For the Law Enforcement Agencies of Miami-Dade County

The Rap Sheet

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The next
Police-Prosecutor
Coordinating Committee meeting
is scheduled for
Wednesday, September 26, 2012
at 1:00 p.m.
The 2012 Legislative Update
will be on the agenda

Laws Becoming Effective October 1, 2012

Chapter 2012-53:

New subsection 837.055(2) provides that it is a third degree felony to knowingly and willfully **give false information to a law enforcement officer** who is conducting a **missing person investigation involving a child** sixteen years of age or younger, with the intent to mislead the officer or impede the investigation, and the child who is the subject of the investigation suffers great bodily harm, permanent disability, permanent disfigurement or death.

Chapter 2012-155:

Several changes and additions deal with the penalties relating to the **reporting of child abuse**. Changes to 39.205(1) raise failure to report child abuse (or preventing another person from doing so) by those who are required to do so from a misdemeanor to a third degree felony. New subsections (3) through (5) require administrators and law enforcement agencies for any college, university or school in Florida to report information about child abuse once they receive it, subject to a $1,000,000 fine if they don't, or prevent another person from doing so.

New section 796.036 provides that violations of chapter 796 that involve minors engaged in prostitution, lewdness, assignation, sexual conduct or any other conduct prohibited by chapter 796, where the minor is not the person charged with the offense, will be reclassified up one degree.

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Members of the Crimes Against Law Enforcement Officers Subcommittee are listed on the back page

IMPORTANT!

Next PPCC meeting, **September 26, 2012**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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Chapter 2012-19:

Video voyeurism, pursuant to subsection 810.145(8)(a)3, where the defendant is 24 years old or more and the victim is younger than 16, is raised from a third degree felony to a second degree felony. An addition to subsection 827.071(5)(a) provides that *each* child depicted in a photo, motion picture, image, etc. involving a sexual performance by that child, is *a separate offense*.

Chapter 2012-21:
Aggravated fleeing or eluding resulting in serious bodily injury or death is added to the list of underlying offenses for first degree murder.

Section 782.065, which deals with murder of a law enforcement officer, will also include correctional officers and correctional probation officers.

Recent Case Law

Mackey v. State, 37 Fla. Law Weekly D637b (3d DCA, 3/14/12) A patrol officer saw this defendant standing with some other individuals and as the officer drove slowly past the group, he saw what he believed to be a firearm concealed in the defendant's pocket. He also noticed a very small part of the handle of the gun and knew, based on his training and experience, that the defendant was carrying a gun concealed in his pocket. He approached the defendant and asked if he had anything on him; the defendant said no. The officer asked if he could pat him down (and there is no information in the decision to indicate that the defendant agreed to the patdown) and felt, then retrieved, a firearm from the defendant's pocket.

The defense argued, in a motion to suppress the search and seizure, that since the officer did not know if the defendant had a license to carry a concealed firearm, he did not have reasonable suspicion to conduct an investigatory stop or a patdown. The defense cited to a 2010 case in the 4th DCA (Broward County) which held that, unless the officer knew that a suspect did *not* have a **concealed weapon permit**, that he did not have reasonable suspicion for a *Terry* stop and frisk. The 3d DCA certified a conflict with the 4th DCA, holding that the possession of a concealed weapon permit may be an exception or affirmative defense to a charge of CCF, but the absence of such a permit is not an essential element of CCF and the patdown in this case was proper.

Rowell v. State, 37 Fla. Law Weekly D745a (4th DCA, 3/28/12) Police were dispatched to a call of shots fired at an apartment complex and arrived promptly. Several people were detained at the scene including the victim, who identified the defendant as having fired a gun at him from a second floor balcony. There was no indication that there was a second shooter. A shell casing was found on the ground in front of the apartment building. The defendant was taken into custody outside of the building. Police proceeded to the defendant's third floor apartment and found that the front door to the apartment was wide open. They entered to conduct a "protective sweep for officer safety". They found a firearm on the kitchen counter and the defendant was arrested, as he was a convicted felon. Later, the police obtained written consent to search the apartment from a co-occupant, the defendant's girlfriend. The trial court denied the defendant's motion to suppress, holding that exigent circumstances justified the warrantless entry.

On appeal, the court discussed the concepts of **exigent circumstances**, **protective sweeps** and **inevitable discovery**. Exigent circumstances exist where the occupants of a house are aware of the presence of someone outside, and are engaged in activities that justify the officers in the belief that the occupants are actually trying to escape or destroy evidence, *and* the police lack time to secure a search warrant. None of those circumstances exist in this scenario, as there is no evidence of any other individuals being involved and officers did have time – as they testified at the hearing – to obtain a warrant. As far as a protective sweep of a dwelling when the occupant is arrested outside of the dwelling, the police would need to have a reasonable belief that third persons are inside, that the third persons are aware of the arrest outside and might destroy evidence, escape or jeopardize the safety of officers or others. The reasons given for entering the defendant's apartment were only unfounded speculation, not actual information, that there might be a second person in the apartment.

The court also ruled that the inevitable discovery doctrine would not hold up in this case. The state could not show, by a preponderance of the evidence, that the evidence ultimately or inevitably would have been discovered by lawful means while making a showing that lawful means were being actively pursued prior to the occurrence of the illegal conduct. Case law cited provides that the inevitable discovery doctrine "will not be applied in every case where the police had probable cause for a search warrant but failed to get one". In prior cases where it was found to apply, the police were already in the process of obtaining a warrant. The court felt that the operation of the inevitable discovery doctrine under the circumstances of this case would effectively nullify the search warrant requirement under the Fourth Amendment. In conclusion, the court held that the subsequent consent obtained from the defendant's girlfriend did not remove the taint of the illegal protective sweep and held the consent to be invalid.

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Hebron v. State, 37 Fla. Law Weekly F796a (4th DCA, 4/4/12) This case involves further fallout from the series of cases in Broward dealing with the manner in which ***Miranda* rights** were given to suspects. In this case the defendant, during interrogation, asked the following questions of the detective: "Can someone tell me what my options are? … Who can tell me? You got a lawyer here? Can we get a lawyer here that can tell me?" Instead of stopping the interrogation and answering the defendant's clear questions, the detective continued the questioning and, within minutes, the defendant signed a **consent to search** form. The court held that the consent was tainted and suppressed all of the evidence found as a result of the consent, reversed the defendant's conviction and sent the case back for a new trial.

D.S. v. State, 37 Fla. Law Weekly D825a (3d DCA, 4/11/12) There are differing versions of the facts in this case among the decision, the concurring opinion and the dissenting opinion. In that it is the decision which controls, the facts therein are as follows: Officers responded to a burglary call and detained this juvenile, and others, on suspicion of burglary. The investigating officer turned this juvenile over to another officer, who was to detain him while the officers finished their investigation. This second officer was going to place the defendant in her patrol car, but before she did, she conducted a full search and discovered a baggie of cannabis in his possession and arrested him for it. The officer testified that she routinely searches suspects before placing them in her vehicle, as a safety precaution. At the time of the search, however, the defendant was not under arrest, so this didn't qualify as a search incident to arrest. She did not observe any bulges on his person nor possess any information which would give her reason to believe that the defendant was armed and possibly dangerous (Florida Stop and Frisk Law, s. 901.151). The 3d DCA held that the defendant's motion to suppress should have been granted and reversed his adjudication of delinquency.

K.S. v. State, 37 Fla. Law Weekly D930a (4th DCA, 4/18/12) Officers observed a stopped, but running, vehicle with its headlights on but the tag light off. An officer pulled up to conduct a traffic "stop" and saw that there were occupants in the car. As the officer approached the driver's side of the vehicle, she saw the front passenger "rummaging through the floorboard/center console area, moving her shoulders about". She asked the passenger to put her hands up and to exit the vehicle, which she did. The officer went to the passenger side while the back-up officer moved to the driver's side. The officer conducted a **pat-down search** of the passenger and felt an unidentifiable hard, round object in her hip area. The officer asked her what it was and the juvenile responded that it was her "weed grinder". She seized it and arrested the passenger.

While the trial court denied the defendant's motion to suppress, the appellate court held that it should have been granted because the officer did not have reason to believe that the juvenile was armed. While her furtive movements could be considered in determining whether there was a reasonable belief that she was armed, the court held that this alone was not sufficient to form the required reasonable belief.

R.J.C. v. State, 37 Fla. Law Weekly D919a (4th DCA, 4/18/12) Another search and seizure case, this involving what began as a consensual encounter. Officers were dispatched, based on an anonymous call, to a particular location regarding two suspicious black persons dressed all in black. When officers went to the location, they did not find anybody matching the description. The officers proceeded to circle around the area and came across this juvenile and his companion, both of whom were wearing black. When the juveniles made eye contact with the deputy, they went into a food store "in a rush". This raised the deputy's suspicions and he stopped his car and followed them into the store. The deputy asked R.J.C. if he could talk to him for a minute, to which he replied, "Yeah, what do you want?". As they were talking, the juvenile had his hands in his pockets. The deputy asked him to remove his hands from his pockets. The juvenile took one hand out, but left his other hand in his pocket. The deputy asked him again to take his hands out of his pockets, when the juvenile put his one hand back in his pocket, so now both were back in his pockets. The deputy asked him yet again to take his hands out of his pocket saying "What do you have in your pockets? Do you have any guns, knives, weapons, anything…I need to know about?" At this point, the juvenile removed both hands from his pockets and a marijuana cigarette fell to the ground.

The court questioned whether the deputy had sufficient articulable suspicion that the juvenile was involved in criminal activity. Unfortunately, the anonymous call contained very little to assist with this determination. The most that was reported was that these two males dressed in black were walking around the area. There is no mention of, or suspicion of, the commission of a crime. Absent some evidence of criminal activity, the only other basis upon which this search and seizure could be upheld would be if it was, in fact, a **consensual encounter** and was not converted to a detention by the deputy's repeated requests that the juvenile remove his hands form his pockets. The court, citing to previous court decisions, held that it evolved into a detention by virtue of these requests.

All opinions of the Third District Court of Appeal (3d DCA) and the Supreme Court are binding in our Circuit. All other DCA opinions are binding in this District only if there are no contrary opinions in the 3d DCA.

All PPCC Subcommittees, Chairs and members are listed below. Please contact any of the Co-Chairs or members if you have an issue to be addressed.

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