FOR THE LAW ENFORCEMENT AGENCIES OF MIAMI-DADE COUNTY

The Rap Sheet

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

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35 Years of Fun..

Wow, time flies fast when you're having fun. But only, of course, in retrospect… Seriously, I've enjoyed almost every day of my 35+ years with the State Attorney's Office. I have particularly enjoyed my association with the Police-Prosecutor Coordinating Committee for the last 24 of those years. Our meetings over the years have given birth to some lasting changes in the way the criminal justice system works and provided a forum for the open exchange of information and ideas. Writing *The Rap Sheet* for the last 13 years has been especially enjoyable! I welcomed the opportunity to keep you advised of what the PPCC was doing, updating you in areas of case law that directly impact your daily job as law enforcement officers, and having a good time with the Florida Legislature's madness in our annual legislative updates.

Marie Jo Toussaint will be taking over as Chair of the PPCC. I hope you will continue to work with her, as you have with me, to help the committee serve as a resource for the resolution of our mutual issues and challenges. Actually, since you'll be seeing this after August 30th, I should say "the resolution of ***your*** mutual issues and challenges"; I'll be embarking on a whole new set of issues and challenges…

Kristi Bettendorf

IMPORTANT!

Next PPCC meeting, **Wednesday, September 18, 2013 at 2:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

Some Laws Becoming Effective October 1, 2013

Chapter 2013-58:

New section 316.305 prohibits **texting**, emailing and instant messaging while operating a motor vehicle. Motor vehicles which are stationary are not included. There are also several exceptions to the applicability of the law. It is a non-criminal infraction, but citations can only be issued when an operator of a motor vehicle has been detained for a suspected violation of *another* provision of Chapters 316, 320 or 322.

Chapter 2013-117:

New subsection 837.05(1)(b) makes it a third degree felony for a person to knowingly give **false information to a law enforcement officer about the commission of a crime**, if the person has previously been convicted of the offense ***and*** either:

1. The information was communicated orally and the officer's account of that information is corroborated by an audio recording, a video recording with audio, a written or recorded statement, or another person was present and heard the false information being given to the officer, or
2. The information was communicated in writing.

Chapter 2013-228:

New criminal offenses for **filing false documents against real or personal property** have been created in section 817.535. This new law deals with instruments such as judgments, mortgages, liens, and other such documents which relate to the ownership, transfer or encumbrance of or claim against real or personal property. Apparently, "sovereign citizens" have been known to use this type of tactic to harass public officials, but the law's application is not limited to this type of offender.

If someone files (or directs a filer to file), with the intent to defraud or harass another, any instrument containing a materially false, fictitious, or fraudulent statement or representation that purports to affect an owner's interest in the property described in the instrument commits a third degree felony. A second or subsequent violation is a second degree felony.

Those offenses are reclassified up one degree if:

- The owner of the property is a public officer or employee
- The person committed the offense while incarcerated, or
- The owner of the property incurs financial loss as a result.

In addition to the criminal penalties, the law also provides for the court to declare the instrument in question null and void and provides that the owner of property has a cause of action against a convicted defendant.

Chapter 2013-242:

While no changes were enacted to the existing law regarding the fraudulent use of **personal identification information**, a new section was created which sets forTH an additional offense.

Section 817.5685 provides that it is unlawful to intentionally or knowingly possess, without authorization, the personal identification information of another person *in any form*. If a defendant possesses the personal ID information of 4 or fewer people, the offense is a first degree misdemeanor. If 5 or more persons' ID is possessed, it is a third degree felony. Note that there is still the "without authorization" component to this offense, so we will need to know who the victims are, be able to contact them and establish their lack of authorization of the defendants to possess their ID information. The statute also specifically lists persons and entities to who this section does not apply and are lawfully in possession of other persons' ID information.

Recent Case Law

M.B. v. State, 38 Fla. Law Weekly D528a (3d DCA, 3/6/13) While this decision is darn short on facts (it's a *per curiam* decision), it is a holding by our DCA on some basic tenets of the law which are important to you when you're doing your job. Because the detention in this case was based upon an **anonymous tip** that was not corroborated, it was unlawful. There was no evidence that the officer had the **reasonable suspicion** necessary to detain the juvenile. The juvenile's flight, standing alone, was not sufficient to charge the juvenile with resisting without violence, as the State introduced no evidence to demonstrate that the **flight** took place in a **high crime area**.

Springer v. State, 38 Fla. Law Weekly D547a (4th DCA, 3/6/13) This defendant was convicted of armed robbery and aggravated battery. In this case, the defendant approached the victim as he stood outside of his vehicle and demanded money. The victim refused and they started fighting. As the victim was trying to leave in his car, he felt a pain in his side, saw he was bleeding and passed out.

Two days later, the defendant was seen driving a vehicle that was missing the sideview mirror on the driver's side. An officer conducted a traffic stop and found out that the defendant was DWLS and he was arrested. A search incident to the arrest revealed a blank check with the victim's name on it and two pocketknives in the defendant's pockets. There were possible blood stains on the trunk of the car. The defendant filed a motion to suppress the evidence based on a bad stop, but the trial court denied it. The issue turns on the validity of the stop and the officer's reliance on safety equipment statutes.

The defendant argues that he did not violate s. 316.294 because it only requires that a vehicle have "a mirror so located as to reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of the motor vehicle". The appellate court reversed the trial court based largely on what the testimony did *not* show. There was no testimony that the vehicle did not have an interior rear view mirror affixed to the windshield nor a sideview mirror on the passenger side. Therefore, it cannot be said that the vehicle was unsafe. The defendant's convictions were reversed.

Williams v. State, 38 Fla. Law Weekly D582a (2d DCA, 3/8/13) In this Second District case, the court ruled that the defendant, the driver of a vehicle, could not be held to have the ability to exercise **dominion and control over** the **cannabis** found in a black bag behind the rear seat because there were 2 other passengers in the vehicle. Although she was driving the car and had, in fact, rented the vehicle, there was nothing in the black bag which tied the defendant to its contents.

State v. Law, 38 Fla. Law Weekly D921a (3d DCA, 4/24/13) This Third DCA case deals with **reasonable suspicion for a stop**. Detectives were conducting surveillance at a location pursuant to a tip about narcotics activity. While there, detectives observed a hand-to-hand transaction and a group of people smoking marijuana. They also observed this defendant approach the person previously involved in the transaction and engage in a short conversation. He then went back in the direction he had come from, and later returned with money in his hand. In the meantime, the detectives had ordered the take down of the people smoking marijuana and the defendant saw this takedown. When he saw it, he appeared frightened and nervous, grabbed the waistband of his shorts, turned around and started speed walking away from the scene of the takedown. Detectives were ordered to stop the defendant.

Detectives saw the defendant and called to him who, while initially responding to the detectives, turned, again grabbed the waistband of his shorts and ran. They ordered him to stop but to no avail. They eventually reached him at the doorway to an apartment and seized the firearm that fell from his waistband. The defendant argued that he was provoked into flight, but the court disagreed. The court said that there was no unreasonable show of force or improper provocation by police, particularly in light of everything they observed about the defendant's behavior.

State v. T.S., 38 Fla. Law Weekly D1079a (3d DCA, 5/15/13) This case discusses the difference between an **anonymous tip** and a **citizen informant**. An officer was off duty and out of uniform but driving his marked police car when he was approached by an individual who advised the officer that he had just been robbed at gun point in the bathroom of a fast food restaurant. The victim gave a description of two suspects involved. The officer spoke with the victim a bit longer and, finding him credible, and learning that the robbery had occurred only a few minutes before, decided to look for the two. He asked the victim to stay there, but had not gotten his name or address.

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After only a few minutes, the officer found two people who fit the description given by the robbery victim. The officer approached them with his gun drawn, as one of the suspects was said to be armed. The officer told them why he wanted to speak with them and asked them to show their hands. This suspect did not respond to the officer's numerous requests to show his hands, until the officer threatened to blow his head off when he wisely raised his hands in the air and told the officer he had a gun in his pocket. The officer seized the firearm and returned to the scene of the robbery about 35 minutes later, but the victim was no longer there. The defendant was charged with CCF and possession of a firearm by a minor.

The trial court had suppressed the gun, holding that the individual to whom the officer spoke was only an unreliable anonymous tipster. The 3d DCA disagreed, reversing the trial court's decision and finding that the individual was a citizen informant whose information was sufficiently reliable to support the investigatory stop. Florida case law has previously held that information provided by a citizen informant is at a higher end of the reliability scale than an anonymous tip. Because the officer had the opportunity to assess the motivation, credibility and potential accountability of the "victim" in this case, his information is considered by the law to be more worthy of credibility. He was not motivated by pecuniary gain, but the desire to further justice. Unlike an anonymous tipster, he directly approached the police and might, therefore, have been held accountable for any false statements. All of these factors led to the court's conclusion that the officer had sufficient reasonable suspicion for the investigatory stop he conducted in this case.

Collins v. State, 38 Fla. Law Weekly D1217b (4th DCA, 6/5/13) At about 1 p.m., a uniform officer was dispatched to an apartment complex in response to an **anonymous telephone tip** that 2 juveniles were loitering around the complex and that drugs were possibly involved. When the officer arrived he encountered the defendant and another young man; neither were juveniles. He stopped them and asked what they were doing there. Both said they were going to visit a friend. The officer pointed out the "no trespassing" sign on the property and asked them to "stand by" while he checked at the apartment they had indicated. The officer testified that at this point the two men were not free to leave. While knocking on the door of the apartment, the officer saw the defendant take something out of his pocket and drop it to the ground. It turned out to be cocaine and the defendant was charged with possession of cocaine.

The trial court had denied the defendant's motion to suppress the cocaine but the 4th DCA disagreed and reversed. The State argued that the anonymous phone call coupled with the officer's independent observations were sufficient to justify the stop and brief detention and, in the alternative, that the encounter was consensual.

The law is well established that an anonymous call can provide a sufficient basis for an investigatory stop only if the details provided in the call are corroborated by independent police work giving the call a sufficient indicia of reliability. Here, the information provided was bare bones and lacked any degree of detail. The call just said "2 juveniles", with no mention of race, sex or any clothing description. And the officer didn't even stop juveniles, but adults.

The court then discussed whether there could have been a basis to stop the individuals on a reasonable suspicion that the crime of **trespass** was being committed. The court also answered this in the negative. A person's mere presence on property that has a "no trespassing" sign is not a sufficient basis to justify an officer's investigatory stop.

Arias v. State, 38 Fla. Law Weekly D1547a (3d DCA, 7/24/13) The saga continues regarding **dog alerts** at the front doors of homes constituting a search. This case has been around the appeal process for a while. Initially, the trial court denied the defendant's motion to suppress. The Third DCA affirmed the trial court's decision and the defendant appealed to the Florida Supreme Court. As you will recall, there were a couple of dog sniff cases that were before the Supreme Court a while back; one of them was *State v. Jardines* While *Jardines* was pending, proceedings were stayed in this case. Once *Jardines* was decided, and the Supreme Court ruled that a dog sniff outside the front door of a home was a search for which probable cause must be established, they sent this case back to the 3d DCA to reconsider in light of the decision in *Jardines*. The Third District affirmed their earlier decision, holding that the trial court's decision in this case did *not* rely upon the dog sniff, in that there was a detective who, independently of the dog, smelled the odor of live marijuana from outside of the house.

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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