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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New Laws

Effective Date: October 1st, 2014

Chapter 2014-5 Sexual Offenses

This bill contains numerous amendments to the statutes dealing with sexual offenders and sexual predators. Some of these changes are as follows:

Section 68.07 is amended to require that information as to whether a petitioner has ever been required to register as a sexual offender or sexual predator be provided for all petition for a name change. It further sets forth specific notification requirements for the Clerk of the Courts and FDLE as well as specific monitoring and notification requirements for the Department of Highway Safety and Motor Vehicles.

Section 775.21 and 943.0435 have been amended by the addition of the definition of "internet identifiers" to include all electronic mail, chat, instant messenger, social networking, application software, or similar names used for internet communication and "vehicles owned" to include any vehicle registered, titled…leased by a sexual offender or sexual predator, any car for which he is listed as an insured…any rented car that a sexual offender or sexual predator is authorized to drive…any car that is registered, titled… by a person or person residing at a sexual predator's or sexual offender's permanent residence for 5 or more consecutive days.

The sexual predator and sexual offender criteria has been expanded to include the additional criminal offenses: sexual misconduct under 393.135(2), 394.4593(2) and 906.1075(2); lewd or lascivious offenses under 825.1025, computer pornography; prohibited computer usage; traveling to meet minor under 847.0135, excluding 847.0135 subsection 6.

Additional information must be provided by sexual offenders and sexual predators during the registration or re-registration process: tattoos or other identifying marks, all internet identifiers, motor vehicle information, palm prints, passport or immigration documents if the person is an alien, and professional license information. They must report all changes regarding motor vehicle information, changes in name, establishment of a transient residence, in person within 48 hours. Offenders and predators who have established transient residence must report in person every 30 days.

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IMPORTANT!

Next PPCC meeting, **Wednesday, September 24, 2014 at 2:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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Sexual offenders or sexual predators who intend to reside in a foreign country for a duration of 5 days or more are now required to notify the local authority within 21 days prior to departure to such foreign country. It sets forth specific notice requirement for the local authority and for FDLE, with the latter mandated to notify the proper authority in the foreign country.

Sexual offenders or predators who volunteers at institution on higher learning must provide information about the institution and his/her status at said institution.

It is now a felony of the third degree for a sexual offender or sexual predator to knowingly provides false registration information by act or omission.

Additional venues for prosecution have been added. Violation of registration requirements can be prosecuted in the county where the offender or predator was released from incarceration or in the county where the defendant offender or predator reported he/she intended to reside.

The Romeo-Juliet statute (Sec. 943.04354) which sets forth the requirement under which a sexual offender or predator can move for the removal of the requirement to register, is amended by changing the victim's age from 13 years or older but younger than 18 years of age. Previously, it was from 14 to 17.

Chapter 2014-119 -- Public Assistance Fraud

The bill creates new first and second degree felony offenses relating to public assistance fraud. It amends the aggregate value amount in s. 414.39(5)(b), F.S., to make it a third degree felony if the value of the public assistance fraud or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of $200 or more but less than $20,000 in any 12 consecutive months.

The bill also creates s. 414.39(5)(c) and (d), F.S., which makes it a second degree felony if the value of the public assistance fraud is of an aggregate value of $20,000.00 or more but less than $100,000 in any 12 consecutive months and makes it a first degree felony if the value of the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is of an aggregate value of $100,000 or more in any 12 consecutive months.

Chapter 2014-194 – Florida Unborn Victims of Violence Act

This bill amends Section 775.021 by providing that a person who commits a criminal act that causes death or bodily injury to an unborn child commits a separate offense if such offense is not specifically provided for, with the punishment for this offense being the same as the punishment for that offense had the injury or death occurred to the mother of the unborn child. An offense under this section does not require proof that the person accused of such offense knew or should have known the mother was pregnant or intended to cause the death or injury to the unborn child. The bill defines an "unborn child" as "a member of the species homo sapiens, at any stage of development," who is carried in the womb." It removes the words "quick" and "viable fetus" from the definition of "unborn child" in ss. 316.193, 782.071, and 782.09.

Recent Case Law

Compiled by Joe Robinson, Chief of the Felony Screening Unit

State v. Edwards, (Third District Court of Appeal, Opinion filed August 27, 2014)

The defendant was charged with being an accessory after the fact to a strong armed robbery, by acting as a getaway driver. The defendant filed a pretrial motion to preclude the State from using his confession at trial on the basis that the State could not produce evidence sufficient to establish a corpus delecti. The trial court granted the motion, despite the fact that the State proffered evidence from the victim that described how the robbery occurred, including the make and tag number of the getaway vehicle used, and from the defendant's girlfriend that she had loaned him the car identified as the one used in the robbery. Not surprisingly, the 3rd DCA reversed the trial court's order.

The concept of the corpus delecti rule is one of which all police officers should be aware. A corpus delecti (literally "the body of the crime") must be established by the prosecution at trial in two parts: first, the occurrence of the specific injury or loss, e.g., for murder, a dead body or for theft, property missing, and second, a person's criminality as the source of the injury or loss. Sufficient evidence must be presented to establish these two elements for a corpus delecti before the defendant's confession can be introduced into evidence against him.

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This writer has seen the issue arise most often in the situation of an embezzlement, where a trusted employee has made off with business funds or inventory over a period of time, and subsequently admitted his or her involvement to the police. Before the confession is admissible to prove the identity of the employee as the thief, it must be first established that a) the money or property is missing (usually never a problem) and b) the money or property is missing through a criminal act or agency, as opposed to being merely lost or mislaid. Sloppy record keeping or inventory tracking may make this a difficult matter to prove, even to the much lesser standard of proof needed for proof of a corpus delecti.

There are a lot of variations and factors at play in the law relating to corpus delecti and its proof. If you have questions about it in general or relating to a specific case please contact me or another Assistant State Attorney.

Lane v. State, (2nd DCA)

This case discusses the factors which may turn an encounter into a detention, and render a subsequent consent involuntary. The facts are as follows: After completing an unrelated traffic stop, the deputy turned off the lights on his patrol car and asked to speak with Lane, an eighteen-year-old high school student who was walking along a sidewalk nearby. Lane assented, and he also agreed to show the deputy his identification. The deputy set the ID and wallet on the hood of the patrol car. The deputy then asked if he could search Lane for weapons. He later testified that he generally asks to conduct a search "as an officer safety measure . . . when speaking with people in street encounters." Lane permitted the search, during which the deputy felt and then retrieved some loose pills in Lane's pants pocket. Lane said that a friend had given him the pills when he complained of a headache. The four pills were hydrocodone, for which Lane had no prescription.

At the hearing on a motion to suppress, Lane testified that he did not feel free to leave during the encounter and that he did not recover his identification until after his release from jail., and argued that the consensual encounter became an illegal detention when the deputy asked to search him without first returning his identification and wallet. The trial court ruled for the State.

In overturning the trial court's decision, the Second District Court of Appeal emphasized that retaining an individual's ID weighs heavily as a factor in weighing whether an encounter has turned into a seizure. Here, the 2nd DCA held that the consensual encounter became a detention when the deputy asked for permission to search before first returning Lane's wallet and ID. The court reached this finding that Lane's consent was not voluntarily given by considering the totality of the circumstances, including Lane's youth, the deputy's retention of Lane's wallet and identification, and the fact that Lane was not told of his right to refuse a search.

Henderson v. State, (4th Dist.)

This case concerns two issues: third-party consent to search and the voluntariness and ultimate effect of the defendant's consent to search.

The defendant was a suspect in an armed robbery, and had an unrelated pending arrest warrant. The police went to his motel efficiency where he lived with his girlfriend and children. They obtained an oral consent to search from the girlfriend, discovered some ammunition, and then obtained a written consent to search from the girlfriend. The police began to search for the firearm used in the robbery. The search then proceeded as follows:

"The defendant was in a police vehicle while Smith and Officer Seltzer searched the room for the firearm. Officer Reynolds was standing next to the vehicle. The defendant told Officer Reynolds of his concern that his girlfriend would be arrested and their children would be placed in the custody of the Department of Children and Families. Officer Reynolds did not respond to the defendant's comments. Soon thereafter, the defendant made an unsolicited offer to Officer Reynolds to "show them where the gun is." Officer Reynolds brought the defendant to the motel room, where the defendant directed police to a satchel which contained a firearm and additional ammunition."

The defendant sought to suppress the entirety of the searches, claiming, inter alia, the girlfriend lacked the authority to consent to the search, and that the defendant was under duress because he believed his girlfriend would be arrested and his children would go into the custody of the Department of Children and Families.

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The Fourth District Court of Appeal, focused on and upheld the State's claim that under the totality of the circumstances in this case, the defendant's unsolicited offer to show the police the location of the firearm severed the causal connections between any unlawful police conduct and the discovery of evidence. The court did not address any alleged illegality in the consents obtained from the defendant's girlfriend, and held even if those initial consents were violative of law, it didn't matter:

"… that the defendant had the opportunity to refute or repudiate his girlfriend's consent to the second search. Instead, he endorsed her consent by offering his own unsolicited consent and assistance. The defendant's subjective concerns that his girlfriend would be arrested were not introduced or encouraged by officers. The officers were under no obligation to reassure the defendant that his girlfriend would not be arrested. Although the defendant was in handcuffs when he offered to show the location of the firearm, there is no evidence that officers created a coercive atmosphere to prompt the offer. The defendant was alone inside a police cruiser and Officer Reynolds was standing outside the vehicle. Officer Reynolds was not trying to engage the defendant in conversation; instead, it was the defendant who expressed his subjective concerns and insisted that Officer Reynolds take him to the room so that he could show the location of the firearm. His unsolicited offer to show the location of the firearm was not a mere acquiescence to a show of police authority.

In sum, we conclude that the defendant's unsolicited offer to show the location of evidence cured any defect in the officer's conduct and based on the totality of the circumstances that offer was unsolicited and voluntary. Accordingly, we affirm the defendant's conviction and sentence. "

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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