

The Rap Sheet

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Miami-Dade State Attorney



1 April 2011

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Subcommittee are
listed on the back page**

IN THIS ISSUE:

PAGE

| | |
|-------------------------|-----|
| Meeting Summary | 1-2 |
| Case Law | 2-3 |
| PPCC Subcommittees..... | 4 |

What is VAN?

What is VINE?

What services are available for victims?

How can law enforcement agencies best utilize those services?

These and many more questions will be
answered for you at the April PPCC Meeting

April 20, 2011, 1:00 p.m.
State Attorney's Office

Summary of PPCC Meeting **March 16, 2011**

Agencies represented: North Miami Beach PD, Miami Beach PD, M-DPD, M-DPD Forensic Services Bureau, Sunny Isles Beach PD, University of Miami PD

Agenda Items:

Ride-Alongs:

The State Attorney's Office is interested in placing renewed emphasis on encouraging SAO staff to accompany police on ride-alongs. The representatives present were asked if their departments would be interested in "hosting" ride-alongs and most departments present indicated that they would. All require that some type of waiver of liability be signed, and some perhaps a criminal history check.

Continued on next page

IMPORTANT!

Next PPCC meeting, **Wednesday, April 20, 2010, 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

Continued from previous page

Update re: Electronic A-forms:

At a meeting I recently attended, it was reported that the "target date" for the completion of the new electronic A-form is estimated to be two years from now.

ISSUES FROM THE FLOOR:

Plea Negotiations:

Ivonne Duran, Miami-Dade PD Legal Bureau, raised the issue of matters which the police agencies would like the SAO to take into consideration when entering into plea negotiations on cases. If property (other than contraband) has been seized in conjunction with an arrest, whether it be personal property or cash, we are asked to take this into account. Forfeiture of the seized property should be considered in conjunction with the negotiations. In addition, if police investigative costs have been requested and documented, they should also be considered. Remember that a green dot on the upper right hand corner of a case file indicates that a cost recovery form is in the file.

Officers Carrying Departmental Photo ID:

Officers are reminded that in order to enter the courthouse, or a court-related facility such as the State Attorney's Office or Public Defender's Office, with their weapon they must have their departmental photo ID to show to building security staff.

Victim Services:

Major Kathy Katerman, North Miami Beach PD, raised a question with regard to the difference between certain victim services (namely VAN and VINE), and how police agencies could best utilize these and other services that exist for victims. A request was made that an individual familiar with these services attend the next PPCC meeting.

The next PPCC meeting will be held on Wednesday, April 20, 2011 at 1:00 p.m.

Recent Case Law

S.J. v. State, 35 Fla. Law Weekly D2826b (4th DCA, 12/15/10) It seems that **loitering and prowling** arrests are rarely upheld these days, but the 4th DCA found probable cause for the L&P in this case, therefore providing a sufficient basis to find the search incident thereto legal.

At about 1 a.m. an officer responded to a call of 2 males in a hospital parking lot. When he arrived, he saw the two in the parking lot just outside of an enclosed dumpster area. The officer testified that it appeared to him that the individuals were trying to hide from an approaching hospital security van. He approached them and asked what they were doing. They both said they were looking for a drink of water. The officer estimated that one of the boys was 14 or 15 and the other looked to be about 10 years old. The officer was concerned because this hospital area was one of his department's worst for vehicle burglaries and thefts and their explanation did not ease these concerns. Both of the boys provided their names and neither tried to flee. He arrested them for L&P.

The gist of L&P is "loitering and prowling in a manner not usual for law-abiding citizens" giving the officer "justifiable and reasonable alarm" for the safety of persons or property in the area, coupled with "aberrant and suspicious criminal conduct that comes close to, but falls short of, the actual commission or attempted commission of a substantive crime". The requisite "justifiable and reasonable alarm" is presumed where a defendant flees, conceals himself or any object, or refuses to identify himself to law enforcement. The defense argued that every element of an L&P was not committed in the officer's presence and that the officer's conclusion that the boys were hiding themselves was only the officer's subjective belief, not an objective fact.

The court stated that concealment merely creates a *presumption* of justifiable and reasonable concern and the proper test for probable cause still requires a consideration of the totality of the facts and circumstances within the officer's knowledge. The court held that the officer, based on the facts of this case, had probable cause to believe that the boys were loitering and prowling.

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Williams v. State, 36 Fla. Law Weekly D55a (3d DCA, 12/29/10) This case deals with the sufficiency of an **obstructing (resisting an officer without violence)** charge. In the wake of a shootout between undercover police and drug dealers on October 13, 2006, an anonymous tip was received (on October 16th) that a young black male, possibly involved in the shootout 3 days earlier, was at a particular location and giving a clothing description. As an officer is responding to this call, he hears another officer's transmission that he had arrived at the location, seen the described suspect and that the suspect had run from him. A perimeter was set up. The officer saw an individual matching the description pop his head up from behind a bush a couple of houses away. The officer ran toward him yelling "Stop, police!". Upon seeing and hearing this, the individual (the defendant) turned and quickly headed back in the direction from which he had come. The officer chased and tackled the defendant. A subject that was not covered in the hearing on the motion to suppress was whether this occurred in a high crime area, referencing the United State Supreme Court case of *Illinois v. Wardlow*, which deals with flight from an officer in a high crime area, and its interpretation by the Florida Supreme Court in *C.E.L v. State* in 2009. The 3d DCA held that the failure to elicit testimony at the hearing regarding whether this occurred in a high crime area was not fatal to the legality of the obstructing arrest. The court concluded that the absence of testimony in this area was amply overcome by additional testimony – the anonymous tip, the description of the subject, the concealment and the second flight – which formed the basis of the officer's legal duty to act, upholding the obstruction arrest.

M.M. v. State, 36 Fla. Law Weekly D105b (1st DCA, 1/13/2011) This case also involves an **obstruction** charge. Police were called to a Starbucks in a shopping center regarding a disturbance. This juvenile had been one of the individuals involved in the disturbance, which involved raised voices but no threats or physical contact. By the time the police arrived, the disturbance was over and the juvenile and others with him were sitting at a table outside of the Starbucks. The officers went into the Starbucks and found out what had occurred and then came outside and asked the juvenile and others in his group to leave the shopping center. They objected, there was some cursing and yelling, but all of them eventually left, except for this juvenile. M.M. insisted that he didn't have to leave. The officer finally coaxed him into leaving and the juvenile began walking away very slowly. The officer followed him into a Publix store and then asked him for his name and identification. M.M. twice refused to give his name and said he didn't have any ID on him and the officer arrested him for resisting without violence.

The court cites to previous case law which holds that unless an individual is legally detained, failing to give one's correct identity is not a crime. Since M.M. was at no time lawfully detained, he was free to refuse to identify himself to the officer.

M.W. v. State, 36 Fla. Law Weekly D111c (2d DCA, 1/14/11) Yet another case involving **resisting an officer without violence**. M.W. was being disruptive at his middle school and a school administrator was called upon to remove M.W. from his classroom. The administrator was trying to walk M.W. to a particular office, but the juvenile was not being cooperative. He was yelling, cursing, threw his books to the ground and told the administrator to "get out of his face or he was going to hit him". The school resource officer did not witness this exchange but arrived shortly thereafter. The administrator told the officer what had happened, the officer spoke with M.W. for a while and then advised M.W. that he was going to arrest him. M.W. resisted the efforts to arrest him in refusing to put his hands behind his back, so the officer physically did so himself and then cuffed M.W. He was arrested for assault on the school administrator and resisting without violence.

The trial court found that there was insufficient evidence to support the assault charge. [Although the decision does not specifically say so, I believe the assault charge could not stand because the juvenile's threat to the administrator was a conditional one: *if you don't get out of my face, I'll hit you.*] The court also found that the officer had probable cause for the assault arrest and found he had committed the resisting without violence charge.

The appellate court held that the officer had no basis for the arrest on the assault charge, because it was a misdemeanor not committed in the officer's presence. The state valiantly argued that the school administrator should be considered a "fellow officer" and that the fellow officer rule could then apply. Not surprisingly, the court held that the school administrator was not a fellow officer. The court held that the officer, in making the arrest for assault, was not engaged in the lawful performance of a legal duty and, therefore, the juvenile's conduct could not constitute resisting without.

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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