For the Law Enforcement Agencies of Miami-Dade County

The Rap Sheet

Katherine Fernandez Rundle — Miami-Dade State Attorney

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

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Summary of PPCC Meeting
November 17, 2011

Agencies represented: SAO, M-DPD, M-DPD Crime Lab, FDLE, Miami Springs PD, Coral Gables PD, Hialeah PD, North Miami Beach PD, Sunny Isles Beach PD, Miami Beach PD

Agenda Items:

Arrest Warrant Procedures:

In follow-up to last month's summary on this topic, one matter is in need of clarification. Police have inquired as to the standard of proof for arrest warrant requests through the SAO Criminal Intake Unit. The standard of proof for arrests is, of course, probable cause. When we file arrest warrants in Criminal Intake, we also file the charging document, an Information, at the same time and prepare the case in its entirety, as we do when screening and filing probable cause arrests based on A-forms. The standard of proof for filing an Information is proof "beyond and to the exclusion of every reasonable doubt", pursuant to the requirements of the Florida Rules of Criminal Procedure and the Florida Supreme Court.

New Search Warrant Form:

The new search warrant form and search warrant checklist were distributed last month to those departmental representatives who had previously requested them. If you would like to obtain this new search warrant format for your agency, please contact ASA David Sherman at (305) 547-3350 or email your request to DavidSherman@MiamiSAO.com.

Protected Witnesses:

I was requested to address the issue of witness protection in state prosecutions. There are several ways in which we deal differently with witnesses in need of protection. Initially, they can be listed on the State's discovery as a "confidential witness" in that we will list their address as "c/o the State Attorney's Office", just as we do for certain other types of witnesses such as minors and the victims of certain types of crimes. The State Attorney's Office then agrees to be responsible for producing this witness when required for deposition or court hearings. In addition to this protection, FDLE administers the state witness protection fund. If a law enforcement officer is seeking to re-locate or protect a witness or victim through these funds, please contact ASA Frank Ledee who can assist in this endeavor.

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IMPORTANT!

Next PPCC meeting, **January 18, 2012, 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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Property Bureau Evidence Issues:

Lt. Deborah Whisby-Ferguson from the M-DPD Property & Evidence Bureau addressed the meeting participants on the issue of releasing trial evidence. This issue involves only items that were actually introduced into evidence during a trial and logged in by the clerk. The Clerk's office will routinely release "miscellaneous items" of evidence to the Miami-Dade Police Department "for disposal in accordance with the provisions of §705.105 of the Florida statutes". Miami-Dade not only receives property impounded and introduced into evidence on their own cases, but evidence submitted by municipalities on their cases too. The M-DPD PEB is bursting at the seams just keeping their own property and would like to be able to return this property to the original impounding agency. This problem will be explored and, hopefully, resolved.

Checklists for Economic Crimes:

Checklists were distributed for check fraud, credit card fraud (involving genuine and counterfeit credit cards accounts) and criminal use of personal identification information. If you would like these checklists contact me (Kristi Bettendorf) and I can send them to you attached to an email. Officers who have used them have said that they found them most helpful in putting a case together on these sometimes confusing charges.

The next PPCC meeting will be held on January 18, 2012 when there will be a presentation regarding the automation of the Offense-Incident Report.

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Case Law for The Rap Sheet

C.D. v. State, 36 Fla. Law Weekly D2026a (4th DCA, 9/14/11) This juvenile was stopped because he was in a city park (within Palm Beach County) after hours. Posted signs in the park gave notice of the park's times of operation. As the officer is explaining this to C.D., he starts to walk away. The officer called to him, but he continued to walk away. The officer then arrested C.D. for the ordinance violation. Because C.D. moved his hands toward his pocket, the officer thought he might have a weapon and searched him pursuant to the arrest, finding marijuana. The trial court denied the defendant's motion to suppress the search.

The 4th DCA took up the issue of whether **violation of** this **ordinance** was a criminal offense, justifying an arrest. The court noted that no penalty is included in the ordinance, nor does the ordinance state that it is a violation to be in the park after hours. The court relied on a general code provision that sets forth a $500 fine as the only penalty that could possibly be assessed, even though the ordinance in question does not declare entering the park after hours a prohibited act. When a fine is the only penalty for violating a municipal ordinance, an "arrest" for such a violation permits only a detention for the time necessary to issue a summons or notice to appear. The court held that a full custodial arrest under these circumstances violates the Fourth Amendment.

Since this now could not be classified as a valid **search incident to arrest**, the court then dealt with the issue of whether the juvenile's movement of his hand toward his pocket would form sufficient basis for a patdown search for weapons. The court held that these facts did not demonstrate the basis for a reasonable suspicion that the juvenile was armed.

L.T. v. State, 36 Fla. Law Weekly D2024b (3d DCA, 9/14/11) This juvenile was adjudicated delinquent for a violation of 901.36(1) for **providing a false name to police**. The facts of this particular case are referenced by the court as the basis for their deviation from previous holdings on this issue.

Police were looking for L.T. with regard to a pending investigation and spoke with L.T.'s mother, who gave them a detailed description of her son, including his tattoos and what he was wearing when she last saw him. They later spotted him, knew it was him and took him into custody. He identified himself as "William Clark". As they were walking him to the police car, they passed L.T.'s mother who said "Oh, they got him." When the officers began to fill out their paperwork, the juvenile gave them his correct name.

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Previous case law had relied upon the event of the arrest as the point after which the defendant could not "recant" his previous false name and avoid a false information charge. The 3d DCA, however, differentiated those cases stating that the defendants in those cases were not known to police and the police were put to some degree of effort and work to determine their true identity. Such did not occur in this case, as the police knew L.T.'s true identity almost immediately upon seeing him. Therefore, previous holdings that the time of recantation in relation to the time of arrest would be the deciding factor would not hold true across the board; the facts of each particular case will dictate whether a valid recantation has occurred.

Gizaw v. State, 36 Fla. Law Weekly D2173b (2d DCA, 10/5/11) The defendant was convicted after trial of trafficking in cannabis. The appellate court reversed this conviction, holding that the state did not present sufficient evidence of possession of the cannabis by the defendant.

The defendant was driving her own car when stopped by police in the early morning hours for speeding. There was also a male passenger in the car. The defendant provided her DL and a records check on the passenger revealed that he was on probation for a drug-related offense. Based on this information, the deputies asked for the defendant's consent to search her car, which she gave. In the trunk of the car, which smelled of raw cannabis when opened, a suitcase containing two bundles of marijuana wrapped in duct tape was found. Other items in the suitcase included three pair of men's jeans which appeared to be in the passenger's size. There were no items of the defendant's in the suitcase. There were no fingerprints found on the suitcase or the duct tape. The defendant made a statement to police indicating that the passenger is her on again/off again boyfriend and that they had driven to Miami that day to visit his grandmother, who was sick. She did not know the grandmother's actual name, just that her boyfriend called her "Mama". Her boyfriend had driven down to Miami and to the grandmother's house and the defendant did now know the grandmother's street address. She indicated that once they arrived in Miami, she laid down to rest as she had a headache and that her boyfriend kept the keys to the car during that time. She said the suitcase was not in the trunk when they left to go to Miami and that she had never seen it before. At the time of her arrest, she had $939 in cash in her purse, which she said was for her school tuition.

Because the defendant was not found in actual possession of the cannabis, constructive possession would have to be proven based on independent evidence of the defendant's knowledge of the presence of the contraband and her ability to exercise dominion and control over it. Proof of constructive possession based on circumstantial evidence must also exclude any reasonable hypothesis of innocence put forth by the defense. The court found that the state's evidence in this case does not rule out the possibility that the cannabis belonged to the passenger and that, in fact, it tends to support possession on the part of the passenger rather than the defendant. The defendant's recitation of what had occurred was unchallenged by the state's evidence. The 2d DCA reversed the defendant's conviction.

State v. Seymour, 36 Fla. Law Weekly (2d DCA, 10/26/11) This case deals with the issue of a **consensual encounter**. Officers were on routine patrol in their marked vehicle when they saw the defendant and two other men flagging down the car in front of the officers. The car slowed but didn't stop. Then the men flagged down the officers' vehicle. The officers pulled up, turned on their emergency lights and exited their vehicle. At this point, all three men started to walk away and the two men with the defendant dropped items to the ground. The trial court held that as soon as the officers turned on their emergency lights, the consensual encounter became a detention and that, at that point in time, there was insufficient reasonable suspicion to justify a detention. Subsequent to the initial hearing in this case, the Florida Supreme Court issued a decision in *G.M. v. State* which concluded that there is no per se rule that "the activation of police lights is dispositive of a finding that an individual has been 'seized' under the Fourth Amendment", but that it is only one of the factors to be considered in making a decision based upon the totality of the circumstances.

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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