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 21, 2012

Agencies represented: SAO, M-DPD, Sunny Isles Beach PD, M-DPD-FSB, Miami Springs PD, and Surfside PD

Agenda Items:

Being as it was the day before Thanksgiving and attendance was light; the meeting was a quick one!

Probation Searches:

We discussed Soca v. State (673 So.2d 24) and the issue of probation searches. Probation officers may sometimes request officers to accompany them on a routine probationary search of a probationer's residence. And sometimes during those searches, controlled substances or other contraband could be found and seized. A probationer's possession of such items, however, can only form the basis of a probation violation. This, and other, cases hold that such evidence obtained in a probationary search may *not* be admitted against a probationer in a separate criminal proceeding unless the search meets customary search and seizure standards.

Written Sworn Statements:

We have seen a marked increase in the use of written sworn statements by police for routine or non-eye-witness victims and witnesses. Nonetheless, there is still a lot of room for expansion in the use of these statements. I passed out a sample sworn statement form containing the appropriate statutory reference and a jurat for the witness's signature under oath. If you would like to receive such a statement form, as an attachment to an email, please request it from me (Kristi Bettendorf) via email.

Arresting Defendants with Cell Phones:

As a follow-up to last month's presentation by the Digital Forensics Laboratory, it was suggested that if you are not going to be seizing a defendant's cell phone in conjunction with an arrest, that it may be very helpful to record the cell phone number and get the name of the cell phone's carrier. We might be able to get phone records which will aid in the proof in the case, either by identifying calls made and received or by obtaining information about the cell site locations associated with the use of the phone.

IMPORTANT!

Next PPCC meeting, **December 19, 2012 at 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

Recent Case Law

State v. Williams, 37 Fla. Law Weekly D164c (3d DCA, 7/11/12) This case discusses the issues of **hot pursuit** and a **warrantless arrest** in a defendant's home.

Officers testified at the motion to suppress that they were patrolling a four-square block area at about 1 a.m., after the police had received several threats the preceeding week that officers would be shot and killed. Officers received a dispatch that shots had been fired near the area they were patrolling. One officer heard the shots close to his location, but did not see anyone shooting nor could he tell exactly where the shots were coming from. The officer and backup officers began to patrol the area on foot. The officer saw three black males in the backyard of a home and observed one of them place something behind a doghouse in the yard. He thought it may have been a firearm, though he did not see one, and continued to watch the three men. They walked across the street and into another yard. This officer put out a BOLO describing these individuals and returned to his vehicle.

A second officer also heard the shots, but did not see who fired them. After hearing the shots and the first officer's BOLO, this officer saw the defendant crossing the street while holding onto his waistband. He did not see a bulge in the waistband. When the defendant saw the officer approaching him, he began walking faster. The officer approached the defendant in his vehicle, identified himself and ordered him to stop. By the time the officer got out of his car, the defendant had entered a yard and was headed for the front porch of the house. He jumped over some bushes, tossed a firearm into one of the bushes and continued into the home. The officer walked up to the door and ordered the defendant to come out of the house. The defendant came out and was arrested.

The trial court granted the defendant's motion to suppress, finding that the officer's ordering of the defendant to come out of the house was a constructive entry of the home, and that there was insufficient basis to justify the warrantless entry into the home.

The Third DCA disagreed. They found that the officer had probable cause to arrest the defendant for CCF, based on the unrefuted testimony that the gun had been concealed from the officer's view before the defendant tossed it into the bushes. The court found unconvincing the defense argument that the officer did not know if the defendant had a valid CCF permit (which he did not). The court found that the officer was in hot pursuit of the defendant, and that "a suspect may not defeat an arrest which has been set in motion in a public place…by the expedient of escaping to a private place."

Bruce v. State, 37 Fla. Law Weekly D1750a (4th DCA, 7/25/12) The 4th DCA seems to have quite the corner on these ***Miranda* rights** cases. I'm not going to go through all of the underlying facts, but the important facts are these: As the defendant was being arrested and led away from his house, he asked his mother to call his lawyer, which she did. She also relayed to the defendant the attorney's instructions not to say anything to the police and, to the officers, the fact that she was on the phone with her son's lawyer. The attorney left voice mail messages and faxed letters to the Fort Lauderdale Police and Broward Sheriff's Office that his client was invoking his right to remain silent and right to counsel. When the attorney arrived at the Sheriff's Office, the attorney was denied access to the defendant. The detectives questioning the defendant were not told that his attorney was seeking to see his client. Over an hour later (after the defendant had signed a *Miranda* waiver form and made a statement) the attorney was taken to the defendant. The court found these procedures in violation of article I, section 9 of the Florida Constitution.

Florida Supreme Court cases dictate that a suspect must be informed promptly of efforts by a lawyer to provide legal assistance relating to the detention; the police must advise a defendant that a lawyer is present in the station and available to speak with him. Because they are responsible for a suspect's isolation, the police have a duty to act reasonably, diligently and promptly to provide a defendant with accurate information. The police cannot rely on the failure to notify interrogators of a lawyer's presence to skirt the article I, section 9 due process requirements. The defendant's convictions were reversed and remanded.

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State v. Delgado, 37 Fla. Law Weekly D1756a (3d DCA, 7/25/12) Police received an anonymous tip that there was a marijuana grow house at a certain location. Four detectives went to the location, two to the front door, two to the side of the house to assure that no one would run from the house. While police were at the front door, the smell of marijuana coming from the house was apparent. The defendant opened the front door and the smell was even stronger. One of the detectives saw someone else inside the house, so while one of them walked around to the side of the house with the defendant the other entered the house and observed cannabis in plain view. The defendant came back into the house with the detective and proceeded to execute a consent form and then a *Miranda* waiver form. The search revealed that the residence was, in fact, a grow house (big surprise there) and the defendant was charged accordingly. The trial court granted the defendant's motion to suppress the search, arguing that the consent was not voluntarily given.

The court discussed the defendant's **consent to search**, stating that it was the state's burden to show that the consent was voluntary by a preponderance of the evidence and the totality of the circumstances. The court's findings were that no weapons were drawn by the detectives, the defendant was never placed in handcuffs, the police conducted a proper knock and talk procedure, there was probable cause for the search, there were no threats by police to obtain a search warrant, nor any other facts that would constitute coercion. The court found the consent voluntary and reversed the trial court's ruling on the motion to suppress.

Burney v. State, 37 Fla. Law Weekly D1791b (2d DCA, 7/27/12) While the **battery on a law enforcement officer** charge in this case was reversed, there are some interesting aspects to the facts of the case and the manner in which it was charged. The victim officer was in a convenience store speaking with the store manager, was off-duty and not in uniform. The defendant entered the store and his behavior demonstrated apparent psychological issues. The defendant launched into a verbal barrage and spoke profanely to the officer. The officer advised him that there was no reason for him to be acting that way, which seemed to irritate the defendant more, but then he left the store. Once outside, the defendant continued yelling at everyone within earshot. He got into his truck and left but returned almost immediately. He re-entered the store and confronted the off-duty officer, placing himself nose-to-nose with the officer. When the defendant made contact with the officer, the officer went to push him back just as the defendant struck the officer's other hand and spilled the officer's hot coffee all over him. The officer then arrested the defendant for disorderly conduct and battery.

The defendant argued on appeal that he was entitled to an acquittal on the charge of battery on a law enforcement officer as the state failed to prove that the officer he touched was engaged in the lawful execution of a legal duty at the time of the battery. The District Court agreed, stating that even though it appears that the defendant knew the victim was a police officer and probably targeted him because of this fact, that is not enough to transform the battery into a battery on a law enforcement officer. The court states in a footnote to the decision that up until the time the defendant touched the off-duty officer, he had merely engaged in shouting and profane speech that did not rise to the level of disorderly conduct, so the officer could not have been found to be making an arrest.

Interestingly, the state charged this battery in alternative ways: it was charged as a battery on a law enforcement officer (a third degree felony) and, alternatively, as a battery with the defendant having a previous battery conviction (also a third degree felony). In those cases, therefore, where we may be unable to charge a defendant with battery on a law enforcement officer, due to an officer's off-duty status, we may still be able to charge a felony battery should the defendant have the requisite previous (provable) battery convictions. The 2d DCA, therefore, reversed the battery on a law enforcement officer conviction and did not reduce the charge to misdemeanor battery upon remand to the trial court, but directed the trial court to conduct additional proceedings to determine if the defendant should be convicted of a misdemeanor or felony battery.

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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