For the Law Enforcement Agencies of Miami-Dade County

The Rap Sheet

Katherine Fernandez Rundle — Miami-Dade State Attorney

1 June 2012

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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
May 16, 2012

Agencies represented: SAO, M-DPD, Sunny Isles Beach PD, Aventura PD, Surfside PD, M-DPD-FSB, Pinecrest PD, Miami Springs PD, Florida City PD, Coral Gables PD, Miami Beach PD, North Miami Beach PD

Agenda Items:

Police Case Numbers on Citations:

Elena Reyes, Administrator in the County Court division of the State Attorney's Office, spoke about this issue. When an officer issues citations to a defendant who is not going to be arrested (is going to be PTAed) and the citations involve an accident, it can often be *very* difficult for us to find the accident report that goes with the citations. If the citing officer will write the police case number (the number by which we can track the accident report) somewhere on the citations, this would be most helpful and would enable us to find the accident reports within time for the court date.

Applications for Mobile Tracking Device Warrants:

At our February PPCC meeting, we discussed the United States Supreme Court decision in U.S. v. Jones, which held that the government's attachment of a GPS device to a vehicle, and its subsequent use to track a subject by monitoring the vehicle's movements, constitutes a search under the 4th Amendment and requires a showing of probable cause. The State Attorney's Office has now completed an application form which should be used before any type of GPS device is attached to a vehicle, no matter the location of the vehicle when the device is attached. Please contact the Organized Crime Unit of the SAO in order to obtain an application for such a warrant. Their phone number is 305-547-0668.

Questioning of Subjects/Defendants:

Officers are sometimes passing up the opportunity to obtain valuable evidence on their cases by failing to speak with subjects and defendants. Officers should routinely advise defendants of their rights and seek to question them, particularly on cases where proof of knowledge is necessary. There is no prohibition against speaking with a defendant who is already incarcerated on another case, after *Miranda* rights of course. Officers should also not overlook (nor forget) any spontaneous statements made by subjects or defendants. If a defendant's statements are not in response to police questioning, then they may be admissible as spontaneous.

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IMPORTANT!

Next PPCC meeting, **June 20, 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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Crimes Against US Census Bureau Workers:

The SAO received, as I'm sure all other local law enforcement agencies received, a letter from the Department of Commerce requesting that we aid in the detection, reporting and prosecution of crimes of violence against Census workers. I, for one, mistakenly believed that Census workers were only out and about every ten years, but they continue to work in the community nearly every day gathering data for other essential economic, labor and demographic purposes.

IRS Tax Refund Fraud Cases:

As you all know, we have been dealing with these cases for a few years and the IRS Criminal Investigation section will now apparently assist local law enforcement with these cases. If law enforcement officers encounter evidence of such fraud, they can contact the IRS-CI Duty Agent, 24 hours a day 7 days a week. I don't want to publish this agent's phone number in *The Rap Sheet*, as they request that the information be disseminated only to law enforcement officers and financial institutions, but if your agency did not receive this information from the Miami Field Office, please let me know. They have also created Form 8821-A, an IRS Disclosure Authorization for Victims of Identity Theft, and Form 14039, an Identity Theft Affidavit. Members of the general public can contact the IRS at 1-800-908-4490.

Issues from the Floor:

A-Form Automation:

The time frame for the countywide implementation of the automated A-Form has been pushed back a few weeks due to "glitches" (my word, not theirs) which have been identified and addressed during the prototype review sessions.

Bookings at TGK:

All bookings being done at TGK looks like it is still on track for the end of December of this year.

Bond Hearing Cutoff Times:

This is not a change, just a reminder. A 1 a.m. booking is the cutoff time for a defendant's appearance at the morning, weekday first appearance hearings. Defendants booked between 1 a.m. and 9 a.m. will be scheduled for the afternoon weekday hearings.

The next PPCC meeting will be held on June 20, 2012 at 1:00 p.m.

Recent Case Law

King v. State, 37 Fla. Law Weekly D443a (1st DCA, 2/17/12) This case raises issues regarding **consent to search** by co-occupants of premises. Police were called to a house regarding a domestic disturbance. When they arrived, the defendant was gone, but his wife was there. They asked her if the defendant owned any guns and the wife said he did, pointing officers to a safe in a closet in their bedroom. The defendant's wife told the officers that she did not have a key to the safe, so the officer took the safe to his car and pried it open.

The appellate court said that common authority to consent does not, in and of itself, permit the search of any personal property contained within the premises. There is no right on the part of a third party to consent to a search of personal property belonging to another person unless there is evidence of both common authority over and mutual usage of the property. The defendant's wife did not have a key to the safe and she had no property in the safe. It was, therefore, incumbent upon the officers to conduct a further inquiry into the possession and use of the safe before forcing it open. The case was reversed.

State v. Bowers, 37 Fla. Law Weekly S136a (Fla. Supreme Court, 2/23/12) The Second and Fourth Districts had issued conflicting rulings on a certain aspect of the **fellow officer rule** and the Florida Supreme Court resolved the conflict with this case. After a traffic stop, Bowers was charged with possession of marijuana and narcotics paraphernalia and DUI. The defendant moved to suppress the evidence found during the search that followed the stop, claiming that the stop was illegal because it was not based on probable cause that the defendant had committed a traffic infraction.

At the motion to suppress, the officer who made the original traffic stop did not testify. The second officer on the scene, the DUI officer, testified as to what the initial officer had told him about the stop. The State argued that, pursuant to the fellow officer rule, the second officer could testify about the basis for the stop, even though he did not personally witness it. The trial court granted the motion to suppress and the State appealed to the Circuit Court, which reversed the County Court's order. The 2d DCA reversed the Circuit Court's decision, holding that the 4th District's decision on this issue misapplied the fellow officer rule. Hence, the appeal to the Supreme Court to resolve the conflict.

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The Supreme Court said that the fellow officer rule exists not to permit an officer to give hearsay testimony regarding the knowledge of another officer so as to justify the other officer's conduct, and it is not a rule of evidence. It exists, instead, to facilitate arrests and searches by allowing an officer to rely on officers' collective knowledge to act in the field and to testify with regard to that collective knowledge to justify his or her *own* conduct, not the conduct of other officers.

F.R. v. State, 37 Fla. Law Weekly D508b (3d DCA, 2/29/12) The definition of "**common pocket knife**", which is an exception to a violation of F.S. section 790.01 for carrying a concealed weapon, has been subject to different interpretations over the years. There is a very old Attorney General's opinion that states that a folding knife with a blade of four inches or less qualifies as a common pocket knife, but this case discusses circumstances where that 4-inch rule may not apply. This case cites to a 1997 Florida Supreme Court case which held that ultimately, the question of whether a knife falls within the exception is not a legal conclusion, but a question for the trier of fact.

The knife in this case had a blade just shy of three inches, but the court held that it had other characteristics which took it out of the common pocket knife exception. One side of the blade had serrations. The handle was curved, with grooves to accommodate the user's fingers. There was a long screw protruding from the handle, which served as a makeshift hilt guard and the blade locks in an open position. F.R.'s conviction for CCW was affirmed.

Darling v. State, 37 Fla. Law Weekly D506a (3d DCA, 2/29/12) You will likely recall this case; it involves a "gun fight" in Liberty City which resulted in the death of a child, Sherdavia Jenkins, who was caught in the crossfire. This defendant went to a Liberty City housing project to buy marijuana. He took a gun with him. He is a convicted felon. He exited his car and started to walk to his destination when an individual, Leroy LaRose, confronted him from a distance. Both of them fired their weapons at each other, and Sherdavia Jenkins was killed. The defendant filed a **"Stand Your Ground"** motion, alleging that he was not responsible for the killing because he fired in response to a perceived threat from the other shooter. "Stand Your Ground" immunity requires that the person asserting immunity "not be engaged in any unlawful activity" at the time. The judge held a pre-trial evidentiary hearing on the motion, as procedure requires, and found that the preponderance of evidence did *not* support immunity. The defendant proceeded to trial and was convicted of the lesser included offenses of manslaughter of Sherdavia Jenkins and aggravated assault upon Leroy LaRose. The Third DCA upheld the trial court's decision on the "Stand Your Ground" motion, holding that the trial court's factual determinations were supported by substantial competent evidence and there was no error in its legal conclusions.

Another issue raised by the defendant dealt with the fact that the jury was advised that the defendant was a convicted felon and, therefore, was engaged in unlawful activity when he possessed a firearm. Normally, charges of possession of a firearm by a convicted felon are severed from the underlying count so as not to unduly prejudice the jury. But the court held that the fact that the defendant was a convicted felon was tied to the necessary proof in this case and agreed with the trial court that evidence of the defendant's convicted felon status was admissible so that the jury could properly evaluate whether his use of force was justified under the circumstances. The convictions were affirmed.

A.W. v. State, 37 Fla. Law Weekly D568d (4th DCA, 3/7/12) This case discusses the circumstances under which law enforcement officers may rely upon **information from an informant** without obtaining corroborating evidence. Police received an anonymous 911 call about a prowler/peeping tom. When the officer got to the community from which the call originated, she was flagged down by some people seated in a car. They indicated that they had made the 911 call when, after someone looked into their window, they looked outside and saw two males. The officer followed their vehicle to the community where the car stopped and they pointed to the defendant as one of the males. The police did not obtain the names of these informants, nor obtain a copy of the 911 call. After identifying the defendant, the callers left the area and could not later be located by police.

The officer approached A.W. and asked him for his name and address but he refused to answer. The officer said she was conducting an investigation and asked again for identifying information. A.W. started to make a call on his cell phone and the officer asked him to stop, a request A.W. ignored. A second officer grabbed A.W.'s arm and he started "flailing" and yelling. He was charged with resisting arrest without violence, but argues that his motion to dismiss this charge at time of trial should have been granted because the officers were not in the lawful execution of a legal duty because they lacked reasonable suspicion to detain him. The 4th DCA found that even though this encounter began as consensual, it became an investigatory detention when the second officer grabbed A.W. The court classified the 911 callers as **anonymous informants** despite the fact that the officer spoke directly with them. Reasonable suspicion may be based on an anonymous tip, so long as it is corroborated. In this case, neither officer observed anything to corroborate the tip. The court found that these informants could not be classified as the more reliable "**citizen informants**" because they could not be held responsible for providing false information, nor did they have reason to fear reprisal (elements which lend to the reliability of a citizen informant) because they left the scene and their identities could not be determined.

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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