FOR THE LAW ENFORCEMENT AGENCIES OF MIAMI-DADE COUNTY

The Rap Sheet

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April 2019

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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 the March, 2019 PPCC Meeting

Agencies represented: SAO, Miami-Dade PD, Miami Beach PD, Aventura PD, Sunny Isles Beach PD; Doral PD, Homestead PD and Pinecrest.

Agenda Items:

Prefiling Conference testimony of Officers – Officers are expected to be prepared when they appear for their prefiling conferences. If they need to review their BWC's recordings to refresh their recollection, they must do so before their appointment. FSU is working on a fixed deadline and having to reset an officer who is not prepared, delays the disposition of our cases and wastes needed resources of the Courts, the SAO as well as the individual police department.

Use of Personal Cell Phones by LEOs – Most police departments have a policy discouraging officers from using their personal cell phones in any work-related investigations. Officers are encouraged to follow that policy as doing so will cause their phones and information to be subject to discovery, particularly if the defense makes a strong argument for the need of the information within a narrow timeframe that is relevant to a particular case or investigation.

Circumstantial Evidence - The general rule is that where a conviction is based entirely upon circumstantial evidence, the sufficiency of the evidence is measured by a special standard of review. "Where the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt, a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence." State v. Law, 559 So.2d 187, 188 (Fla. 1989). While a conviction must be based on proof beyond a reasonable

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IMPORTANT!

Next PPCC meeting, **Wednesday, May 15th, 2019 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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doubt, the circumstantial evidence test protects against a conviction based on impermissibly stacked inferences. Direct evidence of guilt does not require any additional steps if the trier of fact believes the evidence. Circumstantial evidence of guilt requires that the trier of fact make inferences regarding the evidence presented. Criminal prosecutions based solely on circumstantial evidence must exclude every reasonable hypothesis of innocence. This is important for law enforcement officers during investigations, as they are typically in the best position to investigate and exclude reasonable hypotheses of innocence during the preliminary investigation. The special circumstantial evidence rule in prosecutions does not usually effect the probable cause to arrest threshold.

Video Evidence - The availability and use of video evidence in criminal investigations and prosecutions has become more prevalent. Most defense attorneys have made it part of a defense strategy to challenge law enforcement officers who have not attempted to find video evidence at the scene of the crime. Typically, this would involve security surveillance videos. Officers are reminded to at least make inquiries regarding the existence of video evidence during their investigation. The prevailing use of body worn cameras by law enforcement officers also raises issues that defense attorneys have made part of defense strategies. The preparation of police reports is done after the officer has concluded the investigation. When the documentation in the police report includes information that was recorded on the body worn cameras, officers should consider reviewing the video to assure that the written account is consistent with the primary video evidence.

Public Records Requests – Defense attorneys are increasingly filing public records requests for police reports. For the most part, this is happening because an officer has failed to provide discoverable materials to the State and thus the materials were not provided in discovery. The best way to avoid these requests is to provide all evidentiary materials to the State so that it can fulfill its discovery obligations. It is also best practice to contact the ASA assigned to the case to discuss the request and determine the proper course of action.

Case Screening Concerns –

Retail Theft - Generally officers are excused for the first prefiling conference in retail cases where an LPO is involved, but the officer has to call Case Screening so that the LPO can be scheduled. Of course, this presumes that the defendant was arrested at the store and not off site, the defendant is not a store employee and there are no charges other than the theft. If an officer fails to call, he will be set to appear.

FYI – Video Prefiles - There was a problem recently that prevented us from setting cases that would normally be set on a video. The problem has been resolved but officers may find that they have been set for live prefiles where they would normally be set for a video prefile.

Case Law by Criminal Intake ASA Roberto Fiallo

Assault/Words Alone

In H.W. v State, 79 So.3d 143 Fla. 3d DCA 2012), a juvenile was arrested at a middle school for assault on a school administrator. While in the office for disciplinary purposes, H.W. became upset and stated, "something bad was going to happen to (the victim) ... that day." H.W. also said he would make sure the victim got "put to sleep" and "you're going to die today… something is going to happen to you after school; you watch", flailing his arms. An officer on the scene witnessed part of the incident. H.W. was arrested. The trial court denied H.W.'s motion for judgment of dismissal, adjudicated him guilty of assault on a school administrator, contrary to Florida Statute §784.011 and §784.081. An appeal followed and the adjudication was reversed.

The statute requires proof of three elements: (1) an intentional, unlawful threat; (2) an apparent ability to carry out the threat; and (3) creation of a well-founded fear that the violence is eminent. The crime of assault requires not just proof of a threat, but also proof of some physical act which is directed at the victim. The appeal court held that on the record, there was no evidence that H.W. did any act to create a well-founded fear in the victim that violence was imminent. "A person's mere intention to commit an assault is not enough; there must be some

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overt act sufficient to demonstrate a threat directed at the person placed in fear." (citations omitted). The court found that there was sufficient evidence to support a finding by the trial court that H.W. made an intentional, unlawful threat, and that the victim had a well-founded fear, "It is settled that a 'well-founded fear' is measured by a reasonable person standard, not a subjective standard." (citations omitted). H.W.'s words did not create a well-founded fear that he would do something at that time. H.W. threat was that something would happen "that day." When asked if she was afraid, the victim testified that the officer was there and in a way, she was, because H.W. was a violent individual. However, the victim did not raise her voice to shout for help, instead calmly called for the officer who was just outside the door. H.W.'s threat that something would happen "that day is insufficient to show violence was imminent. Officers are reminded that all elements must be proven and that the last element, "creation of a well-founded fear that the violence is eminent", must be proven to occur presently, and not at some future point in time. Also, the "well-founded fear" must be determined by the reasonable person standard, not the victim's subjective belief.

Forgery/Check

In Carr v. State, 133 So.3d 1197 (Fla. 2d DCA 2014), the defendant was arrested after attempting to cash a stolen check at a check cashing store. The defendant had presented I.D. at the time that he was cashing the check. The teller was suspicious because another individual had cashed a check from the same account. The teller contacted the owner of the check, who verified that his checkbook had been stolen. He did not know the defendant and had not given him the check he was attempting to cash.

The defendant fled prior to the arrival of the police. The defendant was subsequently charged with forgery, uttering a forged instrument and petit theft. The defendant moved for judgment of acquittal, which the trial court denied. The defendant appealed is convictions, and the denial of the judgement of acquittal. The appeal court affirmed the judgments and sentences for uttering a forged instrument and petit theft, but reversed the conviction on the forgery judgment and sentence.

Florida Statute §831.01, Forgery, is committed when a person "falsely makes, alters, forges or counterfeits ... an order ... for money ... with intent to injure or defraud any person…" While the State alleged that the defendant either wrote the check himself or that he acted as a principal in the forgery, there was no evidence presented at trial that the defendant forged the check, assisted someone in doing so, or that he even had knowledge of who forged the check. The State presented no evidence to establish whose handwriting was on the check or any evidence as to who participated in the forgery. Evidence alone that the defendant uttered the check, does not by itself establish that the defendant forged the check.

Officers are reminded that the crimes of uttering a forged instrument and forgery are separate and distinct from each other. Credible evidence such as witness testimony, handwriting analysis, etc.… must be presented to establish beyond a reasonable doubt that the person who uttered the forged check, is also the person who forged it.

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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