

The Rap Sheet

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Miami-Dade State Attorney



1 May 2009

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Summary of the PPCC Meeting April 15, 2009

Agencies represented: Sunny Isles Beach PD, Surfside PD, Hialeah PD, Miami Beach PD, North Miami Beach PD, Aventura PD, City of Miami PD, Miami-Dade PD, Coral Gables PD, M-D Schools PD, Miami Springs PD

Agenda Items

Cost Recovery:

Discussion continued on this topic. Pursuant to the statute (938.27), it is the responsibility of the State Attorney's Office to prove the amount of costs incurred by the police agencies and it is therefore critical that any and all Investigative Cost Recovery forms be provided to the SAO as soon as possible. Our office is initiating a system to identify those files containing cost recovery forms.

Booking Issues:

There are two types of problems that sometimes occur when the defendant is being booked after arrest:

Arrest Charges are Not in the Charge Database:

When an arrest charge does not exist in the charge database, the jail will not book a defendant on that charge. There are almost 5,000 charges in the database, so the occasions where a charge is not listed should be limited. It was suggested that if officers were arresting a defendant on an unusual charge, the charge database should be consulted to confirm that the charge exists in the database before proceeding to booking. To find out if a charge exists, you can call Cindy Kryder, the SAO librarian, at (305) 547-0629, or Linda Mims, an SAO Supervisor, at (305) 547-0723 or Kristi Bettendorf at (305) 547-0220.

If your department is linked to the County system (and I've found out since the meeting that not everyone is), the database can be found using the OnDemand feature in CJIS, inputting job number J958410. If a charge needs

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

IMPORTANT!

Next PPCC meeting, **Wednesday, May 20, 2009, 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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to be added to the database, you may contact Cindy Kryder, during business hours, at the above number or by emailing her at CindyKryder@miamisao.com. She will create the charge in the database for you. Another option available for officers when the charge doesn't exist in the database is to use a charge that is similar to and of the same degree as the arrest charge. The officer may then email Cindy Kryder, letting her know that he/she charged a similar charge but would like her to create the precise charge in the database. Mike Hernandez, M-DPD Court Services, inquired if the charge database could be linked to the SAO website. We are looking into this possibility.

Incorrect Statute or Subsection Number:

The second problem that occurs during booking and processing is when an incorrect statute or subsection is written on the A-form. There is an argument to be made at First Appearance Hearing that if the offense is not *charged* on the A-form, there is no probable cause for the charge even if support for the charge may be found in the A-form's narrative. For example, if the charge listed on the A-form is Burglary of a Dwelling, a bondable offense, but the narrative goes on to describe a battery of the victim inside the dwelling, making it a Burglary with a Battery, a non-bondable life felony, probable cause may not be established for the more serious crime. Our office will be able to correct this during the prefile conference process, but by then the defendant may have already posted bond and been released. The charge and its description must be precise because it can make the difference between a defendant being able to bond out and being held in jail when a serious crime has been committed.

On an ancillary issue, if an officer requests a Nebia Hearing (a judicial proceeding to determine if a bond is being paid from the profits of a crime), he/she must check the box on the A-form indicating "Hold for Bond Hearing" and must appear at the bond hearing.

Issues from the Floor

Statute Subsections:

One of the issues raised was that officers were seeing A-forms coming back with statute subsections crossed out, presumably by booking personnel. Most of the charges were grand thefts or batteries. Booking officers do not consult the narrative portion on the A-form to determine if proper subsections have been charged, so it is not known why this would be happening. Kristi asked to be advised of any specific instances of this occurring so that the particular case can be researched. We do have the ability to track a case through the booking system, so we may be able to pinpoint the source of the problem.

eNotify: Investigative Subpoenas:

An officer inquired if escalation of notification of the availability of a requested investigative subpoena can be adjusted so that messages will not be received at 4 a.m. These are typically "short notices" and originate from our Investigations Unit or our Economic Crimes Unit. Yvonne O'cana volunteered to troubleshoot this problem and ask if those parties sending these notices can extend their "due date" to 14 days which should eliminate this middle-of-the-night notification.

The next PPCC meeting will be held on **WEDNESDAY, May 20, 2009 at 1:00 p.m.** All are invited to attend.

Arizona v. Gant

The United States Supreme Court decided Arizona v. Gant on April 21, 2009. In its holding, the court "overruled" its previous decision in New York v. Belton. The holding in Belton, decided 28 years ago, authorized police to conduct a warrantless search incident to arrest of the passenger compartment of a vehicle when the person arrested was a recent occupant of the vehicle. Such automatic searches are no longer permitted.

In the Gant case, the defendant was arrested for DWLS. The police searched the passenger compartment of the vehicle Gant had been driving, as Belton authorized them to do, and found narcotics in the vehicle. The defendant was additionally charged with the narcotics offense. In abandoning Belton, the Supreme Court set forth new criteria for a warrantless search of a vehicle upon the arrest of a recent occupant. Warrantless searches will be permitted

1. If the arrestee is within reaching distance of the passenger compartment *at the time of the search*, or
2. If the officer has reason to believe that the vehicle contains *evidence of the offense for which the defendant is being arrested*.

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If a defendant has already been secured (cuffed, placed in a police car, or taken from the scene) then the first circumstance, based upon officer safety concerns, will not apply and a warrantless search will not be permitted on that basis. In the Gant case, the second circumstance didn't exist either. The court determined that there would be no evidence of the arrest offense, DWLS, that an officer could reasonably believe would be found in the vehicle. (Had this been a narcotics arrest, it could probably be argued that the second circumstance existed, but it didn't under the facts of this case.)

There are obviously other factual situations that may justify the warrantless search of a vehicle, but these will have to be determined on a case-by-case basis. The decision also does not affect an officer's ability to conduct an inventory search pursuant to departmental procedures.

Other Recent Case Law

K.H. v. State, 34 Fla. Law Weekly D739a (4/8/09, 3d DCA) Late at night officers were conducting undercover drug surveillance in a residential neighborhood. They were parked in a pickup truck with dark tinted windows with the engine running. Two juveniles were walking in the area and came up to the truck, walked around it and put their hands up to the window and looked inside. They didn't try the door handles or otherwise try to enter the vehicle. As one of the officers exited the vehicle, this juvenile started to walk away rapidly and the other ran and jumped a nearby fence. The officers went to find the person who ran, but couldn't locate him. They spotted this juvenile again, who was still walking rapidly. An officer, who was in plain clothes, got out of the truck and ordered the juvenile to stop. The juvenile tried to walk around him. The officer tried to grab the juvenile, but he pushed the officer and ran home. The officer caught up with him on his front porch and arrested him for L&P.

The juvenile was found at trial to have committed **battery on a law enforcement officer**. The 3d DCA ruled that there was neither probable cause, nor a founded suspicion, that the juvenile was committing the offense of L&P and that the officer, therefore, was not engaged in the lawful performance of his duties when he stopped the juvenile. The case was remanded to the trial court with instructions to reduce the charge to a simple battery.

Evans v. State, 34 Fla. Law Weekly D150a (4th DCA, 1/14/09) The defendant was found guilty of **tampering with evidence** by a jury. The 4th DCA found that there was insufficient evidence to even send the case to the jury and that the defendant's Motion for Judgment of Acquittal should have been granted.

The defendant purchased a cocaine rock from an undercover officer. A takedown signal was given shortly thereafter and uniformed officers approached the defendant. One of the officers yelled "Police" as they approached. The defendant threw something he had in his hand to the ground. The officers searched the immediate area, believing that the item he threw was the rock he had just purchased, but were unable to find it. The ground in the immediate area was sand.

A discussion of the law in Florida on tampering with evidence ensued, concluding with the 1996 Supreme Court of Florida decision in State v. Jennings, 666 So.2d 131, which held that tossing evidence away in the presence of a law enforcement officer does not, as a matter of law, mean that a defendant cannot be charged with tampering. Depending upon the circumstances, such an act could amount to tampering or concealing evidence. Applying the facts of this particular case, the court held that the only additional "circumstance" was that the defendant happened to be standing on sand when he dropped or threw the item to the ground, thereby making it difficult to find. The court concluded that the defendant's actions constituted mere abandonment, not tampering.

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 Sub-Committees, 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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