

# Bulletin

# 13-6

Date: June 4, 2013

**OFFICERS OF THE MONTH – MAY 2013**

On Sunday May 5, 2013 at 6:20 am, Surfside Police Officers responded to a burglary in progress to a construction site located at 9418 Collins Avenue. Officer John Gentile arrived on scene first and observed the subject running through the construction site and pursued him on foot. Officer Gentile did an excellent job of advising the subject's direction of travel as he jumped over the fence in an effort to avoid capture. Officer Alberto Knight responded to the north side of the alley and Sergeant Jay Matelis pursued the subject from south of the alley. The subject completely disregarded police commands to stop and was stopped between two buildings by the officers. Sergeant Matelis apprehended the subject and placed him into custody. Officer Knight also arrived and assisted with the arrest of the subject.

Sergeant Matelis, Officers Gentile and Knight remained after their shift to complete the reports and notifications. Exceptional and efficient police work was conducted by all in a short period of time. All officers are thanked and praised for their dedication to the safety of the community.

**HIGH ACHIEVERS – MAY 2013**

Gentile	57 traffic citations	26 traffic warnings	4 arrests	12 reports	4 FIs
Ruiz	40 traffic citations	16 traffic warnings	3 arrests	11 reports	3 FIs
Luke	39 traffic citations	26 traffic warnings	4 arrests	9 reports	
Campbell	36 traffic citations	11 traffic warnings	3 arrests	5 reports	
Melendez	377 parking citations				
Acosta	370 parking citations				

Excellent work!

**CRIME PREVENTION/ COMMUNITY EVENTS**

Community Outreach Specialists from the Department of Highway Safety and Motor Vehicles will set up a mobile DMV in the Police Training Room on June 5, 2013 from 9:30am to 3:00pm in the Police Training Room. Dina Goldstein will coordinate this event.

The Meow Mobile as part of the Town's Feral Cat Program will be in the Town Hall lot on June 8, 2013, 8:00am -5:00pm. Supervisors will be responsible to secure the lot and the garage. Officer Dianna Hernandez will oversee this event.

The Summer Police Teen Camp is every Thursday beginning June 13, 2013. If interested in teaching a class, contact Dina Goldstein.

The Eye on Surfside crime prevention meeting is June 19, 2013, at 6pm in the Police Training Room. The topic is Hurricane Preparedness. The contact is Dina Goldstein.

The Bike with the Chief Ride is June 26, 2013, at 5:00pm.

### **NEW JAIL PROCEDURE**

The Miami-Dade Corrections and Rehabilitation Department (MDCR) will open the Turner Guilford Knight Correctional Center (TGK) Centralized Intake Center on Monday, June 10, 2013 at 0700hrs. After June 10, arrestees will not be accepted at the Dade County Jail (DCJ).

### **JUVENILE OFFENDERS**

Six-hour Clock: The 6 hour window begins the moment the youth enters a secure area and ends that last time that they are removed from the secure area. Taking a youth out for bathroom breaks, drive-arounds, interviews, and such does not stop the clock. This time must be included if the youth is returned to the secure area afterwards.

Any entry that shows a youth held over 6 hours should be accompanied by a brief statement as to the reason for the delay in removing from the secure area. Typically due to parent/guardian late arrival, investigative purposes when it is a more serious crime, late transport, or a court order.

Status offenders: Status offenders should never be held securely. Status offenders include runaways, truants, curfew violations and possession of tobacco/alcohol.

### **COMMUNITY TRAFFIC SAFETY TEAM**

SPD be part of an operation, "Rolling Traffic Enforcement Wave" in North Bay Village on June 18, 2013, 8:00am-noon. This traffic wave will be Village wide with emphasis on SR 934, Kennedy Causeway. This joint multi-jurisdiction effort is part of our continued partnership with our North East Community Traffic Safety Team. The focus is on safety to life issues to include speed enforcement, move over law, occupant protection, DUI enforcement, pedestrian safety and commercial vehicle safety checks. Officer Don McGavern has been assigned to the detail.

### **MARTIAL ARTS TRAINING**

The Miami Beach Police Department had extended an invitation to all members of our department to start training at their brand new defensive tactics MMA room. Sgt. Julio Torres will be teaching Brazilian Jiu-Jitsu & Thai Boxing Tuesdays from 6:45am-900am. Classes are also scheduled Thursdays 645am-900am with a MBPD instructor. Sparring and training equipment has been purchased by MBPD therefore all that you will need to bring is MMA style shorts, rash guard t-shirt and a mouth piece/groin cup. If interested contact Sgt. Torres.

### **PROPERTY DISPOSITION FORMS**

The Property Disposition Forms must be returned within seven days of receipt. It is the responsibility of the impounding officer to conduct whatever research is necessary to determine the status of property. Check the appropriate box and provide the required information. Supervisors will be held accountable for their personnel to make sure these forms are returned to me in a timely manner. Deadline Friday, June 7, 2013.

**NEW CASE LAW**

Smallwood v. State, 2013 WL 1830961 (Fla. 2013)  
Search of a Cell phone during a Lawful Arrest

The defendant, Cedric Smallwood, was suspected of robbing a convenience store. The investigating officer obtained a valid warrant for Smallwood’s arrest. The officers arrested Smallwood, and found a cellphone on or near his person. The officers seized the cellphone incident to the lawful arrest. The investigating officer then examined the phone without a search warrant. While searching the phone, the officer found pictures of cash and firearms that tended to link Smallwood to the robbery. The officer did not inform the prosecutor of the search or the pictures until a year later, when Smallwood was preparing for trial. When the prosecutor learned of the search, he immediately obtained a search warrant for the phone.

Smallwood asked the trial court to suppress the photos, arguing that the officer improperly searched his phone without a warrant. The trial judge denied the motion, and Smallwood proceeded to trial. At trial, the investigating officer testified that it is common for suspects to have incriminating pictures on their phone, and that he searched the phone to determine if any such images would be found in this case. Ultimately, Smallwood was convicted of robbery with a firearm, and the First District Court of Appeals affirmed his conviction.

However, the Florida Supreme Court overturned the conviction by ruling that Smallwood’s phone was illegally searched without a warrant.

During a lawful arrest, an officer can seize a cellphone from the person being arrested; however, the officer cannot examine the phone without a search warrant, unless the officer obtains the suspect’s consent or a genuine exigency exists.

As a general rule, searches should not occur without a warrant. The rule contains several exceptions, one of which is a “search incident to arrest.” During a lawful arrest, an officer can search the arrestee for weapons, contraband, or evidence that may be concealed. This rule enhances officer safety, and it prevents the suspect from destroying evidence. In this case, the suspect was lawfully arrested pursuant to an arrest warrant. Therefore, the officers could lawfully *seize* the suspect’s phone to prevent him from erasing the data. However, a lawful arrest does not, by itself, entitle the officer to *search* or examine the phone. In most cases, a search warrant is needed before the phone can be searched.

This opinion does not discuss or overrule the exceptions for consent or exigent circumstances. Officers can still examine a suspect’s phone if the suspect voluntarily consents, or if the officer can articulate a serious exigency that prevents the officer from obtaining a warrant in time.

**NEW RED LIGHT CAMERA AMMENDMENT**

On July 1, 2013, the reformed Mark Wandall Traffic Safety Act (HB 7125) takes effect. The new legislation does not alter the original law that allows municipalities to use traffic infraction detectors. The new law provides a process for enforcing red light camera violations. The first step is sending the registered owner a notification of violation. This

must occur within thirty days of the violation. However, the owner now has sixty days (thirty more than under the initial Wandall Act) following the notification to take one of three actions:

- a) Pay the \$158 statutory penalty;
- b) Submit an affidavit transferring liability or establishing one of the statutory exemptions from liability; or
- c) Request a hearing before a local hearing officer appointed by the local government.

If the owner submits an affidavit establishing the liability of another driver, then the driver identified in the affidavit must now be sent a notice of violation (not a uniform traffic citation as was the case previously). This allows the person to whom liability has been transferred to avoid the issuance of a higher fine uniform traffic citation and have an opportunity to pay the lower notice of violation penalty. However, if the owner does none of these three actions within the sixty day period, then a uniform traffic citation shall be issued within thirty days of the expiration of the sixty day period.

If a violator requests a hearing on a notice of violation and later decides to cancel the hearing before it has occurred, then a violator must pay an additional \$50 in administrative costs to the local government. If the violator seeks a hearing on a notice of violation and the violation is upheld by the local hearing officer, the violator will be responsible for administrative costs of up to \$250 in addition to the statutory penalty. If a violator refuses to comply with the final administrative order's penalty payment plan, then within ten days of the failure to comply, the local hearing officer shall notify the Department of Highway Safety and Motor Vehicles of such failure. The DHSMV may not issue a license plate or revalidation sticker to the violator until the fines have been fully paid.

The violator may also appeal the circuit court to determine whether procedural due process was afforded, whether the essential requirements of law were observed, and whether the administrative findings and judgment are supported by substantial competent evidence.

#### **APRIL TRAINING**

Felony Vehicle Stops – All sworn officers  
Crime Prevention – Dina Goldstein  
Accreditation – Lt. Williams  
Leadership – Officer Colonna