

The Rap Sheet

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MIAMI-DADE STATE ATTORNEY



1 January 2009

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Summary of PPCC Meeting December 18, 2008

Agencies represented: M-DPD, Sunny Isles Beach PD, Miami Gardens PD, Hialeah PD, Miami Beach PD, Surfside PD, City of Miami PD, ABT, North Miami Beach PD, Doral PD

Agenda:

Storage and Destruction of Narcotics Evidence:

Major Rita Banner, M-DPD Property and Evidence Bureau, announced that her department has on order a machine that will vacuum pack marijuana in plastic bags for storage in cardboard boxes in the property room. This type of packaging was approved by our office recently and is expected to free up much needed space. Also, it will eliminate the exposure to toxic fumes that resulted when old evidence was stored in metal and then plastic barrels. M-DPD has contracted with 5 other agencies that may take advantage of this new technology.

Bank-Related Fraud:

ASA Kristi Bettendorf announced that she will be attending the FISA (Financial Institutions Security Association) meeting on January 15, 2009 and asked for input from officers regarding specific instances where they encountered jurisdictional problems in fraud and credit card cases. Miguel Cervera, SAO Community Outreach Division, volunteered to accompany her to the January meeting. A report on this meeting will be published in a future *Rap Sheet*.

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

IMPORTANT!

Next PPCC meeting, **Friday, January 16, 2009, 10:00 a.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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Sending Requests to Officers via eNotify:

As you may know, requests via eNotify previously had to be linked to a prefile conference date. Now we are able to send “information only” requests using this system without having to have a pending prefile scheduled. ASAs who are not already familiar with this system will be trained. Hopefully this will lead to better communication and will facilitate the process of cases being filed by the 21st day after the arrest of the defendant.

Scheduling Prefiles When Officers are Off Duty:

Our office makes every effort to set officers for prefile conferences while they are on duty. However, when a 2nd or 3rd setting is necessary, we are often obliged by time limits to set officers off duty. SAO personnel have limited access to officers’ schedules and this also may account for setting off duty. In the Felony Screening Unit, we do adhere to a list of the charges where setting officers for prefiles is not necessary as the case will be handled elsewhere in our office. See page 3 for this information.

Pre-Arrest Retail Theft Diversion Program:

The State Attorney’s Office is working toward establishing this program with an eye toward saving resources not only for the State Attorney’s Office, but the police departments and retailers as well. Here’s how it will work: When the retailer detains a shoplifter, he or she will call the State Attorney’s Office, not the police department, with identifying information on the subject. (In order to be eligible for consideration for this program, the shoplifter must possess a government-issued photo ID that reflects a South Florida address.) Our office will then conduct a criminal history check to make sure the defendant is a first time offender. When it is determined that this is a first offense, the subject can be signed up to the pre-arrest diversion program and, upon successful completion, the case will not be filed. The program will involve payment of restitution where necessary and participation in anti-theft classes as a requirement to completion. We hope to have the program up and running shortly after the first of the year. Of course it is up to the retailer to determine if he/she would like to participate. The benefit is that the retailer will receive restitution (for lost or damaged merchandise) and also will not be required to come into our office to give statements, or attend depositions or court hearings. Police agencies will not have to respond to calls where shoplifters qualify for the program, allowing resources to be directed toward more serious crimes. Right now, we are in the process of acquainting retailers and police departments with this option. There will be a database of those who have been referred to this program, thereby avoiding multiple referrals. The amount of the retail theft cannot be more than \$500.00. As the final parameters of this program are established, you will be kept informed.

The next PPCC meeting will be held on Friday, January 16, 2009. All are invited to attend.

Case Law

StrikerTaylor v. State, 33 Fla.Law Weekly D2853a (2d DCA, 12/17/08) The conviction for **carrying a concealed firearm** in this case was reversed. The decision discusses Florida Statute s. 790.25(5), the private conveyance exception. The gun in this case – unloaded – was found under the front passenger seat of the car. Ammunition for the gun was in the glove box. The court found that under these circumstances, the gun was not “readily accessible for immediate use”.

D.S.D. and J.T.D. v. State, 33 Fla. Law Weekly D2872a (5th DCA, 12/19/08) These juveniles were adjudicated delinquent on a charge of **loitering and prowling**. The court reversed the adjudications. The facts show that police received a prowler report at about 3:30 a.m. in a particular area. Police encountered these two juveniles

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on a street corner about two blocks from the vicinity of the report. They were dressed all in black. They did not flee when they saw police, but identified themselves when requested to and said that they were looking for a friend, "Ashley", who was supposed to be waiting for them at a certain location, which the officer knew was about ten blocks away. The juveniles said they figured they were lost and were now heading back home. The first element of loitering and prowling is that it be "in a manner not usual for law-abiding citizens". This is interpreted as aberrant and suspicious criminal conduct that comes close to, but falls short of, the actual commission or attempted commission of a substantive crime. Even when police found that one of the juveniles was in possession of a pair of gloves, the court held that these facts did not form the basis for the "justifiable and reasonable alarm or immediate concern for the safety of persons or property" in the vicinity, the second element required by the statute. The court goes on to state that while the discovery of possible burglary tools (the gloves) may support a suspicion of criminal activity after the fact, the offense of loitering and prowling must be completed prior to any police action.

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.

FELONY SCREENING UNIT

In all cases where you arrest an adult defendant on probable cause for all felony charges except

- Murder and Manslaughter
- Attempted Murder
- Sexual Battery
- Lewd & Lascivious Assault on a Child
- Aggravated Child Abuse, Child Abuse, Child Neglect
- Armed Robbery
- Robberies of Tourists
- Arson
- Kidnapping
- Trafficking in Narcotics
- Organized Crime cases
- Leaving the Scene of a Crash with a Fatality
- Other Traffic Fatalities
- Burglaries that are Armed, with an Assault, or
Home Invasions

the case will be processed through the Felony Screening Unit. Officers must call the State Attorney's Office Case Screening Unit at (305) **547-0200** as soon as possible after the defendant's arrest, but no later than 12 hours after the arrest, to schedule a Prefiling Conference. Calls on cases involving civilian victims and witnesses should be made from the scene in all cases possible and the officer should notify the civilians on the scene of the Prefiling Conference date, time and location.

Officers must complete the reverse side of the pink copy of their arrest forms as completely as possible, listing the names of all police witnesses and all name, address, telephone and date of birth information for civilian victims and witnesses. Please also note if a victim is handicapped.

Officers should bring with them to their Prefiling Conference copies of all police reports and other paperwork (eg., Rights Waiver forms, property receipts, photographic lineups, written statements of the defendant, victims or witnesses, search warrants, etc.) on the case. This should include copies, front and back, or the originals, of all forged or fraudulent documents being held as evidence. All suspected controlled substances must be submitted to the Miami-Dade Police Department Crime Laboratory immediately so that the lab analysis results will be available by the case-filing deadline (21 days after the defendant's arrest). Pre-tested drugs used in reverse stings and less than 50 grams of cannabis need not be submitted until the case is scheduled for trial.

All PCCC 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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