

The Rap Sheet

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MIAMI-DADE STATE ATTORNEY



1 February 2009

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IN THIS ISSUE:

PAGE

Meeting Summary.....	1 – 3
Case Law.....	3
PPCC Sub-Committees	4

Summary of PPCC Meeting January 16, 2009

Agencies represented: SAO, M-DPD, Sunny Isles Beach PD, Coral Gables PD, Miccosukee PD, Hialeah PD, Doral PD, Surfside PD, Aventura PD, Miami Springs PD, ABT, North Miami Beach PD

Agenda Items:

Follow-Up re: the January 15th FISA Meeting:

Kristi Bettendorf attended the monthly FISA (Financial Institution Security Association) meeting yesterday. She and Det. Diana Hedrick from Miami Gardens PD collaborated on a presentation Kristi made on the subject of jurisdiction in economic fraud cases involving banks. The topic was not only statutory jurisdiction (venue), but practical issues of jurisdiction among the many police agencies we have in Miami-Dade County. Illustrations of variations of the jurisdiction problems that are encountered when dealing with identity theft cases were discussed (eg., the victim's bank being in one jurisdiction and the fraud occurring in another jurisdiction within the county). Clearly, if a victim of identify theft lives in Miami-Dade County, jurisdiction lies here no matter where the other fraudulent events may have occurred, pursuant to Florida Statute subsections 817.568(15) and (16), and the report of such a crime can be taken in whatever jurisdiction the victim resides. I was surprised when I was told that there were certain agencies that wouldn't even *write* this initial report. Without this initial report, banks and credit companies will not/cannot proceed with their internal investigations. "Home jurisdictions" (where the victim lives) should always be willing to provide a victim with this original report.

Continued next page

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

IMPORTANT!

Next PPCC meeting, **Wednesday, February 18, 2009, 10:00 a.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

Continued from previous page

There is, however, the practical problem of then following up on that initial report in locales that may be within another law enforcement agency's jurisdiction. Should the "home jurisdiction" carry out the investigation no matter where it leads, or should the "home jurisdiction" suggest that the victim follow up on the report with the "fraud jurisdiction" (where the actual fraudulent acts were committed)? What if fraudulent acts were committed in numerous jurisdictions other than the "home jurisdiction"? [Note that this discussion was about different jurisdictions *within* Miami-Dade County. Once jurisdiction leaves the county, state or country, a whole different set of issues arises. The goal was to seek a local solution first.]

There was a very lively discussion of these problems and the difficulty we sometimes face in obtaining necessary information from banks and bank employees. There were questions asked and suggestions made regarding how to address these issues. It was suggested that this topic, and working on the resolution of these problems, be the topic for the Association's annual working seminar. We talked about creating a working network of resources law enforcement could utilize on bank-related issues, and asking bank customers who have become victims of identify theft to sign Privacy Act waivers so that it would be easier/faster for law enforcement to obtain necessary bank documentation. This topic will remain on our monthly meeting agenda so that discussions in this area will continue until our goal of addressing these issues has been reached. Please share any suggestions for discussion or resolution of these issues with Kristi so that they may be included on the following month's agenda.

Referring Victims to the State Attorney's Office:

There are always going to be situations where law enforcement officers will refer victims to the State Attorney's Office for follow-up. Our Criminal Intake Unit follows up on misdemeanor complaints where officers are not permitted by statute to make a probable cause arrest (such as a misdemeanor not committed in the officer's presence and not specifically made an exception by statute). If a court case has already been filed and a victim is seeking information about the status of the case then they, too, should be referred to the State Attorney's Office. However, when a police investigation has been conducted and the investigator has determined that they cannot make an arrest – due to the conflicting stories of the victim and subject, due to the lack of any additional, independent witnesses – these victims should *not* be referred to the State Attorney's Office for "possible charges". If you don't have enough evidence to make a probable cause arrest, then the State Attorney's Office surely isn't going to have enough evidence to issue an arrest warrant.

Gun Cases in the Juvenile Division:

Juvenile Division ASAs are encountering difficulties in proving the required elements in their cases involving firearms. A letter was recently sent out to the Chiefs of all local law enforcement agencies regarding these problems and suggestions on how to overcome them. The proof that a gun is a firearm, that is, designed to expel a projectile by means of an explosion, can be easily established if an officer already involved in the case (such as the officer who impounded the firearm) observes the test-firing of the weapon. Miami-Dade Police Department Crime Lab technicians who were present at the meeting suggested that if officers would call ahead with such requests for test-firing that they could likely be accommodated without too much delay.

In proving the charge of possession of a firearm by a minor, one of the required elements of proof will of course be the juvenile's date of birth. It is important that if the only source of the juvenile's date of birth is the officer's questioning of the juvenile while in custody, then the questioning about date of birth should be after *Miranda* warnings are given.

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Expansion of Use of eNotify System:

We continue to explore the possibility of sending communications via the eNotify system when additional information is needed to file a case. The concept will be discussed further at a meeting on Wednesday, January 21st. A question was raised with regard to the appropriate internal police response to lack of follow-up on these "Information Only" requests. A suggestion was made regarding color-coding these "Information Only" requests so that "escalation" of the notices could be prioritized, notices to appear being given priority over requests for information. This will be addressed when the process is further refined and set into motion.

Issues from the Floor:

Lack of Response by ASAs on Duty Rosters:

An issue was raised regarding an instance of lack of response of an ASA assigned to a specialized division duty roster. When following up with the unit division chief, I learned that there are included in these specialized unit duty rosters, steps to be taken when there is no response within a reasonable time. Please consult the individual Duty Roster for the names and numbers of supervisors to contact in these instances.

Police Training on Technology Issues:

Major Katerman from North Miami Beach PD inquired regarding the police training on technology issues/evidence which was mentioned at a previous PPCC meeting. I learned that the training is still in the works but scheduling has been delayed. When the training has been scheduled, notice of same will be given in *The Rap Sheet* and at the PPCC meeting.

The next PPCC meeting will be held **Wednesday**, February 18, 2009. All are invited to attend.

Case Law

Brook v. State, 34 Fla. Law Weekly D121c (5th DCA, 1/9/09) This case deals with the **statutory exceptions** to the prohibition against **carrying concealed firearms** in section 790.01. The facts of this case seem to extend the exemption found in subsection 790.25(3)(n). Officers entered a closed business when they smelled the odor of cannabis coming from the business. They found the defendant, and several other men, inside the business playing cards. There was marijuana on the table. The defendant had a firearm concealed under his shirt and was arrested. A Motion to Dismiss, based upon the argument that the defendant came under the exemption in 790.25(3)(n) because he worked at the business, was denied by the trial court. The 5th DCA, however, ruled that the defendant was entitled to the benefit of the exemption. Subsection 790.25(3)(n) specifically exempts "A person possessing arms at his or her home or place of business". Previous case law on this topic is cited in support of the holding that the exemption in 790.25(3)(n) applies not only to firearms but to concealed firearms as well (Peoples v. State, 287 So.2d 63 (Fla. Supreme Court, 1973)), and that while the exemption does not extend to an individual's possession of a firearm to someone else's home (State v. Paulk, 588 So.2d 60 (5th DCA, 1991)), the exemption *does* apply when the individual does not have an ownership interest in the business but merely works at the business (State v. Common, 592 So.2d 317 (3d DCA, 1991)). In this case the 5th DCA held that the exemption applies even when the business is not open. The defendant's conviction was reversed.

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 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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