

# The Rap Sheet

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1 February 2010

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## Summary of PPCC Meeting January 20, 2010

Agencies represented: Coral Gables PD, Miami-Dade PD, Hialeah PD, Sunny Isles Beach PD, Miami Beach PD, Medley PD, North Miami Beach PD, Miami-Dade Schools PD

### AGENDA ITEMS:

#### Misdemeanor Domestic Cases – Trial Subpoenas for Officers:

The subpoenaing of unnecessary police witnesses to trial in misdemeanor domestic cases was brought to my attention after a previous meeting. Upon presentation of the concern to the Division Chief (David Benjamin) and Assistant Chief (Heather Ravich) of the Misdemeanor Domestic Violence Unit (housed downtown at the Courthouse Center) they have adopted a change in procedures which, with police cooperation, will solve this problem.

All police officers who are listed either on an arrest affidavit or in a police report will be contacted to respond to the State Attorney's Office, either pre-filing or post-filing. It is at this point that officers should advise SAO staff what their involvement in the case was. If their function was strictly ministerial and they had no direct involvement, then they will be listed as "standby" witnesses for trial and the State will advise defense attorneys at the trial sounding that they do not intend to call those officers at trial. If, however, a listed officer does not affirmatively advise us of their involvement (or lack thereof) in a case, we will err on the side of caution and keep them on our witness list as mandatory.

#### Providing Police Reports by Electronic Means:

We now have 5 police agencies who have indicated their ability to provide police reports electronically (Miami Gardens – Alfred Lewers, Coral Gables – Klaus Reinoso, North Miami – George Manresa, Miami-Dade – Tony Ojeda, North Miami Beach – Joseph Gamerl, and someone gave me the name of Lt. Shawn McDonald but I didn't make a notation of what agency he is with; if someone could give me that information again I would greatly appreciate it). I would like to schedule a meeting of these representatives to discuss enhancing the way we could provide/receive reports electronically. I will try to schedule it in connection with an established PPCC meeting, so be looking for this notification in future issues of The 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, **February 17, 2010, 1:00 p.m.**  
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136  
All are invited to attend

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### **Criminal Intake Unit Handbook/Guide:**

The Criminal Intake Unit has recently updated its Handbook and Guide for police. Copies were distributed at the meeting. If you would like to receive a copy, you may contact Racquel Cuntin in the Criminal Intake Unit at 305-547-0255.

### **Theft from Foreclosed Homes: Burglary, Theft or Civil?:**

When this issue was raised, it was apparent that this was a problem in almost every jurisdiction. With regard to thefts (of appliances, furnishings or fixtures) from previously foreclosed and vacated homes, whether the crime to report is a burglary, theft or a non-criminal matter entirely is going to depend upon follow-up investigation. You wouldn't know what items in the home belonged to the mortgagee or the mortgagor unless you had access to the original purchase documents. It was mentioned that many realtors are leaving lock-boxes on the premises of foreclosed homes and most of these reports do not involve apparent signs of forced entry, further clouding the issue. It was suggested that such reports be classified as "information" reports until the exact nature of the crime can be shown.

### **ISSUES FROM THE FLOOR:**

#### **"We Buy Gold" Stores:**

A question was raised with regard to all of the "We Buy Gold" storefronts that are popping up all over the place. What category do they fall into? Are they pawnbrokers? Are they secondhand dealers? They are probably (depending upon the business conducted at a specific location) secondhand precious metal dealers as created during last year's legislative session. I've asked Thomas Sadler, the SAO co-chair of the Pawnshop Subcommittee, to prepare a presentation on this topic for the PPCC and The Rap Sheet. This will likely be presented at the March PPCC meeting. He also plans to update an article on pawnshop procedures which appeared in The Rap Sheet a few years ago.

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## **Recent Case Law**

J.C. v. State, 34 Fla.Law Weekly D1542a (2d DCA, 7/31/09) The question decided in this case was whether the officer's action was a **consensual encounter or an investigatory stop** and whether there was sufficient legal basis for it. Two officers on patrol observed the defendant riding his bicycle on a bike path that runs parallel to the roadway in a "high crime area". They were wearing range vests and badges. They pulled over in front of where J.C. was and approached the bike path where he was riding. The officer testified that he "made consensual contact with him". When asked what he said to J.C. the officer initially testified that he just asked him what he was doing. When questioned again and asked if he had ordered the juvenile to stop the officer testified "I don't remember exactly what I said to him. I just said, 'Hey, I've got to talk to you for a minute. Hang on.'" The court held that these words under these circumstances amounted to an order and a show of authority and were, therefore, an investigatory stop. Since there was no reasonable suspicion to conduct such a stop, the stop was held to be illegal. The exact words used during a police-citizen encounter can be critical. It is important that you are able to recall them with specificity.

J.J.V. v. State (4<sup>th</sup> DCA, 9/16/09) The case questions the permissible **scope of a consent to search an automobile**. Two deputies observed J.J.V. driving a vehicle at night without headlights and they stopped him. One of the deputies knew him and started asking J.J.V. questions about what he was doing in the area. He asked the juvenile if he had anything illegal in the car to which J.J.V. replied "No, you're welcome to search it if you like". The deputy did, finding nothing remarkable. The center console in the vehicle was locked and the deputy asked J.J.V. if he a key to it. The juvenile responded that it was his mother's car and she had the only key to the console. The deputy then took the key from the ignition, unlocked the console, found some pills, marijuana and a pipe and arrested J.J.V. The deputy testified that he reasonably believed that the consent included a search of the center console because the defendant did not protest or try to stop him. The court disagreed based upon the fact that the console was locked. The court cited to previous cases where searches of locked containers in vehicles had been found illegal, even though consent to search the vehicle had been given. The court further stated that the juvenile's statement that he did not have a key to open the console was the equivalent of an "affirmative attempt to narrow the scope of the general consent".

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Moore v. State, 34 Fla.Law Weekly D2020a (2d DCA, 10/2/09) This case questions whether **possession with intent to sell a controlled substance within 1,000 feet of** a “physical place of worship at which a **church** or religious organization regularly conducts religious services” has been sufficiently proven. The church member expected to testify at the trial failed to appear and, as a result, the only testimony regarding whether or not services were regularly being held at the church which was around the corner from where the defendant was observed selling drugs was the testimony of an officer who could say that he had seen people coming and going from the church on Sundays, but that the last time he had seen this was about a year before the observed sale. While the court held that it would not be required that a church member or leader testify to the fact that services were regularly being held at a specific location, that the officer’s testimony in this case was insufficient with regard to whether the location was being used regularly for service at the time that the defendant was observed selling drugs.

Aldin v. State, 34 Fla.Law Weekly (3d DCA 10/7/09) The **search of a vehicle** as part of the defendant’s written consent to search his apartment was struck down. After his arrest for burglary and theft, the defendant signed a consent to search form as it related to his apartment but specifically crossed out that portion which also authorized a search of his vehicle. The police searched the defendant’s apartment and towed the defendant’s van to the station. There the police searched the van and found incriminating evidence (gloves, tools). Officers testified that they had the defendant’s van towed to the station because the defendant admitted in his statement that he had used the van to commit the crimes. They did not obtain a warrant before the search of the van. They indicated that they could see the tools and gloves through the windows of the van. The court held that the search of the van can **not** be upheld based upon any exception to the warrant requirement. The fact that these objects could be seen did not provide an independent basis for entry into the van. The court also held that the search could not be upheld on the basis of the fact that the defendant was a recent occupant of the vehicle when he was arrested (*Arizona v. Gant*). The 3d DCA held that the motion to suppress the items taken from the van should have been granted and remanded the case back to the trial court.

Ruiz v. State, 34 Fla.Law Weekly D2476a (4<sup>th</sup> DCA, 12/2/09) This case deals with a **trespass to a structure** or conveyance conviction and discusses what is and is not **curtilage of a structure**. The defendant was advised to leave a club by an off-duty police officer, which he ultimately did, but he remained in the parking lot causing a disturbance. He was arrested by the officer for trespass to the structure, among other more serious charges. The only charge of which he was convicted at trial was the trespass. The defendant’s attorney argued in the trial court that the unenclosed parking lot of the club could not be considered the curtilage of the structure, but the trial judge ruled against the defendant. The 4<sup>th</sup> DCA stated that, while there is no statutory definition of “curtilage”, there is case law which defines it and applies it to trespass cases. In *State v. Hamilton* (Fla. 1995) the Florida Supreme Court held that “some form of an enclosure [is required] in order for the area surrounding a residence to be considered part of the ‘curtilage’ as referred to in the burglary statute.” That obviously likewise applies to structures. The *L.K.B. v. State* case (5<sup>th</sup> DCA, 1996) extended the ruling in *Hamilton* to trespass cases. Neither party in this case contended that the parking lot of the club was enclosed. The trespass conviction was reversed.

Hardin v. State, 34 Fla.Law Weekly D2080a (2d DCA, 10/9/09) This is a bit of a strange factual situation with little to no basis for the action taken by the deputies. Deputies were patrolling in a Motel 6 parking lot when they saw a car with a Brownsville, Texas license plate. Because they considered Brownsville “a center for illegal drug activity” they went to the clerk and found out which room the owner of the vehicle was staying in. There they also learned that the names on the room registration were not the same as the name on the vehicle registration, although the vehicle had not been reported stolen. The deputies went to the defendant’s room and conducted a “knock and talk”. This was a consensual encounter where no level of reasonable suspicion of criminal activity is required. When questioned about the car, the defendant said it belonged to his wife’s sister. As deputies were talking to the defendant at the door of the motel, the defendant’s wife was in the room, naked under the sheets, on the bed. The female deputy asked if she could go in and speak to his wife and the defendant said yes. However, the defendant’s wife didn’t speak English so another deputy, a male, was brought into the room to translate. The deputies advised them both that they were looking for illegal drugs. They asked for consent to search their car and it was given. A dog was called in (with another deputy) but nothing was found in the car. Deputies asked the defendant’s wife, still naked and in the bed, for consent to search the room. She agreed and a search of the room revealed nothing. Despite these fruitless searches, the deputies continued to “badger” the defendant’s wife, telling her that they knew she had drugs and that if she cooperated she would not be charged. She eventually took a purse out from under the sheets and handed it over to deputies. It contained cocaine. The defendant stated that the cocaine was his. The court held that while the initial “knock and talk” was lawful, continuing the encounter in the intimidating manner suggested by the record for at least an hour, and after two fruitless searches, exceeded the bounds of consent. They found that the **consent to search** was not valid but was, instead, the product of coercion and intimidation. The 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 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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