

The Rap Sheet

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

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Summary of PPCC Meeting

December 21, 2011

Agencies represented: SAO, M-DPD, M-DPD Crime Lab, Miami Springs PD, Miami PD

Agenda Items:

Emailing of The Rap Sheet:

I noticed that there is sometimes a problem in the email delivery of *The Rap Sheet* with certain departments. If you have not recently received the monthly *Rap Sheet* and you had previously received them with no problem, please let Kristi Bettendorf know. As always, *The Rap Sheet* cannot be sent to an AOL email address; it will always return "failure to deliver" messages.

Automation of the Offense-Incident Report:

Emilio Canasi with the Miami-Dade Police Department Information Technology Services Bureau gave a power point presentation regarding the development of the automated offense-incident report, expected to be instituted in January of 2013. It will look quite different from the current version of this report. An initial report will be created by the assigned officer via computer data entry. The officer will be prompted by the program to go from field to relevant field, depending on the offense, and input the information specific to the incident. It can then be electronically transmitted to administrators. Changes and corrections can be made to the report and will be reflected by what is called the "audit report". This audit report will reflect any and all changes to the initial report, indicating who made the change and when it is made.

While discussing the very valuable aspect of the recording of any changes to the original report, a question was raised regarding how, in arrest cases, the prosecutor will know that a change has been made to a report that they already have in their possession and that they have provided to the defense in discovery. This and other issues will need to be addressed as this automated report moves toward implementation. Other questions raised included how these automated reports will be provided initially to the prosecution on arrest cases and whether the officer, when completing the reports, will be required to complete all necessary fields before an automated report can be submitted (the example given being whether an officer will be required to input victim information in the report on a crime which always has a victim). These should be included in their "validation rules", which will be forwarded to the SAO Information Systems Department for review and additional legal input regarding what information would be required in order to sustain a prosecution.

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IMPORTANT!

Next PPCC meeting, **January 18, 2012, 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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“Active” vs. “Inactive” Charges in the Charge Database:

A question has been raised with regard to what should be done with charges in the CJIS database once they have been “inactivated” due to changes made to the language of a particular statute, additions to or the expansion of the applicability of specific statutes or perhaps even the re-numbering of statutes. The question was whether police would prefer to be able to access and charge an older version of a statute when they were arresting a subject for a crime which was committed when the older version of the statute was in effect, or whether the inactive charges should simply be deleted from the system. The officers present indicated that they would like to have the flexibility to charge an older version of a statute, which could be activated through the entry of the crime date once the automated A-form is implemented.

Miami-Dade PD Crime Laboratory Bureau:

This bureau has started to generate Investigative Cost Recovery forms in all cases where their personnel have completed testing/analysis on a case. These forms will be provided to the lead detectives on the case. It was suggested that since not all cases have detectives assigned, that it may be preferable to develop a system to forward the forms directly to the State Attorney’s Office, preferably before the scheduled arraignment date on a case, so that the SAO can provide the necessary forms to the court when cases are closed out.

The next PPCC meeting will be held on January 18, 2012.

Attendance at PPCC Meetings:

Over the last few months, some very important issues have been raised and discussed at the monthly PPCC meetings, issues which should be the subject of a wide-ranging discussion among law enforcement officers from many different agencies; they have been matters which will ultimately affect all of us in the local law enforcement community. This is one of the advantages of the PPCC forum; to meet in a relatively informal setting to talk about and work through these issues. However, recent attendance at the PPCC meetings has dwindled markedly. If the Police-Prosecutor Coordinating Committee is to remain viable and relevant, it is necessary to broaden the attendance at our meetings. I encourage all agencies to consider sending a departmental representative to the next PPCC meeting and to all future meetings. I also encourage anyone who has an issue they think would be appropriate for discussion at a PPCC meeting, to bring the issue to my attention so that it can be placed on a meeting agenda and publicized, in *The Rap Sheet*, as an upcoming agenda item so that those with an interest in the topic can attend the meeting. I look forward to a very productive year for the Police-Prosecutor Coordinating Committee!

---- Kristi Bettendorf

Case Law for The Rap Sheet

State v. Price, 36 Fla.Law Weekly D2343a (2d DCA, 10/21/11) This case deals with the legality of an officer’s **arrest outside of his jurisdiction** and whether the officer improperly made the arrest “**under color of office**”.

It is a well-established legal principal that an officer outside of his jurisdiction has the same authority to arrest as a private citizen. It is also well established that law enforcement officers outside their jurisdiction do not have a superior power of arrest than a private citizen and that if officers use the powers of their office to observe unlawful activity or gain access to evidence not available to a private citizen, an officer’s actions will be found illegal when an officer improperly acts “under the color of his office”. A private citizen’s (and thus an out-of-jurisdiction officer’s) power to arrest is limited to persons who, in the citizen’s presence, commits a felony or a breach of the peace, or if the citizen believes that the individual committed a felony that has already occurred.

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This case, as well as the cases relied upon by the court in reaching their decision, all involved officers observing individuals driving vehicles in a careless or dangerous manner. Weaving back and forth across center lines, causing other vehicles to take evasive action, leaving the roadway - all were determined to be a breach of the peace, the proper subject of a citizen's arrest. Any private citizen would have been in a position to observe this erratic driving, just as the officers did. The court also held that just because the officer taking the action happened to be wearing their uniform, or driving a marked police vehicle or even using their blue lights to stop the subject's vehicle, did not turn a valid stop and arrest for breach of the peace into an improper stop "under color of office". Quoting the decision in a previous case, the court agreed "[w]hen officers outside their jurisdiction have sufficient grounds to make a valid citizen's arrest, the law should not require them to discard the indicia of their position before chasing and arresting a fleeing felon", or in this case, a subject committing a breach of the peace.

M.M. v. State, 36 Fla.Law Weekly D2357c (4th DCA, 10/26/11) The question presented here is whether the officer was involved in the **lawful execution of a legal duty** when he stopped the juvenile. Officers responded to an anonymous call regarding a large group of juveniles fighting at a particular location. There was no description of the juveniles. When the first officer arrived, he saw only 4 juveniles, one of whom appeared "disheveled" as if he had "been in a fight". The officer asked the juveniles to speak with him about a fight. Two of the juveniles did, including the one with the disheveled appearance. The two other juveniles, one of them M.M., walked away, ignoring the request to stop. Another officer arrived on the scene and the first officer asked him to stop the other two. The second officer ordered the juveniles to stop and one of them did, but M.M. kept walking away. The officer yelled at M.M. again to stop and M.M. turned and told the officer not to raise his voice to him (peppered with some obscenities). The officer says that M.M. took an aggressive stance toward him, and he ordered him to sit down. He started to sit, but didn't sit down completely, and the officer thought he was going to flee. As he started to get up, the officer testified that M.M. attempted to strike him, at which point the officer grabbed M.M.'s shirt. M.M. again tried to strike him and the officer punched him 4 times, then subdued and handcuffed him. M.M. was charged with resisting with violence, but the court found him delinquent as to resisting without violence.

The court found that the officer lacked reasonable suspicion that the defendant had engaged in or would engage in illegal activity and, therefore, had no legal basis to stop him. An anonymous tip will justify a stop only if the information provided is corroborated. This requires the officer to observe "unlawful acts, unusual conduct or suspicious behavior" when he or she arrives on scene. The court held that that did not occur here and that there was insufficient reasonable suspicion for the investigatory stop in this case.

Harris v. State, 36 Fla.Law Weekly D2400a (4th DCA, 11/2/11) This case illustrates the difficulty in determining a clear distinction between what facts will support an **intent to sell controlled substances** and what facts will not. In this case the defendant was observed by police in a park in the middle of the day. She was by herself in the park, observed holding a cell phone in one hand and a baggie containing what appeared to be cocaine rocks in the other. When she saw the police she tried to conceal the drugs, but they were recovered.

Recovered were 40 to 50 pieces of cocaine rock in a plastic bag. The total weight was approximately 5 grams. The defendant did not possess any money which would have been consistent with drug sales. The defendant made no admissions. The defendant did not possess any other drug-related paraphernalia. She was convicted of possession of cocaine with intent to sell within 1,000 feet of a park. The officer testified that, in his opinion and in light of his training and experience, the amount of cocaine rocks and the lack of any paraphernalia in the defendant's possession to ingest the cocaine indicated that the defendant intended to sell the cocaine. The court stated that in drug prosecutions, where the only proof of intent to sell is circumstantial (as in this case where the defendant was not observed selling drugs nor did she admit that she intended to), such proof may support a conviction for possession with intent to sell only if it excludes every reasonable hypothesis that the defendant possessed the drug for personal use.

The court then proceeds to cite to previous case law where amount alone - with amounts similar to this case - was deemed insufficient to support evidence of the intent to sell. In those cases, sometimes the testimony of the "expert" officer was critical; where officers testified that the drugs *could have* been possessed for personal use, the evidence was found to be insufficient. But even in cases where the officer was adamant in his opinion that the defendant intended to sell the drugs, the court required that there be facts to give that opinion credence. It was always significant when the defendants were not observed to be involved in any type of behavior resembling drug sales. In a couple of cases mentioned, the court held that the "method of storage" could be sufficient basis for the officer's opinion that the defendant possessed the drugs with the intent to sell. There is not, however, a clear delineation between these types of cases. In addition, the court cited to a previous case which held that even if the evidence was sufficient to show an intent to sell generally, there must also be evidence to show that the defendant had the intent to sell *within* [or within 1,000 feet of] *the park*, as required by the statute. Simply possessing controlled substances, without the intent to sell, within 1,000 feet of the designated locations, is not subject to the same sentencing enhancement. It is becoming more and more apparent that the courts will be looking for evidence in addition to the amount of drugs to support proof of an intent to sell.

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 Subcommittees, 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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