

The Rap Sheet

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

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At the October PPCC Meeting
there will be a presentation by the

M-DPD Digital Forensics Lab

regarding submission protocols and the
services the lab can provide with regard to
Cell Phones, Computers & Digital Cameras
For **all** local police agencies

Summary of PPCC Meeting September 26, 2012

Agencies represented: SAO, M-DPD, Miami PD, Miami Beach PD, Sweetwater PD, Sunny Isles Beach PD, M-DPD-FSB, North Miami Beach PD, Pinecrest PD, University of Miami PD

Agenda Items:

Legislative Update:

We reviewed new and amended laws of interest to law enforcement officers with effective dates from March 23, 2012 through January 1, 2013. Summaries were distributed. If you would like a copy of the summary, please email your request to Kristi Bettendorf at the State Attorney's Office.

Property Bureau Issues:

Property introduced into evidence at trial:

The Clerk's Office routinely releases to Miami-Dade PD Property Bureau, in their capacity as the sheriff of the county, evidence that has been introduced at trial. The evidence is usually released after a substantial passage of time. While Miami-Dade PD is obligated to hold onto evidence impounded by their agency in connection with their own investigations, they will be initiating a procedure whereby they will notify municipalities of evidence returned in their cases. It is anticipated that this procedure will allow for a certain amount of time for municipal police agencies to obtain their evidence from M-DPD before the evidence is destroyed.

Trafficking amounts of Cannabis plants:

There is a procedure in place within the State Attorney's Office which provides for the destruction of trafficking amounts of cannabis plants, after a defense attorney has been permitted a period of time to conduct their own inspection and testing, and after the cannabis has been properly weighed, photographed, perhaps video-taped and otherwise documented.

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IMPORTANT!

Next PPCC meeting, **October 17, 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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120 days after this notice to defense attorneys, the SAO will seek a destruction order from the judge presiding in the case. If you have any questions about this procedure, please speak directly with the Assistant State Attorney handling your case or to Howard Rosen, the Division Chief of the Narcotics Unit.

Holding on to general evidence:

How long must police property rooms hold on to other general types of evidence? Can the property be disposed of if no arrest has been made? If the statute of limitations has run? A combination of these two may be a good guideline. If there is no subject, no one has been arrested and there is no outstanding warrant or *capias* on a subject AND the statute of limitations has run, it is highly unlikely that this evidence will be needed, and can be safely disposed of. Some caveats to this general principal: Statutes of limitations may vary, depending upon the charge and even upon the facts of a particular case. Seek guidance from your Legal Department if you are unsure of the limitations on a particular case. Evidence in homicide cases, sexual battery cases and evidence involving DNA should not be destroyed. If the evidence being held belongs to a victim, efforts should be made to contact them so that they can get their property back. And as a general rule, when in doubt, check with your agency's Legal Department or Advisor.

Felony Retail Theft Cases:

In shoplifting cases where a retailer has its own loss prevention staff, it is not necessary for arresting officers to attend the Pre-Filing Conference. It is, however, still required that the officer call the State Attorney's Office (at 305-547-0200) to advise of the arrest. If the officer is in the loss prevention office when he or she makes the call, the officer can even advise the loss prevention officer of the date and time of the PFC. Naturally, if this is anything more than a "simple" shoplifting – if it is, instead, employee theft or fraud, or if there are any additional charges such as drugs or resisting arrest – then the arresting officer will be required to attend the PFC.

Bond Hearing Reminders:

The SAO Bond Hearing ASA provided the following suggestions regarding problem issues seen in First Appearance Hearings recently: When the age of the victim is an element of the offense to be proven (e.g., child abuse, battery on an elderly victim) make sure that the victim's age is clearly stated in the narrative (sworn) portion of your A-form. Just writing it on the back of the pink copy won't meet the judge's requirements (although we at the SAO are thrilled at such complete information on the back of the pink!). Writing legibly is always appreciated. And you are always invited to attend First Appearance Hearings to provide any additional information you feel may assist the court in determining bond. During the week, felony bond hearings are held at 9:00 a.m. and 1:30 p.m. in courtroom 1-5, and there is one hearing a day on the weekends, with felony cases starting at about 10:30 a.m., in courtroom 5-3.

Issues from the Floor:

Automated A-forms:

Use of the new automated A-forms has been pushed back to December. We will keep you apprised of any further delays.

Investigative Cost Recovery:

Building upon the discussion earlier with regard to Chapter 2012-125 of the new laws, we discussed investigative cost recovery for law enforcement agencies. The difference between the assessment addressed in Chapter 2012-125's amendment to section 938.055 and investigative costs, found in section 938.27, was discussed. By changing the statute section number in Ch. 2012-125, the \$100 assessment to be paid to FDLE's Operating Trust Fund upon a plea or finding of guilt when the services of a criminal analysis laboratory are used in the case, was made mandatory in all such cases. On the other hand, investigative cost recovery is to be ordered by the court only when the investigating agency requests and documents it. It is, therefore, important for agencies to continue to submit their investigative cost recovery forms as quickly as possible so that they can be considered should a defendant decide to enter a plea at arraignment. The new assessment in section 938.055 does not preclude the Miami-Dade PD Crime Lab from submitting their own investigative costs recovery forms – they are two totally different types of costs.

Domestic Violence Walk:

Major Katerman from North Miami Beach distributed flyers for the October 6th Domestic Violence Awareness Walk and Rally to be held at the Senator Gwen Margolis Amphitheatre and encouraged all to attend and participate.

The next PPCC meeting will be held on October 17, 2012 at 1:00 p.m.

Recent Case Law

A.L. v. State, 37 Fla. Law Weekly D903b (3d DCA, 4/18/12) Sometimes it seems easier to prove an armed robbery than an L&P, doesn't it? In this **loitering and prowling** case, plainclothes officers observed two individuals, this juvenile being one of them, walking in the alleyway between two apartment buildings at about 7:15 p.m. They were pulling themselves up to look into the windows. The officers didn't observe them trying to open any windows, although they watched them for 5 to 8 minutes. The officers then approached them with their badges and guns exposed. A.L. concealed himself in a staircase. When the officer caught up to him, the juvenile said "I was just scared. I didn't want to go to jail tonight". When asked why he was looking in the windows, A.L. said he was looking for a friend.

Citing to the premier Florida case on L & P, State v. Ecker, the court said that the "officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant a finding that a breach of the peace is imminent or the public safety is threatened". The court held that although A.L. was seen looking into apartment windows, he did not possess any tools and he wasn't observed trying to pry open any of the windows. Officers could not point to specific facts that a breach of the peace was imminent or that public safety was threatened. The court pointed out that once A.L. recognized the police officer, he complied fully with the officer's requests and answered his questions. The fact that the officer did not believe A.L.'s explanation is not sufficient, on its own, to justify the officer's alarm or immediate concern for the public safety. The court, therefore, reversed the trial court's decision finding the juvenile guilty of loitering and prowling.

D.T. v. State, 37 Fla. Law Weekly D1214a (4th DCA, 5/23/12) This juvenile and some other individuals were in a retail plaza at about 9:30 p.m. Some businesses were still open. There was a "No Trespassing" sign and a sign at the east end of the plaza that said "no loitering or soliciting on this property". An officer approached the group and asked what they were doing there, and D.T. responded that they were "just hanging out". The officer asked all of them for ID, and if they didn't have ID, their name and DOB. The juvenile gave his name as Dwayne Thomas, Jr. Another officer arrived on the scene who knew the juvenile, and they proceeded to arrest him for trespassing and **providing a false name to police**. He was charged with providing a false name to police and **resisting without violence** for "swinging his arms to avoid being cuffed".

Florida Statute section 901.36(1) provides that it is unlawful for a person *who has been arrested or lawfully detained* by a law enforcement officer to give a false name. The court found that at the time the juvenile provided the false name to the officer, that he was not being lawfully detained, but that the juvenile and the officer were involved in a consensual encounter. Asking for ID and/or names is an act permissible within the confines of a consensual encounter, and the officer did not restrain D.T.'s freedom of movement, make a show of authority or in any way indicate to him that he was not free to leave. The court reversed this conviction.

To sustain a charge of resisting without violence, it is necessary for the state to prove (1) that the officer was engaged in the lawful execution of a legal duty and (2) that the subject's actions amounted to obstruction or resistance of that lawful duty. D.T. argues that the charge could not be sustained because the arrest for providing a false name was unlawful and, in addition, that the officer lacked probable cause to arrest the juvenile for trespass. To arrest someone on property other than a structure or conveyance, the person must have been given notice against entry. This notice can be given by actual communication of a trespass warning or by "posting" the property as required by statute. There was no evidence that anyone had given D.T. any actual communication of a trespass warning, so the posted signs were the only other possibility. The court held that the signage at this location did not comply with the requirements of section 810.011(5), and that the officer lacked probable cause to arrest D.T. for trespass. As a result, the officer was not engaged in the lawful execution of a legal duty when D.T. resisted the officer's attempt to cuff him by swinging his arms. This conviction was also 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 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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