

The Rap Sheet

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Topics at the October PPCC Meeting

***Is the buying and selling of precious metals by jewelers
regulated by any statutes or rules?***

Procedures for obtaining arrest warrants in the SAO

Criminal Intake Division

Summary of PPCC Meeting **September 21, 2011**

Agencies represented: SAO, Sunny Isles Beach PD, M-DPD, M-DPD Crime Lab, Coral Gables PD, University of Miami PD, Miami Shores PD, Miami Beach PD, United State Attorney's Office, Hialeah PD

Agenda Items:

Legislative Update:

We reviewed and discussed new and changed laws from this year's legislative session. I will email a copy of the summary to all on The Rap Sheet email list.

New Search Warrant Format being Tested:

A new form for search warrants is currently being tested and should be available shortly. Officers present asked how they would be able to access the form once it is ready. I will check and either I or David Sherman will address this at the October meeting.

Minor Victims and Witnesses:

When you have listed a minor victim or witness on the back of the pink copy of your A-form, please try to ascertain the name of the minor's parent or guardian and include this as well. When we don't have a name, we can't enforce the service of subpoenas, for depositions or trials, without this information.

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

IMPORTANT!

Next PPCC meeting, **Wednesday, October 19, 2011, 1:00 p.m.**

State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136

All are invited to attend

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The November Meeting:

The November PPCC meeting will be held on **Thursday, November 17th** (instead of the usual Wednesday), at the regular time (1:00 p.m.) and place.

Issues from the Floor:

Police Case Numbers:

Those present were asked to remind their officers that when they call to schedule a pre-filing conference, they should advise Case Screening staff of their entire police case number, to include any zeros that may be merely place holders. Not including them can cause separate case files to be created when A-forms then arrive with the correct, entire case number.

New Line-Up Standards and Instructions:

We discussed the manner in which each agency would be writing up their line-up standards and procedures, to be completed by November 1, 2011. The Dade Chiefs' Association will act as a coordinating point for the development of these standards, based upon those issued by FDLE, FSA, and FPCA, in collaboration with the FPAA. Chief Assistant State Attorney Jose Arrojo will be the person designated within the State Attorney's Office to whom each agency should forward their procedures and standards once completed.

The next PPCC meeting will be held on **Thursday, November 17, 2011** at 1:00 p.m.

Recent Case Law

D.P. v. State, 36 Fla.Law Weekly D1445b (7/5/11, 3d DCA) This case contains a good discussion of the different types of **informants** and how much weight their information carries.

In this case, an officer was called to the scene of some juveniles loitering in a parking lot following a party. When the officer arrived, a young woman approached him. The officer described her as appearing very nervous and fearful; her hands were shaking and she was talking very loudly. She told the officer that D.P. had a gun and that he pointed it at her. The officer found the young woman to be credible and approached D.P. to verify her information. The officer advised D.P. that someone had told him he had a gun on him. D.P. responded that it wasn't him but some other boy. The officer said he wanted to conduct a pat-down search for officer safety and D.P. started to back away from him. This raised the officer's concern and he had D.P. put his hands on a nearby car and conducted a pat-down of his outer clothing, a Terry search. The officer felt a hard, metallic object in his right, front pocket and removed what turned out to be a firearm. After taking D.P. into custody, the officer found out that the young woman had left the scene.

Did the officer have sufficient reasonable suspicion to conduct this weapons pat-down? The court turns to the *Terry* case for an analysis of what is required to show reasonable suspicion, and stated it is dependent upon both the content of the information possessed by police and its degree of reliability. Both of these factors go into determining, by a totality of the circumstances, if reasonable suspicion exists. If a tip has a relatively low degree of reliability, more information will be required to establish the requisite amount of suspicion than would be required if the tip were more reliable.

At the low end of the reliability scale for informants is the anonymous tipster. Absent some corroboration of the information provided or other signs of reliability, the anonymous tipster is generally considered too unreliable to provide the reasonable suspicion needed for a *Terry* stop.

At the other end of the reliability scale is the known informant. The officer knows this informant and knows that he or she has provided reliable and verifiable information in the past. Because of this documented level of reliability, these known informants can often provide the reasonable suspicion necessary for a *Terry* stop.

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Somewhere in between these two extremes is the “citizen informant”, a person who approaches the police in person to report criminal activity. While the defense argued that this young woman was an anonymous tipster, the state argued that, despite the fact that she did not ultimately identify herself, she was more a citizen informant than an anonymous tipster. The trial court agreed with the state and found, considering the totality of the circumstances, that this young woman bears a greater resemblance to a citizen informant than an anonymous tipster. The 3d DCA agreed. Circumstances in this case which weighed in favor of classifying her as a citizen informant were the fact that she provided her information on the scene in a face-to-face encounter with police, in the presence of D.P., and the information was investigated immediately. The woman’s demeanor and the officer’s assessment of her credibility also added to her reliability. The 3d DCA upheld the trial court’s decision to deny D.P.’s motion to suppress and the case was affirmed.

Davis v. State, 36 Fla. Law Weekly D1575a (7/22/11, 5th DCA) Officers approached a “complex” (never really described what kind of complex, but I’m assuming apartment) located in a “high crime area” in the middle of the afternoon. There were several individuals in the courtyard of the complex. As the officers exited their car and started to walk toward these people, the defendant started to walk away. The officer caught up to him and asked if he could talk with him. The defendant stopped and started talking with the officer. The officer observed a pocket knife clipped onto one of the defendant’s pants pockets. The officer “secured” the pocketknife and then did a weapons pat-down. Cannabis, paraphernalia and a set of brass knuckles were found during the search.

The court’s analysis starts with what was apparently a consensual encounter. However, the officer turned the encounter into an investigatory stop when he “secured” (seized) the defendant’s pocketknife. In order to uphold an investigatory stop an officer must have **reasonable suspicion** that a person has committed, is committing or is about to commit a crime. The state argued that because the defendant had already been found in possession of one weapon (the pocketknife), that it was reasonable for the officer to suspect that the defendant might have additional weapons. The court disagreed. Possession of a pocketknife, without more, does not constitute a reasonable suspicion that a person is involved in criminal activity. In this case the pocketknife was apparently openly visible and its possession was entirely lawful. The defendant’s conviction was reversed.

Aders v. State, 36 Fla. Law Weekly (7/27/11, 4th DCA) I have never seen a case on this point before, and it’s an interesting bit of information for law enforcement officers. A deputy on routine patrol saw a black Honda. He randomly ran the car and saw that the tag displayed belonged on a light blue Honda. The deputy stopped the car, thinking that the tag might not belong to that car or it could have been a stolen vehicle, he didn’t know. During the stop, the deputy looked at the defendant’s license and registration and found out that the defendant had re-painted the light blue car black. The deputy then advised the defendant that he was free to leave. Before the defendant left the scene though, the deputy asked if he would consent to his searching the car. The defendant gave consent and some drugs and paraphernalia were found in the center console.

In arguing his motion to suppress, the defendant contends that there is no legal obligation to report a **change in the color of a vehicle**. While agreeing that this is true, the 4th DCA agreed with courts in Indiana and Georgia which had held that a color discrepancy between a car and its computer registration can nonetheless create sufficient reasonable suspicion to justify a traffic stop for further investigation.

Wess v. State, 36 Fla. Law Weekly D1640a (7/28/11, 1st DCA) This is a case charging **robbery by sudden snatching**. The victim in this case was sitting on a bus bench, her purse at her side, touching her hip. The defendant asked the victim a question; she answered him, turned away, then felt her purse “moving”. She turned and saw the defendant running away with her purse. The defense argued that the statute (§ 812.131) requires that the property taken be in the victim’s physical possession. In discussing this concept, the court compares the way taking is described in robbery (“from the person or custody of another”) and in robbery by sudden snatching (“from the victim’s person”) and concludes that taking an item from the vicinity of the victim is not the same as taking something directly from a person. The 1st DCA reversed the robbery by sudden snatching conviction and directed the trial court to enter a judgment for theft.

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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