

The Rap Sheet

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

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Law Enforcement Agencies are invited to
participate in a discussion of

Providing Police Reports Electronically

immediately following the April PPCC meeting at 2:00 p.m.

Summary of PPCC Meeting March 17, 2010

Agencies represented: Hialeah Gardens PD, Miami Gardens PD, Miami Beach PD, Miami PD, Surfside PD, Hialeah PD, Sunny Isles Beach PD, Miami-Dade PD, Coral Gables PD, North Miami Beach PD

AGENDA ITEMS:

Florida v. Powell: The United States Supreme Court recently addressed the sufficiency of a *Miranda* rights waiver form used in Tampa, Florida in this case. The specific part of the *Miranda* warnings that was addressed was that portion that provides that an arrestee has a right to consult with a lawyer, not only before questioning, but at any time during questioning. The Tampa warning read as follows: "You have the right to talk to a lawyer before answering any of our questions" and then, at the conclusion of the rights, "You have the right to use any of these rights at any time you want during this interview". The warnings in this form were found by the Florida Supreme Court to be insufficient and unclear, but the US Supreme Court reversed the Florida Supreme Court. The court held that the Tampa rights did not "entirely omit" any information *Miranda* required them to give, although they are not as clear as, say, the FBI rights which the court referred to as "exemplary". On this point the FBI warnings say: "You have the right to talk to a lawyer for advice before we ask you any questions. You have the right to have a lawyer with you during questioning". The case was remanded to the Florida Supreme Court for further proceedings. The dissenting opinion believes that the Florida Supreme Court could reinstate its original ruling, deciding that it sought to make the protections stronger in the State of Florida than in the federal courts. This remains to be seen.

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IMPORTANT!

Next PPCC meeting, **April 21, 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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Project Safe Neighborhoods Program:

AUSA Todd Mestepey, the Deputy Chief of Special Prosecutions in our US Attorney's Office, attended the meeting. He works with the intake of firearm cases under this program, usually charges of possession of a firearm by a convicted felon, which the federal government will prosecute providing they meet certain intake criteria. There are some substantial enhanced federal minimum mandatory sentences available for cases so prosecuted. Feel free to contact him if you have questions regarding cases which may be eligible under this program; he is eager to work with local law enforcement agencies on filing these cases.

Second Hand Precious Metal Dealers and Pawnshop Procedures:

ASA Thomas Sadler indicated that he would like to work together with interested officers/detectives who have experience with pawn shops to update the pawnshop procedures last published in 2003 in *The Rap Sheet*. The updated procedures will then be included in a future issue of *The Rap Sheet*.

ASA Sadler then addressed the issue of second hand precious metal dealers, an issue raised at the January PPCC meeting. They are regulated in Florida Statute 538, Part 1 (second hand metal recyclers are dealt with in Part II). This applies to any person or other business entity engaged in the business of purchasing, consigning or trading second hand merchandise. A precious metal is defined as any item containing gold, silver or platinum. The statute does not apply in certain instances: not-for-profits, garage sales, transfers from one dealer to another, trade-ins for an item of greater value, antique, coin or collectible shows, and flea markets, whether temporary or permanent. Second hand precious metal dealers are required to register with the Department of Revenue. The registration requirements are in §538.09.

We see those dealing in precious metal more and more nowadays, undoubtedly due to the very high price of gold (\$1,123/oz. as of the meeting date). Regulating them can be problematic as jewelry is often difficult to track. These dealers may provide an easy means to dispose of stolen property, and there are so many of them that many of them are fly-by-night operations. People are having "gold parties", there are kiosks set up in shopping centers, and some dealers are driving around advertising "Cash for Gold" operations on their vehicles.

Due to this proliferation, last year the Legislature dealt with the mail-in second hand precious metal dealers, adding Part III to chapter 538. These mail-in dealers must also register with the Department of Revenue. Registration requirements are found in §538.09.

Detective Lewis from Miami Gardens PD advised that when a new dealer opens up in their jurisdiction they give them a visit and provide them with a packet containing the law, advising them how to register and including a sample form they can use for transactions. They make them sign for these packets, so it would seem that these second hand dealers would have a tough argument to make later on that they didn't know the requirements. They even have some check-cashing stores in their jurisdiction getting licensed to buy gold and there is no system in place for the local police to be notified that someone in their jurisdiction has registered. There is also a problem with regard to the law on second hand dealers in that violations are only misdemeanors, unlike the pawnshops and mail-in precious metal dealers where certain violations are felonies.

Providing Police Reports by Electronic Means:

Since it was not possible to schedule the meeting on this topic in conjunction with the March meeting, we have scheduled it after the April meeting, April 21st at 2:00 p.m.

Upcoming Training:

Miami Beach Police Department is hosting a training on April 12th and 13th 2010 on the topic of Power Point for Public Safety. If interested, please contact Miami Beach PD's Training Office Manager Lori Freedline.

Officers Failing to Bring Police Reports to PFCs:

Please contact Kristi Bettendorf if you are interested in knowing how your department is doing in the area of bringing police reports to PFCs on non-domestic cases. I have statistics that span August, 2009 through February, 2010.

ISSUES FROM THE FLOOR:

Miami-Dade Crime Lab:

The Miami-Dade Crime Lab has merged with their Crime Scene Unit and will be known as the Forensic Services Bureau.

The next PPCC meeting will be held on Wednesday, April 21, 2010 at 1:00 p.m.

Recent Case Law

Hernandez, et al. v. City of Miami Beach, 34 Fla.Law Weekly D2099a (3d DCA, 10/14/09) **The Florida Contraband Forfeiture Act** (sections 932.701 - 706 of the Florida statutes) requires the seizing entity to notify the claimants that they may request an adversary preliminary hearing. In addition, the Act requires that the seizing entity “set and notice the hearing, which must be held within 10 days after the request is received *or as soon as practicable thereafter*”. In this case, once the City received the claimant’s request for a hearing, it waited until the 8th day to file a request for the hearing with the clerk and the 9th day to request a hearing from a judge. The court set the matter on its next forfeiture calendar, but that was 5 days *after* the 10th day. The City argued that this fell under the “as soon as practical thereafter” wording in the statute. The Third DCA held that it did not and reversed the lower court’s decision and ordered the dismissal of the forfeiture action.

The Court held that any delay past the ten-day statutory deadline must be supported by “good cause”, which was not found in this case. Quoting from a Fourth DCA opinion: “[I]f the statute is to be effective, the seizing entity must act within sufficient time to permit the court to schedule the requested hearing within the statutorily allotted ten-day period.” The Third DCA said that it is impermissible for the seizing agency to consume all or most of the ten-day period before making the request for a hearing. The magnitude of the delay in this case made it a practical impossibility for the hearing to be held before the tenth day expired. The court refers to a previous case in a footnote when it states that if the seizing agency makes its request within a day or two of receipt of the request for hearing from the claimants, the fact that the court schedules the hearing after the ten-day deadline will not be held against the seizing agency. These must always be requested as emergency hearings, due to the ten-day deadline.

Daniel v. State, 20 So3d 1008 (4th DCA, 11/4/09) This Broward County case deals with **Mutual Aid Agreements**. Mutual Aid Agreements can be established between or among law enforcement agencies pursuant to §23.1225 of the Florida statutes. In this case Coconut Creek detectives responded to the scene of an armed robbery in their municipality. In following up on the investigation, they went to a home about 5 minutes away from the scene of the robbery, which was located in Margate. At that location they came into contact with people in a vehicle that matched the description of the getaway car. The clothing description of the driver of the getaway car matched the driver of the car as well. When ordered to place their hands on the dashboard, one of the detectives saw what she thought was a gun, backup officers were called, from Coconut Creek and Margate, and the subjects were taken from the car and arrested. A gun and other evidence connecting them with the robbery were found in the car. The defendant moved to suppress the search because the Coconut Creek detectives were outside of their jurisdiction. The court ruled that the detectives were working in accordance with their Mutual Aid Agreement and that the detention and search were, therefore, valid. Keep in mind that Mutual Aid Agreements must be specific with regard to the nature of the law enforcement assistance to be rendered, the procedures for requesting and for authorizing assistance and any other terms and conditions necessary to give them effect. Just because one agency has a mutual aid agreement with another agency does not give officers *carte blanche* to do anything they want in the other agency’s jurisdiction. Their actions will be recognized as legal only to the extent specified in the agreement.

Ward v. State, 34 Fla.Law Weekly D2279a (5th DCA, 11/6/09) This case deals with several issues: **trespass, designation of police to enforce trespass laws** and **giving a false name to police after detention**. Ocala police were patrolling an apartment complex that consisted of several buildings. Ocala PD had a written agreement with the apartment complex owners to patrol the property grounds and enforce trespass laws. There were multiple large “No Trespassing” signs posted throughout the complex that cite to the trespass statute and advise that Ocala PD officers are authorized representatives of the owners. Officers observed the defendant walk through a break in the fence onto the property. They approached him and asked him if he lived there, and he said no, he didn’t, he was just “cutting through”. The contact with the defendant up until this point, the court ruled, was a consensual encounter. The officers then asked for his name, and were going to issue him a trespass warning. At this point he had been detained as he was not free to leave, even though the officers had exercised their discretion and were going to issue a warning, they still had probable cause for a trespass arrest. He gave them a false name, which they were unable to verify. They then arrested the defendant for a violation of §901.36(1). A search incident to this arrest revealed a gun and cocaine. The court upheld the search based on the above reasoning.

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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