

The Rap Sheet

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Miami-Dade State Attorney



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

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At the March PPCC Meeting

ASA Thomas Sadler,

Co-Chair of the Pawnshop Subcommittee

Will speak on the topics of

**Second Hand Precious Metal Dealers and
Pawnshop Procedures**

Summary of PPCC Meeting February 17, 2010

Agencies represented: M-DPD, Coral Gables PD, Miami PD, Sunny Isles Beach PD, North Miami Beach PD, Hialeah PD, and ABT

AGENDA ITEMS:

Fair Market Value in Retail Theft Cases:

We discussed Jackson v. State, 34 Fla.Law Weekly D2476b (4th DCA, 12/2/09), a case that defines fair market value for retail theft cases as the price at which the merchandise is offered for sale. If it's on sale, then it's the sale price. If it's on sale with an additional mark-down taken at the register, then it's the value after the mark-down. Beall's Department Store made a valiant effort in this case, arguing that they offer their merchandise at a lower cost to their paying customers, but since the defendant stole the property, the value would be the manufacturer's suggested retail price. The court did not agree and reduced this grand theft to a petit theft.

Sequential vs. Simultaneous Line-ups:

I was asked about this issue after last month's meeting so looked into the State Attorney's Office position on the procedures. Coincidentally, there was a recent article in *Newsweek* regarding the possibility of suggesting a change to sequential lineups in Texas. (Texas has the greatest number of DNA-exonerated inmates in the country.) There was a movement a few years ago to abandon simultaneous (showing victims or witnesses a group of photographs or live suspects together, at the same time) lineups in favor of sequential (showing photos or individuals one at a time) lineups in response to the number of cases being reversed based upon DNA comparisons.

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IMPORTANT!

Next PPCC meeting, **March 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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It was suggested that because some of these cases had been based upon eye-witness identification, that there must be a problem with the method by which eye-witness identifications are made. Several cities, counties and even states decided to abandon simultaneous line-ups in favor of sequential ones, specifically double-blind (meaning the officer showing the line-up doesn't know who the suspect is either, believing that this may eliminate some subconscious element of suggestibility) lineups. We looked into the process, went to New Jersey to study the model they had created, considered a pilot project locally, but did not implement it. An intervening study conducted in Chicago in 2006 found the new procedure to be worse than the previous one. At present, we are not requesting or urging police agencies to change their lineup procedures.

eNotify Problems?

A problem with officers submitting court overtime slips attached to eNotices has been brought to my attention. Have any other departments had problems with officers submitting court overtime slips for many hours of off-duty time based upon eNotices for what was really investigative work, not court-related appearances? If you have any examples of such, please provide them to Kristi Bettendorf.

ISSUES FROM THE FLOOR:

Home Addresses for Officers:

Yvonne O'cana, supervisor for the Case Screening Unit in the State Attorney's Office, asked that officers not include victim or witness officers' home addresses on the back of the pink copy of the arrest affidavit. There is the possibility that these home addresses may be picked up during the processing of the arrest affidavit and entered in public databases.

Officers Clocking in for PFCs before 7 a.m.:

There is a new procedure for officers who need to clock-in when appearing at the State Attorney's Office before 7 a.m. (or after 7 p.m.), when the front desk is not staffed. The attendance forms are now in a bin affixed to the outside of window 2 at the front desk in the Graham Building. Just inside the window is a date and time stamp machine which can be reached and used by the officers. This is strictly on the honor system.

Haitian Gang Seminar Training:

On April 15th and 16th, North Miami Beach Police Department is hosting a seminar on Haitian gangs. The deadline for signing up is April 8th. There is a fee for this seminar. Contact North Miami Beach Police Department for more information.

Trafficking Cases:

Major Katerman asked why narcotics trafficking cases are not all handled by Narcotics Unit ASAs and why the ASAs assigned to handle the cases change so frequently. Whereas in the past we have had upwards of a dozen ASAs staffing our Narcotics Unit, we now only have 3 and, therefore, they cannot handle all of the trafficking cases. The ones not handled by Narcotics Unit ASAs are assigned to ASAs in the 20 trial divisions. Promotions within the felony trial divisions create a domino-effect with ASAs being transferred to a higher level and, possibly, also to a different trial division. This is what makes frequent case re-assignment a reality.

The next PPCC meeting will be held on Wednesday, March 17, 2010. All are welcome to attend. ASA Thomas Sadler will be making a presentation on second-hand precious metal dealers and pawnshop procedures.

Recent Case Law

G.M. v. State, 34 Fla. Law Weekly S568a (10/8/09) In this interesting decision, the Florida Supreme Court sided with our district court, which was in conflict with all of the other districts in the state. Simply put, the issue was **whether a police officer's activating the lights** on his vehicle automatically made what might otherwise be a citizen encounter **a detention**. As you know, reasonable suspicion is required for a detention; no such requirement exists for a police-citizen encounter.

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The facts of the case are important to understanding the court's holding. Police were watching a park, which had been the source of complaints of drug dealing. There were two cars parked there, some individuals in the cars, and some outside of them. After watching for about 15 minutes, the undercover officers activated the lights on their vehicle and drove into the park, stopping about three feet behind the parked cars. The officers acknowledged in testimony that they had not observed any criminal behavior, but stated that the individuals were not engaged in what the officers considered "traditional" park activities. Bottom line: there was no reasonable suspicion which would form the basis for a detention.

While the two officers were not in uniform, they did have their badges on lanyards around their necks. They were armed, but did not pull their weapons. They walked toward the car G.M. was in the back seat of and could smell the odor of marijuana and see smoke coming from the car, as one or more of the car windows were down. As one of the officers looked into the window of the car, he saw G.M. in possession of marijuana and rolling a "blunt". When G.M. saw the officer, he put the marijuana in his mouth, but took it out when the officer ordered him to.

The analysis by the court was twofold. First of all, the Supreme Court did not agree with the Third DCA's ruling that *none* of the individuals were detained, holding that under the totality of the circumstances, they certainly were. This leads to the conclusion that an officer's use of his emergency lights on his vehicle is going to be one *very important* factor in determining whether a seizure (i.e., detention) has occurred. The court did agree with the Third DCA's holding that G.M. had not been seized because the evidence supported the fact that he was not even aware of the presence of police, let alone the emergency lights on their car, until the officer was at the window of the car. By that point, the officer had observed G.M. in possession of the marijuana and had probable cause for his arrest.

First of all, in order for a "seizure" to have occurred, one of two criteria must be satisfied: either the person must be physically subdued by a police officer or the person must *submit* to the officer's show of authority. The second criterion was not met in this case until the defendant took the marijuana out of his mouth when ordered by the officer to do so, submitting to the officer's show of authority. As has been said, by this time probable cause for the defendant's arrest already existed, so the question of reasonable suspicion for a detention is moot.

The court relies upon U.S. Supreme Court cases in recognizing that there is a longstanding principle that *per se* rules are inappropriate in the context of 4th amendment seizure analysis. To the extent that the cases in conflict with the 3d DCA stand for the absolute and inflexible proposition that activation of police lights alone *always* constitutes a seizure, the Florida Supreme Court agreed with the 3d DCA. The court also mentioned other situations where police emergency lights do not equal a detention, such as where a motorist appears to need help.

In effect, what the court is saying, however, is that unless the defendant is oblivious to the fact that police have approached with emergency lights activated, as in this case with G.M., the likely outcome will be a court's decision that a seizure has occurred, when such a holding is consistent with the totality of the circumstances.

Bowers v. State, 34 Fla.Law Weekly D2140a (2d DCA, 10/16/09) This case involves the **fellow officer rule** and illustrates how important the testimony of each officer is. The facts surround a traffic stop and the subsequent arrest of the defendant for possession of cannabis, possession of paraphernalia and DUI.

The fellow officer rule provides a mechanism by which officers can rely on their collective knowledge to act in the field. Under this rule, the collective knowledge of officers investigating a crime is imputed to each officer and one officer may rely on the knowledge and information possessed by another officer to establish probable cause. The court holds, however, that the fellow officer rule is not a rule of evidence nor does it change the rules of evidence. Here one officer stopped the defendant for a traffic violation and another officer subsequently came to the scene to conduct the DUI investigation. In the hearing on the defendant's motion to suppress, she challenged the validity of the initial stop. Although subpoenaed, the officer who conducted the stop did not appear. The second officer, who arrived at the scene after the defendant had already been stopped, was permitted to testify, over objection by defendant's attorney that it was hearsay, regarding the basis of the stop, as relayed to him by the first officer. The Second DCA held that this was an improper application of the fellow officer rule, that the officer's testimony was, in fact, hearsay and reversed the case, granting the defendant's motion to suppress.

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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