

# The Rap Sheet

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Miami-Dade State Attorney



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listed on the back page**

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## Summary of PPCC Meeting April 21, 2010

**Agencies represented:** North Miami Beach PD, Surfside PD, Miami Beach PD, M-DPD, Miami Gardens PD, Coral Gables PD, Miami PD, Homestead PD, Hialeah PD

### AGENDA ITEMS:

#### Special Victims Bureau:

Miami-Dade Police Department has combined their Sex Crimes and Domestic Crimes Bureaus under the Special Victims Bureau. Their current locations and phone numbers will not change.

#### Warrants on DNA Hit Burglaries:

There is no statute of limitations, under specified circumstances, when a defendant is implicated in a burglary offense by a DNA hit. However, this does not apply to burglaries that occurred prior to July 1, 2003. The change in the law that establishes this special statute of limitations on DNA hit cases also specifies that it applies to any [burglary] offense that is not otherwise barred from prosecution on or after July 1, 2006. Since burglaries carry a three-year statute of limitations, this would include burglaries committed on or after July 2, 2003. Do not seek a warrant for a burglary that occurred before this date based on a DNA hit. There must be a sufficient portion of the DNA evidence collected at the time of the original investigation preserved and available for testing by the defendant for this section to apply.

#### The Use of Electronic Media in Crime Solving:

A recent inquiry raised the issue of the use of social networking media (Facebook, Twitter, text-messaging, Craig's List, etc.) in solving crimes. In the case in question, it was the victim who identified the defendant through the use of these applications. Facebook, however, isn't as reliable (or legally sufficient) as a police lineup! Kristi asked if anyone had any legal issues in connection with the use of these media, and no one did. Feel free to bring up any such questions if they arise.

### ISSUES FROM THE FLOOR:

#### Charges Not Included in the Jail's Charge Database:

An inquiry was made about a charge not included in the Jail's charge database. A request to add a charge to the database can be made to the SAO Librarian Miltonette Craig (305-547-0629), her supervisor, Linda Mims (305-547-0723), or ASA Kristi Bettendorf (305-547-0220). We had such a request recently and were able to get the charge added to the database very quickly.

## IMPORTANT!

Next PPCC meeting, **May 19, 2010, 1:00 p.m.**  
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136  
All are invited to attend

## Electronic Submission of Police Reports Meeting - April 21, 2010

**Agencies represented:** North Miami Beach PD, Surfside PD, Miami Beach PD, M-DPD, Miami Gardens PD, Coral Gables PD, Miami PD, Homestead PD,

ASA Kristi Bettendorf provided some background with regard to the SAO's increased efforts to obtain all police reports and paperwork as early as possible in the case screening process so that they may be turned over with discovery in a timely manner. Last year, representatives of all facets of the criminal justice system – state attorneys, public defenders, judges, police agencies, Corrections, the Clerk's Office, private defense attorneys – got together in a series of workshops and meetings to discuss the areas in our criminal justice system which could use some work. The fact that a case was set for a judge's calendar on a certain date, with all the required players present in the court room, and nothing would happen to move the case forward was seen as very frustrating and a waste of precious resources. One of the areas that was identified as a cause for such delays was the failure of the State Attorney's Office to turn over to the defense the documentation required under the Florida discovery rules. This is, routinely, police reports, lab results, search warrants, supplemental police reports, property receipts, crime scene reports, consent to search forms, rights waiver forms, police lineups and all other sorts of police documentation created in relation to an arrest.

A question was raised with regard to the SAO's obligation to turn over this police paperwork when it had not yet been provided to us by police. However, it is clear in Florida law that the prosecutor will be held to know whatever the police know about a case and it is, therefore, our immediate and continuing obligation to provide police paperwork in discovery. The possible sanctions for failure to provide such documents may be the exclusion of evidence, the exclusion of a witness's testimony or, in the most extreme of cases, dismissal of the charges.

We then went on to the topic of how we could use all of the technology at our fingertips to provide this necessary documentation as quickly as possible. Most of the discussion centered around scanning and emailing these documents. Most of the departments represented at the meeting indicated that they had the capability of providing police paperwork by this means. We discussed the system currently used by Doral PD whereby certain of their reports (I subsequently learned that these reports include DUIs and PTAs) are automatically sent to a mailbox at the State Attorney's Office where they can be easily retrieved when needed by SAO staff. For the remainder of the reports, it appears that the requests are made directly to Doral records, the records are secured and scanned if they haven't already been scanned and emailed to the same email box, where they can be retrieved, and to the original requestor in the SAO, attached to an email. I also learned that all of Doral's offense-incident reports are now electronic, so this would make the retrieval and transmittal of the reports much easier for them; those departments that would have to go about the scanning manually in every instance and then emailing them might find this process burdensome at first, but the process would become easier with each step toward electronic reporting. A number of departments indicated their willingness to participate in such a system and email boxes have now been established for Coral Gables, Doral, Homestead, Miami, Miami Beach, Miami Gardens, North Miami Beach and Surfside Police Departments. The police reports can easily be identified in each mailbox by the defendant's name and police case number or citation number entered in the subject line of each email sent to the mailbox. It is very important that no punctuation be used to separate the defendant's name and the police case number as it will make it impossible for us to use our search tool. Our ability to search by a defendant's name or police case number will become more and more important as the number of emails received grows. Police documents so sent should not include any audio or video material.

Unless these departments wish to begin emailing police reports automatically on arrested defendants, a system will need to be established for the most efficient method for SAO personnel to request the reports from each department's designated records sections. This will be our next step in this project. Any and all input will be appreciated as we move forward in establishing and, hopefully, expanding, this means of providing police reports.

Other discussion at the meeting dealt with each individual officer's responsibility to provide police reports, particularly in cases where the officer will be attending a pre-filing conference. The information needed with regard to the individual department's ability to retrieve reports from the eNotify system with regard to which officers are failing to provide these reports was gathered and will be submitted to ETSD.

This will be an on-going topic of discussion and questions raised in conjunction with these issues will be discussed at the May PPCC meeting. If you have any questions you would like to submit in advance of the meeting, to facilitate discussion, please forward your inquiries to Kristi Bettendorf.

## Recent Case Law

L.C. v. State, 34 Fla.Law Weekly D2306b (3d DCA, 11/12/09) This case was initially discussed at our November PPCC meeting. The decision was not final at that time and there was the possibility of a Motion for Rehearing. However, the Motion for Rehearing was denied in February of this year, so I am including a thorough discussion of the case and its holding.

The main issue in this case is stated as follows: Is it reasonable (within the context of the constitutional prohibition against unreasonable searches and seizures) for a police officer to perform a **weapons search** without having performed a pat-down on a fifteen-year-old **truant** before putting her in the back of his police car to execute his statutory obligation to transport her to school, when the officer has no basis to suspect her of possessing any weapons? The court concluded that it is *not* reasonable to conduct such a search and the motion to suppress should have been granted.

L.C. was stopped by 2 officers in the middle of the school day at a location other than her school. She was wearing a shirt with a school logo and appeared to be of school age so the officers believed her to be truant. Upon confirming that she was truant, the officers searched her pockets and found a small amount of cannabis. The testimony revealed that the officer proceeded immediately to a search of defendant's pockets, without any visual indication, such as a bulge, that would indicate she was armed. Neither did the officer conduct a pat-down search before proceeding to the search of her pockets. The officer testified that he searches all individuals before placing them in his police car as a safety measure.

The analysis of this case begins with a statement that truancy is not a crime and the truant is not being placed under arrest before being put in the police car. Indeed, the primary focus of the law which authorizes officers to pick up truants and take them back to school is for the child's benefit – to get them back into an educational setting without delay. While the court appreciates the concern of officer safety, there is no case law or statutory law which authorizes officers to search an individual, without having performed a pat-down for weapons, simply because the individual is being placed in a police car. All of the cited cases, and there were quite a few of them, relied upon the fact that the officer had conducted a pat-down search for weapons first. And, of course, in order for a pat-down search for weapons to be upheld there must be an "articulable suspicion" that the individual is armed.

A.M. v. State, 35 Fla.Law Weekly D25a (3d DCA, 12/23/09) Officers received a call regarding a burglary in progress in an area designated by police as a "hot zone" for burglaries. The caller gave the location of the burglary and a clothing and physical description of the burglar. The witness had followed the suspect to a particular location. An officer went to that location and was flagged down by the witness. In a brief exchange, the officer confirmed that the witness was the person the officer was looking for. The witness pointed in the direction the suspect had headed. Neither the officer nor the dispatcher obtained the name of the witness. The officer proceeded in the direction pointed out and a few blocks away, found A.M., who matched the description. He approached him and questioned him, asking him what he was doing in the area, why he wasn't in school, what his name was. When the defendant indicated he had a driver's license the officer asked for his name and date of birth. When checked in the system, no driver's license came up under that information. The juvenile then gave another name and date of birth, which also did not reveal a license. The officer patted the defendant down and found an ID card in his pocket with what turned out to be his true name and date of birth, a search under which revealed a pickup order. The defendant was fingerprinted at the station and A.M. ultimately admitted his correct name. The giving of a false name to police upon arrest or when an individual has been lawfully detained is an offense under Florida Statute §901.36(1).

The defense argued that there was no **reasonable suspicion** to support the investigatory stop. The case relied upon by the defense, *Baptiste v. State*, 995 So.2d 285 (Fla. 2008), was distinguished by the court. In *Baptiste* the tipster was anonymous. In this case, the court classified this witness as a **citizen informant**, based upon his face-to-face contact with the officer, even though his identity was not ascertained. A tip from a citizen informant falls at a higher end of the reliability scale than an anonymous tip. The court concluded that the officer had sufficient reasonable suspicion to justify the investigatory stop of A.M. and, therefore, a proper basis to arrest him for giving a false name.

**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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