

THE RAP SHEET

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MIAMI-DADE STATE ATTORNEY



1 OCTOBER, 2003

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Next meeting of the
Pawn Shop Subcommittee

will be held on

Thursday, October 16, 2003

(immediately following the PPCC meeting)

11:00 a.m. - Room S418

**Summary of September 25, 2003
PPCC Meeting**

Agenda:

1. Compliance with Geneva Convention: All departments should have procedures in place for consular notification when foreign nationals are arrested or detained.

2. It is of the utmost importance that officers take particular care when writing their police case numbers on Miami-Dade Lab Request forms. Failure to write the number accurately may delay filing the case.

New and Amended Laws – 2003:

ASA Kristi Bettendorf discussed some of the 2003 Legislation Session laws effective prior to October 1st. Among them:

Effective June 24, 2003: Statute **828.122, animal fighting**, was substantially amended. Prohibited activities, i.e., breeding, training and transporting, have been expanded, as was the right of courts to order seizure of the animals involved and the euthanasia of injured animals. Restrictions that had prevented the execution of search warrants after sunset were deleted and the grounds through which such warrants are authorized were expanded.

Effective July 1, 2003: Changes were made to the statute involving **criminal use of personal identification information**. The classifications of offenses were substantially revised. For example, statute **817.568(2)(b)** reduces the dollar amount for a second-degree felony from \$75,000.00 to \$5,000, and adds the alternative criteria that 10 or more individuals be defrauded. Added: a three-year minimum mandatory sentence is imposed upon conviction.

Continued next page

IMPORTANT!

NEXT PPCC MEETING, THURSDAY, OCTOBER 16, 2003 - 10:00 A.M.

Continued from previous page

Also effective July 1st, new felony offense **810.061** makes it a third degree felony to **impair or impede telephone or power to a dwelling if it can be proven that it was done to facilitate or further a burglary.**

Effective October 1, 2003: The new crime of **"cyberstalking"** is created under **784.04**. Similar to the stalking law already in effect, "simple" cyberstalking is a first degree misdemeanor, aggravated cyberstalking with a credible threat of death or bodily injury, in violation of an injunction or involving a minor victim, is a third degree felony.

Also effective October 1st: New section **817.2361** makes it a third-degree felony to create, market or present a **false or fraudulent motor vehicle insurance card**, with the intent to deceive another person.

Issues from the Floor:

Citations: Administrator Elena Reyes, County Court, reminded officers that when an they handle a DUI that involves a second time refusal to take a breath test, two citations are needed - one for the DUI and one for the refusal.

Felony Traffic citations: When officers cite defendants on felony traffic charges and do not call to schedule a PreFiling Conference, the Felony Screening Unit has no information and no A-form on the case and only finds out about the case when the 21st day arrives and the case comes up for arraignment. To prevent these cases from "falling through the cracks," it is imperative that the officer write an arrest affidavit and call to schedule a PFC on these cases.

Medical Records: Officers advised that, with the new patient privacy laws in force, they are having problems obtaining victims' medical records. Some institutions are requiring a court order even when the officers present a subpoena. They were advised to speak with either ASA Penny Brill, Chief of the SAO Legal Division, or the Chief of the Domestic Violence Unit, Esther Jacobo-Rubio.

A Dedicated Prosecutor: Stephen Talpins, Chief of County Court

Stephen Talpins graduated from Northwestern University with a B.S. in Speech Communications in 1989. He then graduated from the University of Miami School of Law, cum laude, in 1992, and is presently the Chief of the State Attorney's Office County Court Division. He supervises between 30 and 50 Assistant State Attorneys in the prosecution of over 100,000 misdemeanor cases, including 6,000 Driving Under the Influence (DUI) cases, each year. Steve has tried over sixty jury trials, eleven of them homicides.

Steve has recently become a Fellow of the National Highway and Traffic Safety Administration (NHTSA) and National Association of Prosecutor Coordinators (NAPC) for 2003-2004. As such, Steve represents DUI prosecutors throughout the nation in various conferences, seminars and trainings. He also serves on the Statewide Technical Advisory Committee on DUI Enforcement and Prosecution and the Miami-Dade County Association of Chiefs of Police (DCACP) Traffic Enforcement Committee. In 1994 and 1995, Steve served as Deputy Chief, then Chief, of the DUI/Traffic Division, during which time he helped re-write the SAO's DUI/Traffic training manual and won *en masse* hearings regarding the police departments' not videotaping DUI subjects and the admissibility of low volume breath samples. Additionally, Steve prepared for, argued and won a precedent setting *en masse* Frye hearing concerning the admissibility of Drug Recognition Expert (DRE) testimony and evidence, including the field sobriety and horizontal gaze nystagmus tests. See Williams v. State, 710 So. 2d 24 (Fla. 3d DCA 1998). The "brief" was 159 pages long and provided the court with over 2,000 pages of medical literature and caselaw. As part of his preparation for the hearing, Steve spent countless hours at the University of Miami Medical School Library and attended the Florida Department of Law Enforcement (FDLE) Breath Alcohol Technician Forty-Hour Qualification Course, Drug-Alcohol Recognition Technician (D.A.R.T.) School, DRE Pre-School, DRE School, and the DRE Instructor School. The National Commission Against Drunk Driving recognized Steve's efforts in bestowing its Adjudication Award for Outstanding Prosecution on him. Mothers Against Drunk Driving (MADD) also honored him in the past, and, most recently, the Citizens Against Drug Impaired Drivers recognized his continuing efforts in DRE prosecutions in August, 2003.

Steve's involvement has not always been limited to DUI prosecutions. In 1997, as part of his work in the Gang Unit, Steve helped create the SAO's Multi-Agency Gang Strike Force. Steve prosecuted gang racketeering (RICO) cases from 1997 until 2000. In 2001, Steve became Chief of the County Court Division. Since that time, he has authored several articles pertaining to the DRE program and its components. Most significantly, Mr. Talpins published First Person Prosecutor: Taking on the HGN Fight, ADMISSIBILITY OF HORIZONTAL GAZE NYSTAGMUS EVIDENCE (American Prosecutors Research Institute 2003) and Drug Recognition Experts (DRE): The Drunk Stops Here, WALKING THE LINE OF DUI 7.1 (The Florida Bar CLE and the Traffic Court Rules Committee and Criminal Law Section 1994). He also co-authored portions of The DUI Case Preparation Manual for the Florida Law Enforcement Officer, Institute of Police Technology and Management (1996).

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Steve has lectured or presented on DUI and DRE issues for a myriad of groups, including the Arkansas Office of the Prosecutor Coordinator (2003), Florida Association of Chemical Testers (2003), Florida Bar Association (1994), Florida Prosecuting Attorneys Association (1997-1999, 2003), Fort Lauderdale Police Department (1999), Governor's Highway Safety Association (GHSA) (2003), Institute of Police Technology and Management (1993-1995, 1997, 2002), International Association for Chemical Testing (2003); International Association of Chiefs of Police DRE Section (2003), Miami-Dade County Public Schools Trust Specialists (1994), Miami-Dade County State Attorney's Office (1993-1999, 2001), Metropolitan Police Institute (MPI) (1993-1994, 1998), National District Attorney's Association-American Prosecutors Research Institute (2003) and the National Highway Traffic Safety Administration (NHTSA) (2002).

As you can see, Steve's contributions to the State Attorney's Office, the law enforcement community and the community at large, are legion! Congratulations to him on his latest achievement in becoming a Prosecutor Fellow for NHTSA and NAPC.

New Case Law

Johnson v. State, 28 FLW D2061c (3d DCA, 9/3/03) Our DCA ruled that a **battery on a law enforcement officer**, consisting of the defendant **spitting** on an officer, is not one of the forcible felonies listed in 776.08, and therefore is not a qualifying offense for sentencing as a violent career criminal.

Vasquez v. State, 28 FLW D2141b (2d DCA, 9/12/03) Police encountered defendant Vasquez while canvassing the area of an armed robbery shortly after the crime. The defendant indicated he lived in the hotel they were in front of and proceeded to walk toward his room with officers. Upon arriving at the room, the co-defendant (Castell) exited the room and left the door open. Officers speaking to the defendants could see in plain view within the room a syringe, a pipe and a bullet. An officer entered the room on the basis of a **protective sweep** and while quickly going through the rooms, saw some evidence linked to the robbery. After the 'protective sweep' and after some discussion, both defendants signed consents to search the room and the evidence was seized.

The court held that the officer's view of drugs, drug paraphernalia or a bullet inside the room did not permit the officers to enter the room without a warrant because the defendants were detained *outside* of the room. The court further held that no exigency existed (such as consent – remember, this did not occur until after the fact -, emergency, hot pursuit or the imminent destruction of evidence) which would have allowed the officers to forego the warrant requirement. The court went on to state that there were not articulable facts that would warrant "a reasonable belief that the rooms they intended to search harbored a dangerous individual posing a threat to those on the arrest scene", and therefore found the protective sweep to be illegal.

Grant v. State, 28 FLW D2067b (4th DCA, 9/3/03) The court held that this **loitering and prowling** arrest was made without probable cause and, therefore, the drugs seized pursuant to the arrest were suppressed. The defendant and two other individuals were found walking from the area of a closed restaurant after 3 a.m. Next to the restaurant is a building where truck drivers park; they come to the area to sleep at all times of the day and night. Officers approached the defendant and questioned him. The defendant did not try to flee, identified himself correctly and was cooperative. He told officers that he was on the property looking for a place to park his truck, which he had left some distance away. Because the explanations given by the two other men differed from the defendant's, and because the restaurant had been burglarized the night before at approximately the same time, the officers arrested the defendants for L&P. They could not arrest them for an attempted burglary because there was no evidence that they were trying to burglarize the restaurant (they had no burglary tools and didn't appear to be "casing" the restaurant). The court held that because the defendant's observed behavior was not "alarming in nature, pointing toward an imminent breach of the peace or threat to public safety", the fact that their stories differed was irrelevant, and could not be used as a basis for an L&P arrest.

***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.**

Current and back issues of the *Rap Sheet* are posted on the State Attorney's Office web site:

<http://www.MiamiSAO.com>

The *Rap Sheet's* e-mail address is: RapSheet@MiamiSAO.com

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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