

The Rap Sheet

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MIAMI-DADE STATE ATTORNEY



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IN THIS ISSUE:

PAGE

Meeting Summary.....	1 – 3
Case Law.....	3
PPCC Sub-Committees.....	4

Summary of PPCC Meeting November 20, 2008

Agencies represented: M-DPD, Sunny Isles Beach PD, Surfside PD, Miami Springs PD, Miami Beach PD, Hialeah PD, Florida City PD, City of Miami PD, ABT, Coral Gables PD

Agenda:

Storage and Destruction of Narcotics Evidence:

M-DPD Crime Lab supervisor, Oliver Spicer, stated creation of county wide procedures is progressing and now the final draft of the response to the Chief Judge is being completed.

Kristi Bettendorf advised that with regard to grow-house cases, there seems to be a misunderstanding of subsection 893.1351(4). The statutory presumption here is that if the evidence consists of 25 or more *plants*, it may be presumed that there exists proof of an intent to sell or distribute the cannabis. This presumption is being confused with the trafficking section that requires a certain weight, 25 *pounds* minimum, to establish trafficking of marijuana. When these statutes are misunderstood, probable cause hearings are needed to resolve such inconsistencies and establish a trafficking amount of cannabis.

As was discussed at last month's meeting, sometimes banks are not informing or misinforming fraud victims (their customers) of the jurisdiction in their cases. Of course the jurisdiction lies where the crime occurred and not where the financial institution is located. This

Continued next page

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

IMPORTANT!

Next PPCC meeting, **Thursday, December 18, 2008, 10:00 a.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

Continued from previous page

Continuing Discussion of Bank-Related Fraud:

information needs to be passed on to bank personnel. Accordingly Kristi Bettendorf has contacted FISA – the Financial Institution Security Association. She spoke with association president Carlos Martinez who stated that their meetings are held monthly and they often have guest speakers. He suggested that our office send a representative to make a presentation to pass along information regarding fraud cases when jurisdiction needs to be established. Kristi offered to do this and asked if any law enforcement personnel would like to take advantage of this opportunity to disperse helpful information to bank personnel. FISA president Carlos Martinez will contact our office sometime after December 4th to firm up plans for this presentation. Cross-jurisdiction fraud cases will be discussed at a later date.

Counterfeit credit cards were also discussed. An officer recounted a situation where he found what clearly appeared to be counterfeit credit cards in a suspect's possession but since he did not have access to a credit card reader, which would capture the information from the magnetic strip on the back of the card to ascertain necessary information about the victim's account, he had to release the defendant. All law enforcement agencies should have access to such a card reader; it is a necessary tool in investigating this type of crime, as the information embossed on the front of the card will rarely, if ever, be the true account. Kristi distributed a list of the 24/7 contact numbers for law enforcement for the five major credit card companies, to assist them in obtaining required victim/issuing bank information. We are also looking into the possibility of assembling a list of local credit card company representatives who can testify as to credit cards issued by foreign banks.

Kristi Bettendorf and Economic Crime Unit Chief Fred Kerstein have been working on creating checklists to assist in the investigation and arrest for fraud-related crimes. These checklists will be provided to all agencies as they are completed. Once completed, they will be published in future issues of *The Rap Sheet*.

Coordination Between Police Investigators and the SAO:

Laurie Collins Esq., Executive Assistant, M-DPD, brought up the issue of Affidavit Prefiles in firearms and CCF cases, as opposed to face-to-face prefile conferences. She said her department would like to establish mandatory in-person prefiles in these cases. She stated that often officers are not writing accurate or complete A-forms in these cases and that cases are being no actioned based on the lack of information provided by officers on the affidavit. Kristi Bettendorf stated that we don't no action these cases upon first submission of the APF packet, but send out requests for additional information or sometimes request that the officer appear for a PFC to clarify what is written on the A-form or provided in the affidavit. We do, however, no action cases when this information is not received by our office after our requests. She asked that Laurie and any others who have experienced this please send her one or more case references for her review to determine if there is a common problem occurring which can be remedied. We may consider not handling cases by APF where there is a minimum mandatory involved.

As regards police departments providing victim and witness information, Collins suggested that we notify detectives when this information is missing. Our office could send "information only" requests via the eNotify system, but first a procedural issue within the State Attorney's Office would need to be addressed. As eNotify currently exists, any notice (even an information only notice) must be linked to a scheduled prefile date. Also, many times we do not know who the detective is on the case as we only have the names of the lead or arresting officer. Collins stated that we can let the uniformed officers know that we need more information and they may be able to pass this on to the detective on the case. Kristi will meet with our I.S. director to determine if we can request information only via eNotify on all cases where there is an investigator assigned. There is a list of G.U.I. contacts for every station and upon receiving it we will place it on our public drive so that all SAO personnel will have access to it. Assistant Collins advised that the G.I.U. Commanders meet every 6 to 8 weeks to review and discuss best practices and invited Kristi Bettendorf and Yvonne O'cana, Case Screening Unit, to attend the next meeting.

Continued from previous page

Issues from the Floor:

FTA and FTS Notices:

Lt. Gladys Amato, City of Miami PD, inquired if our office can send sergeants in her department (Court Liaison) the names of all officers who fail to appear for prefile conferences via our eNotify system. Right now these notices are being sent directly to the officers and supervisory personnel are not getting the information. Amato stated she and other department supervisors need something official from our office to determine which officers are either failing to appear or failing to schedule a prefile. Yvonne O'cana, Case Screening Unit, stated her unit could begin immediately to send out paper notices to all departments with this information. She further stated that she will meet with our Information Systems director to see if this information can be directly forwarded to the sergeants on specific eNotices, but for now she will print these out and send them to all departments.

The next PPCC meeting will be held on Thursday, December 18, 2008. All are invited to attend.

Case Law

Herrera-Fernandez v. State, 33 Fla.L.Weekly D1604a (4th DCA) In this case the DEA received information from an informant that defendant's home was being used as a grow house for marijuana. The agent, who spoke no Spanish, went to the home accompanied by a local police detective who did. The agent and the detective approached the house together. According to the testimony of the agent, who admitted he didn't understand what was being said between the detective and the defendant, "he assumed he [the detective] received permission for us to come inside". According to the detective, he arrested the defendant and proceeded into the house based upon the very strong odor of cannabis apparent once the front door was opened. There is no mention of the defendant's **consent** to enter the house in the detective's testimony. The court held that the defendant's arrest inside of his home, absent exigent circumstances or an arrest warrant, was illegal. In addition, they found no basis in the record to support the argument that the defendant consented to their entry and, thus, the cannabis seized in the garage of the home should have been suppressed.

S.E.B. v. State, 33 Fla.L.Weekly D2661a (2d DCA, 11/14/08) This case deals with the issue of **constructive possession** of narcotics in a vehicle occupied by more than one person. The defendant in this case was a passenger in a vehicle stopped for speeding. The trooper said that he could smell cannabis when he approached the car. He saw two partially-smoked marijuana cigarettes in the cup holder of the center console. When a dog also alerted to the center console, a further search revealed 99 grams of marijuana and some paraphernalia under the console. The appellate court reversed the trial court's delinquency finding on the felony marijuana and paraphernalia charges. The court cited to several previous cases, the holdings of which can be summarized as follows: To prove constructive possession the State must show that the defendant knew of the presence of the contraband and had the ability to exercise dominion and control over it. Where contraband is found in such places as a console or glove box, there must be independent proof of this knowledge and ability to control. If the contraband is found in a vehicle over which the defendant has joint possession, the defendant's knowledge and ability to control will not be inferred from ownership or possession of the vehicle.

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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