FOR THE LAW ENFORCEMENT AGENCIES OF MIAMI-DADE COUNTY

The Rap Sheet

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April 2014

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

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Summary of PPCC Meeting
March 2014

Agenda Items

Agencies represented: SAO, Miami-Dade PD, City of Miami PD, Coral Gables PD, Florida Fish & Wildlife Commission, Miami Beach PD, Miami Springs PD, North Miami Beach PD, Pinecrest PD, Sunny Isles Beach PD, Surfside PD and University of Miami PD.

Motorized Bicycles

Currently, there is a moped/electric scooter that is being marketed as a vehicle for which a license is not required. Although this particular vehicle looks like and is called a moped or a scooter, it is nothing more than a motorized bicycle. It is not self-propelled; it is propelled by a motor and pedals (human power) and cannot exceed 20 miles per hour.

Value of Stolen Merchandise

The value of any stolen merchandise is its stated value at the time of theft. A number of stores are providing the highest value that the merchandise can be sold for and that is incorrect. We have asked the stores to have their LPOs ring up the items on the day of theft for the purpose of printing a receipt indicating the actual price of the stolen items.

Requests for Latent Prints

Felony Screening Unit ASAs would like officers to request latent prints in constructive possession firearm cases where the defendant is a convicted felon.

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IMPORTANT!

Next PPCC meeting, **Wednesday, April 16, 2014, at 2:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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ISSUES FROM THE FLOOR

Case Screening Supervisor Yvonne O'Cana reported an increase in the number of officers not calling to schedule a pre-filing conference, creating a delay in the time needed to screen and determine the disposition of cases. She will provide "no call" stats as requested.

This problem would be easily identified and remedied if departments would consistently review the relevant E-Notify reports.

Recent Case Law

Compiled by Joe Robinson, Chief of the Felony Screening Unit

Bainter , State, (5th Dist.) 39 FLW D677a

This case involves whether police officers made an illegal entry onto the property of the defendant's residence to conduct a "knock and talk". The defendant's house was located on a multi-acre piece of property, which was surrounded by barbed-wire fence and a chain-link gate at the entrance. There were "No Trespassing" signs posted at the entrance.

The gate was open when the police arrived. They walked into the property and eventually arrested the defendant for manufacture of cannabis. The trial court denied the defendant's motion to suppress the evidence.

The Fifth District Court of Appeal reversed, citing a case from the Third District Court of Appeals (in Miami) which recently held that a defendant had established his subjective expectation of privacy in the curtilage of his home, explaining:

"*Putting up fences, and affirmatively taking express steps to exclude the public or other persons from using the area, seeing into it, or gaining access to the area . . . are ways to establish such a subjective manifestation." Ratcliff v. State, 783 So. 2d 1099, 1101 (Fla. 5th DCA 2001); Ruiz v. State, 743 So. 2d 581 (Fla. 4th DCA 1999)."…* Fernandez v. State, 63 So. 3d 881, 883 (Fla. 3d DCA 2011).

The Court concluded: " *Thus, the issue for determination here is whether the defendant exhibited an actual, subjective expectation of privacy that society is prepared to recognize as reasonable. We hold that he did. … Here, the posting of the signs and the fencing of the entire property, including a push gate at the entrance to the driveway, exhibited the defendant's actual, subjective expectation of privacy, and we conclude that society is prepared to recognize same as being reasonable. Neither the fact that the gate was open, nor that occasional friends or service providers come onto the property, negate that expectation of privacy."*

Hampton v State, (5th Dist.) 39 FLW D556b

The defendant Hampton was convicted of conspiracy to traffic in cocaine.

The essential facts are : The Seminole County Sherriff's Office learned of a man named Marcel Crichlow, a mid-level supplier who sold cocaine to lower-level dealers. A wiretap was secured on Crichlow's phone, recording several conversations that exposed Hampton as one of the lower-level dealers to whom Crichlow sold cocaine. During these conversations, Crichlow discussed their drug transactions using code words.

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Based on these conversations, the State charged Hampton with conspiracy to traffic in cocaine. Crichlow testified as a State witness at Hampton's trial. The State played for the jury the recorded conversations between Crichlow and Hampton. Crichlow testified as to the meaning of the code words used in the recorded conversations and explained that he regularly sold three to five ounce quantities of cocaine to Hampton. After the State rested, Hampton moved for a judgment of acquittal, which the trial court denied. The jury returned a guilty verdict, and this appeal followed.

The defendant argued that because he and Crichlow did not agree to commit the same act, as Crichlow was the seller and Hampton was the buyer, arguing that prior cases (*Davis v. State*, 95 So. 3d 340 (Fla 5th DCA 2012), and *Schlicher v. State*, 13 So. 3d 515 (Fla. 4th DCA 2009) explicitly held *"the State's evidence was insufficient to establish conspiracy because it did not show an agreement between the defendant and any person to commit the same act of selling, purchasing, delivering, or possessing cocaine. Instead, the evidence simply established the planning and execution of a buy-sell transaction between the defendant and Adams" (Davis)* and "*Logic demands that the agreement that constitutes the conspiracy must be an agreement to commit the same criminal offense. In a buy-sell transaction, that agreement usually does not exist because the buyer and seller each intend to commit a different criminal offense. As a result, there is no criminal conspiracy to pursue a common goal. Such is the case here, where [the buyer] and [the seller] were on opposite sides of the drug transactions. Accordingly, there was no evidence of an express or implied agreement between [the buyer] and [the seller] to commit the common criminal offense of purchase of cocaine."* (Schlicher)

The Court of Appeal in this case decided that Davis was wrongly decided: "*In our view, the Davis court's interpretation is contrary to the very nature of conspiracy. Often, members of a conspiracy play different roles, and, in drug trafficking cases, the conspiracy might involve the manufacture, transportation, storage, sale, or purchase of the drugs. Thus, evidence that each conspirator agreed to commit any act that constitutes trafficking -- whether it be the sale, purchase, possession, delivery, or manufacture of drugs, or the bringing of drugs into the state -- is sufficient to support a conviction for conspiracy to traffic. … Based on our interpretation of section 893.135(5), we deem it appropriate to recede from Davis because there, both the defendant and the seller agreed to commit the same offense -- trafficking. … Trafficking in cocaine is an offense that can be committed in a variety of ways. Thus, the buyer and seller in Davis were, in fact, agreeing to commit the same crime (trafficking), albeit in different ways (one by purchasing, the other by selling).''*

The defendant's conviction was thus upheld.

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