

The Rap Sheet

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January 2017

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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 the December 21st, 2016

PPCC Meeting

Agencies represented: SAO, Miami-Dade PD, City of Miami PD, Miami Beach PD, Coral Gables PD. Sunny Isles Beach PD, Pinecrest, Coral Gables PD, Homestead PD; University of Miami PD and Homestead PD.

Agenda Items:

Referring Victims to the State Attorney's Office – There are many reasons for officers to refer victims to the State Attorney's Office, it can be to file a complaint with our Criminal Intake Unit for a misdemeanor not committed in the Officer's presence, and not made an exception by statute or to obtain the status of a court case. However, in cases where an arrest cannot be made because of conflicting testimony and the lack of independent witnesses, victims should not be referred to the State Attorney's Office for "possible charges". If you don't have probable cause to effectuate an arrest, the SAO will not have enough evidence to file a case or approve an arrest warrant.

Presentation by Warren Eth

Chapter 893 and the 2016 Amendments

The substances that are considered controlled in Florida are regulated and listed, for the most part, in Chapter 893, entitled "Florida Comprehensive Drug Abuse Prevention and Control Act." Almost every year, to keep up with major changes and drug trends, the Florida Legislature amends portions of the Chapter. This past year was no different. The majority of the substantive changes dealt with the scheduling of synthetic and newer "designer drugs", drugs that are usually manufactured in laboratories in China and abroad.

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IMPORTANT!

Next PPCC meeting, **Wednesday, February 22, 2017 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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These drugs contain fragments of many molecules and are chemically synthesized at a rate faster than the law can keep up with. To combat this, the legislature created definitions allowing classification based on major molecular formulas. §893.02 was amended to add the definition of “positional isomer” to further this goal. A “positional isomer” is defined in subsection 20 as “any substance that possesses the same molecular formula and core structure and that has the same functional group or substituent as those found in the respective controlled substance, attached at any positions on the core structure, but in such manner that no new chemical functionalities are created and no existing chemical functionalities are destroyed relative to the respective controlled substance...As used in this definition, the term “core structure” means the parent molecule that is the common basis for the class that includes, but is not limited to, tryptamine, phenethylamine, or ergoline...”. In plain English, this allows the statute to cover emerging synthetic drugs that maintain the same positional isomer as its relative, but have new molecular chains.

The Legislature also targeted synthetic cannabis or Spice, by adding §893.03(1)(c)(190), “synthetic Cannabinoids”, noting “[u]nless specifically excepted or unless listed in another schedule or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation that contains any quantity of a synthetic cannabinoid found to be in any of the following chemical class descriptions, or homologues, nitrogen-heterocyclic analogs, isomers (including optical, positional, or geometric), esters, ethers, salts, and salts of homologues, nitrogen-heterocyclic analogs, isomers, esters, or ethers, whenever the existence of such homologues, nitrogen-heterocyclic analogs, isomers, esters, ethers, salts, and salts of isomers, esters, or ethers is possible within the specific chemical class or designation”.

These targeted chemistry based specifications (only two examples of which were shared here) will allow for greater prosecution efforts and also address emerging trends that are not yet formally listed, but share a dangerous molecular pedigree. Adding to this effort was the amendment(s) in §893.0356 which deals with principals of “substantially similar” chemicals. The purpose of these amendments is to allow law enforcement and prosecutors to prosecute cases with chemicals that may not be specifically listed because they are too “new” as they were synthetically created, but are so similar to their outlawed kin that they are just as dangerous (if not more so) and prosecution should be maintained.

In other amendments, §893.033 was amended to restructure the listed precursor chemicals as well as essential chemicals, targeting base chemicals used to manufacture listed substances. The trafficking statute was amended to add more Phenethylamines (a class of substances with psychoactive and stimulant effects e.g. MDMA and Methylone), under §893.135(1)(k). The verbiage of “mixture” when weighing a controlled substance was modified to include “gelatin capsule”, as the trend continues to evolve with distributors using gelatin capsules, which can be bought legally at nutritional stores and online, to package their product. § 893.145 outlawing drug paraphernalia was lightly amended to include the “damiana leaf, marshmallow leaf, and mullein leaf, used, intended for use, or designed for use as carrier mediums of controlled substances”. This addresses trends of utilizing these mildly psychoactive plants in synthetic cannabis blends and consumed on their own or shredded and mixed with other chemicals.

The narcotics area of the law is very complex and often times require consulting definitions and other sections of Florida law. The Narcotics Unit is available to assist law enforcement partners not only in answering questions, but in strategic assistance to further the goals of detecting, dismantling and prosecuting drug trafficking organizations and offenders. The Narcotics Unit can be contacted by calling 305-547-0895.

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Authority of LEOs and Correctional Officers to Administer Oaths – Pursuant to Florida Statutes 117.10, law enforcement officers, correctional officers, and correctional probation officers, as defined in s. 943.10, traffic accident investigation officers and traffic infraction enforcement officers, as described in statutes 316.640, are authorized to administer oaths when engaged in the performance of official duties. An officer may not notarize his or her own signature.

Sufficiency of Arrest Affidavits – An arrest affidavit must include the appropriate statutes and subsections as well as the elements supporting the arrest charge(s). The facts supporting the elements must be included in the narrative section of the arrest affidavit. For example:

- **Elderly or minor victims:** The age of the victims must be stated in the narrative
- **Amounts:** must be specifically stated in the narrative for cases involving theft, criminal mischief, scheme to defraud, insurance fraud, etc. The weight of any controlled substance must be stated in drug trafficking cases.
- **Possession with intent/sale of narcotics within 1000 feet of a specified location** - The distance measurement between the specified location and the location of the drug transaction must be specifically stated in the narrative.
- **Battery by strangulation:** The facts must include that the normal breathing or blood circulation of the victim was impeded.

The recitation of the language of the statute, i.e. “The defendant did knowingly and intentionally deprive the victim of his property”, is a conclusion that should not be a part of any arrest affidavit. Just remember and live by the words of Dragnet’s Detective Sergeant Joe Friday "**Just the facts, ma'am**".

Recent Case Law by Criminal Intake ASA Roberto Fiallo

TRAFFIC STOP FOR SPEEDING BASED ON OFFICER'S VISUAL OBSERVATIONS

Gallardo v. State, ---So.3d--- (Fla. 5th DCA 2016), 2016 WL 7176746

Defendant was stopped for speeding, based on the officer's visual observation. A Deputy testified that the traffic stop was initiated after the defendant was observed traveling approximately sixty miles per hour in a forty-mile-per-hour speed zone. The Deputy testified in substantial detail as to the vantage point and the opportunity to observe the defendant driving at an excessive speed.

The court accepted the testimony, and held that under the totality of the circumstances, the Deputy had reasonable suspicion to believe that the defendant committed one or more traffic offenses, speeding and/or careless driving. Narcotics were subsequently found and the defendant was charged with possession and trafficking. The defendant pled nolo contendere after a motion to suppress the evidence was denied. The defendant appealed, arguing that the discovery of the illegal contraband was the result of an unlawful traffic stop. The court affirmed the conviction.

A law enforcement officer may stop a motor vehicle if they have a well-founded, articulable suspicion that the driver committed a traffic offense. *State v. Allen*, 978 So.2d 254, 255 (Fla. 2d DCA 2008). It is well established in Florida that a vehicle may be stopped for a speeding violation based on an officer's visual observations. Actual speed need not be verified by the use of radar equipment or clocking. The law enforcement officer must have training and experience related to determining the speed, so as to rely on the visual observations. Other observations (auditory) such as, the sound of tires screeching and a passing gear kicking in, may also contribute to a finding of reasonable suspicion. Officers are reminded that while a stop for speeding may be based on visual or other observations, those will not be sufficient to prove the infraction beyond a reasonable doubt.

ESTABLISHING VALUE OF PROPERTY IN THEFT CASES**Council v. State, ---So.3d--- (Fla. 1st DCA 2016), 2016 WL 7190619**

Defendant was charged with burglary and first degree grand theft. The value of the property stolen, which included several items of jewelry, was alleged to be over \$20,000. At issue was the method by which the value of two diamond rings was established by the State, with testimony from the victim's mother. The court reversed the 1st degree grand theft conviction, finding that the State failed to establish the value of the rings, and remanded for the trial court to impose a third degree theft sentence.

The element of value is an essential element that must be proven beyond a reasonable doubt in a theft case. In the statute, value is defined as "the market value of the property at the time and place of the offense or, if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense." § 812.012(10)(a)1., Fla. Stat. (2016).

A two-pronged test is applied to determine whether evidence is sufficient to prove the value of stolen property:

First, the court must determine whether the person testifying is competent to testify as to the value of the property. Second, if the person is competent, the court must ascertain whether the evidence adduced at trial is sufficient to prove that the property was worth more than the value alleged in the charge at the time of the theft.

Sellers v. State, 838 So.2d 661,662 (Fla. 1st DCA 2003) "An owner of stolen property is presumed competent, because owners generally have personal knowledge as to "quality, cost, and condition of his property." *Taylor v. State*, 425 So.2d 1191,662 (Fla. 1st DCA 1983). However, "a property owner's mere guess at, or uninformed estimate of, the value of his property is insufficient, without more, to establish its value beyond a reasonable doubt." *Fitts v. State*, 58 So.3d 430,431 (Fla. 2011). The victim's mother was not able to testify to the price of the diamond rings, as they had been given to her by her deceased husband. Additionally, the victim's mother did not know about diamonds or the price of diamonds. Thus, under *Taylor* the victim's mother was not competent to testify as to the value of her diamond rings. 425 So.2d 1193.

Since the value of the rings could not be determined, its replacement value would be an "appropriate measure of value." *Newland v. State*, 117 So.3d 482,484 (Fla. 2d DCA 2013). The victim's mother did not provide any testimony regarding the purchase price of a replacement. She testified that she had looked on a computer with the prosecutor to establish the value, looking for identical rings to the one that was stolen. As such, the State did not lay the proper foundation to establish the price listed on the computer as a business record, and the testimony was inadmissible hearsay and was, as a matter of law, insufficient to prove the stolen ring's replacement value.

Officers are reminded that the value of the property is an essential element of the theft, which the State must prove. All valuations should be subjected to analysis under the two-prong test established in *Sellers*.

STATEMENTS (ADMISSION) MADE BY DEFENDANT DURING NON-CUSTODIAL, CONSENSUAL ENCOUNTER**Ho v. State, 201So.3d 726 (Fla. 4th DCA 2016)**

Detectives were investigating the homicide of an "escort" who had been shot twice, and had information that the defendant (Ho) had been in telephone contact with the victim several times on the day of the homicide. Prior to the victim being found, her boyfriend had received a text from her saying that she was with a client who was acting strangely and that she was scared. Detectives obtained the defendant's address and responded

to his residence. Additionally, they developed information and reasonably believed the defendant was a police officer (he was actually a security guard/former police officer) who would thus possess a weapon. There were about ten armed police officers and a canine unit, surrounding the defendant's home. One of the arresting detectives testified that he and another detective knocked on the door. One detective had his gun at the low ready position. The defendant answered the door and his girlfriend was standing behind him. The detectives told the defendant they were investigating a shooting, and that they had some questions. The defendant immediately made voluntary statements like, "it was self-defense" and "my life is ruined." Based on the statements, the detectives arrested defendant. The defendant claimed that the detectives had their guns drawn and pointed at him, and that his statements were coerced. The defendant moved to suppress the statements. The evidence considered by the trial court, including the testimony of the detectives was found to be more credible than that of defendant's. The court also noted that the defendant's girlfriend who was present during the defendant's interaction with the officers, disagreed with the defendant's assertion that the officers had their weapons drawn and pointed at him. The court found the incriminating statements, made before he was actually asked any question, un-coerced and voluntary. The appellate court affirmed the trial court's ruling.

A knock and talk, which is what occurred during this encounter, is a "purely consensual encounter" and an officer may initiate it without any objective level of suspicion. During consensual encounters, defendants have no constitutional safeguards. A defendant is free to terminate the encounter at any time. The knock-and-talk technique must be free of any coercive police conduct. The trial court conducted a "totality of the circumstances" review and properly considered the fact that the victim had been shot; that Appellant was possibly tied to the victim, if not the shooting; and that the officers reasonably believed Appellant was a police officer (he was actually a security guard/former police officer) who would thus possess a weapon. These factors supported the presence of a number of armed officers at the scene. By virtue of his law enforcement experience, Appellant would have been well aware that any police visit to his home would likely have extra security given the possibility that he was armed and trained himself.

Officers are reminded that consensual encounters, such as a knock and talk, must be free of coercive police conduct. The number of officers present, whether weapons are drawn or holstered, as well as other factors, will be reviewed by the court under the totality of the circumstances standard.

Next PPCC meeting – Wednesday, February 22, 2017

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 Subcommittees, 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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