

The Rap Sheet

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June 2015

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

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**There will be no
Police-Prosecutor Coordinating Committee
Meeting in July or August**

**The next scheduled meeting after the summer hiatus
will be on September 16, 2015 at 2:00 p.m.
and will include the annual Legislative Update**

Summary of PPCC Meeting May 20th, 2015

Agencies represented: SAO, Miami-Dade PD, Miami PD, Aventura PD, Miami Beach PD, Coral Gables PD, South Miami PD, Sunny Isles Beach PD, Surfside PD, Biscayne Park PD, Miami Springs PD, Pinecrest PD, Miami gardens PD, Homestead PD, University of Miami PD and Bay Harbor Island PD.

Agenda Items

Overdue Rental Vehicles

The driver of an overdue rental vehicle who is not the renter has no legal obligation to return the vehicle and cannot be charged with failure to return the vehicle. In addition, such driver can only be charged with grand theft auto if there is evidence that the vehicle was stolen and the driver knew or should have known the vehicle was stolen.

Worthless Checks

The worthless check statute has certain requirements that determine whether a worthless check can be prosecuted. A check that is held because the funds are not available on the date of issue or a post-dated check cannot be prosecuted.

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IMPORTANT!

Next PPCC meeting, **Wednesday, June 17th, 2015.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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A check not honored because of insufficient funds cannot be prosecuted until after a check writer fails to tender payment fifteen (15) days after the payee has sent him/her a letter demanding payment and advising that the matter will be turned over to the State Attorney's Office for prosecution. A demand letter is not required for checks issued on a closed account. Theft can be charged if there is proof that the account holder issued a check knowing that the account was closed or if the account has been closed for at least 6 months.

Presentation by Deputy Chief Assistant State Attorney Howard Rosen

- **Update on the law pertaining to obtaining cell site information - PC is no longer needed**

On 5/6/2015, in *US v. Quartavious Davis*, the 11th Circuit in an en banc opinion, reversed the prior panel's decision and held that **probable cause was not required to get historical cell site location information**. The standard to obtain such historical cell site location information is now back to "specific and articulable facts" that there are "reasonable grounds to believe" that the requested records are "relevant and material to an ongoing criminal investigation." Consequently, we will discontinue using "An Application for a Warrant Authorizing Historical Cell Site Location Information and revert back to using "An Application for an **Order** Authorizing Historical Cell Site Location Information. Please note this change does not apply to REAL-TIME cell phone tracking which requires a warrant based on probable cause.

- **Electronic Search Warrants**

Last fall, the State Attorney's Office, working with the Judiciary and our local law enforcement partners, implemented a pilot project with Miami-Dade PD to process search warrants electronically. This will save a lot of man hours by eliminating the need for detectives to drive downtown during the day or to Judges' homes at night.

This new process will enable detectives to electronically transmit the Affidavit and Search Warrant to the duty Judge for review and signature and to have the Judge electronically sign it and transmit it back to the detective.

The process will work as follows:

1. The detective will email the "on call" ASA the Affidavit and Search Warrant
2. The ASA will review the Affidavit, Search Warrant, and Affirmation, and make whatever changes he/she deems appropriate.
3. The ASA will then email the Affidavit and Search Warrant back to the detective.
4. The detective will then either:
 - A) 1. Print out the Affidavit and Search Warrant;
 2. Be sworn in by a Sergeant or a higher ranking officer, and then swear to the Affidavit in that officer's presence; then
 3. Scan the documents back into an electronic format-OR-
 - B) 1. If the Affiant has software that will allow him/her to electronically sign the document, he will do so, swearing in front of a Sergeant or a higher ranking officer, who will also sign electronically.

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5. The detective must telephonically call the on-call Judge to advise that he/she is emailing a Search Warrant to the Judge. The detective will then email the now sworn-to Affidavit, the Search Warrant, as well a new MANDATORY document called an Affirmation of Affiant that the Search Warrant was reviewed by an Assistant State Attorney. This Affirmation is to include a legal description of the premises or vehicle to be searched, the date of the Affidavit and Search Warrant, as well as the name of the Assistant State Attorney who reviewed the Search Warrant. The Judges will NOT issue any Search Warrants without this Affirmation being attached to the Affidavit and Search Warrant. This document is now required on all search warrants, not just electronic search warrants.
6. The detective will email the sworn to Affidavit, the Search Warrant, and the Affirmation of Affiant that the Search Warrant was reviewed by an Assistant State Attorney as a PDF file to the on-call Judge, at a special email address provided for search warrants.
7. The on-call Judge will have a dedicated iPad, which has special proprietary software on it which will allow the Judge to open the document for review. The software also allows the Judge to electronically sign the Search Warrant and to initial each page of the documents.
8. Once the Judge has signed the Search Warrant and initialed each page of the documents, he/she will then email it back to the detective at the email address from which the detective initially sent it.
9. The detective will then print out the documents, and utilizing a blue pen will write on the printed copy "This is the original", and will sign that particular statement. The purpose of this is so that when it is subsequently filed at the Clerk's office there will be no question as to which is the original.

Please note that detectives when emailing the Search Warrants to a Judge, are **NOT** to include any comments or discussions about the Warrant or the investigation in the email. These emails are going to be public records under Florida Statute 119. If the Judge has any questions or comments, any communications addressing this should take place orally on the phone.

Next PPCC meeting – Wednesday, May 20th, 2015

Recent Case Law

Compiled by Joe Robinson, Chief of the Felony Screening Unit

State v. Nelson, 40 Fla. L. Weekly D1095a (5th Dist.)

This case (actually multiple cases joined for appellate review) involves the interpretation of Florida Statutes 316.125, which reads:

(1) The driver of a vehicle about to enter or cross a highway from an alley, building, private road or driveway shall yield the right-of-way to all vehicles approaching on the highway to be entered which are so close thereto as to constitute an immediate hazard.

(2) The driver of a vehicle emerging from an alley, building, private road or driveway within a business or residence district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, road or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic thereon and shall yield to all vehicles and pedestrians which are so close thereto as to constitute an immediate hazard.

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(3) A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

The defendants in these cases were stopped by the police after being seen driving across a sidewalk without stopping to enter the roadway while exiting a parking lot of a business. There was no pedestrian or vehicular traffic present when the drivers pulled out. The trial court held the stops were bad, interpreting section (1) of the statute as a "failure to yield" law, and if there is no pedestrian or vehicular traffic present there can be no violation.

The 5th DCA held that the facts fell under section (2) of the statute, and that drivers in a residential or business district are indeed required to stop before crossing a sidewalk to enter the street whether there is pedestrian or vehicular traffic present or not. In a move puzzling to this writer, the cases were remanded to the trial court for determination as to whether there actually was a sidewalk to be crossed at these locations.

State v. Baker, 40 Fla. L. Weekly D1141a (1st Dist.)

It is a violation of Florida Statute 316.605 for a trailer hitch to obscure the reading of a vehicle license tag, says the First DCA, diverging with the Fifth DCA:

The defendant was stopped after a Sheriff's Deputy observed that his tag was obscured. A records check of the tag revealed that the car was stolen. The defendant was arrested for grand theft auto and a search incident to arrest revealed the defendant was in possession of cocaine, marijuana and cannabis. Additional drug charges were added. The defendant filed a motion to suppress on the basis that the stop was illegal, citing to *Harris v. State, 11 So.3d.462 (Fla. 2d DCA 2009)*, where the Second DCA held "*that a trailer hitch, in and of itself is an insufficient basis to obscure a tag*". The motion was denied and the defendant filed an appeal

This court analyzed a number of other cases including *State v. English, 148 So.3d 529 (Fla. 5th DCA 2014)* where the Fifth Circuit adopted the dissent from the Harris Court, finding that the statute is clear as to its meaning that a license plate is to be visible at all times. This Court agreed with the Fifth Circuit and found "*the deputy had a valid basis for the stop, as the trailer hitch obscured a portion of the alphanumeric designation; thus, we affirm the trial court's denial of Appellant's motion to suppress. As we conclude that the deputy had a valid basis for the stop based on our interpretation of the statute, we do not address the trial court's conclusion that even if the stop was illegal, the inevitable discovery doctrine would apply. We certify that our decision interpreting this statute is in conflict with the Second District's decision in Harris v. State, 11 So.3d.462 (Fla. 2d DCA 2009)*".

The final decision will eventually come from the Florida Supreme Court.

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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