For the Law Enforcement Agencies of Miami-Dade County

The Rap Sheet

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

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Mailing List for *The Rap Sheet*

If you are currently receiving a hard copy of *The Rap Sheet* via U.S. Mail, this is to advise that the "snail mail" list will soon be eliminated. If you wish to continue to receive *The Rap Sheet*, please advise Kristi Bettendorf of your email address and you will be added to the email list. You also have the option of viewing the current and all back issues of *The Rap Sheet* on the State Attorney's Office website by clicking on "publications" and "police newsletter".

Summary of PPCC Meeting February 19, 2013

Agencies represented: SAO, M-DPD, Coral Gables PD, Aventura PD, North Miami PD, Hialeah PD, FDLE, University of Miami PD, Florida City PD

Agenda Items:

Affidavit PreFiles:

For those departments that participate in the Affidavit Pre-File procedure, be advised that the requirement for original signatures will be strictly enforced. Faxed copies will not substitute for original signatures.

Electronic A-Forms:

User Acceptance Testing is slated to begin in March and may be completed as early as June. Utilization of the form countywide should soon follow, barring any unforeseen problems that arise during testing.

Submitting Narcotics Paraphernalia for Testing:

In order to prove the misdemeanor charge of possession of narcotics paraphernalia, the State must prove that the item (and I'm referring here largely to homemade pipes of some form or fashion) was used in connection with a controlled substance. We most frequently meet this burden of proof when a lab test has concluded that there is residue of a controlled substance on the pipe. Some sort of admission by the defendant may exist in a small number of these cases, but understand that for the most part if you do not submit the pipe to the lab for testing, we cannot file or prove possession of narcotics paraphernalia.

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IMPORTANT!

Next PPCC meeting, **Tuesday, March 19, 2013 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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Investigative Cost Recovery:

With the imminent introduction of electronic A-forms, this is a perfect opportunity to determine how Investigative Cost Recovery forms will work within the new "system" and to create a format that can be consistent and therefore used by all law enforcement agencies. Kristi Bettendorf will be working with Ivonne Duran, with Miami-Dade PD Legal Unit, on this project and we welcome any assistance other law enforcement agencies may wish to offer. We've talked about instituting the resultant procedure as a pilot project, to see how it proceeds and work out any kinks, then instituting it county-wide. If you are interested in offering input or participating in the creation of this pilot project, please contact Kristi.

US Supreme Court decision in *Florida v. Harris*:

The United States Supreme Court concluded the long legal journey of **Aldo, the trained narcotics dog**, in *Florida v. Harris*, 568 U.S. ____ (2013). As a brief synopsis, back in 2006 Harris had been stopped for a routine traffic offense when Aldo alerted to the driver's door handle. A search revealed the presence of the ingredients used to make methamphetamine, (drugs which Aldo had not been trained to detect) and the defendant was charged accordingly. In a subsequent traffic stop, Aldo again alerted on Harris's truck, but nothing was found. Based on this series of events, the defendant challenged the search, challenging not Aldo's training, but his certification and performance in the field. The trial court denied the Motion to Suppress as did the 1st DCA, but the Florida Supreme Court reversed, holding that "a wide array of evidence was always necessary to establish **probable cause**, including field-performance records showing how many times the dog has falsely alerted. If an officer…failed to keep such records, he could never have probable cause to think the dog a reliable indicator of drugs."

Thankfully, the United State Supreme Court didn't agree and restored Aldo's besmirched reputation. The Court spoke of a common sense standard, looking at the totality of the circumstances and rejecting rigid rules and bright-line tests. The Court stated that the Florida Supreme Court flouted this established approach by creating a strict evidentiary checklist to assess a drug-detection dog's reliability. The Florida Supreme Court's decision was reversed.

Issues from the Floor:

Lineup Procedures:

I was asked if there had been any legal challenges to the line-up standards and procedures proposed by FDLE and adopted by law enforcement agencies. I review new case law each week and have not seen any such challenges, but will keep an eye out. Remember that neither the standards nor the State Attorney's Office has expressed a preference for one method over the other (sequential vs. contemporaneous). Each case will be evaluated on its own set of facts and circumstances.

The next PPCC meeting will be held on TUESDAY, March 19, 2013 at **2:00 p.m.**

Recent Case Law

Segal v. State, 37 Fla. Law Weekly D2362b (4th DCA, 10/10/12) This defendant was charged with and convicted of **grand theft** based upon the **non-performance of a contract** to construct kitchen cabinets. The victim met with the defendant and discussed taking out her cabinets and replacing them with new ones. The defendant made several computer-aided drawings of the cabinets and showed her a sample of a cabinet door. The victim gave the defendant a check for several thousand dollars (which was deposited) and said he would return the next day to begin part of the work. The defendant was not as easy to reach as he had been before they signed the contract and, after adjusting the original contract with a few changes, the victim never saw the defendant again. At one point, through a nephew, the defendant advised the victim that he wanted to give her deposit back because he could not continue with the contract. He never did.

As police you receive complaints of this nature all the time. How do you assess whether a situation is merely a civil contract dispute or a criminal charge? It predominantly revolves around the issue of intent. Can it be proven that, *at the time the defendant entered into the contract with the victim and accepted her deposit*, that he had criminal intent – basically that he never had any intention of fulfilling his end of the contract but was just going to take the money and run? Intent, being a state of mind, is often not subject to direct proof and can only be inferred from the circumstances. And, as you know, a case based on circumstantial evidence must not only be consistent with guilt, but inconsistent with any reasonable hypothesis of innocence.

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In its discussion of several similar type cases, the court noted that when a defendant has made *some* effort to fulfill the terms of a contract, although minimal, that the required felonious intent could not be proved. Citing to another case, the court quoted that where a "taking was in the open, with no subsequent attempt to conceal it, and there was no concealment or denial of such taking, but on the other hand, an express avowal thereof, [this] tends to raise a strong presumption that the [defendant] had no felonious intent…" The defendant in this case provided testimony about his efforts to fulfill the contract, but the ultimate failure of his business. He had purchased some of the materials. He had made rental payments on his work space where the cabinets were to be constructed. He returned to the victim's home after signing the initial contract to re-measure the area after the victim had had the dropped ceiling removed from her kitchen. He did make efforts to perform the contract and thus, the court concluded, there was insufficient proof of felonious intent at the time of the taking of the victim's money. The defendant's conviction was reversed.

(Note that the court goes on to state that there were no willful misrepresentations made by the defendant to induce the victim to sign the contract, such as you might find in a case where a defendant has represented himself to be a licensed contract when, in fact, he is not. Had that been the case here, there would most likely be a different outcome.)

F.Q. v. State, 37 Fla. Law Weekly D2426a (4th DCA, 10/17/12) Picky, picky, picky…Yes, the law can be very picky and this case is a good example. One afternoon, police saw this juvenile and another juvenile sitting in the back yard of an abandoned house. This juvenile had, and discarded, a baggie which appeared to contain **cannabis.** The other juvenile had, and discarded, two baggies that also appeared to contain cannabis.

At trial, only one of the baggies was admitted into evidence (likely because the lab only tested one of the three baggies submitted) and its contents tested positive for cannabis. The officer did not testify as to which juvenile had dropped the baggie that was admitted into evidence, and there was no testimony about any examination by any officers as to the contents of the other baggies. [Did the contents of those bags look just like this bag? Did they all smell the same?]

The court held that there was insufficient evidence to establish this juvenile's **possession** of the baggie admitted into evidence. Although this juvenile may have been aware of *all* the baggies thrown, there was no evidence that he exercised dominion and control over any of the baggies either than the one he had possessed. This case is a good illustration of why, in cases involving more than one defendant, any controlled substances seized should be attributed to a particular defendant, preferably on a separate property receipt.

State v. Hinman, 37 Fla. Law Weekly D2555b (3d DCA, 10/31/12) Officers involved in a narcotics investigation observed a vehicle matching a BOLO description commit a **traffic violation**. The defendant was driving the vehicle. Officers approached the defendant's vehicle and one of them asked the defendant, almost immediately, whether she had any drugs or guns in the vehicle. The question was asked without the defendant having been given her *Miranda* warnings. The officer testified at the hearing on the motion to suppress that he asked the question as a matter of safety and as a customary policy. A "look of fear" came over the defendant's face and she answered that she had a bag of pills. A trafficking amount of hydrocodone, as it turned out. The officer asked her to step out of the car, which she did, and then she pulled a bag of pills from her pocket. The trial court found that the officer's question was one designed to elicit an incriminating response and granted the motion to suppress.

The appellate court pointed out, however, that in the case of a lawful traffic stop such as this one, "persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of *Miranda.*" The 3d DCA cited to cases from other districts around Florida which all held that a traffic stop is not to be considered "in custody" for *Miranda* purposes, and reversed the trial court's decision.

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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