

The Rap Sheet

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Summary of PPCC Meeting May 18, 2011

Agencies represented: Coral Gables PD, M-DPD, M-DPD Forensic Services Bureau, Sunny Isles Beach PD, University of Miami PD, North Miami Beach PD

AGENDA ITEMS:

Dog Sniff Cases:

The majority of the meeting was spent discussing two recent Florida Supreme Court cases dealing with dog sniffs. While the Attorney General's Office may well be moving for rehearing and/or appealing these decisions, they are, for the time being, the law in Florida.

Jardines v. State, 36 Fla. Law Weekly S147a (4/14/11) deals with a dog sniff outside of a residence. This case happened here in Miami-Dade County and while the Third DCA found this a permissible practice and not a violation of the Fourth Amendment (holding that it did not constitute a search), the Florida Supreme Court reversed our DCA's decision.

Police were alerted by an anonymous Crime Stoppers tip that marijuana was being grown at the house in question. About a month later, a detective went to the house in the early morning, observed no activity at the house, no vehicles, and the blinds were closed. After watching the house for 15 minutes, a drug detection dog was called to the house. The handler walked the dog to the front door of the house where the dog alerted to the scent of contraband. The handler reported back to the detective, who then approached the front door for the first time and smelled marijuana. The detective also observed that the house's A/C never cycled off, which he believed was due to high-intensity light bulbs being used inside.

The detective secured a search warrant and it was executed later on that day. A hydroponics lab was found in the house and the defendant was arrested. While only the detective and the dog handler were present at the time of the dog sniff, a number of agencies and law enforcement personnel were present for the execution of the search warrant.

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

IMPORTANT!

Next PPCC meeting, **Wednesday, June 15, 2011, 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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After reciting the facts, the Supreme Court opinion looks at the United States Supreme Court law in this area. In all three cases cited – a dog sniffing a piece of luggage at the airport, a dog sniffing the exterior of a vehicle at a drug interdiction checkpoint, and a dog sniffing the exterior of a vehicle during a lawful traffic stop – the United States Supreme Court held that no legitimate privacy interest had been breached, and that these, in fact, did not even constitute a search. The Florida Supreme Court then decides that all of these US Supreme Court decisions are not applicable to a private home. Going even seemingly further afield, the court recognizes the right of police to conduct a “knock and talk” encounter at someone’s front door, but apparently you can’t take a dog with you. One wonders if the detective had approached the door first, before the drug dog did, if this “search” would have been just fine. The court repeatedly refers to the “vigorous and intensive procedure” of the dog sniff – which probably took all of 5 minutes – and how the homeowner was subjected to “public opprobrium, humiliation and embarrassment” in a process that “raises the specter” of being arbitrary and discriminatory. When they refer to “public humiliation” the court is obviously referring to the serving of the search warrant, as they refer to a “sustained and coordinated effort by various law enforcement departments involving multiple law enforcement personnel, including narcotics officers and other officers”. They tried to draw a distinction with other cases that found this process acceptable based on the fact that they involved apartments, which they refer to as ‘temporary dwellings’, but the distinction seems, at least to this writer, disingenuous.

The bottom line, however, is in the court’s ruling that the police must possess probable cause, not merely reasonable suspicion, before conducting a dog sniff test at a private residence.

Harris v. State, 36 Fla. Law Weekly S163a (4/21/11) A week later, the Florida Supreme Court extended its limitations upon the use of drug-detection dogs. The facts of the case (which seem quite weak, from the State’s perspective) are as follows: The defendant was observed, by a canine officer, driving a truck with an expired tag. The officer noticed that the defendant was “shaking, breathing rapidly, and could not sit still”, and also observed an open beer can in the truck. He asked for consent to search the truck and the defendant refused. The officer then deployed his dog, who alerted to the driver’s side door handle. Upon searching the truck, 200 pseudoephedrine pills were found in a plastic bag under the driver’s seat, as well as a large number of matches and muriatic acid. The officer testified that these chemicals are precursors of methamphetamine. After rights, the defendant admitted to cooking and using meth for the past year.

The case then proceeded to discuss Aldo’s (the drug dog) certification and training. The only evidence presented was that Aldo had completed a 120-hour drug detection course two years before, with a different handler. The year before this incident, the officer here became Aldo’s handler and a few months before they had completed a 40-hour training seminar. Aldo was trained and certified to detect cannabis, cocaine, ecstasy, heroin and methamphetamine. There was no testimony regarding whether a dog trained to detect and alert to meth would also detect and alert to pseudoephedrine. The canine officer continues to train with Aldo 4 hours a week. Unfortunately, the record-keeping done regarding Aldo’s performance was rather spotty. Aldo’s performance was rated as “really good”, and “satisfactory” 100% of the time. There was no testimony regarding whether a satisfactory performance included any alerts to vehicles where drugs had not been placed during training. The officer testified that he only kept records of Aldo’s performance in the field when an arrest was made, that he did not keep records of those instances where Aldo alerted and no drugs were found. According to the officer, there is no certification required in Florida for a single-purpose dog such as Aldo and Florida does not have a set standard for certification of single-purpose dogs. FDLE certification is required only for dual-purpose dogs.

In the face of this testimony, the defense presented evidence that two months after the arrest in this case, the same officer and Aldo had occasion to stop this defendant again in his truck for a traffic offense, Aldo again alerted to the driver’s side door handle but this time no drugs were found in the vehicle. Testimony followed regarding residual odors, but the officer indicated that he wasn’t qualified to testify about how long a residual odor may remain on an item. The defense argued that the State had failed to establish Aldo’s reliability.

A conflict among various District Courts in Florida brought the matter to the Florida Supreme Court. Three of the Districts had held that probable cause to search a vehicle can be established by demonstrating that a trained and certified drug detection dog has alerted to the vehicle. If the defendant wanted to challenge the reliability of the dog, it was the defendant’s burden to introduce field performance tests of the dog or other evidence. The Second District, however, held that the fact that a dog has been certified and trained, without more, is not sufficient to give officers probable cause. They required evidence regarding the dog’s past performance in the field, with an emphasis on the number of mistakes

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the dog has made. Residual odors were also an element in the Second District case. The Court stated “The presence of a drug’s odor at an intensity detectable by the dog...does not mean that the drug itself is present”. They also pointed out that the training and certification courses vary widely in their methods, elements and tolerances of failure.

The State argued that the records of field performance by the dogs would be meaningless because the dogs do not distinguish between residual odors and drugs that are present and, therefore, alerts in the field without contraband being found are merely unverified alerts, not false alerts. But the Court, while not buying that argument, indicated that this only opened up another set of concerns altogether regarding how we can count on drug dogs to be reliable.

In its ruling the court adopted a “totality of the circumstances” approach which requires the State to present all records and evidence that are necessary to allow the trial court to evaluate the reliability of the dog. This should include explaining the training and certification the dog was given, the record of false alerts during training, and the record of successful and false alerts in the field. The State would then have the opportunity to present evidence explaining the significance of any unverified alerts, as well as the dog’s ability to detect or distinguish residual odors. And finally, the State must present evidence of the experience and training of the handler. All of this information, the Florida Supreme Court holds, should provide sufficient information for the trial judge to determine a particular dog’s reliability.

CJIS Charge Database:

The CJIS charge database on the State Attorney’s Office website is back in working order and being updated on a daily basis. Please consult the database to determine if your arrest charge is contained in the database and is listed correctly.

Miami-Dade Police Department Forensic Services Bureau:

The chemistry section of the M-DPD Crime Lab will be experiencing some personnel shortage over the next few months and this may result in a delay in the time required to obtain lab results. It is therefore suggested that all officers submit contraband seized in conjunction with an arrest to the Crime Lab immediately.

The **next PPCC meeting** will be held on **Wednesday, June 15, 2011** at 1:00 p.m. The June meeting will be the last until the September meeting, when we will address new and amended laws from this year’s legislative session.

CASE LAW

Simms v. State, 36 Fla.Law Weekly D206a (1/28/11) This cases deals with the legality of a **loitering and prowling** arrest and reliance upon an **anonymous tip**. At about 10:30 on Halloween night the police received an anonymous tip about a man, including a physical and clothing description, who was trying to open car doors on a specific block of a residential neighborhood. Officers responded to the location. One of the officers, seated in his car observing the block, testified that he suddenly saw the defendant standing between two parked vehicles, as if he had been crouched there and just stood up. As the defendant started to walk away, the officer detained and questioned him. The defendant stated he had just come from a friend’s house and was on his way home. After advising the defendant of his *Miranda* rights, the defendant repeated the story, declining to identify the friend so as not to involve him. The officer confirmed that the defendant lived a few houses away. His concern for the safety of persons and property in the area not having been dispelled, the officer arrested him for L&P and found a bullet, for which he was also charged.

The court held that such an anonymous tip cannot form the basis for an L&P arrest. “A truly anonymous tip has been consistently held to fall on the low end of the reliability scale” and the information in the tip must be corroborated by independent police investigation. No officer saw the defendant trying to get into cars, nor did they even see him crouching between cars, although one officer assumed that he had been. While concealing oneself may be an element to be considered in weighing whether an L&P exists, this must be considered in conjunction with other factors. The defendant did not flee or refuse to identify himself. The court held that there was not probable cause for the L&P arrest in this case.

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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