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DISTRICT COURT OF APPEAL
THIRD DISTRICT OF FLORIDA

2011 JAN -7 A 11:42

CASE NUMBER: 3D 11-

AGUSTIN G. LATORRE

Petitioner

DIVISION OF
ADMINISTRATIVE
HEARINGS

vs.

STATE OF FLORIDA DEPARTMENT
OF LAW ENFORCEMENT, CRIMINAL
JUSTICE STANDARDS AND TRAINING
COMMISSION; DIVISION OF ADMINISTRATIVE
HEARINGS; ADMINISTRATIVE LAW
JUDGE JOHN G. VAN LANINGHAM; and
CITY OF MIAMI BEACH POLICE DEPARTMENT

Respondents

SUMMONS
(ORIGINAL JURISDICTION)

THE STATE OF FLORIDA

To all and Singular the Sheriffs of the State:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the Petition for Writ of Prohibition and Appendix, to be served in this action

by serving:

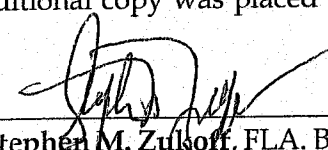
Hon. John G. Van Laningham, Administrative Law Judge
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, FL 32301-3060

Further directions as to the necessity of a response and timing thereof will be forwarded to Respondents by the Court. Please note that the Clerk of this Court, does not put the Court's seal on this document.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copies of the forgoing were furnished to the Process Server for service upon the Respondents, and an additional copy was placed in the US Mail to Respondents on this 5th day of January 2011.

BY:


Stephen M. Zulkoff, FLA. BAR NO.: 0177061
Attorney for Plaintiff
Biscayne Building, Suite 211
19 West Flagler Street
Miami, Florida 33130
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DIVISION OF
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STATE OF FLORIDA DEPARTMENT
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COMMISSION; DIVISION OF ADMINISTRATIVE
HEARINGS; ADMINISTRATIVE LAW
JUDGE JOHN G. VAN LANINGHAM; and
CITY OF MIAMI BEACH POLICE DEPARTMENT,

Respondents.

FILED
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2011 JAN -5 PM 1:18
APPEAL - THIRD DISTRICT

PETITION FOR WRIT OF PROHIBITION

The Petitioner, Agustin G. Latorre, by counsel, petitions this Court for a writ of prohibition directed to the Respondents prohibiting them from proceeding with a complaint against the Petitioner seeking revocation of Petitioner's certification as a law enforcement officer. For grounds, Petitioner states that the jurisdictional bases for such a proceeding before the FDLE Criminal Justice Standards and Training Commission do not exist.

BASIS FOR JURISDICTION

This Court has jurisdiction to issue a writ of prohibition directed to a governmental agency subject to the Administrative Procedures Act pursuant to art. V, §4(b)(3), Fla. Const. as implemented by Fla. R. App. P. 9.030(b)(3). *See Dep't of Health Bd. of Dentistry v. Barr*, 882 So. 2d 501 (Fla. 1st DCA 2004).

STATEMENT OF THE FACTS

The Petitioner was a certified law enforcement officer employed by the City of Miami Beach Police Department. During the course of his employment, the Petitioner was subjected to an investigation by the Internal Affairs Department following allegations of his unlawful possession of a controlled substance in violation of §893.03(3)(7), Fla. Stat. Said investigation commenced in February of 2008. App. 1. Prior to the completion of the Internal Affairs investigation, the Petitioner resigned from the police department, under threat of arrest in November of 2008. App. 2.

Thereupon, a form entitled "Internal Investigation Report Form, CJSTC Form 78," was signed by Sgt. Wayne A. Jones and submitted to the Florida Department of Law Enforcement. App. 3. Section 11 of that form entitled "Agency Disposition," contains five boxes reflecting potential dispositions of Internal Affairs charges, including "sustained as a violation of section 943.13(4) or (7); sustained as a violation

of agency policy; not sustained; unfounded; or exonerated.” None of those boxes were checked. *See* App. 3. Under Section 13 entitled “Agency Disciplinary Action,” the CJSTC form 78 reads: “None, officer resigned while under investigation.” The form has the name and signature of Wayne A. Jones, Sergeant over the blank labeled “Agency Administrator’s Name and Title.”

NATURE OF RELIEF SOUGHT

The Petitioner seeks a writ of prohibition prohibiting the FDLE Criminal Justice Standards and Training Commission from pursuing the certification revocation proceeding before it, prohibiting the Department of Administrative Hearings and Administrative Law Judge from conducting proceedings in the matter, and precluding the Respondent City of Miami Beach Police Department from further prosecuting its complaint seeking the Petitioner’s decertification.

ARGUMENT

I.

THIS COURT SHOULD ISSUE A WRIT OF PROHIBITION BECAUSE THE FDLE CJSTC LACKS JURISDICTION OVER THE DECERTIFICATION PROCEEDING DUE TO INSUFFICIENCIES IN CJSTC FORM 78

A. Introduction:

This Court should issue its writ of prohibition directed to the Respondents

because the decertification proceedings pending before the FDLE CJSTC lacks a proper jurisdictional basis. The CJSTC Form 78 required by Florida law fails to contain the necessary findings under the Agency Disposition required to initiate such a proceeding. Second, the CJSTC Form 78 was improperly submitted by someone other than the Agency Administrator.

The applicable statute and implementing rule limit the power of the CJSTC to situations in which a police officer's department has made a finding sustaining a charge of misconduct sufficient to warrant decertification. No such findings were made by the Respondent City, and no such findings appear on the Form 78 involved in this case. That statute and rule limit the jurisdiction of the CJSTC to cases in which the Form 78 was signed by the Agency Administrator, which means a high-ranking official in the police department with policy-making power. The Form 78 here was signed by an ordinary sergeant who is not the Agency Administrator.

B. The CJSTC Lacks Jurisdiction Because No Findings Were Made on Form 78 Sustaining the Charges Against Petitioner:

Section 943.1395, Fla. Stat. establishes the jurisdictional basis for the FDLE CJSTC to conduct decertification proceedings for revocation of police officers' certification. Subsection (5) of that statute provides that, as a condition for decertification, "the employing agency must *submit the investigative findings* and

supporting information and documentation to the commission in accordance with the rules adopted by the commission.” (Emphasis added).

The rule adopted by the Commission setting forth the manner in which a police agency must initiate a decertification proceeding and submit its investigative findings is section 11B-27.003, Fla. Admin. Code. That section provides as follows:

11B-27.003 Duty to Report, Investigations, Procedures.

(1) Pursuant to Section 943.1395(5), F.S., an employing agency shall conduct an investigation when having cause to suspect that an officer it employs or employed at the time of the alleged violation, or employed on a Temporary Employment Authorization (TEA) pursuant to Section 943.131, F.S., does not comply with Section 943.13(4) or (7), F.S., or subsection 11B-27.0011(4), F.A.C. An investigation shall be conducted and concluded when the employing agency has cause to suspect that an officer is in violation of Section 943.13(4) or (7), F.S., or subsection 11B-27.0011(4), F.A.C. ***The agency's investigation shall contain an official disposition, which shall be reported to Commission staff pursuant to subsection (2) of this rule*** section.

(2) Upon concluding the investigation:

(a) If the allegations are sustained, the employing agency shall complete an Internal Investigation Report, form CJSTC-78, revised November 8, 2007, hereby incorporated by reference, regardless of whether any civil service appeal, arbitration, employment hearing, administrative, civil, or criminal action is pending or contemplated. Form CJSTC-78 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx> or by contacting Commission staff at 850-410-8615.

(b) If the allegations are sustained, and are a violation of Section

943.13(4) or (7), F.S., or subsection 11B-27.0011(4), F.A.C., the employing agency shall forward to Commission staff the complete investigative package, which shall include the following, no later than 45 days after the allegations are sustained:

1. A completed Internal Investigation Report form CJSTC-78.
2. The allegations.
3. A summary of the facts.
4. Names of witnesses.
5. Witness statements and depositions.
6. Certified court documents.
7. Any other supportive documentation or information.

(c) If the allegations are not sustained, unfounded, or the officer has been exonerated, or the allegations that are sustained are only violations of the employing agency's policies, and are not violations of Section 943.13(4) or (7), F.S., or subsection 11B-27.0011(4), F.A.C., the employing agency shall complete form CJSTC-78 and maintain the form on file at the agency.

Section 11B-26.003, Fla. Admin. Code (emphasis added).

The only ground for decertification pursuant to Section 943.1395, Fla. Stat. is “that an officer is not in compliance with, or has failed to maintain compliance with, § 943.13(4) or (7).” *See* § 943.1395(5), Fla. Stat. Subsection (4) of § 943.13 is the section permitting decertification of police officers who “have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces.” Subsection (7) of §943.13 requires, as a condition for continued certification as a police officer, that the officer “[h]ave a good moral character as determined by a background investigation under

procedures established by the commission.” The CJSTC lacks jurisdiction over the present proceedings against the Petitioner because the employing agency made no findings concerning either one of those statutory provisions for decertification.

The Form 78 submitted by the Respondent police department to the FDLE contained nothing checked under the section for “Agency Disposition.” Thus, there were no “investigative findings” required by section 943.1395(5) as a condition for the jurisdiction of the CJSTC to conduct decertification proceedings. “It is well recognized that the powers of administrative agencies are measured and limited by the statutes or acts in which such powers are expressly granted or implicitly conferred.” *State Dep’t of Env’l Re. v. Puckett Oil Co.*, 577 So. 2d 988, 991 (Fla. 1st DCA 1991). *Accord*, *Dep’t of Prof’l Reg., Bd. of Med. v. Marrero*, 536 So. 2d 1094 (Fla. 1st DCA 1988); *Florida Dep’t of Corrections v. Provin*, 515 So. 2d 302 (Fla. 1st DCA 1987); *Hall v. Career Serv. Comm’n*, 478 So. 2d 1111 (Fla. 1st DCA 1985).

The CJSTC and the ALJ have no power to proceed, and a writ of prohibition should be issued directing dismissal of the decertification proceedings. Likewise, the Miami Beach Police Department should be precluded from pursuing the decertification proceedings any further because section 11B-27.003(2)(b) only permits an employing agency to pursue decertification proceedings against a police officer for violating §943.13(4) or (7) “[i]f the allegations *are sustained*.” (Emphasis

added). Here no allegations were sustained because the internal affairs investigation was interrupted by Petitioner's forced resignation.¹ There being no sustained allegations of misconduct against the Petitioner, and no findings of same as required by the applicable administrative code provision, the CJSTC lacks jurisdiction to proceed and the Petition should be granted.

C. Form 78 Was Invalid As Not Signed by the Agency Administrator:

Another reason why the CJSTC and ALJ lack jurisdiction to proceed is that the Form 78 submitted to initiate Officer Latorre's decertification proceedings was not signed by the Agency Administrator. The form adopted by the CJSTC under its statutory grant of authority to adopt rules for such decertification proceedings reflects that it must be signed by the Agency Administrator. The Form 78 submitted to initiate the decertification proceedings against officer Latorre was signed by Sgt. Wayne A. Jones. He is not the official who must sign the initiating document.

Although there is no definition of the term "Agency Administrator" in §943.1395 or §11B-27.003, this Court should find that the term "administrator"

¹ The Petitioner is in the process of pursuing legal remedies seeking reinstatement to his position on the ground that he was unfairly forced to resign in violation of his constitutional rights. Although this Court need not adjudicate the issue of Petitioner's efforts to obtain reinstatement by the employing agency, the fact is presented for this Court's consideration in connection with this Petition seeking cessation of the decertification proceedings.

means a high-ranking officer in the police department, such as a chief of police. The definition of “administrator” is “an officer that directs or superintends affairs (as of a business, school, or government agency.)” Webster’s Third New International Dictionary, unabridged ed. at 28 (1993).

Further, another statute provides some definition to the term “agency administrator” used in the context of the Criminal Justice Standards and Training Commission. Section 938.15, Fla. Stat., providing that municipalities and counties may assess fees “for expenditures for criminal justice education degree programs and training courses.” That statute requires that such programs and courses be “approved by the employing *agency administrator*.” (Emphasis added). That terminology obviously contemplates approval by someone of high enough rank to set the standards for education and training for all police officers within a given department.

With respect to Sgt. Wayne A. Jones, he does not and cannot meet the definition of someone qualified to approve all education and training for all police officers in the Miami Beach Police Department. The same definition should be utilized in connection with the requirement that the agency administrator complete Form CJSTC 78. Therefore, the form was improperly submitted and the petition should be granted.

II.

THE CJSTC LACKS JURISDICTION BECAUSE THE FORM 78 WAS UNTIMELY SUBMITTED

Another reason why the Petition should be granted and the Respondents be prohibited from proceeding with the decertification action is that the Form 78 was untimely submitted to the CJSTC. Section 11B-27.003(2)(b) requires that the Form 78 and other materials be submitted to the CJSTC "no later than 45 days after the allegations are sustained." As noted in the preceding section of this Petition, no allegations were ever sustained against officer Latorre. Therefore, the CJSTC lacks jurisdiction for that reason.

However, if the resignation of Officer Latorre were to be considered as somehow sustaining the allegations against him, then the Form 78 is untimely because his resignation occurred on November 12, 2008, more than five months before submission of the Form 78 by the Respondent police department. The proceedings against Officer Latorre were untimely commenced, depriving the Respondent CJSTC of jurisdiction to proceed. Therefore, this Petition should be granted.

CONCLUSION

WHEREFORE, there being no sustained allegations of misconduct warranting decertification against Officer Latorre, Form 78 being incomplete and being unsigned by the Agency Administrator, and the form being untimely submitted, the CJSTC lacks jurisdiction over the proceedings and the Respondents should be prohibited from proceeding further.

Respectfully submitted,

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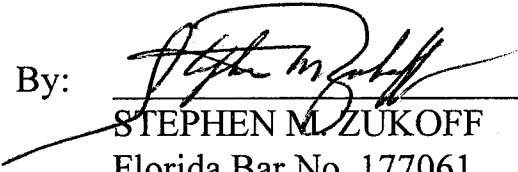
By: 
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Florida Bar No. 177061

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing was served by U.S. Mail upon Commissioner Gerald M. Bailer, State of Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, FL 32308; Criminal Justice Standards and Training Commission, c/o Florida Department of Law Enforcement, 2331 Phillips Road, Tallahassee, FL 32308; Division of Administrative Hearings, 1230 Appalachee Parkway, Tallahassee, FL 32301-3060; Administrative Law Judge John G. Van Laningham, Division of Administrative Hearings, 1230 Appalachee Parkway, Tallahassee, FL 32301-3060; Carlos Noriega, Miami Beach Chief of Police, 1100 Washington Avenue, Miami Beach, FL 33139; Jose Smith, Miami Beach City Attorney, 1700 Convention Center Drive, Fourth Floor, Miami Beach, FL 33139; on this the 5th day of January, 2011.

By: _____


STEPHEN M. ZUKOFF

Florida Bar No. 177061

FILED

2011 JAN -7 A 11:42.

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THIRD DISTRICT OF FLORIDA

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HEARINGS; ADMINISTRATIVE LAW
JUDGE JOHN G. VAN LANINGHAM; and
CITY OF MIAMI BEACH POLICE DEPARTMENT,

Respondents.

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FILED COURT OF
CLERK DISTRICT OF
APPEAL-THIRD DISTRICT

APPENDIX TO PETITION FOR WRIT OF PROHIBITION

ITEM

APPENDIX

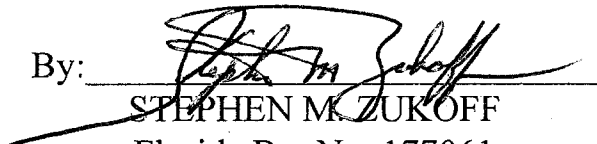
Miami Beach Police Internal Affairs Report	App. 1
Letter of November 12, 2008 from Latorre to City of Miami Beach Police Department, et al.,	App. 2
FDLE Internal Investigation Report	App. 3

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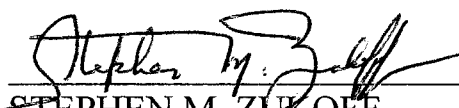
By: 

STEPHEN M. ZUKOFF
Florida Bar No. 177061

Counsel for Petitioner

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By: 
STEPHEN M. ZUKOFF
Florida Bar No. 177061

MIAMIBEACH
POLICE

INTERNAL AFFAIRS REPORT

I.A. CASE NUMBER: IA2008- 003
M.B.P.D. CASE NUMBER: 2008-4897
COMPLAINANT(S): Chief's Office
DATE OF INCIDENT: February 8, 2008
DATE REPORTED: February 8, 2008
INVOLVED OFFICERS: Agustine Latorre
INVESTIGATOR: Sergeant Wayne Jones

ALLEGATION:

While investigating a possible police involved shooting and after securing the permission of Officer Latorre's F.O.P. union attorney Daniel Lurvey, Detective Osvaldo Ramos entered Officer Latorre's assigned police vehicle (#3035) to retrieve Officer Latorre's secondary weapon. Detective Ramos discovered seven Xanax pills and two unidentified blue pills inside the bag in which the weapon was located. The pills were packaged in two separate clear cellophane wraps. There were no readily apparent valid prescriptions located with them.

The vehicle was therefore sealed and towed to MBPD. The following day, a thorough inventory was conducted and additional pills were recovered. Also, a glass pipe was found in the trunk of the vehicle concealed in the front zippered compartment of a leather waist bag, which also contained Officer Latorre's personal identification. Additional items discovered in the trunk included, two "At home drug test kits."

REGULATION / PROCEDURE:

1). **MBPD DRR 6.6.2 – Responsibility:**
"Employees will not use any controlled substance except when prescribed in the treatment of an illness by a doctor or dentist. An employee shall immediately notify his supervisor before reporting for duty when prescribed medication is used that affect their ability to perform their duties."

2). **FSS, 893.03(3) (7) Schedule III- Possession of a Controlled Substance:** "A substance in schedule III has a potential for abuse less than the substances contained in I and II and has a currently accepted medical use in the treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence... (f) Dronabinol (synthetic THC – referred to by the pharmaceutical name, Marinol in this report)."

3). **MBPD, SOP #006 - Property and Evidence:**
6(a). "All suspect narcotics, marijuana and other controlled substances, and all narcotics paraphernalia impounded by officers shall be transported to the station, counted, weighed (large amounts only), field tested (by the impound officer) where possible, and sealed to prevent unauthorized tampering prior to being stored in PEU."

DISPOSITIONS:

Closed

PERSONS INTERVIEWED:

N/A

PERSONS NOT INTERVIEWED:

Officer Agustin Latorre, due to the resignation he submitted on November 12, 2008.

CHRONOLOGY OF FACTS:

On February 6, 2008, Officer Agustine Latorre responded to a 911 call of a shooting at the CVS Pharmacy located at 1425 Alton Road. Upon arriving at the secondary location where citizens had followed the offender, Officer Latorre was confronted with the armed subject and one shot was discharged. The subject was fatally wounded. Because it was not readily apparent who (responding Officers Agustin Latorre, Victor Silot, Robert Chenoweth, or the subject) fired the shot, the incident was initially investigated as an officer involved shooting. All three officers were initially treated as involved officers and their equipment was impounded and inspected by Criminal Investigation Division (CID) investigators. All three officers met with F.O.P union attorney, Daniel Lurvey. Officers Silot and Chenoweth provided sworn statements which indicated they had not discharged their firearms. Officer Latorre, through attorney, Dan Lurvey, declined to provide a voluntary statement to CID investigators and Mr. Lurvey declined to proffer his client's account of the incident. As a result, the case remained under investigation as a possible officer involved shooting. Mr. Lurvey informed Detective Ramos of the presence of Officer Latorre's secondary weapon in a black leather bag, contained within his Miami Beach Police Department city issued police vehicle (#3035).

With Mr. Lurvey's permission, Detective Ramos subsequently entered the vehicle to retrieve the weapon from the waist bag and discovered a total of seven suspected Zanax pills and two unidentified blue pills. These pills were packaged in two separate clear cellophane wraps and there was no apparent evidence of a valid prescription located with the medication. Crime Scene Technician Rickert impounded the medication as evidence. The vehicle was subsequently sealed by Crime Scene and towed to the Miami Beach Police Department.

The following day, February 7, 2008, Officer Latorre's vehicle was inventoried and additional controlled substances were recovered. A glass pipe was located concealed in the trunk of the vehicle in the front zippered compartment of a leather waist pack which also contained Officer Latorre's identification. There were also two "At home drug test kits" located in the trunk of Officer Latorre's city vehicle. As a result of these findings, Officer Latorre, under the department's Reasonable Suspicion Drug Test Policy, was ordered to provide a urine sample to Mount Sinai Medical center for drug testing. Officer Latorre complied with the order and provided the sample for testing. He was escorted to Mt. Sinai Medical Center by F.O.P Union Vice-President Gustavo Sanchez.

~~February 7, 2008~~

Sergeant Morgalo contacted Assistant State Attorney (ASA) Johnette Hardiman and relayed the circumstances of the case to her. She advised him to continue a criminal investigation. The case was, therefore, criminally tolled.

~~At approximately 1700 hours, Sergeants Morgalo, George, and Camacho inventoried the~~

contents of Officer Latorre's assigned vehicle (3035). Including the items discovered the previous day, the following items were found and placed in the Property and Evidence Unit (PEU):

1. White bottle labeled "Ciprofloxacin" containing four (4) pills;
2. Advil bottle containing twenty-nine (29) pills, six (6) different types. Nine (9) pills later determined to be Marinol, had no accompanying prescription;
3. Container with sixty four (64) various pills (suspected Cialis and Viagra);
4. A purple latex glove;
5. A fragment of a glass smoking pipe (field tested negative);
6. Two fragments of glass smoking pipe;
7. Two, "At home drug test kits" inside a white plastic bag (one kit partially used);
8. Black leather waist pack containing miscellaneous identification;
9. Prescription for Amoxgeillin 500;
10. Sealed evidence bag containing six (6) blue pills in cellophane; and
11. Sealed evidence bag containing two (2) blue hexagon pills and one (1) yellow pill in cellophane;

Following the discovery of controlled substances in Officer Latorre's marked vehicle (3035), Sergeants Daniel Morgalo and Elbys Camacho ordered him to submit to a Reasonable Suspicion Drug Test. The drug test was conducted at the Employees Health Center (Mt. Sinai Hospital). Officer Latorre was accompanied by F.O.P. Union Vice-President, Detective Gustavo Sanchez. Sergeant Morgalo accompanied Officer Latorre to the lavatory and witnessed his compliance to the order as he provided a urine sample.

February 12, 2008

The result of the reasonable suspicion drug test collected on 2/7/08 was, "Negative / Diluted." Therefore, there was no conclusive finding.

February 28, 2008

Impounded property items 1, 2, 3, 10 and 11 were sent to Miami-Dade Police Department Crime Lab for processing.

April 29, 2008

Impounded property items 5 and 6 were sent to Miami Dade Police Department Crime Lab, Drug Analysis Unit, for processing.

May 30, 2008

The results of the analysis of the 7 items sent to the Miami-Dade Police Department Crime Lab for processing were received. The respective findings of each item were:

- | | |
|--|--------------------------------|
| 1. White bottle containing four (4) pills | Not analyzed |
| 2. Advil bottle containing twenty-nine (29) pills | THC / Marinol (9 pills of 5mg) |
| 3. Prescription bottle containing sixty-four (64) | Not analyzed (Cialis / Viagra) |
| 5. A fragment of glass pipe | No drug found |
| 6. Two fragments of glass pipe | No drug found |
| 10. Cellophane containing six (6) blue pills | Alprazolam |
| 11. Cellophane with two (2) blue and one (1) yellow pill | Not analyzed |

June 17, 2008

The drugs THC (Marinol) and Alprazolam were researched (<http://biotech.icmb.utexas.edu> and <http://www.rxlist.com/cgi>).

Research Summary

Tetrahydrocannabinol (THC)

THC is the active and most important substance in cannabis which contains a total of 60 different psychoactive chemicals. Collectively, these chemicals are known as cannabinoids. THC produces a euphoric effect when ingested as Dronabinol (prescribed in pill form as Marinol), or smoked in Marijuana. Users generally experience "a pleasurable state of relaxation, with heightened sensory experiences of taste, sound and color." The effects are accompanied by short term memory impairment and / or the ability to learn. Additionally, users may experience episodes of confusion and anxiety with long term use of heavy doses, sometimes resulting in behavioral disorders.

The peak effect of taking THC occurs within 20-30 minutes with aggregate effects lasting 90-120 minutes. THC is non-addictive and there are no withdrawal symptoms. Despite being largely used for recreational purposes, THC (Marinol) does offer some medical benefits. It has proven useful with cancer patients suffering from chemotherapy related nausea (dose of 2.5-20mg / day) and in treating people suffering from AIDS related anorexia (dose of 2.5 -40mg / day). Marinol is only available to patients with a prescription; possession of Marinol without a prescription is a third degree felony in the state of Florida (see FSS 893.13.2).

Alprazolam

Alprazolam or Xanax, a Schedule III drug, is used in the treatment of anxiety disorder and panic disorder. Anxiety disorder is characterized by unrealistic or excessive anxiety and

worry about two or more life circumstances for a period of 6 months or longer, during which the person is bothered more days than not by these concerns. Panic disorder is characterized by recurrent unexpected panic attacks consisting of intense periods of fear or discomfort that develop abruptly and reach a peak within 10 minutes. Xanax is supplied in four different dosages 0.25mg; 0.5mg; 1mg (blue oval pill) and 2mg. When used in dosage more than 4mg/day, Xanax has the potential to cause severe emotional and physical dependence. The most common side effect associated with its use is drowsiness or light-headedness.

June 18, 2008

Assistant State Attorney Johnette Hardiman was notified of the results of the Miami-Dade's Crime Lab's analysis of the pills submitted for testing. She stated that she would relay the findings to attorney, Daniel Lurvey, and request that his client, Officer Latorre, provide prescriptions for the Xanax and Marinol, but that she would not require one for the Cialis or Viagra pills, which were also found in his city issued police vehicle (#3035).

September 26, 2008

After numerous requests to provide prescriptions for the pills, Officer Latorre via his attorney submitted a prescription for the Xanax (Alprazolam), but could not provide one for the Marinol. The prescription, written and signed by Dr. Latorre, Officer Latorre's father, was dated January 5, 2008. The prescription specifically read, "SAMPLES – given for Xanax (Alprazolam) 1mg #10 (ten) take 1 tablet every 8 hours react for Anxiety (Divorce), No refills."

Dr. Latorre's DEA # was listed as BL6142690 on prescription pad # 5LGP1330607.

Between September 26, 2008 and the time of his resignation, numerous requests were made to Officer Latorre via his attorney to provide a prescription for the Marinol discovered in his city issued police vehicle (#3035). Officer Latorre failed to provide the prescription.

November 12, 2008

Officer Latorre submitted a letter resigning from the Miami Beach Police Department.

INVESTIGATIVE FINDINGS:

• Officer Latorre was in possession of a schedule 1 controlled substance (Marinol) without a prescription.

- Officer Latorre was in possession of two (2) at home drug test kits (1 partially used).

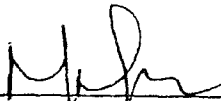
CONCLUSION:

On November 12, 2008, Officer Augustine Latorre resigned his position at the Miami Beach Police Department while under investigation for the aforementioned charges and prior to submitting to a subject officer interview. As such, this case is considered Closed.

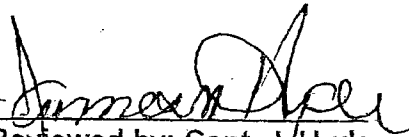
"I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in SS. 112.532 and 112.533, Florida Statutes."


Investigator: Sgt. W. A. Jones
Internal Affairs Unit Sergeant

3/17/09
Date:


Witness: Sgt. M. Doyle

3/17/09
Date:


Reviewed by: Capt. J. Hyde
Internal Affairs Unit Commander

3/17/2009
Date:


Approved by: Chief Noriega
Chief of Police

4/2/09
Date:

From: Agustin G. Latorre

Date: November 12, 2008

COPY

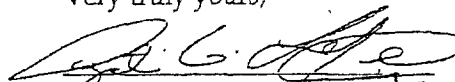
To: The Miami Beach Florida Police Department and
The City of Miami Beach Florida

Subject: Resignation

Gentlemen, effective 11:59 p.m. on November 12, 2008, I resign from the Miami Beach Florida Police Department.¹

I wish my friends at the City the best.

Very truly yours,


Agustin G. Latorre

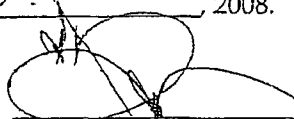
STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, personally appeared Agustin G. Latorre, who is personally known to me or produced Driver's lic. as identification.

SUBSCRIBED before me this 12th day of NOV., 2008.

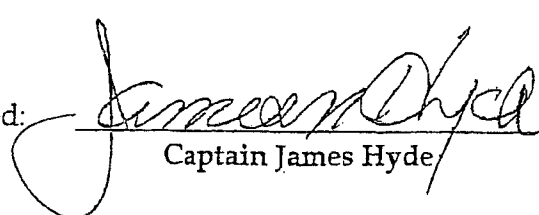


T. TORO
MY COMMISSION # DD 664855
EXPIRES: April 19, 2011
Bonded thru Budget Notary Services


NOTARY PUBLIC,
State of Florida at Large

My commission expires:

Received:


Captain James Hyde

¹ It is my understanding that if I sign this document, the City of Miami Beach and the Miami Beach Police Department will not press the State Attorney to cause me to be arrested and/or prosecuted and the Internal Affairs investigative file will be closed without finding. If there is anything not true in this document please advise and I will then further consider my options with regard to this matter and my resignation.



COPY

Internal Investigation Report Form

CJSTC
78

Please read instructions on back of this form and how to use it. Type or print in black ink.

OFFICER

AGENCY

1. SSN: _____
2. Officer's Name: LATORRE,
(Last)
AGUSTIN
(First) G.
(MI)
3. Officer's Last Known Address: _____
(Street)

(City)

(State) _____ (Zip Code)
4. Telephone Number: (____) ____-____
5. ORI: FL 130700
6. Agency: MIAMI BEACH POLICE DEPARTMENT
(Name)
7. Agency Contact: Ggt. WAYNE JONES
(Name)
8. Telephone Number: (305) 673 - 7920
9. Agency FAX Number: (305) 673 - 7976

VIOLATION/ALLEGATION

10. Nature of Allegation(s): POSSESSION of a Controlled Substance
(Schedule III - FSS, 893.03(3)(7)).
11. Agency Disposition: ☐ Sustained - Violation of s.943.13(4) or (7)
☐ Not Sustained ☐ Unfounded ☐ Sustained - Violation of Agency Policy ☐ Exonerated
12. Criminal Charges Filed: NONE
13. Agency Disciplinary Action: NONE - OFFICER RESIGNED WHILE UNDER INVESTIGATION
14. If the allegation has been sustained and determined to be a violation of s.943.13(4) or (7), attach and forward the following to the Division of Criminal Justice Standards and Training:
☐ Summary of the Facts ☒ Internal Investigation Report ☐ Name & Address of Witness
☐ Witness Statement/Deposition ☐ Certified Court Documents ☐ Other Supportive Information

NOTICE: Pursuant to Florida Statute 943.1395(5), an employing agency must conduct an internal investigation when having cause to suspect that an officer it employs is not in compliance with Section 943.13(4) or (7), F.S. If the investigation is sustained, the employing agency must forward a report to the Commission as specified by Rule 11B-27.003.

Agency administrator's signature

Date signed

Wayne A. Jones, Sergeant
Agency administrator's name and title

04-21-2009

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