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INSIDE

Florida Money Laundering Act (896.101)

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Florida Money Laundering Act (896.101)

Felony Division Chief: Lori Winstead

Money Laundering laws seek to penalize individuals or organizations using financial transactions to hide the proceeds of unlawful activities in the state of Florida. The Money Laundering statute has become a powerful tool to address white collar crime, organized crime, drug trafficking, cybercrime, human trafficking, child exploitation and much more.

Money Laundering entails taking criminal profits and moving them in a prohibited manner. Specifically, criminals or persons acting on their behalf generate proceeds in the form of money or property as a result of committing a crime designated as a specified unlawful activity. Criminals then move that money, often with the intent to disguise the nature, location, source, ownership, or control of the funds, which is known as "concealment" money laundering. Alternatively, in "promotion" money laundering, they reinvest the money in their criminal activities. The Money Laundering statute, §896.101 Fla. Stat., states:

(3)(a) it is unlawful for a person knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, to conduct or attempt to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity

1. With the intent to promote the carrying on of specific unlawful activity; or
2. Knowing that the transaction is designed in whole or in part:

a. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

b. To avoid a transaction reporting requirement or money transmitters' registration requirement under state law

A financial transaction is defined as a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects commerce. A transaction can include purchase, sale, loan, pledge, gift, transfer, delivery and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, or exchange of currency. In order to have the charge of Money Laundering, the evidence must show that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state or federal law, or any of the specified crimes under Fla. Stat. §895.02 definitions of "Racketeering Activity."

What is a specified unlawful activity?

A "specified unlawful activity" is defined as any "racketeering activity." § 896.101(2)(g). "Racketeering activity" includes committing, attempting, or conspiring to commit a chargeable crime "relating to theft, robbery,

and related crimes" or soliciting, coercing, or intimidating another person to do so. § 895.02(1)(a)(32), Fla. Stat. The word "conceal" is the plain and ordinary meaning; to "prevent disclosure or recognition of; to place out of sight."

In Hardie, v. State, 162 So.3d 297 (2015), the victim, a church, received donations for a benevolent account to assist the needy, a mortgage account, and an operating account. Hardie paid numerous personal bills with money from the benevolent account. To avoid detection of his use of the funds, Hardie manipulated the benevolent and mortgage accounts so as to conceal many of the improper transaction. Hardie would write a check from the mortgage account, held at Fifth Third Bank, and deposit that check into the benevolent account, held at SunTrust. Hardie would then write a check from the benevolent account to himself or to petty cash and then cash that check and "pocket" the proceeds by depositing them into his personal account at Wachovia/Wells Fargo. The court found that the evidence presented at trial was sufficient to establish the required elements of both a specified unlawful activity and concealment. Once Hardie took funds from the mortgage account, which had been designated by the donors for use in paying the church's mortgage, and transferred them into the benevolent account, which had been designated for helping the needy in the community, the transferred funds became proceeds of an unlawful activity. With these improper and unauthorized acts, Hardie's theft was completed, thereby satisfying the "specified unlawful activity" element of money laundering.

Similarly, in United States v. Villarini, 238 F.3d 530 (4th Cir.2001), Villarini, a head bank teller, was responsible for reporting the amount of damaged cash the bank received. However for many years, she overstated the amount of damaged cash actually received. On her last day of work, she prepared a ticket indicating a cash payout of $83,000. However, the bank's auditors soon discovered that Villarini's drawer was short $83,000. The bank theorized that Villarini used the cash payout to disguise her overstatement of the damaged cash for which she was responsible. Thereafter, Villarini deposited some of the stolen money into personal bank accounts, in four transactions of varying amounts, and began making purchases with the stolen funds. The court upheld the four convictions for money laundering.

What is Concealment or Promotion?

Concealment is not just merely spending the money. The requirement that the transaction be "designed" to conceal requires more than a minor motivation to conceal. *United States v. Garcia-Emanuel*, 14 F.3d 1469 (10th Cir.1994). While there are many things that criminals can do with their profits that would arouse suspicion of an intent to launder the money, actions that are merely suspicious and do not provide

substantial evidence of a design to conceal will not alone support a conviction. Things that you can look for that would indicate an intent to conceal consist of statements by a suspect probative of intent to conceal, unusual secrecy surrounding transactions, structuring the transactions in a way to avoid attention, depositing illegal profits in the bank account of a legitimate business, highly irregular features of the transaction, using third parties to conceal the real owner, a series of unusual financial moves cumulating in the transaction.

In Hardie, evidence was presented that he wrote checks from the mortgage account to the benevolent account and then wrote checks from the benevolent account to himself. He then cashed the checks and deposited the cash into his personal account. These multiple transactions involving three different banks served to disguise the original ownership of the money, there by satisfying the concealment requirement.

To promote a crime means to contribute to an activity's growth or prosperity. *United States v. Paramo*, 998 F.2d 1212 (3d Cir. 1993). This would include not only ongoing and future activity, but also prior activity. The evidence would have to show that the suspect engaged in the financial transaction with the intent to promote the carrying on of such specified unlawful activity. *United States v. Dileo*, No. 13-10661, 2015 WL 5099473 (11th Cir. Sept. 1, 2015) Which means the suspect must have conducted or attempted to conduct the financial transaction for the purpose of facilitating or making easier or helping to bring about the specified unlawful activity. Evidence that a suspect ran from the scene of a drug sale with the cash he received in the sale did not create a reasonable inference that the suspect intended to promote the completed crime or promote future drug selling. *Dallas v. State*, 995 So. 2d 1062, 1063 (Fla. Dist. Ct. App. 2008). However, in a case involving the founder of pain management clinics and two physicians who prescribed controlled substances for clinic patients, the agent provided evidence about the monetary transactions and testified that the funds at issue were used to pay overhead, rent, and malpractice insurance. Thus, the proceeds of the unlawful activity were deposited into numerous bank accounts and then spent to pay all expenses incurred to promote and continue the operation of the conspiracy to unlawfully dispense controlled substances.

Benefits to Charging Money Laundering

The Florida Contraband Forfeiture Act applies to any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle, money, securities, record, research, negotiable instrument, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony. §932.701 Fla. Stat. Any contraband is subject to forfeiture pursuant to the Florida Contraband Forfeiture Act.

If a person is alienating or disposing of monetary instruments or funds, or appears likely to or demonstrates an intent to alienate or dispose of monetary instruments or funds, used in money laundering or any crime listed as specified unlawful activity under this section, or monetary instruments or funds that are traceable to any such violation, a temporary injunction can be applied for in any circuit court having jurisdiction where the funds are located or deposited. This temporary injunction will "freeze" the assets in order to prohibit the person from withdrawing, transferring, removing, dissipating or disposing of any such monetary instruments or funds. However,

the funds in the account must total $10,000 or more to apply or keep the temporary injunction. Further, the temporary injunction will last for ten (10) days, and must be followed up with a forfeiture proceeding or a warrant or other court order to seize the monetary instruments or funds for subsequent criminal prosecution.

When issuing a subpoena to a financial institution related to money laundering, the subpoena should include a nondisclosure provision. If the subpoena includes a nondisclosure provision, any financial institution, licensed money services business, employee or officer of a financial institution or licensed money services business or any other person may *not* notify, directly or indirectly, any customer whose records are being sought by the subpoena about the existence or contents of that subpoena.

A person convicted of Money Laundering is subject to a first, second and third degree felony, depending on the amount of funds laundered. Further, money laundering is based on a consecutive twelve (12) month period so each twelve month period is a separate money laundering charge. A third degree felony is a financial transaction exceeding $300 but less than $20,000 in any 12-month period. A third degree money laundering charge is a level seven which is awarded 56 points on the Criminal Punishment Code Scoresheet which translates to 21 months as the lowest permissible prison sentence. A second degree felony is a financial transaction exceeding $20,000 but less than $100,000 in any 12-month period. A second degree money laundering charge is a level eight, which is awarded 74 points on the scoresheet which translates to a 34.5 months as the lowest permissible prison sentence. A first degree felony is a financial transaction exceeding $100,000 in any 12-month period. A first degree money laundering charge is a level nine, which is awarded 92 points on the scoresheet which translates to 48 months as the lowest permissible prison sentence.

Money laundering will continue to occur and thrive in this state unless it is addressed and attacked at the local level. The legislature's intent for creating the anti-money laundering statutes is determent as shown by the descriptive and detailed statute and increased punishment for the laundering of money related to criminal activity.

FROM THE COURTS...

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SEARCH AND SEIZURE – VEHICLE STOP

Police officers observed an occupied car behind a business at night. The business owner had previously alerted law enforcement of several recent burglaries. The officers observed the occupants get out of the vehicle and with the use of flashlights, walked around the back of the building. The individuals then left the area in the vehicle. Both officers later testified that they had observed no illegal conduct. While they investigated further, the officers instructed another officer to stop the vehicle. When the third officer stopped the vehicle, drugs were found on one of the occupants. Additionally, one of the occupants resisted arrest. At the motion to suppress, the defense argued there was not a well-founded, articulable suspicion that criminal activity was afoot and therefore the stop of the car was illegal. The trial court denied the motion to suppress. On appeal, the Second District reversed, holding that a person's mere presence in an area known for past criminal activity or near a closed business late at night does not provide reasonable suspicion necessary to stop a car. Because the drugs were discovered as a direct consequence of the illegal stop, they had to be excluded. The resisting charge was also reversed. *Thomas v. State*, 39 Fla. L. Weekly D1675b (Fla. 2d DCA August 8, 2014).

SEARCH AND SEIZURE – PROBABLE CAUSE TO SEIZE PRESCRIPTION BOTTLE

The defendant's vehicle was stopped by law enforcement on suspicion that he was impaired. The defendant gave the deputy consent to search his vehicle for anything illegal. As the defendant was exiting the vehicle, the deputy observed a large pill bottle in the driver's side door pocket. The deputy was able to read the bottle label and also recognize that a pill inside was Xanax, which was different from the bottle label. The deputy made his observations without touching the bottle. At the motion to suppress, the trial court suppressed the pill, ruling that the illicit nature of the pill was not immediately apparent because the defendant could have had a prescription for the Xanax. On appeal, the Second District rejected that trial court's ruling. The court held that the deputy had probable cause to seize the evidence in plain view. If the defendant had a prescription, he could assert that defense. Possession of Xanax in a container that is not for a Xanax prescription provides prima facie evidence that the possession is unlawful. *State v. Vinci*, 39 Fla. L. Weekly D1970c (Fla. 2d DCA September 12, 2014).