

THE RAP SHEET



1 MARCH, 2001

ABOVE AND BEYOND

Everyone who works in the criminal justice system is constantly challenged. There is always so much to do and precious little time to get it all accomplished. In this never-ending balancing act we sometimes run across those who shine; whose dedication inspires our respect and gratitude. On those days when our best efforts are met with no reward, these extraordinary efforts serve to keep us going in the good fight we engage in every day, and these efforts should be recognized and shared.

ASAs Jordan Lewin and Jonathan Davidoff recently went to trial on a years-old DUI case; the defendant had several prior DUI convictions. Imagine their dismay upon learning that the main witness in the case, Florida Highway Patrol Trooper Daphne Yuncker, had moved to Naples since the arrest. However, Trooper Yuncker not only returned to Miami for this trial, but during the trial week, journeyed from Naples to Miami no less than three times, returning on one day just in case she might be needed for rebuttal testimony. She waited hours while the jury deliberated, so was present to hear the jury's guilty verdict and the substantial sentence imposed. Trooper Yuncker went above and beyond the call of duty, did a real service to our community and deserves our thanks and recognition.

If you have any items you would like to submit for "Above and Beyond", please contact Kristi Bettendorf at the State Attorney's Office. E-mail address: Kdorf@sa11.state.fl.us

ISSUES RESOLVED AT FEBRUARY MEETING

- Q.:** *How should a defendant be charged with a violation of s. 316.2045, obstruction of public streets?*
- A.:** The answer depends upon which subsection is being charged. If the defendant is being charged with a violation of subsection (1), simply obstructing the roadway by standing on it or approaching motor vehicles, this is a non-criminal infraction and the defendant should be charged by means of a traffic citation. If the defendant is being charged with a violation of subsection (2), obstruction in order to solicit, this is a second degree misdemeanor and the defendant should be charged by means of an arrest affidavit. It is very important that you specify which subsection is being charged.
- Q.:** *Why are petit theft, third conviction (a felony) cases often reduced to misdemeanor petit theft?*
- A.:** In order to charge a defendant with recidivist petit theft, we must not only prove that the defendant is the person who committed the new petit theft, but that the defendant is the same person who was convicted of at least two prior thefts. The means by which we prove the identity of the defendant on the prior thefts is by way of fingerprints recorded on the conviction. While Florida Statute 812.014(3)(d)1 requires that the defendant shall be fingerprinted in open court on every theft conviction, and that the judge shall sign the conviction as well, attesting to the fact that the fingerprints affixed are the fingerprints of the defendant, this procedure has not been consistently followed. So while a defendant may have many, many prior petit theft convictions on his record, and you may properly arrest him for felony recidivist petit theft, we are often unable to find two prior theft convictions that include the defendant's fingerprints. We have taken steps to remind both the County Court judges and assistant state attorneys of this statutory requirement.

POLICE-PROSECUTOR COORDINATING COMMITTEE

Chair: Kristi Bettendorf, ASA, SAO (305) 547-0220

Co-Chairs:

Chief Patrick Kiel, West Miami PD
(305) 266-0530

Ivan Fernandez, ASA, SAO
(305) 547-0664

Chief Steve Rothlein, M-DPD
(305) 471-2619

Chief Fred Maas, Sunny Isles Beach PD
(305) 947-4440

Major John Buhmaster, City of Miami PD
(305) 579-6592

IMPORTANT!

Next ppcc meeting, Thursday, March 15, 2001 - 10:00 a.m.
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

SUMMARY OF FEBRUARY 15, 2001 POLICE-PROSECUTOR COORDINATING COMMITTEE MEETING

The February PPCC meeting began with reports from the standing sub-committees. Most sub-committees have already set about organizing, scheduling meetings, and soliciting input regarding issues of interest to those in the law enforcement community. In addition, some pending issues have already been referred to sub-committees for their study and resolution.

Three new subcommittees were formed. A Juvenile Subcommittee will deal with issues unique to their division. An Operations Subcommittee will address "systems" issues that don't fall within the purview of any of the other subcommittees. An Administrative Case Review Subcommittee was established. Cases, predominantly, at this point, involving charges where police officers are victims, can be referred to this subcommittee for resolution of problem areas which have arisen in the case and, hopefully, establishing or refining procedures in order to avoid similar problems in future cases. All of those who have signed up for these new committees are listed, along with all other sub-committee members, on the last page of this issue.

The response to two pending issues were reported and are listed separately in this bulletin. Other pending issues are also listed separately.

Again, in order to serve the largest number of those in the law enforcement community, please copy and distribute this bulletin widely. Contact the State Attorney's Office (Kristi Bettendorf) for additional copies.

NEW CASE LAW

State v. Alvarez, 26 Fla. L. Weekly D386 (Fla. 3d DCA Feb. 7, 2001) - When the defendant was stopped for a traffic violation and asked to perform field sobriety tests, he was not in custody and his responses during the tests did not have to be preceded by Miranda warnings.

Bedoya v. State, 26 Fla. L. Weekly D434 (Fla. 5th DCA Feb. 9, 2001) - Police properly audiotaped and videotaped an interview of the defendant without his consent or knowledge because a defendant does not have an expectation of privacy in a police interview room.

Betz v. State, 26 Fla. L. Weekly D304 (Fla. 2d DCA Jan. 24, 2001) - When a police officer, who had validly stopped the defendant for driving with an extinguished headlight, smelled marijuana on the defendant and the interior of the car, the officer had probable cause to search the defendant and the interior of the car, but did not have probable cause to search the trunk of the car.

Harnanan v. State, 26 Fla. L. Weekly D311 (Fla. 5th DCA Jan. 26, 2001) - After invoking his right to counsel, defendant told a corrections officer that he did not know what to do. The corrections officer asked the defendant if he would like to talk, but did not reread any Miranda rights. The defendant's subsequent confession was not suppressible because the defendant had initiated the conversation with the corrections officer.

Clark v. State, 26 Fla. L. Weekly S69 (Fla. Feb. 8, 2001) - A defendant, who intentionally crashed his truck into an occupied vehicle, was properly convicted of an aggravated battery on the occupant of the other vehicle. Although the victim was not actually touched by the defendant's truck, the impact of the crash "spun" the victim, thus supporting the conviction. Because the defendant's truck was a deadly weapon, the conviction for aggravated battery was proper.

Miller v. State, 26 Fla. L. Weekly D356 (Fla. 2nd DCA Feb. 2, 2001) - A defendant, whose conduct consisted of loud and aggressive speech, directing an officer to remove her boyfriend from her residence, was illegally arrested for disorderly conduct because her words were neither fighting words nor false words that created a clear and present danger of harm to others. However, the defendant was properly convicted of battery of a law enforcement officer and obstructing an officer with violence because it is unlawful to resist even an unlawful arrest with violence.

***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.**

TRIAL SUBPOENAS FOR POLICE OFFICERS

Police officers and administrators frequently express concern about the short notice that officers, particularly uniform officers, receive to appear in court for trial. Although the notice is frequently short, there is a reason, which we would like to share with you.

The State Attorney's Office sends out subpoenas for trial 28 days before the scheduled trial date. Although they are frequently lost, discarded or sometimes ignored by officers, these notices are the only trial subpoenas that are usually issued to officers. By agreement with all the police departments in the county many years ago, these "standby subpoenas" are issued so that officers can remain on duty (or off-duty, whichever the case may be) rather than sit in a courthouse hallway waiting to be called for trial. The agreement further stipulated that when an officer is actually needed for trial, the prosecutor's office can obtain that officer's appearance by a telephone call. Over the years, the methods of mandatory appearance notification have evolved and differ from police department to police department, depending on the needs and wants of the various departments, but the principle remains the same.

These days, most judges have somewhere between 60 and 120 cases set for trial each week, more in Misdemeanor Court. When you consider that there are more than 50 judges handling criminal cases in the 11th Judicial Circuit (Miami-Dade County) and that most cases have multiple police officer witnesses on each case, you realize that the State Attorney's Office sends out thousands of the "standby subpoenas" to police officers each week. Although contact with each civilian witness is attempted by SAO personnel prior to trial, there is not time nor staff to allow the State Attorney's Office to personally contact each witness officer, therefore, the "standby subpoena" method is used. A single prosecutor frequently has 50 or more cases set for trial on a Monday morning, and generally has a pretty good idea which case or cases the judge wants to go to trial on that week. Usually, the week before trial, the prosecutor will personally speak to all the essential witnesses in the two or three or four cases the ASA thinks are most likely to go to trial the following week, in order to prepare those witnesses for trial and to let them know that their case is a priority on the judge's calendar. Even though the prosecutor has a good idea about which cases will most likely go to trial, the judge, not the State Attorney's Office, determines which cases actually go to trial and when.

When the cases come up for trial on Monday morning, frequently, the number one, two and three cases for trial get disposed of or postponed because a victim or officer witness is sick or injured, or the defense seeks a last-minute continuance, or the defendant doesn't show up for trial, or the defendant pleads guilty unexpectedly, or the judge changes his mind about trying a particular case that week, or any number of other reasons. The judge will then announce at 10:30 A.M., for example, that he wants to go to trial that day at 1:30 P.M. on a case that nobody thought would go to trial that week. The prosecutor must then call from court to the State Attorney's Office and have his witness coordinator get the witnesses in for that case as soon as possible. Civilian and police officer witnesses are then given the same short notice to appear for trial that the prosecutor received.

We suggest that you do not discard your standby subpoenas before trial, that you try to stay in touch with the ASA or the witness coordinator by calling the telephone number listed on the subpoena, and that you try to understand how this problem occurs and, like the prosecutor, work with it as best you can.

PENDING PPCC ISSUES

1. Rules to Show Cause.
2. Officers are getting traffic court subpoenas with no contact phone number on them to call to advise of a possible conflict. Submitted by: Homestead P.D.
3. Coordination is needed among the JAC and those facilities where juveniles with mental health issues are to be taken. Submitted by: Homestead P.D. (Referred to Juvenile Sub-Committee)
4. It is taking an inordinate amount of time to obtain arrest warrants. Submitted by M-DPD (Referred to Case Intake Sub-Committee)
5. NCIC/FCIC criminal history records are not available for all defendants at first appearance hearings. Submitted by: M-DPD
6. Delayed submission of narcotics to MDPD Crime Lab for analysis. Submitted by: MDPD Crime Lab, SAO
7. WIS not being used in scheduling officers' appearances. Submitted by Miami Beach P.D. (Referred to Communications Sub-Committee)
8. Subpoenas being sent directly to officers rather than through Liaison. Submitted by: Miami Beach P.D. (Referred to Communications Sub-Committee)
9. Officers not being notified when and why cases are No-Actioned. (Referred to Communications Sub-Committee)

PROSECUTION 101

Civil Traffic Infraction Hearing Officers

- Q.: What are the qualifications to become a court hearing officer? If one has a complaint about the conduct of a hearing officer, who should the officer contact?
- A.: The qualifications for hearing officers for civil traffic infractions are set forth in Florida Statute 318.34. Applicants for the position must be members in good standing of The Florida Bar and must have completed a 40-hour education and training program approved by the Florida Supreme Court. In addition, hearing officers must complete a 4-hour continuing education program each year. They may serve either full or part time and serve at the pleasure of the chief judge. They have no definite term of office. Hearing officers are subject to the Florida Bar Code of Professional Responsibility, not the Judicial Code of Ethics. Therefore, complaints regarding the conduct of a hearing officer may be referred to either the chief judge or The Florida Bar.

THE RAP SHEET

All PPCC Sub-Committees, Chairs and members are listed below. Please contact any of the Co-Chairs or members if you have an issue to be addressed.

CASE INTAKE SUBCOMMITTEE

CO-CHAIRS:

Det. Mike Crowley, M-DPD (305) 270-3842
Johni Hardiman, ASA, SAO (305) 547-0255;
e-mail: hardimj@sa11.state.fl.us

Committee Members:

Kristi Bettendorf, ASA, SAO (305) 547-0220
Marie Lacroix, ASA, SAO
Sandy Roberts, SAO
Sgt. Laura Diaz, M-DPD
Det. Andrew Delgado, M-DPD
Det. Paul Manzella, SIBPD
Suzie Vazquez, ASA, SAO
Sgt. Efrén Lopez, M-DPD

COMMUNICATIONS SUBCOMMITTEE

CO-CHAIRS:

Major Grace O'Donnell, M-DPD (305) 375-5555;
e-mail: godon123@aol.com
Bill Howell, ASA, SAO (305) 547-0438;
e-mail: howellb@sa11.state.fl.us

Committee Members:

Denise Moon, SAO
Ray Araujo, ASA, SAO, County Court
Manny Segarra, ASA, SAO
Gloria Paskiewicz, MBPD
Sgt. Laura Diaz, M-DPD
Melinda Breidenbach, SAO
Johni Hardiman, ASA, SAO
Sandy Roberts, SAO

CRIMES AGAINST LEOs SUBCOMMITTEE

CO-CHAIRS:

Capt. David Rivero, MPD (305) 579-6450;
e-mail: david.rivero@miami-police.com
David Waksman, ASA, SAO (305) 547-0306;
e-mail: waksmd@sa11.state.fl.us

Committee Members:

Chief Chuck Reynolds, SAO
Ivan Fernandez, ASA, SAO
Denise Moon, SAO
Abbe Rifkin, ASA, SAO
Chris Scileppi, ASA, SAO
Chief Pat Kiel, West Miami PD
Audrey Frank-Aponte, ASA, SAO
Susan Leah Dechovitz, ASA, SAO
George Cholakis, ASA, SAO
Joe Frederick, ASA, SAO
Lt. David Evans, M-DPD, Cutler Ridge
Shana Seitchik, ASA, SAO
Sgt. Efrén Lopez, M-DPD, Hammocks
Lt. Brian Ackerman, M-DPD, Northside
Lt. Ralph Gracia, Hialeah PD
Det. Robert Garland, M-DPD
Lt. Robert Vance, Pinecrest PD
Lt. Alan Apfel, Hialeah PD
Ofcr. Carlos Arguelles, M-DPD, Hammocks
Jonathan Davidoff, ASA, SAO
Lt. Luis Bazo, M-DPD, Northside
Sgt. Marshall Gilreath, M-DPD
Det. Ray Hoadley, M-DPD

JUVENILE SUBCOMMITTEE

Capt. Michael Mouring, M-DPD
Patricia Lieber, ASA, SAO
Ellen Skidmore, SAO

ADMINISTRATIVE CASE REVIEW SUBCOMMITTEE

Sgt. Cecile Guerra, M-DPD
Capt. Michael Mouring, M-DPD
Lt. Kevin Lystad, Miami Shores PD
Kristi Bettendorf, ASA, SAO

DOMESTIC CRIMES SUBCOMMITTEE

CO-CHAIR:

Margie Henghold, ASA, SAO (305) 547-0132;
e-mail: henghom@sa11.state.fl.us

Committee Members:

Asst. Chief Anthony Mazzara, BHIPD
Carrie Soubal, SAO
Cristina Escobar, ASA, SAO
Lt. Alan Apfel, Hialeah PD
Denise Moon, SAO
Maj. Harriet Janosky, M-DPD
Judith Rubenstein, M-DPD Legal

LEGAL BULLETIN SUBCOMMITTEE

CO-CHAIRS:

Lt. Brian Ackerman, M-DPD, Northside (305) 835-4072;
e-mail: backerman@mdpd.com
Capt. David Rivero, MPD (305) 579-6450;
e-mail: david.rivero@miami-police.com

Committee Members:

Paul Mendelson, ASA, SAO
Abbe Rifkin, ASA, SAO
Kristi Bettendorf, ASA, SAO
Sandy Roberts, SAO
Betty Tarre, SAO
Ed Griffith, SAO

ROLL CALL/RIDE-ALONG SUBCOMMITTEE

CO-CHAIRS:

Chief Patrick Kiel, West Miami PD (305) 266-0530;
e-mail: mrpnut@bellsouth.net
Marc Anton, ASA, SAO (305) 547-0350;
e-mail: antonm@sa11.state.fl.us

Committee Members:

Chris Scileppi, ASA, SAO (Juvenile Div.)
Lt. David Evans, M-DPD, Cutler Ridge
Lt. Brian Ackerman, M-DPD, Northside
Jason Scully-Clemmons, ASA, SAO
Shana Seitchik, ASA, SAO
Chief Chuck Reynolds, SAO

TRAINING SUBCOMMITTEE

CO-CHAIRS:

Izzy Reyes, ASA, SAO (305) 547-6856;
e-mail: reyesi@sa11.state.fl.us
Lt. Ricardo Gomez, M-DPD, Court Services (305) 547-5088;
e-mail: rickygomez@mdpd.com
Audrey Frank-Aponte, ASA, SAO (305) 547-0493;
e-mail: frankaa@sa11.state.fl.us

Committee Members:

Kara Preissel, ASA, SAO, County Court
Ivan Fernandez, ASA, SAO
Dan Bernstein, ASA, SAO
Lynnise Jones-Curry, M-DPD
Suzie Vazquez, ASA, SAO
Jason Scully-Clemmons, ASA, SAO
Johni Hardiman, ASA, SAO
Shana Seitchik, ASA, SAO
Michael Von Zamft, ASA, SAO
Jay Novick, ASA, SAO

OPERATIONS SUBCOMMITTEE

Melinda Breidenbach, SAO
Lt. Albert Vila, MPD
Johni Hardiman, ASA, SAO
Sgt. Gladys Amato, MPD
Ivan Fernandez, ASA, SAO