

# THE RAP SHEET



1 SEPTEMBER, 2002

## POLICE-PROSECUTOR COORDINATING COMMITTEE

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## Change of date for September's PPCC Meeting

Note that September's meeting  
and  
Legislative Update

Has been changed to the fourth  
Thursday of the month,

**September 26, 2002**

## ELECTRONIC SUBPOENAS

More and more departments are contacting the State Attorney's Office and ITD to inquire about electronic notification of their officers. Hamilton Davies, the State Attorney's Office Information Systems Director, would like to meet with representatives of all interested departments to discuss their participation. Please plan to join us on Thursday, **October 3, 2002**, at **9:30 a.m.** in conference room S-419 at the **State Attorney's Office** in the Graham Building. For further information, contact Melinda Breidenbach at (305) 547-0418.

## IMPORTANT!

Next ppcc meeting, Thursday, September 26, 2002 - 10:00 a.m.  
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136  
All are invited to attend

## A Crime Against Law Enforcement Officers

Enrique Gonzalez' case came up for sentencing last month. Unfortunately, not an unusual case by Miami-Dade standards, the defendant, angered because his car was ticketed, went to the Virginia Gardens Police Department to "express his displeasure". Not letting the fact that the department was closed to the public on the weekend discourage him, the defendant went to the entrance marked for police officers only. When an officer came to the door and tried to explain to him that the department was not open to the public, Gonzalez proceeded to create a scene, scream, yell and carry on. His verbal abuse escalated and he ultimately punched Officer James Chohonis and Officer Charbel Abud, inflicting visible injury to Officer Chohonis – a cut above his eye – and other unobservable injuries to both officers.

The charges proceeded to trial. The ASAs who handled the trial, Michael Padula and Jonathan Davidoff, commented on the excellent presentation of all officers who testified. "Their testimony was very direct and credible – they spoke from their hearts - and they kept their cool on cross-examination" (police brutality had been alleged by the defense). The defendant was convicted of two counts of battery on a law enforcement officer, resisting with violence and disorderly conduct.

At time of sentencing, Officers Chohonis and Abud testified, as did Chief Free. The extent of the defendant's rage, over a simple parking ticket, was not lost on the presiding Judge, Manuel Crespo. Although the defendant had no prior criminal history, he was sentenced to 5 years in prison.

### Crimes Against LEOs Subcommittee

The above case obviously progressed appropriately through the criminal justice system to a successful conclusion. The Crimes Against Law Enforcement Officers subcommittee of the Police-Prosecutor Coordinating Committee was created to assure the proper handling of cases involving police officers as victims. Cases where officers have been seriously injured are now reviewed and referred for special handling if the circumstances warrant it. The co-chairs and subcommittee members are listed on the last page of The Rap Sheet; you should feel free to contact any one of them if you have questions about the handling of your case.

## Attempted Felony Murder or Attempted First Degree Murder?

Recently, some officers have been charging Attempted Felony Murder on A-Forms in which the appropriate charge is Attempted First Degree Murder. This has significant ramifications in Bond Court which will be explained.

F.S. Section 782.051 describes Attempted Felony Murder as:

“(1) Any person who perpetrates or attempts to perpetrate any felony enumerated in s. 782.04(3) and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another...”

“(2) Any person who perpetrates or attempts to perpetrate any felony other than a felony enumerated in s. 782.04(3) and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another...”

It should be noted that under this section, the act that could have caused the death of the other person is done without the intention of actually killing the victim. It should be charged when the defendant is committing a felony, and does some additional act which, if completed, could have caused death. In some recent arrest narratives, there has not been any clear indication that any other felony was being attempted or perpetrated, and this section would therefore not be appropriate.

However, as enumerated in F.S. Section 782.04, if a person attempted “the unlawful killing of a human being...when perpetrated from a premeditated design to effect the death of the person killed or any human being”, then the charge of attempted first-degree murder would be appropriate. Accordingly, it would not be correct to charge the crime of Attempted Felony Murder when the defendant actually intended to kill the victim.

The standard bond for Attempted First Murder is No Bond whereas the standard bond for all degrees of Attempted Felony Murder (besides the use of a deadly weapon) is \$10,000. In several instances, a defendant has been given the ability to bond out with a \$10,000 bond (Attempted Felony Murder) when the A-Form narrative describes a non-bondable offense (Attempted First Degree Murder). Obviously when this happens, it's not only a poor reflection on our system, but presents a risk of harm to the public.

If you have any questions, please feel free to contact the Felony Bond Attorney (ASA Todd Bass) at (305) 547-0297 or better yet, visit bond court as a participant in our shadow program.

## RECENT CASE LAW

Mosley v. State, 27 Florida Law Weekly D1930d (1st DCA, 8/28/02) While the victim's car was stolen in one county, the defendant was arrested driving it another county 2 months later. In the county where the car was recovered, the defendant was convicted of grand theft auto and burglary of a conveyance. The defendant contested his burglary conviction, arguing improper venue, but the appellate court ruled that every time the defendant entered the victim's car to use it, he was committing a burglary, under both "unlawful entry" and "remaining in" theories.

Green v. State, 27 Florida Law Weekly D1927b (1st DCA, 8/28/02) The defendant rented a hotel room on a daily basis. On the day in question, the defendant had failed to pay for the room by check-out time and the hotel owner entered it about 4 hours later to install a "lock-out" device. While in the room, the owner saw what he believed to be crack cocaine in plain view and called the police. They responded and, being granted entry by the hotel owner, seized the cocaine and arrested the defendant. The motion to suppress was denied, on the ground that the room was no longer the defendant's by the time the owner invited the deputy inside.

Gaiter v. State, 27 Florida Law Weekly D1791b (3d DCA, 8/7/02) The attempted robbery conviction in this case was reversed. The property which the defendant was trying to take was a bicycle chained to a pole which belonged to a tenant of the victim. The landlord/victim interceded in the taking and was injured when he and the defendant fought. The court held that just because the landlord owned the real property on which the tenant's personal property was kept, that did not make him a "custodian" of the property for purposes of the robbery statute.

**\*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.**

## State Attorney's Office 2002 Training Class

As of August 12th, there are many bright, new faces at the State Attorney's Office; forty-nine potential Assistant State Attorneys, who are anxiously awaiting their Bar results! The class began training on August 12th and will continue through September 20th. As part of their orientation to the Miami-Dade County criminal justice system, they are being encouraged to accompany a law enforcement officer on a ride-along, so you may meet them before they officially begin their duties. The new hires are:

Christopher Angell  
Crystal Bembery  
Julia Bonner  
Vivian Bustillo  
Peter Butlien  
Justin Caldarone  
Raquel Campos  
Morris Carranza  
Daniel Dudis  
Andrew Edwards  
Peta-Gaye Fancy  
Paula Ferris  
Aaron Finesilver  
Gina Girardot  
Allison Gramer  
Marcus Griggs

Anthony Heary  
Justin Howard  
Thomas Jerla  
Jason Jones  
Patricia Kates  
Neil Khan  
Jason Lopez  
Miranda Lundeen  
Cristina Marinucci  
Christopher Marlowe  
Alex Martinez  
Edward Martinez  
Leah McRae  
Jason Melton  
Scott Miller  
Gabriela Ortino

Orlando Ortiz  
Heather Ravich  
Clarence Rogerts  
Ramon Sarmiento  
Samantha Schosberg  
Sara Shulevitz-Specter  
Miriam Soler  
Alex Solomiany  
Franchesco Soto  
Clarke Sturge  
Edward Tapanes  
Erinn Thompson  
Horacio Wheelock  
Robert Whittel  
Brian Williams  
Jason Wodogaza

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:**

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Sandy Roberts, SAO  
Sgt. Laura Diaz, M-DPD  
Det. Andrew Delgado, M-DPD  
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Gloria Paskiewicz, MBPD	Ray Araujo, ASA, SAO, County Court
Sgt. Laura Diaz, M-DPD	Kathleen Phang, SAO
Lt. Harry Pickering, CGPD	Trpr. Peter Gonzalez, FHP
Melinda Breidenbach, SAO	Teresa Williams, SAO
Johni Hardiman, ASA, SAO	Ergio Fernandez, SAO
Sandy Roberts, SAO	

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Denise Moon, SAO	Lt. David Evans, M-DPD, Cutler Ridge
Abbe Rifkin, ASA, SAO	Lt. Willie Hill, Pinecrest PD
Sgt. Efrén Lopez, M-DPD, Hammocks	Det. Norma Dieppa, CGPD
Chief Pat Kiel, West Miami PD	Jonathan Davidoff, ASA, SAO
Audrey Frank-Aponte, ASA, SAO	Lt. Luis Bazo, M-DPD, Northside
Susan Leah Dechovitz, ASA, SAO	Sgt. Marshall Gilreath, M-DPD
George Cholakis, ASA, SAO	Det. Ray Hoadley, M-DPD
Lt. Brian Ackerman, M-DPD, Northside	Det. Robert Garland, M-DPD
Ofcr. Carlos Arguelles, M-DPD, Hammocks	

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