

# THE RAP SHEET

Katherine Fernandez Rundle

Miami-Dade State Attorney



1 January 2007

## POLICE-PROSECUTOR COORDINATING COMMITTEE

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

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### **Summary of December 21, 2006 PPCC Meeting**

Agencies represented: Sunny Isles Beach PD, Miami-Dade Schools PD, FDABT, Miami-Dade PD, Hialeah PD, North Miami PD, Biscayne Park PD, Opa locka PD, State Attorney's Office

### **AGENDA ITEMS:**

#### Juvenile Detention:

The main topic of discussion at December's meeting was the recently decided D.M., et al. vs. Dobuler, et al., 31 Fla.L.Weekly D3052a, a Third District case decided on December 6, 2006. The main holding in the case mandates that a juvenile who is taken into custody by a law enforcement officer for a criminal violation must be provided a detention hearing within 24 hours of being detained.

While the problem the case was apparently addressing was the lack of regularly scheduled detention hearings in the Juvenile Division, there is an additional effect on how law enforcement officers must deal with juveniles they detain. And while juvenile detention hearings have been increased and are now scheduled at 9 a.m., 1:30 p.m. and 5 p.m. during the week and twice on the weekends, thereby increasing the likelihood that a juvenile will be brought for a detention hearing within the 24-hour period, officers need to be careful to accurately document arrest times, as this date and time will serve as the beginning of the 24-hour period. When writing arrest affidavits on referrals, where juveniles are not actually taken into physical custody, do *not* enter an arrest date and time; simply indicate on the arrest affidavit that the case is a "Referral". When juveniles are, in fact, taken into custody, the arrest date and time will dictate the parameters of this 24-hour period, regardless of the date and time that the juvenile is received at the JAC.

*Continued next page*

### **IMPORTANT!**

Next PPCC meeting, **Thursday, January 18, 2007, 10:00 a.m.**  
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136  
All are invited to attend

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While the case finds that a violation of this 24-hour deadline can result in a juvenile being released from detention, the court goes on to state that "...we agree with the State that the failure to provide a child with a hearing within 24 hours of being taken into custody may not justify immediate release in every case." However, no specific examples or guidelines of when release is not justified were given, so each case should be treated as one in which immediate release may be granted. The JAC needs a *minimum* of 6 hours to complete their risk assessment and transport a juvenile for a detention hearing. Special circumstances, such as a juvenile being refused at the JAC due to a medical condition, do not delay or change this 24-hour requirement. If a juvenile is admitted to a medical or mental health facility, it was suggested that the officer bring the arrest affidavit to the State Attorney's Office Juvenile Division as soon as possible.

### **ITEMS FROM THE FLOOR:**

#### **Unresolved Agenda Items:**

Kristi Bettendorf announced that in the New Year she would like to revisit any previously-raised agenda items which have not yet come to resolution. Please call her regarding any issues that you feel need to be re-addressed.

Jennifer Resko, Miami-Dade Police Department Property and Evidence Bureau, inquired into the status of some very old containers of cannabis which are, essentially, turning into mush. ASA Bettendorf will bring the matter to the attention of the Chief of the SAO Narcotics Division, David Paulus.

### **JANUARY 2007 CASE LAW**

**State vs. Green**, 31 Fla.L.Weekly D3113a (12/13/06, 2d DCA) Police officers, while patrolling an apartment complex, found a group of individuals gambling. The defendant was one of the persons arrested for gambling. In a search incident to arrest, keys to a vehicle were found in his pocket. Officers looked for the car the keys went to and, when they located it, shined a flashlight inside and observed a razor blade with what appeared to be cocaine residue on it on the center console. They opened the car with the defendant's keys and seized cocaine, cannabis and paraphernalia.

The trial court suppressed the narcotics found, holding that the police were required to obtain a warrant before entering the car because there was no exigent circumstance involved. This court held, however, that because the officers had probable cause to believe that there was contraband in the vehicle (because they saw it), a warrant was not required. In addition, they went on to discuss the line of United States Supreme Court cases that have ruled on **searches of cars and exigent circumstances** and ruled that exigent circumstances do not have to exist in cases such as this where probable cause exists to search the vehicle.

**Davis v. State**, 31 Fla.L.Weekly D3165e (12/18/06, 1<sup>st</sup> DCA) **When does an encounter become a stop?** This question is addressed in this case where the defendant was a passenger in a vehicle stopped for a traffic violation. The driver of the vehicle provided his license and the rental papers to the vehicle and all were in order. Yet, the deputy asked the driver if he had anything illegal in the car, to which the driver responded no. The driver was asked for consent to search the car, which he gave. The deputy then approached the passenger side, asked the defendant to step out so he could search the car and asked him to place his hands on the top of the car. When he did so, the deputy asked the defendant if he had anything illegal on his person, to which the defendant responded no. The deputy then asked for the defendant's consent to conduct a search, which the defendant gave. During the frisk, a bag containing cannabis fell out of the defendant's pant leg.

In the trial court the State argued that this was an encounter, not a search, because the deputy was *requesting* the defendant to do these things, not ordering him. The First District disagreed with this ruling and suppressed the evidence, thereby reversing the defendant's conviction. The court held that having the defendant get out of the car and put his hands on the roof of the car was a seizure, not an encounter. The court also held that there was neither reasonable suspicion nor probable cause for this seizure and that it was, therefore, illegal. Citing to a Florida Supreme Court case, the court stated that "when consent is obtained after illegal police activity such as an illegal search or arrest, the unlawful police action presumptively taints and renders involuntary any consent to search. The consent will be held voluntary only if there is clear and convincing proof of an unequivocal break in the chain of illegality sufficient to dissipate the taint of prior official illegal action." The court held that there was no such break in this case and that the consent was, therefore, involuntary.

Remember that if, after seeking a defendant's consent to search, you affirmatively advise the defendant that he or she has the right to refuse to consent to the search, that this has been held in previous cases to be a sufficient break in the chain of events so as to overcome any prior illegal police activity.

**\*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.**

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## LAW ENFORCEMENT OFFICER CONTACT INFORMATION

If for any reason you need to follow up on the handling of a criminal case in which you are involved, as a victim or as an investigator, you may speak with the Assistant State Attorney assigned to handle your case or you may contact the following supervisors:

<b>COUNTY COURT DIVISION: (Misdemeanor Crimes and DUIs – Civic Park Plaza)</b>		
Division Chief:	Deisy Rodriguez	(305) 324-2999
<b>COUNTY COURT DIVISION: (Misdemeanor Domestic Violence Crimes – Courthouse Center)</b>		
Division Chief:	Manny Segarra	(305) 349-5868
<b>JUVENILE DIVISION:</b>		
Division Chief:	Leon Botkin	(305) 637-1371
Chief of Litigation:	Shana Belyeu	(305) 637-1382

In addition, each judge's division is supervised by a division chief; call the main number (305-637-1300) and ask for the division chief for the judge your case is scheduled before.

### Felony Division:

Each judge's division is supervised by a division chief; call the main number (305-547-0100) and ask for the division chief for the judge your case is scheduled before. In addition, Chief Assistants supervise the felony divisions and the specialized units. They are:

<b>JUDGES: Pereyra-Shuminer, Young, Ward, Schwartz, Diaz, Dresnick, Soto, Perez and Tunis PUBLIC CORRUPTION, ORGANIZED CRIME, NARCOTICS and GANGS</b>		
Jose Arrojo		(305) 547-0309
<b>JUDGES: Prescott, Schlesinger, Adrien, Scola, Pineiro and Leban SEXUAL BATTERY and TRAFFIC HOMICIDE</b>		
Kathleen Hoague		(305) 547-0522
<b>DOMESTIC CRIMES UNIT, COUNTY COURT</b>		
Don Horn		(305) 547-0564
<b>JUDGES: Reyes, Thomas, Arces, Firtel, Freeman and Murphy ECONOMIC CRIMES, CYBER CRIMES</b>		
Howard Pohl		(305) 547-0523
<b>CAREER CRIMINAL/ROBBERY, JUVENILE</b>		
Chet Zerlin		(305) 547-0858
<b>For questions involving cases being handled by the FELONY SCREENING UNIT:</b>		
Division Chief:	Joe Robinson	(305) 547-0220
Assistant Chiefs:	Michael Strozier and Wayne Adams	(305) 547-0220
<b>For questions involving cases being handled by the CRIMINAL INTAKE DIVISION:</b>		
Division Chief:	Marie Jo Toussaint	(305) 547-0255
<b>And if you're not really sure who you need to call, you can contact:</b>		
Kristi Bettendorf		(305) 547-0220

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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Det. Paul Manzella, SIBPD Lt. Efren Lopez, M-DPD

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Sandy Roberts, SAO Major Kathy Katerman, NMBPD  
Manny Segarra, ASA, SAO Oliver Spicer, Jr., M-DPD  
Gloria Paskiewicz, MBPD Ray Araujo, ASA, SAO, County Court

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Lt. Efren Lopez, M-DPD, City of Doral Det. Norma Dieppa, CGPD  
Susan Leah Dechovitz, ASA, SAO Ofcr. Nelson Delgado, VGPD  
Audrey Frank-Aponte, ASA, SAO Lt. Marshall Gilreath, M-DPD  
Lt. William Riley, MBPD Sgt. Danny Formosa, Coral Gables PD  
Sgt. Carlos Arguelles, M-DPD, City of Doral  
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Sgt. Paul Marcus, MBPD Lt. Walter Campbell, MBPD  
Lt. Howard Ostlund, M-DPD, JAC

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### ROLL CALL/RIDE-ALONG SUBCOMMITTEE

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