

The Rap Sheet

KATHERINE FERNANDEZ RUNDLE

MIAMI-DADE STATE ATTORNEY



1 September 2008

POLICE-PROSECUTOR COORDINATING COMMITTEE

Steering Committee:

Kristi Bettendorf, ASA, Chair
State Attorney's Office
(305) 547-0220

e-mail:

KristiBettendorf@MiamiSAO.com

José Arrojo, Chief ASA
State Attorney's Office
(305) 547-0309

e-mail: JoseArrojo@MiamiSAO.com

Naim R. Erched, Assistant Director
Police Services
Miami-Dade Police Department
(305) 471-2625

e-mail: nerched@mdpd.com

Frank Ledee, ASA
State Attorney's Office
(305) 547-0853

e-mail: FrankLedee@MiamiSAO.com

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

e-mail: mikegrand@mindspring.com

Betty Tarre, SAO
Recording Secretary

e-mail: BettyTarre@MiamiSAO.com

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

IN THIS ISSUE:

PAGE

Case Law	2
New Laws Effective October 1, 2008	2, 3
PPCC Sub-Committees	4

Police-Prosecutor Coordinating Committee Meeting Thursday, September 18, 2008 10:00 a.m.

State Attorney's Office
4th Floor Training Room

Agenda Items:

Legislative Update 2008

An overview of New and Amended Laws
Passed during the 2008 Legislative Session

Obtaining Evidence from Computers And Computer Media

(including cell phones and digital cameras)

* What types of evidence can be found? *

* Legal Issues *

Information regarding FREE computer investigation

Courses available to law enforcement

IMPORTANT!

Next PPCC meeting, **Thursday, September 18, 2008, 10:00 a.m.**

State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136

All are invited to attend

CASE LAW

Reynolds v. State, 33 FLW D1043a (3d DCA, 4/16/08) The Third DCA reversed the defendant's conviction for trafficking in marijuana, ruling that the state had failed to prove that the defendant was in **actual** or **constructive possession** of the marijuana. During an investigation at a warehouse, dogs alerted to the presence of drugs in shrink-wrapped cardboard barrels. After obtaining a warrant and as agents were opening the barrels, the defendant arrived. He tried to leave the premises, but was arrested. When questioned, the defendant said that he realized that he was probably involved in something illegal because of the secrecy and the cash involved, but that his knowledge of what was actually in the barrels was speculation. These remarks were documented in a contemporaneous report. Another report, written over a year later, stated that the defendant said yes when asked if he knew there were drugs in the barrels. [The facts in the case don't mention what connection, if any, the defendant had to the warehouse premises where the barrels were found.] The court stated that since the barrels were not within "ready reach" of the defendant, then they were not in his actual possession. Proof of constructive possession of narcotics must show that the defendant knew of the presence of the contraband and was able to exercise dominion and control over it. The court found that this burden of proof had not been met: the marijuana could not be seen or smelled in the shrink-wrapped barrels, the barrels (or their contents) were not fingerprinted to show that the defendant had even handled them, and he exercised no dominion or control over them. It is apparent that the court rejected the contents of the police report written a year after the fact, particularly when the agent testified that "everything noteworthy" was in the first report.

Napoleon v. State, 33 Fla.L.Weekly D1678a (1st DCA) A deputy **stopped** a vehicle for **traffic** infractions. Once the vehicle was stopped, the deputy made observations of the occupants of the vehicle (5 people including this defendant), which led him to believe that they may be gang members and he knew the driver dealt in narcotics. The deputy indicated that they were all extremely nervous. He called a street crimes unit for backup. When they arrived almost twenty minutes later, the deputy walked his narcotics dog around the car. The dog alerted on the car and the occupants of the car were detained. They found narcotics and this defendant also had a firearm.

The court ruled that the motion to suppress should have been granted by the trial court because there was no founded suspicion of articulable criminal activity to justify the detention that occurred in this situation. The court cites to many cases, among them a United State Supreme Court case which holds that a driver stopped for a traffic infraction, when there is no founded suspicion of criminal activity, can be detained no longer than the time it takes to write a citation (Illinois v. Caballes, 543 US 405 (2005)). The deputy in this case stated that he was going to wait for backup officers to arrive before he wrote the citation, but then never wrote one. What he did when backup arrived was have his drug dog sniff the car. The court found that this traffic stop quickly became an investigatory stop, without sufficient legal basis to support it.

***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.**

New Laws Effective October 1, 2008

Dating Violence

New subsections (11) through (15) are added to **784.046**. Subsection (11) requires law enforcement officers who are investigating an alleged incident of **dating violence** to assist the victim to obtain medical treatment if needed, advise the victim of a domestic violence center from which the victim may receive services, and provide to the victim notice of the legal rights and remedies available. FDLE is to revise the "Legal Rights and Remedies Notice to Victims" form to comply with these requirements and make the model form available for use by all law enforcement agencies throughout the state.

Continued from previous page

Subsection (12) requires a law enforcement officer to handle such an incident pursuant to the arrest policy provided in s. 901.15(7) (dealing with arrests without warrant for domestic violence). Whether an arrest is made or not, the officer shall make a written police report which clearly indicates that the alleged offense was an incident of dating violence. This report must include a description of any physical injuries observed. If the officer decides not to make an arrest or to arrest two or more parties, the report must include the officer's reason(s) for doing so. The report must include a statement that an officer has given the victim a copy of the legal rights and remedies notice. Whenever possible, the officer shall obtain a written statement from the victim and any witnesses. The law enforcement agency must, within 24 hours of receipt of the report, send a copy of this and all subsequent reports to the nearest locally certified domestic violence center. The report should exclude victim or witness statements or other materials that are part of an active criminal investigation and are exempt from disclosure under chapter 119, but must include a narrative description of the dating violence incident.

Subsection (13) states that if the officer finds probable cause that an act of dating violence has been committed, he may arrest and charge the suspected person(s). The decision to arrest does not require consent of the victim.

Subsection (14) provides that if complaints are filed by two or more parties, the officer shall evaluate each complaint separately. If the officer determines that there is probable cause to arrest two or more parties, the officer shall try to determine who was the primary aggressor. Arrest is the preferred response only with regard to the primary aggressor, and not the preferred response with regard to persons who acted reasonably to defend themselves or someone else.

Subsection (15) provides that it is a first degree misdemeanor to willfully violate a condition of pretrial release provided in 903.047 when the original arrest was for an act of dating violence. Someone arrested for such an offense shall be held until a first appearance hearing.

Theft of Copper or Other Nonferrous Metals

New section **812.145** begins by providing definitions of communications services, communications services provider, copper or other nonferrous metals, utility and utility service. It is a first degree felony when a person knowingly and intentionally takes copper or other nonferrous metals from a utility or communications services provider, thereby causing damage to the facilities of a utility or communications services provider, interrupting or interfering with utility service or communications services, or interfering with the ability of a utility or communications services provider to provide service.

The Caller ID Anti-Spoofing Act

New section **817.487** deals with telephone caller identification systems. Subsection (2) provides that a person may not enter or cause to be entered false information into a telephone caller identification system with the intent to deceive, defraud, or mislead the recipient of a call. "False information" is defined as data that misrepresents the identity of the caller to the recipient of the call or to the network itself. "Call" includes any call made over a telephone landline, a cellular phone or a voice-over-Internet protocol service. Subsection (3) provides that a person may not place a call knowing that false information was entered into the telephone caller identification system with the intent to deceive, defraud or mislead the recipient of the call. Certain exceptions apply, including caller ID blocking and law enforcement agencies. A violation of either of these subsections is a first degree misdemeanor. If a violation of either of these subsections occurs during the commission of a crime or to facilitate or further a criminal offense, then the degree of the underlying offense will be reclassified one degree higher.

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:**

Marie Jo Toussaint, ASA, SAO (305) 547-0255;
e-mail: MarieJoToussaint@MiamiSAO.com
Bart Armstrong, Police Legal Advisor
Miami-Dade P.D. (305) 471-2550
e-mail: barmstrong@mdpd.com

Committee Members:

Sandy Roberts, SAO
Det. Paul Manzella, SIBPD
Sgt. George Arango, MDPD
Sgt. Ray Santiago, UMPS
Lt. Efren Lopez, M-DPD

COMMUNICATIONS SUBCOMMITTEE**CO-CHAIRS:**

Major L. Buck, M-DPD (305) 375-5555;
e-mail: lbuck@mdpd.com
Deisy Rodriguez, ASA, SAO (305) 324-2999
DeisyRodriguez@MiamiSAO.com

Committee Members:

Lt. Gladys Amato, MPD
Sandy Roberts, SAO
Manny Segarra, ASA, SAO
Regla Dominguez, MBPD
Capt. Betty J. Fuller, M-DCR
Major Michael Mills, SMPD
Major Kathy Katerman, NMBPD
Oliver Spicer, Jr., M-DPD
Ray Araujo, ASA, SAO

CRIMES AGAINST LEOs SUBCOMMITTEE**CO-CHAIRS:**

José Arrojo, ASA, SAO (305) 547-0309;
e-mail: JoseArrojo@MiamiSAO.com
Chief Steven Steinberg, Aventura PD (305) 466-8996;
e-mail: SSteinberg@AventuraPolice.com
David Waksman, ASA, SAO (305) 547-0445;
e-mail: DavidWaksman@MiamiSAO.com
Capt. Mike Hernandez, M-DPD, (305) 375-5086
mahernandez@mdpd.com
Fran Miller, Inv., SAO, (305) 547-0669
e-mail: FranMiller@MiamiSAO.com

Committee Members:

Lt. Ralph Gracia, Hialeah PD
Lt. David Evans, M-DPD, Airport
Det. Robert Garland, M-DPD
Lt. Efren Lopez, M-DPD, City of Doral
Susan Leah Dechovitz, ASA, SAO
Audrey Frank-Aponte, ASA, SAO
Sgt. Danny Formosa, Coral Gables PD
Sgt. Carlos Arguelles, M-DPD, City of Doral
Captain Luis Bazo, M-DPD, Police Administrative Bureau
Abbe Rifkin, ASA, SAO
Lt. Willie Hill, Pinecrest PD
Ofcr. Roger Ruano, Corrections
Det. Norma Dieppa, CGPD
Ofcr. Nelson Delgado, VGPD
Sgt. Jerome Berrian Jr., MBPD
Lt. Marshall Gilreath, M-DPD

JUVENILE SUBCOMMITTEE**CO-CHAIRS:**

Leon Botkin, ASA (305) 637-1300
e-mail: LeonBotkin@MiamiSAO.com
Olanike Adebayo, M-DPD, Legal Unit
e-mail: OAdebayo@mdpd.com

Committee Members:

Capt. Ian Moffett, M-DSBPD
Ellen Skidmore, SAO

PAWNSHOP SUBCOMMITTEE**CO-CHAIRS:**

Thomas Sadler, ASA, SAO (305) 547-0877;
e-mail: ThomasSadler@MiamiSAO.com

Committee Members:

Det. Melissa Dejong, CGPD
Pat Kiel
Jonah Dickstein, ASA

DOMESTIC CRIMES SUBCOMMITTEE**CO-CHAIRS:**

Leah Klein, ASA, SAO (305) 547-0132;
e-mail LeahKlein@MiamiSAO.com
Major Michael A. Herrera, M-DPD (305) 305-418-7200
e-mail mherrera@mdpd.com

Committee Members:

Carrie Soubal, SAO
Sgt. Jed Burger, Domestic Crimes Unit, MBPD
Sarah Poux, MBPD

RAP SHEET SUBCOMMITTEE**CO-CHAIRS:**

Kristi Bettendorf, ASA, SAO (305) 547-0220
e-mail: KristiBettendorf@MiamiSAO.com

Committee Members:

Sandy Roberts, SAO
Ed Griffith, SAO
Betty Tarre, SAO

ROLL CALL/RIDE-ALONG SUBCOMMITTEE**CO-CHAIRS:****Committee Members:**

Shana Belyeu, ASA, SAO
Audrey Frank-Aponte, ASA, SAO
Brenda Mezick, ASA, SAO

TRAINING SUBCOMMITTEE**CO-CHAIRS:**

Capt. Miguel Hernandez, M-DPD, Court Services (305) 375-5086;
e-mail: mahernandez@mdpd.com
Susan Dechovitz, ASA, SAO; 547-0309
e-mail: SusanDechovitz@MiamiSAO.com
Tom Headley, ASA, SAO; 547- 547-0186
e-mail: TomHeadley@MiamiSAO.com
Sgt. Barry Mankes, M-DPD, Intracoastal District (305) 940-9980

Committee Members:

Capt. Ian Moffett, M-DSBPD
Lt. Van Toth, Hialeah Gardens PD
Sgt. Lynnise Jones-Curry, M-DPD
Capt. Luis Bazo, M-DPD
David Waksman, ASA, SAO
Det. David Adlet, EPPD
Oliver Spicer, Jr., M-DPD
Ofcr. Chad Rosen, Surfside PD
Shana Belyeu, ASA, SAO

OPERATIONS SUBCOMMITTEE**CO-CHAIRS:**

Major Rita Banner, M-DPD, Property and Evidence Bureau,
(305) 471-2599, rbanner@mdpd.com
Major Kathy Katerman, NMBPD, (305) 948-2929,
kathy.katerman@nmbpd.org
Dreama Oliver, SAO, Administrator, Felony Operations,
(305) 547-0307, dreamaoliver@miamiSAO.com

Committee Members:

Bill Altfield, ASA, SAO
Jay Pollen, MPD

Liaison Subcommittee**CO-CHAIRS:**

Kathleen Hoague, SAO, (305) 547-0522;
e-mail: KathleenHoague@MiamiSAO.com
Maria Diaz, SAO, (305) 547-0331;
e-mail: MariaDiaz@MiamiSAO.com
Sgt. Manny Munoz, M-DPD, (305) 548-5775
U302760@mdpd.com

Current and back issues of the *Rap Sheet* are posted on the State Attorney's Office web site:

<http://www.MiamiSAO.com>

Subscribe online by sending an e-mail to: RapSheet@MiamiSAO.com