FOR THE LAW ENFORCEMENT AGENCIES OF MIAMI-DADE COUNTY

The Rap Sheet

KATHERINE FERNANDEZ RUNDLE — MIAMI-DADE STATE ATTORNEY

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POLICE-PROSECUTOR COORDINATING COMMITTEE

Steering Committee:

Marie Jo Toussaint, Deputy Chief ASA
State Attorney's Office
(305) 547-0220
e-mail: MarieJoToussaint@MiamiSAO.com

José Arrojo, Chief ASA
State Attorney's Office
(305) 547-0309
e-mail: JoseArrojo@MiamiSAO.com

Assistant Director Alfredo Ramirez, III
Miami-Dade Police Department
(305) 471-2625
e-mail: aramireziii@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: fmaas@sibfl.net

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

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Summary of the March 15th, 2017 PPCC Meeting

Agencies represented: SAO, Miami-Dade PD, City of Miami PD, Miami Beach PD, Coral Gables PD, Sunny Isles Beach PD, Homestead PD, North Miami Beach, Surfside PD, and Miami-Dade Corrections.

Agenda Items

Reminder from the Felony Screening Unit

- **Body Camera Statements** – The best practice is to take written or recorded sworn testimony from victims or witnesses. A body camera statement may not be available when needed at the pre-filing conference.
- **Cases involving homeless victims –** We have had to drop aggravated battery cases where homeless victims were seriously injured because we could not locate them. Whenever possible, do obtain sworn statements from these victims and others who are likely difficult to locate in the near future. This would allow us to file the case if appropriate and give us more time to locate them.
- **Citation requirement –** Florida law requires that citations be issued for all misdemeanor and felony traffic violations as well as for other charges that mandate a license suspension or revocation. When you have a felony case that includes this type of charge, bring a copy of the citation with you to the pre-filing conference.

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IMPORTANT!

Next PPCC Meeting, **Wednesday, May 17, 2017 at 2:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

Presentation by County Court Chief Suzanne Jackson

- **Disorderly Conduct**
  - Disorderly conduct requires that a person unlawfully commit an act that was of a nature to corrupt the public morals, outrage the sense of public decency, and/or affect the peace and quiet of persons who might witness it. Words alone generally do not constitute disorderly conduct. Only fighting words or words like "fire" shouted in a crowded room constitute disorderly conduct. Disorderly conduct requires more than just words alone. Mutual combatants brawling would constitute disorderly conduct. If an officer witnesses multiple people fighting but cannot determine whether it was consensual or not, it would be prudent to charge both with disorderly conduct.
- **Disorderly Intoxication**
  - Disorderly intoxication requires that the State prove that a person was (1) intoxicated or drinking any alcoholic beverage in a public place, (2) and endangered the safety of another's person or property or caused a public disturbance. Intoxication means more than merely being under the influence of an alcoholic beverage. A person must have been so affected from drinking as to have lost or been deprived of his normal faculties. Disorderly intoxication is essentially disorderly conduct where the defendant is intoxicated.
- **Loitering and Prowling**
  - Loitering and Prowling requires that the state prove that (1) the defendant loitered or prowled in a place, at a time, or in a manner not usual for law-abiding individuals and (2) such loitering and prowling was under circumstances that warranted justifiable and reasonable alarm or immediate concern for safety of persons or property in the vicinity. An officer must allow the defendant to dispel the alarm. Officers must personally witness the loitering and prowling. While the circumstances that may be considered in determining whether such alarm or immediate concern is warranted includes: taking flight upon appearance of a law enforcement officer, refusing to identify himself/herself, manifestly endeavoring to conceal himself/herself or any object, these circumstances do not by themselves constitute loitering and prowling. For example, an officer watching a person hide behind a trash can is not by itself loitering and prowling. A good example of loitering and prowling is when an officer witnesses a person in a parking lot attempting to open door handles on multiple cars and flees upon the officer approaching. In this example, one should consider the time and place of when these actions occur.

Presentation of ASA Todd Bass, Chief, Juvenile Division

- **Juvenile Referrals:**
  - There are no referrals of juveniles whereby the juvenile is not arrested and Arrest Forms are either mailed to the Juvenile Division of the State Attorney's Office or are entered into the Automated A-Form system (hereinafter AFM). The only exception to this is in the rare case where the police officer is required to witness certain misdemeanors in order to arrest and the officer did not witness the crime. In all other cases, juveniles should be arrested and processed at the Juvenile Assessment Center (hereinafter JAC). This is actually a benefit for the juvenile since this will allow eligible juveniles to be considered for a diversion program. By not processing the juvenile at the JAC, the diversion process is bypassed and the SAO is forced to file a petition in court. Also, processing the juvenile at the JAC permits the fingerprints of the juvenile to be entered into the AFIS System.
- **Civil Citation Referrals**
  - If a juvenile is being referred to the Civil Citation Program (only on eligible misdemeanors), the police officer can either process the juvenile at the JAC or do the appropriate paperwork which includes entering the civil citation form, release agreement, and then entering the Arrest Form in the AFM and uploading the aforementioned forms in the AFM. In these cases, the Arrest Form is only filed with the clerk's office when the juvenile is unsuccessful in the Civil Citation Program. These cases are considered non-arrests and there should not be any evidence of these crimes in the system. If the juvenile successful
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  - completes the program, the juvenile can claim that he or she was not arrested for this crime. We discussed incidents where certain police agencies are entering these crimes in their police agency systems and are reporting the juvenile as having been arrested even upon the juvenile successfully completing the program. This is penalizing the juvenile since in reality an arrest was not made and the juvenile who represents that he/she was not arrested appears to be misrepresenting the truth. We have sent this issue to the Juvenile Subcommittee of the Police-Prosecutor Coordinating Committee to address this concern and hopefully develop a solution to resolve it.

- **Juvenile Assistance with Issues**
  - We are happy to assist if you have any issues concerning juveniles or if you need any assistance on these cases. Please contact us at the Juvenile Division in the Children's Courthouse at 305-679-2100.

Presentation by Miami-Dade Corrections Sgt Renea Sanders

- Officers submitting multiple A-forms for a defendant at the time of booking must list one armband number on all A-forms.
- Officers submitting additional A-forms when the defendant has already been booked and is custody must list the defendant's jail booking number on the additional A-forms. In addition, the officer must notify MDCR of the pending additional A-form (s) by calling 786-263-5314 or 5312. Officers must also verify that the defendant is still in custody. A-forms submitted after a defendant has bonded out will be rejected.
- Officers must submit two A-forms if the defendant is a young adult with a juvenile pick up order. The A-form for the adult case should be submitted through the adult side of Think Stream and the juvenile A-form should be submitted through the juvenile side of Think Stream.
- Paper A-forms will only be accepted in the event of a complete system outage. An officer experiencing an outage at his/her police department must use the computer at MDCR to complete and submit an electronic a-form.
- Police Officers submitting a misdemeanor crime or traffic A-form when a defendant is also being charged with a probation violation pursuant to Florida Statutes 948.061 must submit two A-forms, one for the misdemeanor charges and another one for the probation violation. This will prevent a new felony case being generated in error.

Automated A-Forms - Compliance for March 2017 was 98.39% and overall was 96.36%.

Case Law discussed

Next PPCC Meeting – May 17th, 2017

Recent Case Law by Criminal Intake ASA Roberto Fiallo

Miranda warnings need not be administered twice.

Day v. State, --- So.3d ---, (Fla. 4th DCA 2017), 42 Fla. L. Weekly D819a

The subject voluntarily went to the police station to speak to a detective regarding injuries to his child. The subject was not under arrest, but the detective administered Miranda warnings, and the subject agreed to speak with the detective without an attorney. The questioning lasted for several hours, and the subject made enough incriminating statements to create a reasonable belief (probable cause) that he had done something to harm his child. Subsequent to arrest and filing of charges, the subject moved to suppress the statements made to the police. The subject argued that even though he was not in custody during the initial questioning, after the interrogation became "confrontational and accusatory" it was the equivalent of being in custody, which required the detective to re-administer Miranda. The appeal court upheld the trial court's denial of the motion.

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Miranda warnings allow a defendant to make an intelligent and knowing waiver of the right to counsel before speaking to the police. The record supported the trial court's conclusion that the subject freely and voluntarily waived his Miranda rights, and that the waiver was effective even after the questioning became accusatory. The court commented, "To agree with the defendant's argument would be to place law enforcement in an impossible position. If given too early, before custody began, Miranda warnings would be ineffective; if given too late, a constitutional violation would arise. Where the police administer warnings at the beginning of a non-custodial interview, it is unrealistic for the law to require them to determine the magical moment when custody commences, such that the warnings must be given again."

Subject voluntary waived his rights when he reinitiated communication with detective

Simon v. State, --- So.3d ---, (Fla. 4th DCA 2017), 42 Fla. L. Weekly D823a

The subject was arrested (first degree murder as a principal) and the detective administered Miranda warnings, and the subject requested a lawyer. The detective prepared to leave the office and advised the subject he would be taking his property. The subject asked about his girlfriend, and the detective answered that he was talking to her, and that she was with the subject when the crime occured. The subject then began to talk and ask questions to the detective, who reminded him he had invoked his rights. The detective asked the defendant, "…do you want me to answer that?", and the defendant answered yes, that he wanted to talk about his "…point of view". The subject subsequently gave the detective information regarding the murder. In court, the subject moved to suppress his statements, arguing that he had invoked his Miranda rights. The court denied the motion, holding that the subject had voluntarily reinitiated communication with the detective. Factually, the detective did not ask questions to wear down the subject's resistance or urge him to change his mind. The subject reengaged the detective and volunteered the information, even though the detective continued to remind him of his ability to invoke. In this case there was video footage of the encounter, which provided evidence of what had occurred, and the subject's initiation of further discussion.

Subject's barehanded punching of an unconscious, seated victim was "imminently dangerous" conduct within the meaning of §784.04(2).

Starks v. State, --- So.3d ---, (Fla. 2nd DCA 2017), 2017 WL 1067815

The subject and the victim were at a party, when the subject mistook the victim for someone else and became hostile. During the course of the evening, the subject wanted to escalate the incident to a physical confrontation, and the victim declined. Ultimately while the victim who had been drinking and was seated in a chair, incoherent, the subject punched him and the victim lost consciousness. As other guests tried to intervene, the subject then punched the victim six to twelve times in the head, even though the victim was unconscious. The victim was transported to the hospital, where he subsequently died. The cause of death was blunt trauma to the head and neck, and the manner was determined to be homicide. The subject was arrested and charged with second degree murder. At the conclusion of the state's case, the subject moved for a judgment of acquittal, arguing that the state had failed to prove that the subject's actions the night of the incident were "imminently dangerous", and that he could not be convicted of murder for the act of "punching". The trial court denied the motion, and the subject was convicted of second degree murder. The subject appealed the trial courts denial of his motion.

The court held that for an act to be "imminently dangerous" and sustain a conviction for second degree murder, the question was whether a person of ordinary judgment would know that the conduct was reasonably certain to kill or do serious bodily injury. The court further held that the state had presented sufficient evidence that a reasonable person in the subject's position, would know that repeated punches, to a defenseless, limp victim in the face and head was reasonably certain to kill or do serious bodily injury. There was substantial, competent evidence that the subject's actions were "imminently dangerous". The conviction was affirmed.

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.

All PPCC Subcommittees, 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
Ivonne V. Duran, Police Legal Bureau
Miami-Dade P.D. (305) 471-2561
e-mail: ivduran@mdpd.com
Committee Members:
Det. Paul Manzella, SIBPD
Det. Thomas m.Carrigan, UMPD
Lt. Dawn Colon, M-DPD

COMMUNICATIONS SUBCOMMITTEE
CO-CHAIRS:
Lt. Dawn Colon, M-DPD, (786) 469-3675;
e-mail: dmcolon@mdpd.com

Committee Members:
Lt. Gladys Amato, MPD
Major Michael Mills, SMPD
Capt. Janet Gray, M-DCR
Capt. Richard Rand, NMBPD
Ray Araujo, ASA, SAO
Oliver Spicer, Jr., M-DPD
Det. James Moore, NMBPD

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

Committee Members:
Lt. Lazaro Artime, Hialeah PD
Abbe Rifkin, ASA, SAO
Audrey Frank-Aponte, ASA, SAO
Lt. Derrick Bowman, Pinecrest PD
Lori Fredline, MBPD
Ofcr. Nelson Delgado, VGPD
Ofc. Alexander Martinez, Corrections
Sgt. Jerome Berrian Jr., MBPD
Sgt. Henry Guzman, SMPD
Sgt. Jose Diez, MPD
Sgt. Carlos Arguelles, M-DPD
Lt. Dawn Colon, M-DPD
Richard Adams, M-DPD

JUVENILE SUBCOMMITTEE
CO-CHAIRS:
Todd Bass, ASA, SAO (305) 637-1300
e-mail: Todd Bass@MiamiSAO.com
Det. Antonio Miguelez, CGPD (305) 460-5636
e-mail: amiguelezn@coralgables.com

Committee Members:
Chief Ian Moffett, MDSPD
Ellen Skidmore, SAO
Sgt.Timothy Houser, MBPD

PAWNSHOP SUBCOMMITTEE
CO-CHAIRS:
Det. Janesse Soto, CGPD
e-mail: jsoto@coralgables.com

Committee Members:
Det. Antonio Miguelez, CGPD
Pat Kiel

DOMESTIC CRIMES SUBCOMMITTEE
CO-CHAIRS:
Scott Dunn, ASA, SAO (305) 547-0132;
e-mail: ScottDunn@MiamiSAO.com
Capt. Tyrone White, M-DPD, (305) 715-3300
e-mail:TWhite@mdpd.com

Committee Members:
Carrie Soubal, SAO
Sarah Poux, MBPD

RAP SHEET SUBCOMMITTEE
CO-CHAIRS:
Marie Jo Toussaint, ASA, SAO (305) 547-0220
e-mail: MarieJoToussaint@MiamiSAO.com
Committee Members:
Ed Griffith, SAO

TRAINING SUBCOMMITTEE
CO-CHAIRS:
Natalie Moore, ASA, SAO; 547- 547-0307
e-mail: TomHeadley@MiamiSAO.com

Committee Members:
Chief Ian Moffett, MDSPD
Det. David Adlet, EPPD
Chief Van Toth, Hialeah Gardens PD
Oliver Spicer, Jr., M-DPD
Lt. Sergio Alvarez, M-DPD
Barry Mankes
Ofcr. Alexander Martinez, Corrections
Lt. R. Rodriguez, SMPD

OPERATIONS SUBCOMMITTEE
CO-CHAIRS:
Captain Richard Rand, NMBPD, (305) 948-2929,
Richard.rand@nmbpd.org
Dreama Oliver, SAO, Administrator, Felony Operations,
(305) 547-0307, dreamaoliver@miamiSAO.com

Committee Members:
Jay Pollen, MPD

LIAISON SUBCOMMITTEE
CO-CHAIRS:
Kathleen Hoague, ASA, SAO, (305) 547-0522;
e-mail: KathleenHoague@MiamiSAO.com
Maria Diaz, SAO, (305) 547-0331;
e-mail: MariaDiaz@MiamiSAO.com
Lt. Dawn Colon, M-DPD, (786) 469-3675;
e-mail: dmcolon@mdpd.com

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