

# The Rap Sheet

KATHERINE FERNANDEZ RUNDLE

MIAMI-DADE STATE ATTORNEY



December 2013

## POLICE-PROSECUTOR COORDINATING COMMITTEE

### Steering Committee:

Marie Jo Toussaint, ASA, Chair  
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 Randy Heller  
Miami-Dade Police Department  
(305) 471-2625  
e-mail: rheller@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](mailto:fmaas@sibfl.net)

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

### IN THIS ISSUE:

### PAGE

Meeting Summary .....	1-2
Case Law .....	3-5
PPCC Subcommittees.....	6

*The SAO Family wishes you and your family a Joyous Holiday Season and a Happy New Year!!!!*



### Summary of PPCC Meeting November 20, 2013

**Agencies represented:** SAO, MDPD, Coral Gables PD, Miami Beach PD, Surfside PD, Hialeah PD, Aventura PD, Sunny Isles Beach PD, Pinecrest PD, University of Miami PD, Fish and Wildlife Commission and FDLE.

#### Agenda Items:

#### Issues involving felony arrest affidavits

ASA Nessa Manten discussed the problems she encounters at Bond Hearings when felony arrest affidavits are deficient. She explained that in probable cause arrests where a defendant is in custody, a probable cause determination has to be made by the bond hearing judge within 48 hours of the arrest. Consequently, the sworn narrative portion of the arrest affidavit must include all the elements of the crime charged. When probable cause is not found, the arresting officer must appear for a probable cause hearing. Despite what one would hope, expect the defendant to be released on his own recognizance if the arrest affidavit does not contain all the elements of the crime charged and the arresting officer does not appear for the probable cause hearing.

*Continued on next page*

### IMPORTANT!

Next PPCC meeting, **Wednesday, December 18, 2013 at 2:00 p.m.**

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

All are invited to attend

*Continued from previous page*

### **10 Helpful Hints when drafting Arrest Affidavits**

- The following when applicable must always be included in the sworn narrative portion of an arrest affidavit if it is an element of the crime: the weight of narcotics, age of victim, prior convictions, value of property taken or amount of damage.
- In cases involving DNA or fingerprint hits, it is important to indicate specifically where the DNA sample or fingerprints were found, to support the nexus to the defendant
- In cases involving constructive possession of contraband, indicate the defendant's relationship to the location, i.e. defendant's house, car and/or room, etc.. and where the contraband is found in relation to the physical location of the defendant.
- In domestic violence cases where battery by strangulation is charged there must be an indication that the victim's breathing was obstructed.
- In cases where battery on a pregnant victim is charged, indicate whether the defendant has knowledge of the victim's pregnancy and/or whether the victim is visibly pregnant.
- In auto theft cases, indicate whether the stolen vehicle was key driven or if there was any indicia of theft, i.e. broken steering column, popped ignition, etc...
- Check box for Nebbia in all drug trafficking cases and when otherwise appropriate (whenever there is a nexus between the crime and money that could be used to post bond e.g. mortgage fraud, theft, embezzlement, drug sales etc.).
- Make sure that the statute number and statement of the charges match.
- Make sure the narrative contains facts not conclusions.

### **Search Warrants**

We continued our discussion on warrants. Municipal officers cannot execute a warrant outside their jurisdiction unless their department has signed a Mutual Aid Agreement with Miami-Dade Police Department. This agreement allows the municipal officer to make arrests and/or to execute search warrants within the territorial limits of municipalities that are signatories to the Agreement and in areas in which the Miami-Dade Police Department has law enforcement jurisdiction.

### **Issues involving the E-notify system**

The E-notify system works best when an officer's schedule is kept updated. Many times, officers who call to schedule a pre-filing conference (PFC) provide a schedule that is different from the schedule listed on E-Notify. We have no way of verifying this information. This can result in officers' Pre-Filing Conferences being set during off duty hours. In addition, the E-Notify system reporting functions are very much underutilized. For accountability purposes, police managers are encouraged to review those reports that indicate whether an officer failed to call to schedule for a pre-filing conference or failed appear at a scheduled pre-filing conference or fail to check in for a pre-filing conference.

### **State of Florida is not a victim**

It is improper to list the State of Florida as a victim in a victimless crime. List only the essential witnesses, i.e. officers and civilians, if any.

**The next PPCC meeting will be held on Wednesday, December 18, 2013 at 2:00 p.m.**

## **Recent Case Law**

Compiled by Felony Screening Unit Assistant Chief Wayne Adams

**Hoepfner-Parry v. State, 5<sup>th</sup> District  
38 Fla.L. Weekly D2580a  
Opinion Filed December 6, 2013**

The defendant was arrested on March 19, 2013. He filed a motion to set a bond which the court denied on April 10, 2013. During this time the defendant remained in custody. On April 19, 2013 the State finally filed an information with five felonies. This was thirty days after the arrest. After the information was filed the defendant moved for an Adversary Preliminary Hearing pursuant to Florida Rule of Criminal Procedure 3.133(b)(1) which provides:

(b) Adversary Preliminary Hearing

(1) When Applicable. A defendant who is not charged in an information or indictment within 21 days from the date of arrest or service of *capias* on him or her shall have a right an adversary preliminary hearing on any felony charge then pending against the defendant. The subsequent filing of an information or indictment shall not eliminate a defendant's entitlement to this proceeding.

The trial denied the motion and an appeal followed. The 5th District Court of Appeal reversed the trial court's denial holding that under a clear reading of the rule the defendant had a right o an Adversary Preliminary Hearing as long as the defendant hasn't been formally charged by indictment or information within 21 days from the date of arrest.

An Adversary Preliminary Hearing is a somewhat involved affair typically requiring the appearance before the court by the State's main witnesses and under some circumstances production of physical evidence to satisfy the court that probable cause existed for the arrest. Therefore it is clear that every effort should be made by arresting officers to be sure that all necessary evidence is marshaled and presented to the State Attorney's Office within 21 days after a defendant's arrest so that a filing decision can be made within 21 days whenever possible. If the charges are filed after 21 days, an Adversary Preliminary Hearing is required if the defendant requests one.

**State v. Thomas  
38 Fla. L. Weekly D2540a  
Opinion Filed December 4, 2013**

In this case a detective received an anonymous tip that the defendant was growing cannabis in his back yard. In addition, the tipster said that the defendant sold cannabis from his car and the residence. The detective did surveillance of the defendant's residence from the ground but could not verify whether or not cannabis was being grown in the backyard because of an 8 foot high privacy fence. The detective then did an aerial surveillance. He could not see any evidence of cannabis growing in the yard from the aerial surveillance but he did see that the privacy fence was lined on the inside with a green fabric. The detective then did two trash pulls from the defendant's garbage bins. They were conducted a week apart. In the pulls there were cannabis leaves and stems as well as burnt cannabis cigarettes in addition to pill bottles with the defendant's name. The detective applied for a search warrant and in the affidavit he stated that the privacy fence was lined on the inside and he described the contraband found in the trash pulls. He also indicated that the defendant had prior convictions for drug related offenses. He did not however, indicate in the affidavit that during the aerial surveillance he saw no evidence of cannabis growing in the back yard. A magistrate issued the search warrant. The defense moved to suppress the evidence seized as a result of the search arguing that the detective omitted a material fact in the search warrant application, namely that he saw no evidence of cannabis growing in the yard from the aerial surveillance. The trial court granted the motion and the State appealed. The appeals court held that even if the search warrant affidavit had included information that there was no evidence of cannabis growing in the backyard, the other facts would have been sufficient to establish probable cause to issue the warrant. First, there was cannabis discovered in the trash on two occasions. This is sufficient to establish that there was a pattern of continuous drug activity. Next there was an eight foot high privacy fenced lined with green fabric on the inside. Finally the defendant had numerous prior drug convictions. The court found that not only would the fact that there was no evidence of cannabis growing in the backyard as gleaned from an aerial surveillance not have defeated a finding of probable cause to issue the warrant, there was no evidence that the omission resulted from intentional misconduct or reckless conduct that amounts to deception. The trial court's decision was reversed.

*Continued on next page*

*Continued from previous page*

**Thomas vs. State, 1st District  
38 Fla. L. Weekly D2432a  
Opinion Filed November 20, 2013**

A woman was raped and reported to police that the rapist stole her purse containing her cell phone. The police utilizing a tracking device for the cell phone tracked the cell phone to a particular apartment. Three police officers went to the door and knocked on the door. A female occupant of the apartment who was later identified as the defendant's girlfriend opened the door. The officers asked her if they could come inside the apartment and look for a cellphone. The girlfriend asked if they had a warrant and when they said no she told them to come back with a warrant and tried to close the door. At this point an officer put his foot in the door preventing it from closing and took the girlfriend outside. They then entered the apartment. They located the defendant inside the apartment along with the victim's cell phone and a purse. The girlfriend then consented to the search of the apartment and the police recovered other items. Prior to the defendant's trial on charges of sexual battery and petit theft the defense filed a motion with the trial court to suppress the evidence seized as a result of the search based on the grounds that the search was illegal. The trial court denied the motion on the ruling that the police had a reasonable concern that there might be other people in the apartment who posed a threat to the officer's safety and therefore entry to conduct a "protective sweep" was not illegal. Moreover, the defendant's girlfriend gave consent. Finally, even assuming the initial entry was illegal, there was a break in the chain of events leading to the consent. The items seized during the search along with statements the defendant made after being taken into custody was introduced into evidence in the defendant's trial. The defendant was subsequently convicted. The defense appealed the trial courts denial of the motion to suppress. As for the claim that there were exigent circumstances, the appeals court held that there was no evidence that any suspect in the apartment would escape and there was no evidence in the apartment that would be destroyed. Testimony during the motion to suppress that a cell phone could be flushed down the toilet was not persuasive to the appeals court. In addition, the appeals court found that the consent given by the defendant's girlfriend was given only after illegal entry into the apartment therefore was tainted and involuntary unless there was clear and convincing proof that it was not. The case was remanded to the trial court for a new trial sans the suppressible evidence.

**Ramsey v. State, 1st District  
38 Fla.L. Weekly D2321a  
Opinion Filed November 6, 2013**

The defendant was charged with and convicted of conspiracy to commit theft of copper in violation of section 812. 145(2) Florida Statutes (2011) which reads:

A person who 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, commits a felony of the first degree.

The undisputed facts are that the defendant and another individual cut a hole in the locked fence surrounding an electric power substation, entered the grounds through the hole and then attempted to remove a spool of cooper wire. The wire was not connected to any power equipment. They were caught before they could remove the copper. The defendant claims that in order for him to be guilty of this crime it must be proven that the taking of the copper itself caused damage to the facility.

The State argued that as long as there was damage done to the facility during the taking the statute had been violated. The trial court agreed with the State's interpretation and an appeal followed. The appeals court held that if they agreed with the defendant's interpretation of the statute even a person driving a bulldozer through the substation's security fencing to get to a copper spool would not be guilty of violating this statute as long as long as there was no damage in the moving of the spool of copper. Finding such a result "absurd" they confirmed the defendant's conviction.

**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  
Lt. Efrén Lopez, M-DPD  
Det. Octavia Bridges, UMPD

**COMMUNICATIONS SUBCOMMITTEE****CO-CHAIRS:**

Lt. J. C. Rodriguez, M-DPD, (305) 548-5774;  
e-mail: jcrodriguez@mdpd.com

**Committee Members:**

Lt. Gladys Amato, MPD  
Capt. Wendy Mayes-Sears, M-DCR  
Regla Dominguez, MBPD  
Ray Araujo, ASA, SAO  
Major Michael Mills, SMPD  
Major Kathy Katerman, NMBPD  
Oliver Spicer, Jr., M-DPD

**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  
Det. Robert Garland, M-DPD  
Susan Leah Dechovitz, ASA, SAO  
Audrey Frank-Aponte, ASA, SAO  
Regla Dominguez, MBPD  
Ofc. Alexander Martinez, Corrections  
Rebecca Gutjahr, ASA, SAO  
Sgt. Michael Weissberg, SMPD  
Abbe Rifkin, ASA, SAO  
Lt. Willie Hill, Pinecrest PD  
Ofcr. Nelson Delgado, VCPD  
Lt. Jerome Berrian Jr., MBPD  
Sgt. Jose Diez, MPD  
Sgt. Carlos Arguelles, M-DPD  
Captain Luis Bazo, M-DPD

**JUVENILE SUBCOMMITTEE****CO-CHAIRS:**

Todd Bass, ASA (305) 637-1300  
e-mail: ToddBass@MiamiSAO.com  
Sgt. Melissa DeJong, CGPD (305) 460-5632  
e-mail: MDeJong@CoralGables.com

**Committee Members:**

Chief Ian Moffett, MDSPD  
Sgt. Mark Schoenfeld, MBPD  
Ellen Skidmore, SAO

**PAWNSHOP SUBCOMMITTEE****CO-CHAIRS:****Committee Members:**

Det. Melissa DeJong, CGPD  
Pat Kiel

**DOMESTIC CRIMES SUBCOMMITTEE****CO-CHAIRS:**

Leah Klein, ASA, SAO (305) 547-0132;  
e-mail: LeahKlein@MiamiSAO.com  
Capt. Janna Bolinger-Heller, M-DPD, (305) 418-7218  
e-mail: jbh@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

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

Audrey Frank-Aponte, ASA, SAO  
Brenda Mezick, ASA, SAO  
Rebecca Gutjahr, ASA, SAO

**TRAINING SUBCOMMITTEE****CO-CHAIRS:**

Susan Dechovitz, ASA, SAO; 547-0309  
e-mail: SusanDechovitz@MiamiSAO.com  
Tom Headley, ASA, SAO; 547- 547-0186  
e-mail: TomHeadley@MiamiSAO.com

**Committee Members:**

Chief Ian Moffett, MDSPD  
Chief Van Toth, Hialeah Gardens PD  
Sgt. Lynnis Jones-Curry, M-DPD  
Capt. Luis Bazo, M-DPD  
Ofcr. Alexander Martinez, Corrections  
Richard Moss, Director, Miami Dade College School of Justice  
Sgt. Michael Weissberg, SMPD  
Det. David Adlet, EPPD  
Oliver Spicer, Jr., M-DPD  
Barry Mankes

**OPERATIONS SUBCOMMITTEE****CO-CHAIRS:**

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:**

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  
Lt. J. C. Rodriguez, M-DPD, (305) 548-5774;  
e-mail: jcrodriguez@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](mailto:RapSheet@MiamiSAO.com)