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 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

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

IN THIS ISSUE: **PAGE**

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

Summary of PPCC Meeting
November 19, 2014

Agencies represented: SAO, Miami-Dade PD, City of Miami PD, Coral Gables PD, Miami Beach PD, Aventura PD, Sunny Isles Beach PD, Surfside PD, Miami Gardens PD, University of Miami PD, Doral PDFDLE, Hialeah, and Homestead PD.

Agenda Items:

Retail Theft

There are no provisions for regular theft cases in the retail theft statute, Section 812.015 which provides enhanced penalties for certain types of theft. Therefore, we will continue to use the general theft statute for all regular retail theft cases. We will be re-titling some general theft charges forms to indicate specifically that the theft was from a merchant or farmer.

Stand Your Ground Presentation

Legal Unit Division Chief Penny Brill discussed the 2014 amendments to the self-defense legislation, pertaining to SYG which is as follows:

Continued on next page

IMPORTANT!

Next PPCC meeting, **Wednesday, December 17, 2014 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

HB 89 has amended various subsections of ch. 776, the self-defense statutes to expand the use of the criminal and civil liability now present under the statutes. Sec. 776.012, has been amended to justify a person's "threat" to use force, both non-deadly and deadly force, to those situations where the person reasonably believes that such threat to use force is necessary to defend themselves or another against the other's imminent use of unlawful force A person who threatens to use non deadly force in accordance with this subsection does not have a duty to retreat. This means that if there is imminent use of non-deadly force by the "victim," then, it is irrelevant if the "defendant" is engaged in an unlawful activity, the "defendant" does not have a duty to retreat. The "defendant" is still entitled to statutory civil and criminal immunity under s. 776.032.

As to deadly force, s. 776.013(3), the Stand Your Ground provision, has been reworded so that it allows a person who is attacked in his dwelling, residence, or vehicle to not have a duty to retreat and can stand this ground and use or threaten to use force, including deadly force, if it is done in accordance with ss. 776.012 or 776.031, which allows a "defendant" to use or threaten to use deadly force when the threat from the "victim" is imminent. It also provides that there is no duty to retreat if the person is not engaged in a criminal activity (changed from unlawful activity) and is in a place where he or she has a right to be. Prior to this amendment, a person had no duty to retreat in situations where he or she "reasonably believed it was necessary" to use deadly force to prevent death or great bodily harm. It was not required for the threat to be imminent. Thus, the bill now requires the threat to be imminent. "Imminent means near at hand, mediate rather than immediate, close rather than touching." Brown v. State, 454 So. 2d 596, 599 (Fla. 5th DCA 1984) quoting Linsely v. State, 101 So. 273 (Fla. 1924). However, it also continues the repeal of the common law duty to retreat in the above situations. In reality, if the threat of death or great bodily harm was imminent, it generally meant that the person had no place to safely retreat to. Thus, this amendment could be considered a weakening of the SYG provisions.

Furthermore, because under the bill, the defendant would not have a duty to retreat if he "is not engaged in a criminal activity" and is in a place he has a right to be, the legislation changes the case law that has provided statutory immunity for a person who uses deadly force without the need to retreat, when the threat is imminent, even if the "defendant" is engaged in unlawful activity. See Pages v. Seliman-Tapia, 134 So. 3d 536 (Fla. 3d DCA 2014); Brown v. State, 135 So. 3d 1160 (Fla. 1st DCA 2014); Little v. State, 111 So. 3d 214 (Fla. 2d DCA 2013). Thus, under the amended statute, those persons who acted in self-defense by using or threatening to use deadly force when confronted with an imminent threat of death or great bodily harm, but were engaged in criminal activity, would not be able to present a self-defense claim and they would not get pretrial statutory immunity because their use of deadly-force would not be in compliance with the statutes. Depending on what the "criminal activity" was, i.e., nonviolent misdemeanors, prosecutors should use discretion in reviewing these claims of self-defense.

Because of the difference between "imminent" and "immediate" as defined above, a person who is engaged in criminal activity could still use deadly force if the threat was immediate - and there is no place to retreat to (which is often inherent in immediate).

Habitual Traffic Offender Update

A defendant can be charged with driving with an HTO revocation even if the revocation date has expired. The HTO revocation will last until the defendant's license is reinstated.

The 3rd DCA (our District) has held that a defendant who has never obtained a license can be charged with driving with an HTO revocation. Be aware that the 2nd DCA has reached a different conclusion.

A defendant who has an HTO revocation from another state cannot be charged with driving with an HTO revocation because the person's driving records are not maintained by the Florida Department of Motor Vehicles.

Case Law Discussed

Automated a-Forms

If an electronic A-Form cannot be processed and a paper A-form is used, the automated A-form must be cancelled to prevent the system from generating two separate cases.

Next PPCC meeting – Wednesday, December 17, 2014

Case Law

Costanzo v. State, 39 Fla. L. Weekly D2498a

A BSO detective was arrested and charged with several tampering related charges. The defendant's motion for judgment of acquittal on the evidence tampering count was denied. He was acquitted on two charges but convicted of tampering with evidence. He appealed on the grounds that the state had not proven this intent to tamper with or destroy evidence.

The defendant arrested a woman who in the course of being processed mentioned a then current criminal case in which she was the victim of false imprisonment by two Ft Lauderdale officers Billy Koepke and Brian Dodge. The defendant recorded the conversation on his work cellphone, sent it to Koepke and to a BSO Sgt. He also used his work computer to send the video to a Police Benevolent Association attorney. He had a conversation with the Sgt. indicating that Koepke was a buddy and that the video would help him with his case. Consequently, a search warrant was issued for the defendant's phone but the video was not found. It was later determined that the video had been deleted. The video was ultimately retrieved from Koepke's Sprint/Nextel account and the e-mail servers at the Broward Sheriff's Office and shown to the jury.

The question before the 4th DCA was whether the defendant had violated the tampering statute which requires proof of the defendant's knowledge of a pending trial, investigation or proceeding by a prosecuting attorney, law enforcement agency etc. and of the defendant's intent to destroy or alter evidence with intent to impair its verity or availability in such proceeding, trial etc..

The court cited several other cases where the mere removal of evidence was found to be insufficient to support a conviction. It found that the defendant's act of disseminating the video was inconsistent with the intent to destroy it and that in fact, there was insufficient evidence that the video was "destroyed" within the meaning of the statute. The Court went on to say that "the statute does not criminalize evidence existing in the memory of a particular electronic device particularly where such evidence resides elsewhere in the electronic ether".

The Court reversed the conviction and directed the trial court to grant the motion for judgment of acquittal.

Heien V. North Carolina ___ U.S____(2014)

This week, the U.S Supreme Court ruled in Heien v. North Carolina, that where an officer's mistake of a law is reasonable, there is reasonable suspicion to justify a stop under the Fourth Amendment

A North Carolina officer stopped Heien after observing that the defendant's vehicle had one taillight burnt out, which the officer believed was a violation of North Carolina law. The officer cited the defendant and but then became suspicious when defendant and his passenger disagreed as where they were headed. The officer obtained consent from the defendant to search the vehicle and a subsequent search revealed bags of cocaine. The defendant was arrested and charged with attempted trafficking. The trial court denied his motion to suppress on the basis that the faulty brake light provided reasonable suspicion to justify the stop but the North Carolina Court of Appeals reversed on the basis that North Carolina Law only requires a car to have a single lamp and therefore the stop was not justified. The North Carolina Supreme Court reversed the Court of Appeals' ruling, holding that even if there was no violation of law, the officer's mistake as to the law was reasonable and thus the stop was valid.

The U.S Supreme Court underlined that "it had repeatedly affirmed that the ultimate touchstone of the Fourth Amendment is "reasonableness", citing to Riley v. California, 573 U.S___ (2014). It went on to state that "the Fourth Amendment tolerates only reasonable mistakes and those mistakes-whether of fact or of law-must be objectively reasonable. The Court found that the officer's mistake was reasonable because North Carolina had two provisions pertaining to lamps which arguably could be interpreted differently.

The Court affirmed the ruling the Supreme Court of North Carolina.

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. Octavia Bridges, UMPD
Lt. Efren Lopez, M-DPD

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

Committee Members:
Lt. Gladys Amato, MPD
Major Michael Mills, SMPD
Capt. Wendy Mayes-Sears, M-DCR
Major Kathy Katerman, NMBPD
Regla Dominguez, MBPD
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

Committee Members:
Lt. Lazaro Artime, Hialeah PD
Abbe Rifkin, ASA, SAO
Det. Robert Garland, M-DPD
Lt. Willie Hill, Pinecrest PD
Susan Leah Dechovitz, ASA, SAO
Ofcr. Nelson Delgado, VGPD
Audrey Frank-Aponte, ASA, SAO
Lt. Jerome Berrian Jr., MBPD
Regla Dominguez, MBPD
Sgt. Jose Diez, MPD
Ofc. Alexander Martinez, Corrections
Sgt. Carlos Arguelles, M-DPD
Sgt. Henry Guzman, SMPD
Captain Luis Bazo, M-DPD

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

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

PAWNSHOP SUBCOMMITTEE
CO-CHAIRS:
Jason Pizzo, ASA, SAO (305) 547-0404
e-mail: JasonPizzo@MiamiSAO.com

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. Eric Garcia, M-DPD, (305) 715-3300
e-mail:elgarcia@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:
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
Det. David Adlet, EPPD
Chief Van Toth, Hialeah Gardens PD
Oliver Spicer, Jr., M-DPD
Sgt. Lynnise Jones-Curry, M-DPD
Barry Mankes
Capt. Luis Bazo, M-DPD
Ofcr. Alexander Martinez, Corrections
Lt. R. Rodriguez, SMPD

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, ASA, 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

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