FOR THE LAW ENFORCEMENT AGENCIES OF MIAMI-DADE COUNTY

The Rap Sheet

KATHERINE FERNANDEZ RUNDLE — MIAMI-DADE STATE ATTORNEY

December 2015

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**

Meeting Summary 1
Case Law 2-5
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 18th, 2015

Agencies represented: SAO, Miami-Dade PD, Miami PD, Miami Beach PD, Hialeah, North Miami PD, Coral Gables PD, Aventura PD, Pinecrest PD, Sunny Isles Beach PD, Homestead PD; Key Biscayne PD, Surfside PD, Golden Beach PD, Miami-Dade Corrections and Rehabilitation Dept., Clerk of the Court and Miami-Dade ITD.

Agenda Items

Automation System:

This meeting was devoted solely to the automation system. Representatives from Miami-Dade ITD, the Clerk's Office and Corrections addressed the following issues:

Continued on next page

IMPORTANT!

Next PPCC meeting, **Wednesday, January 20, 2016**.
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

Continued from previous page

Address – We need complete address for defendants, victims and witnesses. Defendant's address must be listed on the arrest affidavit; without an address, the Clerk's Office is unable to serve the defendant and more importantly, if that defendant has older cases, the computer will delete the address listed in each case. If the defendant is homeless or his address is unknown, check off the appropriate box and do not write homeless or address unknown on the address line. If a defendant lives under a bridge, do not list the bridge as an address, check off homeless or unknown. Do not list a party's address as an intersection, i.e., intersection of S.W. 54th and 37th Avenue. When an officer is entering an address, he/she must choose from the drop down list, for example, if a party lives at 1320 N.E. 1st Avenue, he/she will input "1320 N.E. 1st and the system will provide a list that would include: Avenue, Street, Court, Terrace, etc. from which to choose. Court subpoenas cannot be sent when addresses are incorrect, resulting in parties not appearing in court.

Names of corporate victims – For a compound name like Sports Authority, place a dash between the two words or write the compound name as one without any space between the words: "Sports-Authority" or "Sports Authority"; the system does not accept numerical names like "7 Eleven", the officer must spell the name as "Seven-Eleven".

Warrants - Warrants have different categories. For traffic warrants, select from the Traffic category list and not from other warrant categories. When this is not done, it will not be submitted to the Clerk's Office Spirit system for further processing. For traffic felonies, select from the felony category list.

Charges - This has become a major problem. We have verified that charging mistakes are the result of operator input. Officers have to scroll down until the correct charge is found. The charge line begins with the degree of the crime (felonies: F1, F2, F3 - misdemeanors M1, M2 - L for local municipal ordinance - C for county ordinance - T for traffic, the statute number, then the charge description, ie., F3…812.014 (2c) Grand theft 3rd Degree Once an officer has completed the arrest form, he/she should click on "summary" to verify that the correct charges were inputted. As we discussed previously, choosing a lesser charge may result in a defendant being released on bond for a non-bondable offense; alternatively, choosing a higher charge will result in a defendant having to pay a higher bond amount. Neither result is acceptable. Sergeants who are tasked to approve these a-forms must ensure that the appropriate charges are listed on the arrest form.

Comments: Information listed in the "Comments" section must be brief. Information listed in the arrest affidavit are not to be repeated in the "comments" section.

Hold for Magistrate – If an officer wants a defendant to be held for a magistrate, he or she must write the warrant number if there is one. If there is no warrant, the officer must write "no warrants".

Juvenile defendants – For a young adult who has a juvenile warrant, the defendant must be taken to the Juvenile Services Department first and then to TGK to be booked for the adult case. TGK will not accept a young adult with an open juvenile warrant. If a juvenile is transported to the Juvenile Services Department, do not select the REFERRAL box. The REFERRAL box should be checked when the juvenile is not taken into custody. Referral forms are submitted automatically to the SAO for processing and can't be used for booking purposes by JSD.

Continued on next page

Continued from previous page

Multiple Arrest Affidavits – Once a defendant is arrested, an armband number is issued for him/her. If he/she has multiple cases, the same armband and jail number must be listed in all the cases. When a defendant is arrested and sent to TGK, if he has additional arrest affidavits pending, the subsequent paperwork must be placed in "task" so that Corrections will know to expect additional arrest forms. If that is not done and the defendant bonds out, the additional arrest affidavits will be rejected, resulting in the defendant having to be rearrested in order to be booked. For additional information, contact Corrections at (786) 263 5312.

Deadline for full automation is January 1st, 2016 – Currently officers who complete paper arrest forms have to wait at TGK until after officers with automated arrest forms have been taken care of. Also, in some cases, Corrections staff members are assisting officers to complete their arrest forms electronically on a Corrections computer. Starting January 1st, 2016, paper arrest forms will not be accepted. Officers with paper arrest affidavits will be directed to computers on site to complete the arrest form electronically without the aid of a Corrections officer.

Case Law will be discussed at the December Meeting.

For information or concerns regarding the automated system, call Mayte Quiros at 305-596-8801.

Next PPCC meeting – Wednesday, January 20th, 2016

Recent Case Law

Compiled by Felony Screening Unit Chief Joe Robinson

R.C.R., a Child, Appellant, v. STATE OF FLORIDA, (4th Dist.)

The juvenile defendant was arrested and due to resisting arrest, he was hobbled and placed in handcuffs, in the rear of a police car. After transport to a hospital and then a juvenile assessment facility, the transporting officer found a baggie of cocaine wedged between the rear seat and the doorframe.

The deputy testified that she did not see it earlier because of the angle she was standing when she opened the door and because it was dark outside. The deputy photographed the baggie and then field-tested the substance in the bag, which tested positive for cocaine. She did not test it for fingerprints or DNA (here, this may have been fatal to a successful prosecution).

The deputy never saw Appellant with a baggie of cocaine, but she testified that the baggie was not there when she checked her vehicle at the beginning of her shift and Appellant was the only person in her patrol car that day. No one had been in the back of the car for five days prior. The deputy testified that the baggie did not belong to her."

The appellant was convicted of possession of cocaine after a bench trial. The Fourth District Court of Appeal reversed the conviction, holding the State had failed to prove actual or constructive possession by the juvenile. On appeal, the State had (curiously) argued that the juvenile was in actual possession of the cocaine. The 4th DCA brushed this argument aside quickly.

Continued on next page

Continued from previous page

As to constructive possession, the court set out the basic principles (citations omitted):

"*In regards to constructive possession, we have explained, constructive possession exists where a defendant does not have actual physical possession of contraband but knows of its presence on or about his premises and has the ability to exercise dominion and control over it. Mere proximity to contraband, standing alone, is insufficient to establish constructive possession of the substance. The state must present independent proof of the defendant's knowledge and ability to control the contraband.*

When the defendant has exclusive possession of the area where the contraband is found, "the defendant's knowledge of the contraband and ability to maintain control over it may be presumed" for purposes of constructive possession.. In the possession context, we have construed the term "exclusive" to mean "vested in one person alone."

In the case of jointly-occupied premises, the knowledge and ability to control elements will not be inferred and must be established by independent proof..

Such proof may consist either of evidence establishing that the accused had actual knowledge of the presence of the contraband, or of evidence of incriminating statements and circumstances, other than the mere location of the substance, from which a jury might lawfully infer knowledge by the accused of the presence of the contraband on the premises. Additionally, the knowledge element "may be satisfied where the contraband is found in plain view in a common area of the premises."

The 4th DCA then went on to explain why the State failed to prove constructive possession: "the first issue is thus whether Appellant had exclusive control of the area where the contraband was found. The facts are not in favor of finding exclusive control under our definition. Control of the backseat of the patrol car was not vested in Appellant alone. … While the deputy testified that she checked her vehicle the morning of her shift and the contraband was not there, there is no testimony as to when the baggie was placed in the car; and, even though no other arrestees were in the backseat during Appellant's arrest, multiple officers had access to the backseat (and specifically the area between the seat and the door jamb) during the range of potential time that the baggie could have been placed there. Additionally, the deputy was in control of her vehicle the entire time, further making Appellant's control only jointly held. Therefore, without exclusive control, the elements of knowledge and control cannot be presumed to find constructive possession.

From the evidence presented, there was no independent proof showing that Appellant ever had knowledge of the presence of the contraband. … There was no testimony that Appellant ever possessed any cocaine or that he had seen the baggie in the door jamb or that his statements otherwise indicated that he knew of its presence. To the contrary, the deputy testified that she never saw Appellant with any contraband, and Appellant testified that he was never in possession of cocaine, nor did he see any cocaine that night.

In a case where an appellate court is reviewing the sufficiency of the evidence, the standard of review is "If, after viewing the evidence in the light most favorable to the State, a rational trier of fact could find the existence of the elements of the crime beyond a reasonable doubt, sufficient evidence exists to sustain a conviction." This court set out this standard, but then seemingly ignored it, substituting their judgment and view of the evidence over the trial judge.

Continued on next page

Continued from previous page

STATE OF FLORIDA, Appellant, v. COREY JOHN CARTER, Appellee. Fifth District Court of Appeal

The 5th DCA reversed the trial court's ruling suppressing statements by the defendant in a recorded interview with a police detective. The defendant had told the detective he "should wait to talk to my public defender" but wanted to "tell the truth – the whole truth".

The interview continued: *Detective Brunner advised Carter more than once that he was not obligated to talk with her, and that she would end the interview any time he wanted. However, Carter continued to indicate that he might want to talk:*

I mean I do [want to talk], but I don't think I should. I want to, but --

Shortly following this exchange, Carter spontaneously asked whether police had found "the other guy." When Detective Brunner answered in the affirmative, Carter began to discuss the incident. Detective Brunner interrupted Carter to confirm that he wanted to proceed with the interview:

Do you wanna just let me read you your rights, and then you can decide whether or not you're gonna talk or -- or not?

After being advised of his Miranda[1] rights, Carter agreed to waive those rights and give a statement.

The 5th DCA held this to not be an unequivocal request for an attorney, and that he did not make an unequivocal or unambiguous invocation of his right to remain silent.

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. 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
Det. Robert Garland, M-DPD
Lt. Derrick Bowman, Pinecrest PD
Susan Leah Dechovitz, ASA, SAO
Ofcr. Nelson Delgado, VGPD
Audrey Frank-Aponte, ASA, SAO
Sgt. Jerome Berrian Jr., MBPD
Lori Fredline, 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
Det. James Simpson, CGPD (305) 460-5632
e-mail: jsimpson@coralgables.com

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

PAWNSHOP SUBCOMMITTEE
CO-CHAIRS:
Jason Pizzo, ASA, SAO (305) 547-0404
e-mail: JasonPizzo@MiamiSAO.com
Det. Janesse Soto, CGPD
e-mail: jsoto@coralgables.com

Committee Members:
Det. James Simpson, 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:
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. 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**