For the Law Enforcement Agencies of Miami-Dade County

The Rap Sheet

Katherine Fernandez Rundle — Miami-Dade State Attorney

1 February 2012

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

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

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At the February PPCC Meeting
We will discuss the recent
United States Supreme Court decision in

United States v. Jones

Regarding GPS Tracking Devices on Vehicles

Summary of PPCC Meeting
January 18, 2012

Agencies represented: SAO, M-DPD, M-DPD Crime Lab, Aventura PD, Miami Springs PD, Pinecrest PD, North Miami PD, Sunny Isles Beach PD, Coral Gables PD, Miami PD, Surfside PD, UM PD, Florida City PD

Agenda Items:

Emailing of *The Rap Sheet*:

Problems continue in the email delivery of *The Rap Sheet* with a couple of departments. If you have not recently received the monthly *Rap Sheet* and you had previously received them with no problem, please let Kristi Bettendorf know. As always, *The Rap Sheet* cannot be sent to an AOL email address; it will always return failure to deliver messages.

Taking Written Sworn Statements:

Officers can take written, sworn statements from victims or witnesses. When a victim's required testimony is limited in scope, officers are encouraged to ask victims to write out, and swear to under oath, the facts which support the elements of the crime. [See the section in the *Florida Law Enforcement Handbook* entitled "Elements of Offenses" regarding a few of the most frequently encountered crimes; the elements of other offenses can be found in the *Florida Standard Jury Instructions in Criminal Cases*.] Victims who are testifying only to ownership (of a burglarized home or a stolen car) and lack of permission most notably fall into this category. The value of stolen property (other than vehicles) is an important element to include, as is the dollar amount of damage caused. Victims or witnesses visiting from out of town could provide their statement as well. Certain witnesses, such as bank tellers or pawn shop clerks, routinely follow the same procedures in their work. "Form" statements can be created containing the routine procedures with blank spaces to fill in for the specific case. You may consult with the State Attorney's Office for assistance in creating these forms.

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IMPORTANT!

Next PPCC meeting, **February 15, 2012, 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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It is important that you include sufficient contact information for the victim or witness who provides such a statement. This should include home and work addresses and phone numbers, cell phone numbers or email addresses. While the written statement you obtain may provide the information needed to file a criminal case, the State Attorney's Office will want to contact these victims or witnesses as the case proceeds and good contact information is critical.

Once a witness has written their statement, you are then authorized by Florida Statute section 117.10 to administer an oath to this witness swearing to the truth of the contents of the statement. The witness should then sign the statement. Under this you can write "Sworn to me, pursuant to s. 117.10, this ___ day of _____, 20___" and then sign your name. [If you would like a sample format, Kristi Bettendorf will be happy to provide one.]

Important Details to Include in A-Form Narratives:

Missing details in A-Form narratives can cause an officer to put in added time or effort, when required to appear at a probable cause hearing or having to submit an additional affidavit on Affidavit PreFile cases. These additional demands on an officer's time can be avoided by remembering to include necessary details in A-form narratives. I asked those in the SAO who handle First Appearance (Bond) Hearings and APFs to give me examples of those areas that seem to come up with regularity; remember these necessary elements when writing A-forms:

- The value of stolen property; if not stated, the judge will only find PC for a petit theft
- The owner of stolen or burglarized property and the fact that they did not give the defendant permission to take or enter their property
- The dollar amount of damage caused by the defendant - criminal mischief can be a second degree misdemeanor (damage less than $200), a first degree misdemeanor (damage $200 or greater but less than $1,000) or a third degree felony ($1,000 or more)
- The age of the victim when the statute requires it (e.g., elderly or child victims)
- If a gun is found concealed in a vehicle, was it securely encased? Was it loaded or was there ammunition in the vehicle?
- On a curtilage burglary, how is the curtilage enclosed? Fencing? Shrubbery?
- What facts tend to show that a defendant *knew* the property was stolen?
- The posting of statutory signs on a trespass to a construction site, commercial horticultural property, an agricultural site or a domestic violence center

For purposes of screening Affidavit PreFile cases, on cases involving contraband found in vehicles we need to know if there was anyone else in the vehicle beside the defendant and whether the defendant owned the vehicle. Was the contraband visible? When traffic stops form the basis for subsequent offenses, it is better to write what the offense which led to the stop was, rather than just the citation number. Some traffic offenses require some related information to withstand legal scrutiny. An example is section 316.155 dealing with required signals when turning or changing lanes. Such signaling is only required when "any other vehicle may be affected by the movement", so we would have to know how other traffic was affected. Having an inoperable taillight is only illegal if *no* working taillights remain on one or both sides of the rear of the vehicle; if a vehicle has multiple taillights, only two (one on each side) need be working (s. 316.221).

Issues from the Floor:

Investigative Cost Recovery:

The issue of Investigative Cost Recovery was raised with regard to the actual payment and disbursement of the defendant's payment of these costs. The process was discussed at a recent Felony Operations Group meeting, where it seemed to be apparent that a thorough and complete understanding of who was responsible for performing what tasks and what documentation would be required was needed. We will follow up with this issue at further F.O.G. meetings and report the result to the PPCC.

The next PPCC meeting will be held on February 15, 2012.

Recent Case Law

L.M. v. State, 36 Fla. Law Weekly D2467a (3d DCA, 11/16/11) This case reversed a juvenile's adjudication for carrying a concealed weapon holding that the state had failed to establish that this **BB gun** was a **deadly weapon**. The testimony established that the BB gun lacked a CO2 cartridge and was not loaded with pellets. The court went on to state that there was no testimony describing its operation or the nature and characteristics of the injuries, if any, that it might be capable of inflicting. The court held this showing to be insufficient as a matter of law.

Reynolds v. State, 36 Fla. Law Weekly D2427b (4th DCA, 11/9/11) The defendant in this case was convicted of **sale of cocaine** but his conviction was reversed when the court held that the trial court erred in admitting police testimony that the defendant's conduct was consistent with that of someone conducting a drug transaction. The court permitted the officer to testify about "general criminal behavior" as evidence of the defendant's guilt and the 4th DCA found that unacceptable. The "general criminal behavior" testimony dealt with the fact that the defendant was seen "leaning into a car" and that this behavior was consistent with the conduct of someone engaged in a drug transaction. This general testimony, together with the fact that the buyer could not identify the defendant and the officer didn't actually see an exchange of drugs for money led the court to reverse the defendant's conviction.

Pinkney v. State, 36 Fla. Law Weekly D2528a (2d DCA, 11/18/11) In this case the defendant was convicted with **aggravated assault on a law enforcement officer** with a motor vehicle. The question of the defendant's intent was argued on appeal. The defense argued that the state had failed to prove that he had the specific intent to do violence to the victim.

This defendant was the driver of a vehicle which was approached by law enforcement officers because it matched the vehicle description from a BOLO. Another individual was in the process of entering the passenger side of the car when an officer positioned himself behind and off to the side of the vehicle and, at gunpoint, ordered him out of the vehicle and down on the ground. While the passenger was doing as the officer ordered, the reverse lights on the car came on and the car started to speed backwards in the direction of the officer. The officer testified that he had to move very quickly out of the way as he was afraid the car was going to hit him. The car then sped forward and left the scene, after striking another police vehicle. The court held that there was no requirement that the state prove that the defendant had the specific intent to do violence to the victim; what the state was required to prove was that the defendant did an act that was substantially certain to put the victim in fear of imminent violence. The court held that this burden of proof had been met in this case.

The defense argument that just because the defendant had to reverse his vehicle in order to exit the gas station parking lot did not mean that he had "the specific intent to do violence", basically conceding that he attempted to leave because he did not want to be apprehended. The court held that the defendant's motive for reversing and backing up toward the officer was immaterial, citing to a footnote which stated: "Under Mr. Pinkney's reasoning, anyone who points a gun, brandishes a knife, or drives his car toward a police officer to avoid apprehension cannot be guilty of aggravated assault. On the contrary, such threats in an attempt to elude apprehension are quintessential examples of aggravated assault on a law enforcement officer."

Jamerson v. State, 36 Fla. Law Weekly D2550a (3d DCA, 11/23/11) This defendant was originally charged with attempted first degree murder of a law enforcement officer. The proof at trial was uncontroverted that the defendant viciously bit the officer, while stating that he had AIDS and was going to kill the officer. The scar from the bite was visible one year later at trial. The defendant admitted at trial that he had HIV. The officer had to undergo a six-month course of treatment which caused him to suffer from many side effects and great mental anguish. The jury returned a verdict, instead, for **aggravated battery on a law enforcement officer**, as a permissible lesser included offense. The defendant objected to the jury being instructed on this charge as a permissible lesser included offense and the wording of the verdict form. The Third DCA rejected both arguments, holding that the Information contained all of the elements of, and the proof provided at trial supported the jury's verdict for, aggravated battery on a law enforcement officer.

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: Marie Jo Toussaint@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
Laurie Collins, M-DPD (305) 471-2625;
e-mail: llcollins@mdpd.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
Lt. Michael Cole, MSPD
Sgt. Carlos Arguelles, M-DPD
Ofcr. Alexander Martinez, Corrections
Captain Luis Bazo, M-DPD
Rebecca Gutjahr, ASA, SAO

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

Committee Members:
Major. Ian Moffett, MPD
Ellen Skidmore, SAO
Sgt. Mark Schoenfeld, MBPD

PAWNSHOP SUBCOMMITTEE
CO-CHAIRS:
Nneka Uzodinma, ASA (305) 547-0459
e-mail: NnekaUzodinma@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. 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:
Kristi Bettendorf, ASA, SAO (305) 547-0220
e-mail: KristiBettendorf@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:
Maj. Ian Moffett, MPD
Det. David Adlet, EPPD
Chief Van Toth, Hialeah Gardens PD
Oliver Spicer, Jr., M-DPD
Sgt. Lynnise Jones-Curry, M-DPD
Ofcr. Chad Rosen, Surfside PD
Capt. Luis Bazo, M-DPD
Barry Mankes
Ofcr. Alexander Martinez, Corrections
Richard Moss, Director, Miami Dade College School of Justice

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

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