For the Law Enforcement Agencies of Miami-Dade County

The Rap Sheet

Katherine Fernandez Rundle — Miami-Dade State Attorney

1 February 2013

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

IN THIS ISSUE: **PAGE**

Meeting Summary 1-2
Case Law 2-3
PPCC Subcommittees 4

Summary of PPCC Meeting January 16, 2013

Agencies represented: SAO, M-DPD, Pinecrest PD

Agenda Items:

Requests for Blood Test of Defendant:

We sometimes receive requests from officers to have a defendant's blood tested because they have come into contact with a defendant under circumstances that may result in the transmission of HIV or other diseases. If these circumstances exist, usually as a result of a defendant's blood or saliva coming into contact with a wound the officer has received, there is a motion we file before the court, pursuant to Florida Statute 384.287. These motions are routinely granted by the court, but in order to file them a physician's statement must accompany our motion. The physician's statement, which must be notarized, states that based upon the doctor's examination of the officer, that the officer's injury could result in transmission of the disease. We have these letters in the forms drive of our computer system; please feel free to contact me and I will be happy to send the form to you in an email immediately so we can file these motions quickly. We are also looking into other ways we might make this, and other appropriate forms, more accessible to officers.

Scheduling Pre-Filing Conferences in the Felony Screening Unit:

In all aspects of life, we tend to have favorites. We have our favorite officers, you have your favorite ASAs, it's just human nature. However, it has created some serious scheduling issues in the Felony Screening Unit. Marked inequities had developed in the caseload we were each handling. Therefore, we cannot honor requests for specific ASAs or paralegals to handle your Pre-Filing Conferences except in situations where other cases on the same defendant are currently pending PFC, or where defendants are, in fact, co-defendants in the same police case. Thank you for your understanding and cooperation in this matter.

Use of Personal Cell Phones and Trial Testimony:

Based upon observations at recent DUI trials, we talked about the use of officers' personal cell phones. A common scenario, on cross examination, goes something like this:

Continued on next page

IMPORTANT!

Next PPCC meeting, TUESDAY, **February 19, 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

Q: Did you take a picture of the [whatever the attorney is referring to]?
A: No.
Q: Why not?
A: I didn't have a camera.
Q: Do you have a cell phone?
A: Yes.
Q: Did you have it with you then?
A: Yes.
Q: Why didn't you take a picture with your cell phone?

The answers that were given in the trials being watched didn't go over well at all with the jurors. They looked rather confused and incredulous when one officer answered "I don't know". We all know that a relatively small number of cases actually go to trial, but when they do, juries really expect solid and forthright answers from police witnesses. With the proliferation of smart phones, defense attorneys may well question an officer about evidence they know *doesn't* exist, especially when they can't make much of an argument about the evidence that *does* exist. Be prepared to answer these questions; know your department's SOPs regarding the use of personal cell phones in police investigations and arrests. "My department prohibits the use of my personal cell phone" or "My department's rules say my cell phone may be seized as evidence if I use it on a case" sound a lot better than "I don't know". We had a longer discussion of this issue at the meeting, but since only two police agencies were represented, the discussion was limited in scope. Make it a point to find out about your agency's stance on this issue and be prepared to answer this question with confidence if you're asked.

Issues from the Floor:

Correction re: Regular Meeting Day:

In last month's *Rap Sheet*, I erroneously listed our regular meeting day as Thursday. I must have been having a flashback – we haven't had meetings on Thursdays in many years. Our meetings are now regularly held on the third Wednesday of the month at 2 p.m. Except, of course for *this* month...see below.

The next PPCC meeting will be held on TUESDAY, February 19, 2013 at 2:00 p.m.

Recent Case Law

J.R. v. State, 37 Fla. Law Weekly S529a (8/30/12) This Florida Supreme Court decision reverses our jurisdiction's holding that "school board police" (as the trial court described them) were designees of a school's principal for purposes of being authorized to warn individuals against **trespassing on school property**, pursuant to section 810.097(2). At the trial level, the court took judicial notice of the fact that the "school board officers were hired to protect the schools" and were, therefore, definitely designees of the principal for purposes of enforcing the trespass statute. The 3d DCA affirmed the trial court's decision. However, the Supreme Court held that since there was no proof presented at trial that either of the MDSPD officers had received either express or implied authorization from the principal to restrict access to school grounds, the adjudication of delinquency on the trespass charge must be reversed.

S.L. v. State, 37 Fla. Law Weekly D2119a (9/5/12, 3d DCA) In this case a 13-year old student (at a school for emotionally and behaviorally disturbed children) started hurling out insults, obscenities and making rude gestures toward the school resource officer who was about 20 yards down the hallway. The officer approached S.L. and took him to another area to talk to him. This had no effect on S.L., who continued to be uncooperative and aggressive. At one point, S.L. was allowed to return to the cafeteria and yelled one last insult at the officer. The officer ordered him to come back, but he took off. He was subsequently returned to the office, where the officer began to write up the paperwork for the arrest for **disruption of a school function**. S.L. continued to curse and yell, wouldn't remain seated as instructed and, while be escorted to the police car, began kicking at officers and pulling his hands away. He was additionally charged with resisting without violence.

As a result of S.L.'s outburst, the teachers escorted their students on to their destinations (cafeteria, classrooms) in a more hurried manner than they might otherwise have done, as they were trained. The Dean of Discipline testified at the trial "[T]he teachers did a marvelous job. They got their kids in the cafeteria away from the situation. So the kids who might have reacted didn't have a chance to react, because their teacher moved them away from the situation."

Continued on next page

Continued from previous page

The 3d DCA held that this was not a "material" or "significant" interference or disruption of the school's functioning, as required by previous case decisions, so reversed the finding of guilt on this charge. Conversely, the court upheld the resisting without violence charge, finding that there was sufficient evidence to support the charge based upon the facts known to the officer at the time and despite the fact that the court had just reversed the disruption of school function charge.

Carbone v. State, 37 Fla. Law Weekly D2267a (9/27/12, 4th DCA) The defendant in this case was convicted of attempted burglary and **possession of burglary tools**. The defendant approached the front door of a home and lightly tapped on the door. The homeowner, who was inside, did not open the door and saw the defendant then return to his car. He reached into some sort of bag in the back seat of his car and pulled out a white handkerchief. He then returned to the home and used the white handkerchief, trying to open the door. Had the door not been deadbolted from the inside, the defendant would have been able to open the door. The homeowner confronted the defendant and asked him what he wanted. The defendant said he was there to see someone, who he named, and the victim told him there was no one there by that name. The defendant returned to his car and left. When the defendant was stopped by police, some tools were found in the back seat of the car in a fanny pack (the decision doesn't specify what type of tools they were).

In order to prove possession of burglary tools, the state is required to prove

1.) That the defendant intended to commit a burglary or trespass,
2.) That the defendant had in his possession a tool, machine, or implement that he intended to use, or allow to be used, in the commission of the burglary or trespass, and
3.) The defendant did some overt act toward the commission of the burglary or trespass.

The state was required to show that the defendant actually intended to use those tools to perpetrate the crime; mere possession of the tools is not enough.

According to the homeowner, the only item the defendant possessed when he approached the house was a handkerchief. There was no evidence presented that the defendant was using or attempting to use the items in the car as burglary tools at the time he was attempting to commit the burglary. The conviction for attempted burglary was affirmed, but the conviction for possession of burglary tools was reversed.

P. R. v. State, 37 Fla. Law Weekly D2268a (9/27/12, 4th DCA) **L&P** cases are very difficult to sustain and this is a very good example of that. Police received an anonymous call reporting that 2 juveniles were trying to open back patio doors in a residential community. A brief clothing description was given, in addition to the information that one of the juveniles was a Latin male, the other a white male. An officer went to the address reported in the call and didn't see anyone at first. When he went around to the back, he saw this juvenile, matching the clothing description of the Latin male, coming around some bushes and onto the sidewalk. He wasn't hiding or behaving evasively when the officer first saw him, but when the juvenile saw the officer's car, he turned away from the car and started to walk back where he had come from. The officer called out that he wanted to talk with him and P.R. came over to the officer, identified himself and cooperated with the officer. P.R. said he didn't live in the neighborhood but that he was meeting a friend at the pool. He said he was there with someone and helped the officer locate the other juvenile. He was arrested for loitering and prowling and in a search incident to arrest, found to have some cannabis in his possession.

The court did not address P.R.'s argument that the officer did not have sufficient reasonable suspicion for the initial stop, but found that there was no probable cause for the L&P arrest. An L&P conviction requires the state to prove that 1.) the defendant loitered and prowled "in a place, at a time, or in a manner not usual for law-abiding individuals" and 2.) the loitering occurred under "circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety or persons or property in the vicinity". An officer may not base a decision to arrest for L&P on an anonymous tip; only the officer's own observations may be considered in determining whether probable cause exists. Both elements of the crime must occur in the officer's presence. First, the officer must observe "incipient criminal behavior" which gives rise to a "threat of immediate, *future* criminal activity". In order to satisfy the second element, flight upon the appearance of police *may* be considered in determining whether alarm or immediate concern is warranted, as well as refusal to identify himself or herself or trying to conceal his or her presence or hide something. P.R. did none of this. The court held that neither of the elements for an L&P arrest had been proven and, therefore, the search incident to the arrest for the charge must be suppressed.

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

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
Rebecca Gutjahr, ASA, SAO
Captain Luis Bazo, M-DPD
Sgt. Michael Weissberg, SMPD

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:

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
Barry Mankes
Capt. Luis Bazo, M-DPD
Ofcr. Alexander Martinez, Corrections
Richard Moss, Director, Miami Dade College School of Justice
Sgt. Michael Weissberg, 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, 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**