

# The Rap Sheet

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Subcommittee are listed  
on the back page**

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## Summary of the January 18<sup>th</sup>, 2017

### PPCC Meeting

**Agencies represented:** SAO, Miami-Dade PD, City of Miami PD, Miami Beach PD, Coral Gables PD. Sunny Isles Beach PD, North Miami Beach PD, Surfside PD, Medley PD, Coral Gables PD, Doral PD, and Opa Locka PD.

### Agenda Items:

**Use of an Officer's Personal Cell Phone** – Any video recorded as part of a criminal investigation on an officer's personal cell phone or a video where an officer uses his/her personal cell phone to show witnesses photos from social media or to record a witness statement must be provided to the state and is discoverable. Officers should follow their police department's cell phone policy.

**Changes to the SAO Website** – Our website has been updated. To access copies of the Rap Sheet, go to [www.miamisao.com](http://www.miamisao.com), click "Resources" and then click "Police Newsletters".

**Felony Traffic Citations** – An offender cited for a felony traffic citation should be arrested and an arrest affidavit written. The arrest needs to be called in to the SAO's Case Screening Unit so that a pre-filing conference can be scheduled. When this is not done, a copy of the citation makes its way to the Clerk's Office and a case is generated from that. It's not until 21-30 days later at the arraignment that the SAO becomes aware that a case exists. This creates a mad rush to schedule the officer to appear for a PFC to resolve the case.

**Print/DNA Cases** – In DNA or print cases, arrest warrants issued when a defendant is in state custody will not be processed until the

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## IMPORTANT!

Next PPCC meeting, **Wednesday, March 15, 2017 at 2:00 p.m.**  
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136  
All are invited to attend

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defendant completes his/her sentence. This results in victims having to wait until a defendant's sentence expires to have their cases heard. In such cases, once a court case is generated for the warrant, the assigned detective can request that the SAO files a motion to have the defendant returned to Dade County for prosecution.

**Publication of the Rap Sheet** – It is critical that information provided and discussed at the PPCC meeting be disseminated to those most in need of such information.

**Reminders from our Case Screening Unit:**

- Complete victim's information must be provided.
- The name (first and last) and ID number of all officers, including transporting officers, involved in a case must be listed.
- Name and ID numbers of out of town officers are not needed as they cannot be notified via the E-Notify system. List them as civilians and provide the physical address of their police department.
- Correcting a police case number requires the arresting officer to notify the Clerk's Office **and** our Case Screening Unit. Case Screening will ensure that the change is reflected in our SAO internal tracking system and in all SAO related documents.

**Automated A-Forms** - We experienced close to 99% compliance for December 2016 and 95% for 2016.

**Issues from the floor –**

- **Fire Rescue Reports** - Often, we need fire rescue reports in cases where a fire rescue unit responds to the scene of a crime to treat an injured party. Therefore, it is essential to indicate which fire department responded, i.e. Miami-Dade or a municipality and to provide the fire rescue unit number, station number and address, alarm number and the name of the responding emergency medical technicians.
- **A-Form Management (AFM) Outage** - In case of a system failure, officers need to write paper arrest affidavits until the system is restored. An invitation will be extended to representatives from Miami-Dade Corrections to discuss the issues involved when the AFM system is down and paper arrest affidavits have to be submitted.

**Recent Case Law by Criminal Intake ASA Roberto Fiallo**

**Covered Front Porch of Residence is Part of the “dwelling” under Florida Burglary Statute.**

Morlas v. State, ---So.3d ---, 2017 WL 512474 (Fla. 4th DCA 2017)

The State charged the defendant along with two other defendants with burglary of a dwelling (among other charges). The defendant and one of his accomplices walked to the area in front of the home, characterized by the State as an “attached porch.” The evidence at trial revealed pry marks consistent with attempting to enter the residence, but no actual entry was made into the residence other than the outdoor area. The Defendant moved for a judgment of acquittal on the burglary count, which was denied by the court. The Defendant argued that the State had not shown that the area in question was “burglarizable” under the statute. The Defendant was convicted by the jury, and the Defendant appealed the court's ruling.

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The Court of Appeal upheld the conviction, holding “We agree with the State: the area at issue constitutes an ‘attached porch’ and, as such, a ‘dwelling.’ United States Supreme Court Justice Potter Stewart famously said of pornography, ‘I know it when I see it.’ Here, the State submitted photographs of the area in question into the record, and a good starting point to explaining our conclusion that this area is an ‘attached porch’ is a picture of the area at issue, with the hope that this picture is worth one thousand words.” The court analyzed several factors: front porch was directly adjacent to and touching the home; it was elevated, thus differentiating it from the rest of the front yard; the eave of the house completely overhangs this “front patio” and, as such, shares a common roof with the home; there were four exit points from this front porch, with one leading directly into the home and one blocked by several bushes and a large tree; another area is blocked by large hose reels and yet another bush; there is one single entrance/exit point from the open field into the area of the porch; personal items were kept on this front porch.

The court held that this area “constituted an extension of the house which shared common notions of security and privacy with the home it was attached to.”

Officers will find this analysis by the court and the factors listed helpful in determining of incidents of this type should be treated as a burglary or a trespass.

### **Exigent Circumstances Justified Warrantless Entry into Residence**

Hansis Antonio Collado A/K/A Jorge Luis Molina v. State, ---So.3d ---, 2017 WL 8257517 (Fla. 3d DCA 2017)

Police were dispatched to the defendant’s residence (911 call) regarding a person being held hostage. Contact was made with the 911 caller, who explained that the defendant grabbed her friend by the neck as she was exiting the defendant's house and then dragged her back into the house against her will. The 911 caller could hear her friend screaming for her, and was in fear for her safety, so she called 911. There were two large pit bull dogs preventing access to the front door. Police officers called the defendant from a neighbor's house. The officers placed approximately twenty unanswered phone calls, during a span of ten minutes. Being in fear for the victim’s safety, officers entered the defendant’s property from the rear and knocked on the back door. After approximately two minutes with no response the defendant dressed only in boxer shorts, opened the door and stepped outside with his hands up. The officers heard a female screaming for help from inside the house. The defendant was detained.

Officers entered the house and headed in the direction where the screams were coming from, and observed narcotics and ammunition in plain view. The victim was found lying naked in a fetal position on the bathroom floor crying and saying, “Please help me, please help me.” A protective sweep of the house was conducted.

During the course of the investigation the defendant was presented with and signed a consent to search form. The consent to search form specifically advised the defendant that he had the right to refuse to consent to a search and the right to demand that a search warrant be obtained prior to any search. The defendant executed the form, and a search was conducted. Additionally, the defendant was transported to the police station where prior to any questioning, he was advised of his Miranda rights, which he

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waived and provided a statement to the police. The defendant moved to suppress the search and the statement.

The court held that there were sufficient facts on the record to show that the officers reasonably believed that exigent circumstances existed which justified the warrantless entry. Additionally, they affirmed denial of the defendant's motion to suppress the physical evidence and the defendant's post-Miranda statements. The evidence seized was based on the defendant's voluntary execution of a consent to search form, which properly advised the defendant of his right to refuse such consent. The detention of the defendant was based on reasonable suspicion, which ripened into probable cause after the police entered the defendant's house and after the defendant consented to the search of his residence.

Suppression of the defendant's post-Miranda statement was not required where the trial court found, that the post-Miranda statement at the police station was sufficiently attenuated from the prior statement the defendant gave earlier at the scene.

**Exigent circumstances (additional explanation and rationale), State v. McRae, 194So.3d 524, (Fla. 1st DCA 2016):**

Exigent circumstances to search is an exception to the warrant requirement. A warrantless entry justified by exigent circumstances, must still be based on probable cause to search. Probable cause to search is based on the totality of the circumstances. "A set of facts must exist that precludes taking the time to secure a warrant." Additionally, "[T]he kinds of **exigencies** or emergencies that may support a warrantless entry include those related to the safety of persons or property, as well as the safety of police."

Officers are reminded that warrantless entries require that they have probable cause, and the justification which precludes the time required to secure a warrant.

**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.**

**Next PPCC meeting – Wednesday, March 15, 2017**

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.

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