FOR THE LAW ENFORCEMENT AGENCIES OF MIAMI-DADE COUNTY

The Rap Sheet

KATHERINE FERNANDEZ RUNDLE — MIAMI-DADE STATE ATTORNEY

January 2014

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**

Summary of PPCC Meeting December, 2013

Agencies represented: SAO, MDPD, Miami Beach PD, Sunny Isles Beach PD, Pinecrest PD, University of Miami PD, Miami Springs P.D, and State Fire Marshall's Office.

Agenda Items:

Issues involving felony arrest affidavits

We continued our discussion on arrest affidavits and reviewed the elements of a legally sufficient affidavit. Remember that if a bond hearing judge finds probable cause lacking because your affidavit is legally insufficient, you will have to appear for a probable cause hearing within 48 hours of the arrest. If you do not appear, the incarcerated defendant will be released on his own recognizance.

Defendants' Statements

Inculpatory statements made by defendants should always be mentioned in an arrest affidavit narrative, particularly when the statement is crucial to the case. Such statements, when omitted can lead to problems in filing and/or proving the case.

Issues involving the E-notify system

Police departments are encouraged to update their officers' duty hours whenever changes are made. Failure to do so leads to officers not appearing for their pre-filing conferences and cases being dropped. In addition, supervisory use of the E-Notify reporting function contributes to a decrease of no calls and no shows.

IMPORTANT!

Next PPCC meeting, **Wednesday, January 15, 2014, at 2:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

Recent Case Law

Compiled by Joe Robinson, Chief of the Felony Screening Unit

Rodriguez v. State, --- So.3d ----, 2013 WL 6800975,
Fla.App. 3 Dist., December 26, 2013 (NO. 3D12-2097)

The defendant was a resident of a house where bail bondsmen had gone to look for another individual. Upon being invited into the residence, the bondsmen asked the defendant to open a locked bedroom door. The defendant did so, revealing a marijuana grow operation. The bondsmen notified the police, who when they arrived, were also invited in by the defendant. Narcotics detectives arrived, and the defendant signed a consent form to search the home. After confirming the presence of the grow room, the detectives arrested the defendant.

The defendant filed a motion to suppress, claiming his consent was given involuntarily. The trial court, after taking testimony from the witnesses, agreed that under the circumstances the consent was coerced. However the court refused to suppress the evidence on the basis of the inevitable discovery doctrine, which applied because probable cause had been established before the defendant signed the consent and the police could have undoubtedly obtained a search warrant.

The Third District Court of Appeals affirmed the trial court, breaking ranks with the First District Court of Appeal on this issue. The First DCA had held that the inevitable discovery doctrine could not apply where the police had not yet begun the process of obtaining a search warrant. The Third DCA held that it was not necessary for the warrant process to have already commenced, citing language from both the Florida Supreme Court and the U.S. Supreme Court to the effect that where the police are already in investigation mode and have already acquired the evidence sufficient to obtain a search warrant, it is not necessary for the police to have actually begun the process to obtain a search warrant.

K.P., a juvenile, vs.State, --- So.3d ----, 2013 WL 6800973
Fla.App. 3 Dist., December 26, 2013 (NO. 3D12-1925)

The police received an anonymous tip that the juvenile defendant, a student at Northwestern Senior High School, was in possession of a firearm. He and his book bag were removed from class. A search of the book bag revealed a loaded handgun. The defendant challenged the search of the book bag, arguing that it was based upon an uncorroborated anonymous tip and as such violated his Fourth Amendment right to be free from unreasonable searches and seizures.

The Third DCA upheld the search of the book bag. The Court first set out the general rule regarding searches and seizures based upon anonymous tips:

> " … a substantial body of law addresses the level of reliability that an anonymous tip must demonstrate in order to justify a search under the Fourth Amendment. In this regard, the level of reliability that an anonymous tip must demonstrate in order to satisfy the Fourth Amendment is lower both when an extraordinary danger is threatened and where legitimate expectations of privacy are reduced.
>
> Anonymous tips, which are more susceptible to abuse than a tip by a known informant, may be less reliable than other investigative leads. … The government's interest in conducting a search based upon an anonymous tip, therefore, is usually measured by examining the tip's "indicia of reliability." … Generally, a search based upon an anonymous tip withstands scrutiny under the Fourth Amendment only if the tip contains sufficient details and information that can be independently corroborated by the police to establish a level of reliability regarding the information in the tip. … In the words of a noted jurist and scholar in this area, the anonymous tip must show "that the tipster has some inside knowledge about the suspect, and that the tipster's accusation of illegal activity is entitled to some credence." Phillip A. Hubbart, Making Sense of Fourth Amendment Law: A Fourth Amendment Handbook 197 (2005).
>
> (The U. S. Supreme) Court (has) held that an anonymous tip was sufficient to justify an investigative stop that led to a consensual search of a vehicle which uncovered marijuana. The Court focused on the extensive, predictive details regarding the suspect's appearance, automobile, time of departure, and route included in the tip that allowed the police to test the informant's knowledge and credibility. … When the police were able to verify this information, the Court explained, they had "reason to believe not only that the caller was honest but also that he was well informed, at least well enough to justify the stop."

Continued on next page

Continued from previous page

> In contrast, in Florida v. J.L., 529 U.S. 266, the Court later held an anonymous tip did not provide sufficient corroborating detail to justify an investigative stop and frisk on a public street when the tip consisted entirely of a statement that an African–American youth standing at a certain bus stop wearing a plaid shirt was carrying a gun. … The Court held that the tip must be reliable, not only to identify the suspect, but also to indicate the crime was being committed: "[t]he reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." … A tip that does no more than accurately describe a suspect's readily observable location and appearance on a public street is insufficient to pass Fourth Amendment muster because it fails to "show that the tipster has knowledge of concealed criminal activity ."
>
> Nevertheless, it would be wrong to read J.L. as establishing an irreducible minimum of reliability that applies to all anonymous tips in all circumstances, and regardless of the extent of the threat that the tip revealed. Although the Court in J.L. set forth a required level of reliability needed for an anonymous tip to justify a stop and frisk on a public street, the Court was careful to note the Fourth Amendment did not establish a minimum level of reliability required in all circumstances.
>
> In fact, the Court expressly recognized that there may be circumstances justifying "protective searches on the basis of information insufficient to justify searches elsewhere." …. For example, "extraordinary dangers sometimes justify unusual precautions." … In other words, the Court recognized that a search may be justified under the Fourth Amendment based upon an anonymous tip reflecting a lesser level of reliability than the tip in J.L. if the tip concerned a greater danger than possession of a firearm on a public street. The Court noted:
>
> The facts of this case do not require us to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability. We do not say, for example, that a report of a person carrying a bomb need bear the indicia of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk.

The Third DCA then cited the line of cases holding that a student within a school setting has a reduced expectation of privacy than the general populace, noted that the intrusiveness of the search was minimal, and that the government's interest in conducting the search was higher than if the student was merely out on the street. In considering the totality of the circumstances the Court held that the search was within the reasonableness requirement of the Fourth Amendment.

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

JUVENILE SUBCOMMITTEE
CO-CHAIRS:
Todd Bass, ASA (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:

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:
Marie Jo Toussaint, ASA, SAO (305) 547-0220
e-mail: MarieJoToussaint@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:
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
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**