

# The Rap Sheet

KATHERINE FERNANDEZ RUNDLE

MIAMI-DADE STATE ATTORNEY



June 2017

## POLICE-PROSECUTOR COORDINATING COMMITTEE

### *Steering Committee:*

Marie Jo Toussaint, Deputy Chief ASA  
State Attorney's Office  
(305) 547-0220  
e-mail: [MarieJoToussaint@MiamiSAO.com](mailto:MarieJoToussaint@MiamiSAO.com)

José Arrojo, Chief ASA  
State Attorney's Office  
(305) 547-0309  
e-mail: [JoseArrojo@MiamiSAO.com](mailto:JoseArrojo@MiamiSAO.com)

Assistant Director Alfredo Ramirez, III  
Miami-Dade Police Department  
(305) 471-2625  
e-mail: [aramireziii@mdpd.com](mailto:aramireziii@mdpd.com)

Frank Ledee, ASA  
State Attorney's Office  
(305) 547-0853  
e-mail: [FrankLedee@MiamiSAO.com](mailto:FrankLedee@MiamiSAO.com)

Chief Fred Maas  
Sunny Isles Beach PD  
(305) 947-4440  
e-mail: [fmaas@sibfl.net](mailto:fmaas@sibfl.net)

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

### IN THIS ISSUE:

### PAGE

Meeting Summary .....	1-4
Case Law .....	5
PPCC Subcommittees.....	6

**There will be no  
Police-Prosecutor Coordinating Committee  
Meeting in July or August**

**The next scheduled meeting after the summer hiatus  
will be on September 27, 2017 at 2:00 p.m.**

### **Summary of the May 17<sup>th</sup>, 2017 PPCC Meeting**

**Agencies represented:** SAO, Miami-Dade PD, Miami Beach PD, FDLE, Aventura PD, Coral Gables PD, Sunny Isles Beach PD, Hialeah PD, Homestead PD, Pinecrest PD, Surfside PD and Virginia Gardens PD.

#### Agenda Items

#### **Presentation by County Court Assistant Chief Tamara Nanes**

When prosecuting a Driving Under the Influence case, the State can circumstantially prove that a Defendant was driving by showing that the Defendant was in actual physical control of a vehicle. The DUI jury instructions interpret actual physical control (APC) to mean that the Defendant must be physically in or on the vehicle ("on" for motorcycles and bicycles only) and that the Defendant has the capability to operate the vehicle regardless of whether or not the Defendant is actually operating the vehicle at that time. Cases have further interpreted APC to mean "the ability to keep a vehicle from starting and the authority to manage it".

*Continued on next page*

### **IMPORTANT!**

Next PPCC meeting **Wednesday September 27 at 2:00 p.m.**

All are invited to attend

*Continued from previous page*

The policy behind APC is to prevent impaired people from even getting behind the wheel of a car. Courts have even gone so far as to say that this policy reason outweighs the desire to encourage drivers to “sleep it off” in their cars.

Because APC consists of circumstantial evidence, officers and prosecutors must first rule out every reasonable hypothesis of innocence. In doing so, officers and prosecutors should consider the totality of the circumstances in determining whether or not there is enough evidence of actual or constructive possession of the means of controlling the vehicle. Factors to look for include: the proximity and location of the keys, the defendant’s location whether in a vehicle or on a motorcycle or bicycle, whether the engine is on/off, the status of the car (parked, in drive, damaged, etc.), the number and position of passengers within the vehicle, the operability of the car, indicators of ownership (such as registration/insurance), or driving-related injuries (such as a seatbelt burn) or the presence of airbag dust. Most important of these factors, according to the case law, is the location of the keys, the Defendant’s position within the car, and whether or not the car is operable to some extent. Ultimately, APC is a powerful tool in proving DUIs, even without a witness that can place a Defendant behind the wheel, but proving APC hinges on how well the State can paint that circumstantial picture of driving.

**Presentation by Economic Crimes Unit Chief John Perikles and Special Prosecution ASA James Chimera, Criminal Intake Prosecutor Robert Fiallo**

**Investigate First:** Investigate the facts of the case thoroughly prior to arrest. If you have questions about the facts and evidence of your case, contact a prosecutor in the Economic Crimes Unit, Intake Division, or Special Prosecutions Intake Unit – We are here to help.

**Pressured to make an Arrest?** Many victims are eager to see a subject arrested and pressure investigators to act quickly. Remember, the Statute of Limitations for any Theft and Organized Scheme to Defraud charge is five years, whereas the Speedy Trial Period is only 175 days and the clock begins ticking on the date of arrest. Arresting a defendant prior to completion of the investigation, including obtaining all pertinent evidence, can lead to a case being no-actioned – which makes for upset and frustrated victims.

Economic crimes and fraud investigations require specific investigative protocols. First, identify who is the victim. It may be the card holder, the person who has the checking account, or it could be one of the banks involved. An example, is a case where a bank cashes a counterfeit check (the account is legitimate, but the paper is not) and ultimately the bank must take the loss (not the account holder). The bank is the victim. The account holder is probably a witness, and the teller who cashed the check is a witness. Additional evidence may exist in the form of photographs of the transaction, video and identification presented by the subject. Each case will require an organized and methodical investigation to compile your evidence.

In complicated theft or organized scheme to defraud cases, saying that a defendant diverted \$80,000.00 of the company funds is not enough. How was the theft accomplished, when were the funds stolen, what evidence exists to show that the defendant is the person who took the funds and who can identify the defendant as the person who stole the funds.

You must follow the money; where did it go, who had access to it, what were the stolen funds used for. In order to determine this, you must subpoena any financial instruments used to perpetrate the theft, to include checks, wire transfers, deposits, and withdrawals and if appropriate, bank records, copies of contract and other business documents. If the funds were used to pay mortgage payments, credit card

*Continued on next page*

*Continued from previous page*

payments, tuition fees etc., you must subpoena the records of each relevant institution to ascertain the identifying information of the person to whom these accounts belong or who benefitted from the use of these funds.

We have too many cases where essential evidence, including supporting documents and records were not obtained prior to a probable cause arrest. Attempting to obtain these documents by subpoena after the arrest is problematic because more often than not, the documents are not provided prior to the arraignment date. This causes us to drop the case. At times, victims have requested that we re-file their case. We can do so if the needed documents are provided to the State prior to the expiration of the Speedy Trial Period, which again is 175 days after arrest.

However, when these documents are provided after the expiration of the Speedy Trial Period, the case can no longer be prosecuted. In such instances, defendants with no prior records can have their records expunged. This allows them to not disclose a criminal history to their next employer, which could allow them to engage in similar criminal activities.

Remember, just call us if you need us. The SAO is here to help.

**Automated A-Forms** - Compliance for May was 99.60% and overall was 97.52

**Automated A-Forms - Reminders from County ITD about the booking Process for Multiple/Additional A-forms**

**Scenario 1:** Additional A-Forms are approved and submitted to MDCR after the defendant is already Booked at TGK.

**Solution:** Arresting officers must include the "Proposed Jail Number" in the A-Form:

- Armband ID is not necessary
- Locate the Subject's Jail Number using the Search or Advance Search functionality
- Enter the Subject's Jail Number in the "Current Incarcerated" section.
- Complete the A-Form and submit it for supervisor approval
- Call MDCR at 786-263-5315 to notify that an additional A-Form has been submitted.
- Verify the A-Form has been BOOKED by MDCR by the end of the shift

**THINK OF THE ARMBAND ID # AS A PERSONNEL CONTROL # (IT IS A UNIQUE NUMBER ONLY USED BY CORRECTIONS TO DETERMINE PROCESSED AND NON-PROCESSED INMATES – ONCE INSIDE TGK, THE ARMBAND ID # IS DISCARDED. You must use the defendant's jail number.**

**Scenario 2:** A-Forms approved and submitted to MDCR but defendant is transported to a Medical facility.

**Solution:** Arresting officer or any officer within the agency should:

- Add a NOTE in the A-Form Application indicating the defendant has been transported to a Medical Facility
- Contact the SAO and let them know about the arrest and email them the A-Form
- Transport the defendant to MDCR after his/her release from the Medical facility

**Scenario 3:** A-Forms approved and submitted to MDCR, but defendant has been released using PTA.

**Solution:** Arresting officer must:

- Contact MDCR at 786-263-5312 and ask a booking officer to reject the A-Form

*Continued on next page*

Continued from previous page

- Delete the rejected A-Form from his/her Task List

C

**AS WITH ANYTHING DEALING WITH An ELECTRONIC A-FORM, IF YOU DO NOT KNOW, CONTACT AN ADMINISTRATOR IN YOUR DISTRICT / PD OR VIA THE RADIO. THERE ARE TRAINERS IN EVERY DISTRICT/ BUREAU / PD, GET TO KNOW THEM, THEY CAN BE A GREAT ASSET.**

**ANY QUESTIONS, PLEASE REMEMBER YOUR OTHER RESOURCES:**

**HELP DESK: (305) 596-4357**

**E A-FORM DEVELOPMENT TEAM: VIA HELP DESK OR VIA YOUR ADMIN REPRESENTATIVE**



- Arrest Data
- Defendant
- Charges
- Involved Persons
- Narrative
- Injuries
- Vehicle
- Agency Advisory
- Parent/Guardian
- Summary

Submit

**Arrest Data**

POLICE CASE NO\*  (LLYYMMDDNNNNNN)  ?BYPASS VALIDATION

ARMBAND ID  ?

RELATED TO  GANG ACTIVITY  FRAUD

INDICATION OF ALCOHOL INFLUENCE\* DRUG INFLUENCE\*  
 YES  NO  UNKNOWN  YES  NO  UNKNOWN

AGENCY CODE 030

JUVENILE ONLY  REFERRAL  QUALIFIES AS CIVIL CITATION

ARREST DATE/TIME  ?  ?

ARREST LOCATION LOCATION NAME/LANDMARK  ?  
 ADDRESS  ?  
 APARTMENT CITY STATE ZIP  ?BYPASS ZIP CODE VALIDATION  
 ?  ?  ?  ?

MDC GRID AGENCY GRID LATITUDE LONGITUDE  
 ?  ?  ?  ?

**Clear Address**

CURRENTLY INCARCERATED  ? PROPOSED JAIL/JAC NO  **Check Jail Number**

SPECIAL OPERATION - SELECT -

MDPD RECORDS ID/CIN  ?

PMHD\*  YES  NO  UNKNOWN ?

WEAPON  WEAPON SEIZED TYPE SEIZED - NOT APPLICABLE -  CONCEALED WEAPONS PERMIT#

\* = required field

*Continued from previous page*

## **New Law and Case Law by Criminal Intake ASA Roberto Fiallo**

### **New Law – Effective date June 9, 2017**

**Section 776.032**, the self-defense immunity, commonly referred to as "Stand Your Ground", was amended to provide that "In a criminal prosecution, once a prima facie claim of self-defense immunity from prosecution has been raised by the defendant at a pretrial hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from criminal prosecution provided in subsection (1)." The effect of this amendment is that the State has a higher burden to overcome a viable "Stand Your Ground" defense. The State Attorney's Office is currently reviewing the impact of the amendment on pending and future cases, and officers will be advised how that may impact arrests and subsequent prosecutions.

### **Case law**

#### **Affirmative Defense/Reasonable Hypothesis of Innocence. Faulk v. State, --- So.3d --- (Fla. 1st DCA 2017), Case No. 1D15-5428**

Subject was convicted of burglary with a battery. The State's case was based on the following: a victim was in her car outside a club to pick-up a friend. The uninvited subject entered the car and demanded money from the victim. When the victim did not comply, the subject struck the victim. The subject testified in his own defense, that he was a local drug dealer, known to the victim. The victim had invited the subject into the vehicle to purchase cocaine. The subject gave the victim the cocaine and she refused to pay, at which time the subject struck her. The subject argued that he could not be convicted of burglary, because the victim had invited him into the vehicle. The trial court did not instruct the jury on the affirmative defense of consent, and the appeal followed. The appeals court reversed the conviction and remanded for a new trial. Officers are reminded that as part of the investigation, further inquiry should be made when a defendant gives an explanation that constitutes a reasonable hypothesis of innocence. This is applicable mostly in theft and burglary cases where consent is at issue. It should be established that the victim/owner did not give consent to enter, or in theft cases, did not give the subject consent to be in possession of the property. It is always the prosecution's burden to rebut any reasonable hypothesis of innocence.

**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.**

*Continued on next page*

All PCCC 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  
Lt. Dawn Colon, M-DPD  
Det. Octavia Bridges, UMPD

#### **COMMUNICATIONS SUBCOMMITTEE**

##### **CO-CHAIRS:**

Lt. Dawn Colon, M-DPD, (786) 469-3675;  
e-mail: dmcolon@mdpd.com

##### **Committee Members:**

Lt. Gladys Amato, MPD  
Capt. Janet Gray, M-DCR  
Ray Araujo, ASA, SAO  
Det. James Moore, NMBPD  
Major Michael Mills, SMPD  
Capt. Richard Rand, NMBPD  
Oliver Spicer, Jr., M-DPD

#### **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  
Audrey Frank-Aponte, ASA, SAO  
Lori Fredline, MBPD  
Ofc. Alexander Martinez, Corrections  
Sgt. Henry Guzman, SMPD  
Sgt. Carlos Arguelles, M-DPD  
Richard Adams, M-DPD  
Abbe Rifkin, ASA, SAO  
Lt. Derrick Bowman, Pinecrest PD  
Ofc. Nelson Delgado, VCPD  
Sgt. Jerome Berrian Jr., MBPD  
Sgt. Jose Diez, MPD  
Lt. Dawn Colon, M-DPD

#### **JUVENILE SUBCOMMITTEE**

##### **CO-CHAIRS:**

Todd Bass, ASA, SAO (305) 637-1300  
e-mail: ToddBass@MiamiSAO.com  
Det. Antonio Miguelez, CGPD (305) 460-5636  
e-mail: [amiguelezn@coralgables.com](mailto:amiguelezn@coralgables.com)

##### **Committee Members:**

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

#### **PAWNSHOP SUBCOMMITTEE**

##### **CO-CHAIRS:**

Det. Janesse Soto, CGPD  
e-mail: jsoto@coralgables.com

##### **Committee Members:**

Det. Antonio Miguelez, CGPD  
Pat Kiel

#### **DOMESTIC CRIMES SUBCOMMITTEE**

##### **CO-CHAIRS:**

Leah Klein, ASA, SAO (305) 547-0132;  
e-mail: LeahKlein@MiamiSAO.com  
Capt. Tyrone White, M-DPD, (305) 715-3300  
e-mail: TWhite@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:**

Tom Headley, ASA, SAO; 547-547-0186  
e-mail: TomHeadley@MiamiSAO.com

##### **Committee Members:**

Chief Ian Moffett, MDSPD  
Chief Van Toth, Hialeah Gardens PD  
Lt. Sergio Alvarez, M-DPD  
Ofc. Alexander Martinez, Corrections  
Lt. R. Rodriguez, SMPD  
Det. David Adlet, EPPD  
Oliver Spicer, Jr., M-DPD  
Barry Mankes

#### **OPERATIONS SUBCOMMITTEE**

##### **CO-CHAIRS:**

Captain Richard Rand, NMBPD, (305) 948-2929,  
Richard.rand@nmbpd.org  
Dreema Oliver, SAO, Administrator, Felony Operations,  
(305) 547-0307, dreemaoliver@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. Dawn Colon, M-DPD, (786) 469-3675;  
e-mail: dmcolon@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](mailto:RapSheet@MiamiSAO.com)