For the Law Enforcement Agencies of Miami-Dade County

The Rap Sheet

Katherine Fernandez Rundle — Miami-Dade State Attorney

1 March 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

IN THIS ISSUE: **PAGE**

The March PPCC Meeting
is scheduled a week earlier than usual,
on **March 14, 2012**

Summary of PPCC Meeting
February 15, 2012

Agencies represented: SAO, M-DPD, M-DPD Crime Lab, Aventura PD, Village of Pinecrest PD, Sunny Isles Beach PD, Coral Gables PD, Miami PD, Surfside PD

Agenda Items:

United State vs. Jones – Police Use of GPS Tracking Devices:

ASA Howard Rosen, the Division Chief of the SAO Organized Crime Unit, spoke about the January 23, 2012 US Supreme Court decision in *United State v. Jones*. The court held that the government's attachment of a GPS device to a vehicle, and its subsequent use to track a subject by monitoring the vehicle's movements, constitutes a search under the Fourth Amendment. Accordingly, it is now the policy of the State Attorney's Office that any installation of a mobile tracking device will be done ONLY through the use of a search warrant designed specifically for this purpose. This shall be the case whether the device is a slap on type device which is just magnetically placed on the undercarriage of the vehicle, or the device is hard-wired through the interior of the vehicle. Similarly, it shall be the case whether the vehicle was in a public parking lot at the time of the installation, or the vehicle was on the subject's posted private property behind a locked gate.

Historically, authorization for the placement of these devices was obtained pursuant to Florida Statute s. 934.42 which had, as it's standard, that the "information likely to be obtained is relevant to an ongoing investigation" being conducted. *United States v. Jones* now requires, however, a showing of probable cause that a crime has been, is being or will be committed in order to form the basis for such a request and a statement that there is probable cause to believe that use of the device and the location data it will provide will lead to evidence of said crime.

Continued on next page

IMPORTANT!

Next PPCC meeting, **March 14, 2012, 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

Continued from previous page

If you currently have an investigation pending where a mobile tracking device is in use, the device should be removed immediately, as any evidence obtained subsequent to the date of this decision will be deemed illegally obtained. Once the device is removed, we can then apply to the court for a search warrant authorizing the installation and use of a mobile tracking device using the probable cause standard. If we cannot demonstrate probable cause, we will not be able to reinstall the device. We will argue that any evidence obtained by means of such a device prior to January 23rd, was obtained in good faith based upon the then-current law and should be held to be admissible.

Please contact the Organized Crime Unit of the State Attorney's in order to obtain such a search warrant; they will be happy to assist you. Their telephone number is (305) 547-0668. The paralegal who assists in these matters is Shellene Thorpe. In the unusual circumstance that such a warrant would be required outside of normal working hours, there is an on-call list of ASAs who are authorized to obtain pen registers and trap and traces; they will be handling these warrants as well.

Traffic Citations Issued to Juveniles:

Elena Reyes, Administrator of the SAO County Court Division, advised that all criminal traffic citations and accompanying arrest affidavits involving a juvenile should be processed like all other criminal traffic PTA cases. All paperwork should be filed via the Clerk's Office, County Court Division, not forwarded to or left at the State Attorney's Office Juvenile Division.

Change in SAO Photo Request Protocol:

Whereas we used to request photos only once a week, we will now (as of February 13th), be faxing requests for crime scene photos twice a week, on Mondays and Wednesdays. The once-a-week requests often failed to secure the photos in time for the ASAs' trial needs, so we will now be picking up the photo CDs from the police agencies on Wednesdays (from Monday's requests) and Fridays (for Wednesday's requests). If you have any questions about this procedure, you should contact Trevor Wanless, the supervisor in the SAO Litigation Support Unit.

Issues from the Floor:

Off-the-Records Conversations with PDs at Juvenile Court:

An issue was raised regarding officers' appearances at Juvenile Court. It was reported that officers were complaining that when ASAs were encouraging officers to go out in the hall to speak with the Public Defenders (in an effort to resolve the cases) while the ASA had to remain in court, that the PDs were then going back into the courtroom and turning the officer's words against them.

I discussed the matter with Leon Botkin, the Division Chief of the Juvenile Division, and Todd Bass, the Chief of Litigation for Juvenile. They indicated that they have heard about such problems, that they usually occurred with regard to misdemeanor cases and that they would like to help to resolve them. If an officer has this happen, please contact Todd Bass at Juvenile (305-636-7500) so that it can be addressed.

The next PPCC meeting will be held on March 14, 2012.

Recent Case Law

Soto v. State, 36 Fla. Law Weekly D2608a (3d DCA, 11/30/11) The defendant was convicted of trafficking in heroin. The Third DCA ordered that the conviction be reversed and the defendant discharged because police did not comply with the requirements of section 901.91(1), the Florida **"knock-and-announce" statute**. While there was clear evidence that the police announced their presence at the door to the defendant's residence, there is no evidence that they announced their purpose, as required by the statute. The fact that the defendant was sleeping soundly and likely would not have heard them announce their purpose did not sway the court's opinion, as the police did not learn this until *after* they had entered the home.

Continued on next page

Continued from previous page

Rozzo v. State, 36 Fla. Law Weekly D2683a (4th DCA, 12/7/11) Police set up a controlled buy of narcotics (roxicodone) from the defendant. The buy was made a short distance from his home, where he lived with his father and stepmother, and the defendant was taken into custody there. Per the detectives' testimony, police proceeded to the defendant's house, found his father and stepmother home, and ordered them out of the house while they conducted a "security sweep" of the house. After the sweep, detectives spoke with the parents and indicated their belief that there were more drugs in the house. The parents indicated there were no drugs in the house and that the police were welcome to check. The defendant's father signed a **consent to search** form and showed police to the defendant's room where more drugs, and cash, were found. The detectives indicated that their interaction with the defendant's parents was, at all times, cordial. The parents' testimony differed markedly from the police, indicating that they were threatened with arrest if they did not consent to the search, and the defendant's father said he felt coerced into signing the consent.

The court's analysis, based on these facts, first dealt with the protective sweep. Absent consent or exigent circumstances, police may not enter a dwelling without a warrant. A **protective sweep** is a "quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers and others". A protective sweep may not be conducted just because it is routine. When the arrest occurs outside of the residence, the circumstances of a sweep are further limited; officers must have both a reasonable belief that persons are inside, and that these persons are aware of the arrest outside so that they might destroy evidence, escape or jeopardize the safety of the officers or the public. The court found that none of these circumstances existed in this case and that the protective sweep was illegal. Further, because the protective sweep was an unreasonable warrantless entry into the defendant's home, the father's subsequent consent to the search of the home was presumptively tainted.

The state argued that the taint of the illegal protective sweep was dissipated because the father was advised that he had a right to refuse the search. The court ruled, however, that just because this advice was part of the written consent form was insufficient, in and of itself, to remove the taint of the illegal search.

Reinlein v. State, 36 Fla. Law Weekly D2756a (2d DCA, 12/16/11) The defendant was convicted of **tampering with physical evidence**. The defendant was observed engaged in what was believed to a narcotics transaction, but the officer did not see the hand-to-hand exchange of drugs, money or anything else. When the defendant departed in his vehicle, other officers were radioed to follow the defendant and stop him if he committed a traffic infraction. He was, in fact, stopped for a traffic violation. As he was pulling over, the officer observed the defendant make a motion as if to "pop something into his mouth", although he could not see what the item was. After being advised of his *Miranda* rights, the defendant admitted that he had put the crack cocaine he had just purchased into his mouth.

The defense argued, however, that the defendant's statement was not admissible because the state had not proven the ***corpus delicti*** of the crime of tampering. This requires the state to prove the legal elements necessary to show that a crime was committed before an admission to that crime can come into evidence. The elements which must be shown are:

1.) That the defendant had knowledge of an impending investigation, and

2.) Destroyed evidence in order to impair its availability for the investigation.

The court held that the state failed to prove these elements. While the defendant may certainly have had knowledge of an impending investigation, for all he knew (or from what was proven) that might have been the investigation of a traffic offense. Absent his admission, the state could not prove that the defendant ingested something that he knew was the focus of an investigation. The defendant's conviction was reversed.

D.O. v. State, 36 Fla. Law Weekly D2768a (3d DCA, 12/21/11) In this case an officer stopped to question a group of young people regarding their age and why they were not in school. This individual, D.O., was found to be of school age and so the officer was going to take him into custody, pursuant to Florida Statute 984.13, and take him to his school. Prior to placing him into his police car, the officer conducted a *Terry* patdown of the juvenile's outer clothing. The officer was not arresting the juvenile, nor did he have any reasonable suspicion that he was armed. The 3d DCA upheld the search as an example of a permissible search pursuant to an officer's **"community caretaker" function**. The statutes require an officer to take a **truant** into custody and transport him or her to school or parents "without unreasonable delay". The concurring decision weighs the public interests vs. the individual rights in reaching the conclusion that this is, in fact, a permissible search.

Note, however, the previous 3d DCA opinion in L.C. v. State, 23 So.3d 1215 (2009) where the court held to be unreasonable the direct search of all of the truant's pockets before placing the truant in the police car. This decision states that had the officer in that case conducted a limited pat-down search for weapons instead of the direct search of the pockets, it would have been held to be reasonable.

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. Derrick Bowman, 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

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**