FOR THE LAW ENFORCEMENT AGENCIES OF MIAMI-DADE COUNTY

The Rap Sheet

KATHERINE FERNANDEZ RUNDLE — MIAMI-DADE STATE ATTORNEY

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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

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: mikegrand@mindspring.com

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

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Summary of PPCC Meeting April 17, 2013

Agencies represented: SAO, M-DPD, Coral Gables PD, Aventura PD, North Miami PD, University of Miami PD, Florida City PD, Pinecrest PD, Sunny Isles Beach PD, North Miami Beach PD, Miami Beach PD, Key Biscayne PD

Agenda Items:

O'Leary v. State - Facebook posting as written threat

We talked about this very interesting case from Florida's 1st District which addressed an issue of first impression. The defendant posted threats to do bodily harm to another on his personal Facebook page. One of the defendant's Facebook "friends" was a relative of the person to whom the threats were directed. The defendant was convicted of sending written threats to kill or do bodily harm, pursuant to Florida Statute section 836.10.

There has been a three-part standard developed regarding whether a violation of this section has occurred: 1.) a person writes or composes a threat to kill or do bodily injury, 2.) the person sends or procures the sending of the communication to another person, and 3.) the threat is to the recipient of the communication or a member of his family. Electronic communications are now (since 2010) included within the meaning of a written or composed threat, so that element of the crime is met. The court was faced with the query of whether posting on an individual's personal Facebook page was the equivalent of "sending". Finding no Florida case law on this topic, the court looked to a common sense analysis.

The defendant argued that he merely "published" the message, but did not "send" it as he neither asked anyone to view it, nor addressed it to anyone in particular. The court held that the defendant did more than just publish the threat. Citing to a law journal article on cyber-victimization, the court found that Internet technologies "generally do not involve communications sent directly to another. Rather, communications are posted for the whole world to see, or, in a closed network for a particular community to see, such as a community of 'Facebook friends.'" There is no logical reason to post comments other than to communicate them to other Facebook users, the court reasoned. The court concluded that the defendant had, in fact, sent the threats.

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IMPORTANT!

Next PPCC meeting, **Wednesday, May 15, 2013 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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"Rapid ID" and Mugshot Procedures:

Michael del Rey, with the Miami-Dade Police Department Systems Development Bureau, spoke with those present about the Photo Imaging System and related components being used by Miami-Dade PD, and by several other local law enforcement agencies. It is a database which contains booking photographs of adults (back to 2000) and juveniles (back to 1998) which searches over 90 identifying fields. It also includes a photograph of all property seized from the arrestee at booking. From these photographs single or 6-pack lineups can be created. The system also contains composite drawings. Included in the Interstate Photo ID Network (IPIN) are Miami-Dade County, Pennsylvania, New York, New Jersey and Michigan (an estimated 10 million records). The Rapid ID component of the system is very interesting. On fixed or small, portable devices two fingerprints of a subject can be scanned and within a minute result in a hit (match) or no hit (no match). Another feature is RISC (Repository of Individuals of Special Concern) dealing with data on registered sex offenders, probationers, wanted persons, etc.

You may contact Michael del Rey (305-471-3450) if you would like to learn more about this system and inquire into obtaining it for your agency.

The next PPCC meeting will be held on Wednesday, May 15, 2013 at 2:00 p.m.

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CASE LAW

Symonette v. State, 37 Fla. Law Weekly D2514a (4th DCA, 10/24/12) This case deals with a contemporary issue – **text messages** in cell phones. This case involves the robbery of a convenience store by three individuals and the murder of the store clerk. There was a fourth individual involved who was driving the car used during the robbery. There were text messages between the defendant and the driver of the car, and photographs of these text messages were introduced during the defendant's trial. The defendant contended that they were improperly introduced and were inadmissible hearsay.

The court referred to Florida Statute 90.901, which deals with the authentication of evidence. The phone in question was seized from the defendant when he was arrested for the crimes a week later. Police obtained a search warrant for the cell phone. The detective took photographs of the text messages on the phone. The driver of the car identified the text messages between her and the defendant and talked about the context of the messages as it related to the robbery and homicide. The court found that all of these circumstances sufficiently authenticated the photographs of the text messages.

Additionally, the court found that the text messages were admissible hearsay evidence because they were admissions, the defendant's own statements used against him, an exception to the hearsay rule.

State v. Roman, 37 Fla. Law Weekly D2585b (2d DCA, 11/7/12) The defendant's house was under surveillance based on information received that the house was being used as a **cannabis grow house**. Detectives made some observations which tended to confirm this information – the sound of humming coming from the garage (which they associated with fans or electronic ballasts commonly used in marijuana grow operations), PVC piping coming out of the side of the garage (an apparatus seen at other grow houses to carry the runoff water from the plants), a video camera above the front door pointing toward the street (also common at grow houses). They approached the front door and when the defendant opened it, they could smell a strong odor or marijuana coming from inside the house.

The detectives asked the defendant for consent to search the house and she declined. They advised her that she was not free to leave and that they were going to secure a search warrant. Two detectives conducted a "protective sweep" to verify that no one was in the house who could possibly be armed or destroy evidence. They observed the marijuana plants in the garage and used this information in their warrant request.

The trial court suppressed the physical evidence seized, finding that the protective sweep was improper. The 2d DCA agreed. "Absent exigent circumstances, a warrantless entry to search for weapons or contraband is unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within." The court found that the two possible exigencies referenced by the detectives – concern that someone in the house could destroy evidence while the warrant was being procured and concern that someone in the house may have access to weapons and pose a threat to law enforcement – were not supported by the testimony that the detective had never seen anyone aside from the defendant at the home, and no cars beside hers were ever observed.

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However, the 2d DCA did not agree with the trial court that, absent this improper protective sweep, there was insufficient probable cause to support the issuance of the warrant. Citing to previous case law, the court held that there was ample probable cause to support the warrant aside from the observations made during the protective sweep. The suppression of the evidence was reversed and the case was sent back to the trial court for trial.

State v. M.R., 37 Fla. Law Weekly D2647a (3d DCA, 11/14/12) This case deals with two issues: **probable cause for a narcotics arrest** and the **admissibility of statements** made by the defendant without having been advised of his *Miranda* rights.

Due to neighborhood complaints and previous narcotics activity, police were watching a particular house in Liberty City. During the surveillance, an officer observed what appeared to him to be narcotics transactions – at least 6 or 7 of them – between M.R. and other individuals who would approach him in front of the duplex in question. The police did not stop or search any of these purchasers, but approached the defendant and arrested him. A search incident to his arrest revealed 8 individual baggies of marijuana. The trial court found that there was insufficient probable cause to arrest the defendant and that, therefore, the search incident thereto was invalid. The 3d DCA disagreed, citing to the factors which, added together, gave rise to probable cause for M.R.'s arrest. The fact that there had been previous narcotics activity at this location, that neighbors had been voicing complaint about continued drug transactions, the experience the officer had in dealing with narcotics arrests, and the observation of at least 6 or 7 transactions involving the exchange of money for something in a small baggie, all provided sufficient probable cause for the defendant's arrest.

After his arrest, the defendant was cuffed and placed in a police car. He was not advised of his *Miranda* rights. An officer said to M.R. "You don't have to be out here doing this", to which he replied that he was selling marijuana to support his child. The trial court found that, while not a question, the officer's statement was the functional equivalent of interrogation as it was reasonably likely to elicit an incriminating response, and suppressed the defendant's response. This ruling was not disturbed on appeal. The officer then asked the defendant for his mother's name and phone number. She called her and asked M.R.'s mother to come to the scene. Once she arrived, she approached her son, in the presence of the officer, who told her that he did not want to talk to her in front of the officer and that she (his mother) knew why he was selling marijuana. In arguing that this statement should be held admissible, the state argued cases where defendants had made statements to third parties, which statements were overheard by police. The 3d DCA drew a distinction, however, because in those cases these were individuals that the defendants had *requested* to speak with. In this case, the police requested that M.R.'s mother come to the scene, not M.R. The 3d DCA held that these statements by M.R. were an exploitation of the initial illegality regarding the defendant's first statement, made without benefit of *Miranda* warnings.

M.R. v. State, 37 Fla. Law Weekly D2645a (3d DCA, 11/14/12) Here's a unique case – an **L & P** that actually gets upheld on appeal! There are two elements to be proven in an L & P case. First, that the defendant loitered or prowled in a place, at a time, or in a manner not usual for law-abiding individuals, and second, that such loitering and prowling were under circumstances that warranted a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.

In this case, an officer observed the defendant walking in the alleyway behind several closed businesses at around 11:30 p.m. and trying the door handles. All of the businesses were closed and there was, generally, no business or pedestrian activity in the area after about 6 p.m. The defendant was also looking up toward the roof of the commercial shopping center, as if he were looking to see if there were any security or surveillance cameras. As the officer approached in his marked unit, the defendant hid behind a dumpster, and then began to quickly walk away. The defendant eventually returned, upon the officer's command.

The court held that the activity shown was clearly not usual for law-abiding citizens. Remember that the officer (and the court) can not only consider the observed behavior, but also any rational inferences to be drawn from them (such as the conclusion that he was looking up to the roof to see if there were any security cameras). Likewise, the court found that the circumstances demonstrated the element of alarm regarding an imminent breach of the peace, considering the testimony of not only what the defendant was observed doing, but his actions upon the approach of police. When advised of his *Miranda* rights and given the opportunity to dispel the officer's alarm, the defendant's explanation failed to do so.

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

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