

The Rap Sheet

KATHERINE FERNANDEZ RUNDLE

MIAMI-DADE STATE ATTORNEY



October 2013

POLICE-PROSECUTOR COORDINATING COMMITTEE

Steering Committee:

Marie Jo Toussaint, ASA, Chair
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: mikegrand@mindspring.com

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

IN THIS ISSUE:

PAGE

Meeting Summary	1-3
Case Law	4-5
PPCC Subcommittees.....	6

Summary of PPCC Meeting September 18, 2013

Agencies represented: SAO, M-DPD, Miami PD, Homestead P.D, Coral Gables PD, Hialeah PD; Miami Springs PD, Miami Beach PD, Florida City PD, Florida Fire Marshall, Surfside PD, Aventura PD, Sunny Isles Beach PD, University of Miami PD, FDLE, Pincrest PD and Clerk of the Courts.

Agenda Items:

DUI BLOOD TESTS

Laura Adams, Division Chief of the Sexual for Sexual Battery and a member of the SAO Traffic Homicide Unit, spoke about the issue of collecting blood from DUI drivers post McNeely. Attached you will find an in-depth analysis of the McNeely decision, its practical impact on DUI investigations, a sample warrant request and a sample consent form provided by Laura Adams.

McNeely v. Missouri serves as a reminder that bad facts make bad law!!!! Defendant McNeely was stopped for speeding and crossing over the center lanes of a Missouri highway more than once. The defendant exhibited the classic signs of being under the influence and admitted to drinking. He was arrested and charged with DUI after failing sobriety tests. The defendant would not take a breath test and refused to give consent for a blood draw. He was taken to a hospital where the officer had a medical tech draw his blood. Test result revealed that the defendant's blood alcohol level was .154.

Continued on next page

IMPORTANT!

Next PPCC meeting, **Wednesday, October 16, 2013 at 2:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

Continued from previous page

The defendant filed a motion to suppress the results of the blood test which was granted despite the state's argument that exigent circumstances existed for the warrantless blood draw because of the fact that blood alcohol levels decrease over time. The decision was appealed to the Missouri Supreme Court which affirmed the lower court's opinion. In effect, the Court said that a "totality of the circumstances" test had to be used to evaluate the warrantless seizure of the defendant's blood and the mere fact that blood alcohol dissipates alone is insufficient to allow an exception to the search warrant requirement.

That decision was appealed to the United States Supreme Court which agreed to review the case because of conflict among various courts. The question before the Court was whether a law enforcement officer may obtain a nonconsensual and warrantless blood sample from a suspected drunk driver under the exigent circumstances exception to the Fourth Amendment warrant requirement based upon the natural dissipation of alcohol in the bloodstream. After reviewing a number of "exigent circumstances cases", the Court held that the inevitable dissipation of alcohol in blood alone does not constitute an automatic exigency to support a warrantless blood test in a drunk-driving investigation. However, the Court noted that depending on all the circumstances in a particular case, an exigency may develop.

In the final analysis, a warrant will be required for a non-consensual blood draw whenever there is not an adequate showing of exigent circumstances.

What can an officer do to protect the integrity of a DUI investigation? Laura Adams made several recommendations. Officers would need to be trained on how to obtain warrants and provided with warrant documents so that they are readily available when and if needed. Officers would need to properly document efforts made to obtain a warrant (if they were unable to obtain one) and/or the reasons why, under a particular set of circumstances, an officer faced an emergency in which he could not reasonably obtain a warrant. In addition, officers can ask the defendant for written consent to draw blood for DUI testing, understanding that the state would need to prove that such consent was voluntary.

For additional information regarding this topic, you may page the SAO Traffic Homicide Unit at (305) 287-6500.

DUPLICATE CITATIONS

Ralph Padron and Sabrina Perez from the Clerk's Office, SAO County Court Administrator Elena Reyes and County Court Assistant Chief Miriam Agrait spoke about the increasing number of duplicate citations filed into the system, the havoc they are creating and what police departments can do to alleviate the problem. A duplicate citation issue exists when the Clerk's office received two citations with the same number citing two different drivers for traffic violations, either from the same police department or from two different police departments. The Clerk's Office will enter the first citation received and upon receiving the duplicate citation, will contact the police department to have the officer contact the Clerk's Office. More often than not, contact attempts are unsuccessful. A number of recommendations were made:

- Departments may need to work with their vendors and IT personnel to ensure the integrity of each citation number issued to their department.
- Officers should never cross out a citation's bar code and make up a number.
- Officers should not make copies of citations from other officers to be used when their regular supply is finished.
- Departments may need to assign a specific employee(s) to respond timely to Clerk's Office's duplicate citation notice as the officer who issued the citation will need to respond to the Clerk's Office the next day to fill out a new citation. If the citation is for a DUI, Tallahassee needs to be notified as well. In

Continued on next page

Continued from previous page

case of transmittal, the new citation will need to be transmitted with a cover sheet that indicates it is replacing a duplicate citation.

For additional information regarding duplicate citations, you may contact Ralph Padron at (305)548-5385

PAPER CASES: CHECKS, CREDIT CARD RECEIPTS AND OTHER DOCUMENTS

In all paper cases involving checks or credit cards, the name and contact information of the accountholder (whether the real victim or not) must be provided to our Case Screening Unit when an officer calls to schedule a pre-filing conference. In addition, a copy of the document whether it is a check, a credit card receipt or any other document must be provided to the ASA handling the pre-filing conference.

Updates from the Floor:

Pre-filing and pre-trial conferences for midnight Officers- As much as possible, ASAs are asked not to set appointments for these officers in the middle of the day after they've worked all night.

Electronic A-Form - Several agencies have started submitting automated A-forms. Several more will begin in October.

Video Bond Hearing from TGK - Rehearsals are scheduled. If all goes well, it will go live on Thursday.

The next PCC meeting will be held on Wednesday, October 16, 2013 at 2:00 p.m.

Recent Case Law

Compiled by FSU Assistant Chief Wayne Adams

Leslie v. State
5th District Case No. 5D12-1303
Opinion filed March 1, 2013

The officer stopped the defendant for driving a motor vehicle without a center rearview mirror. The officer believed that the absence of this mirror was a traffic violation. When the officer approached the vehicle, he saw marijuana on the defendant's lap. The defendant was arrested and charged with possession of marijuana and cocaine. The case doesn't indicate where the cocaine was found but that is irrelevant on these facts since the issue concerns the validity of the stop itself. The defendant moved to suppress the cocaine and cannabis arguing that the stop was not based on reasonable suspicion. The trial court denied the motion. The appellate court however reversed the trial court, holding that an officer's mistake of law as to what constitutes a traffic violation cannot provide reasonable suspicion to justify a traffic stop. Florida law requires a vehicle to have "a mirror so located as to reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of the vehicle." 316.294, Fla. Stat. (2011). Therefore as long as there is at least one mirror on the vehicle meeting this requirement the vehicle is in compliance with Florida law. This is not to be confused with 316.2954(2), Florida Statutes (2011) that requires rear view mirrors on both sides of a vehicle if the rear window is covered up or treated somehow with any material which has the effect of making the rear window nontransparent.

State vs. T.S.
3rd District Case No. 3D12-2373
Opinion filed May 15, 2013

In T.S., an officer who had just pulled into a McDonald's parking lot was approached by a man (the reporter) who appeared to be excited and agitated. The reporter stated that someone had pulled a gun on him in the McDonald's restroom. The reporter was on his cell phone and told the officer that he was speaking with a 911 operator. The officer verified that the reporter was indeed reporting the robbery to the 911 dispatcher. The reporter told the officer that two individuals were involved and he gave the officer a description of both men and what they were wearing. The officer asked the reporter to remain at the McDonalds while he immediately went to search for the suspects. After a brief time, the officer spotted the defendant along with another person, both of whom matched the description given by the reporter. The officer detained them and recovered a concealed firearm from the defendant. The reporter was gone when the officer returned to the McDonald's parking lot to get identifying information from him. The defendant was charged with carrying a concealed firearm. At the trial level the defendant moved to suppress the firearm arguing that the officer did not have a reasonable suspicion to detain him because the information regarding the incident came from an anonymous unreliable tip. The trial court granted the motion to suppress and the State appealed. The 3rd DCA reversed the trial court holding that the firearm was not suppressible. The appellate court pointed out several factors that made the tip sufficiently reliable to support the defendant's detention. First the reporter approached the officer face to face as opposed to an anonymous phone call. Secondly, the officer and the reporter engaged in conversation for approximately two minutes giving the officer ample time to evaluate the reporter's credibility. Moreover, the officer verified that the reporter in fact was reporting a robbery to the 911 dispatcher at the time he approached the officer. Additionally, the defendant met the description given by the reporter of one of the men involved. Finally, there was no evidence that the reporter was attempting to conceal his own identity. Therefore this tip was being offered by a 'citizen informant' and is thusly more reliable than a tip received via an anonymous phone call.

Continued on next page

Continued from previous page

Obviously while each case must be evaluated on its individual facts it appears from this holding that a face to face tip given by a person whose identity is unknown would not automatically render the tip unreliable. Other factors have to be considered.

Arias v. State

3rd District Case No. 3D08-483

Opinion filed July 24, 2013

The police received an anonymous tip that a particular residence served as a grow house for cannabis. The police went to the house along with a police dog. The dog alerted to the smell of marijuana from outside the house. A police officer testified that he also smelled cannabis as he stood outside the house. The officer also testified that the air conditioner was running and did not recycle on and off; there were three (3) vehicles in the driveway and the blinds were closed. Based on the dog's alert, the officer's smelling of the cannabis, the vehicles in the driveway, the air conditioner not recycling, and the closed blinds, a search warrant was issued. Search of the residence revealed the house was indeed a cannabis grow house and the defendant was charged with trafficking in cannabis. The defendant filed a motion to suppress the evidence arguing that the search warrant was based on an illegal dog sniff which was proscribed in Jardines v. State, 73 So.3d 34 (Fla.2011), aff'd, 133 S. Ct. 1409 (2013). The trial court denied the motion to suppress and the decision was affirmed by the appellate court. The appellate court held that even if the dog sniff was excluded as one of the factors supporting probable cause to issue a search warrant, the other factors including the non-recycling air conditioner; the number of cars in the driveway; the blinds over the windows; and the officer's smell of the cannabis himself was sufficient to establish probable cause to issue the search 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.

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
Lt. Efrén Lopez, M-DPD
Det. Octavia Bridges, UMPD

COMMUNICATIONS SUBCOMMITTEE

CO-CHAIRS:

Lt. J. C. Rodriguez, M-DPD, (305) 548-5774;
e-mail: jcrodriguez@mdpd.com

Committee Members:

Lt. Gladys Amato, MPD
Capt. Wendy Mayes-Sears, M-DCR
Regla Dominguez, MBPD
Ray Araujo, ASA, SAO
Major Michael Mills, SMPD
Major Kathy Katerman, 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
Det. Robert Garland, M-DPD
Susan Leah Dechovitz, ASA, SAO
Audrey Frank-Aponte, ASA, SAO
Regla Dominguez, MBPD
Ofc. Alexander Martinez, Corrections
Rebecca Gutjahr, ASA, SAO
Sgt. Michael Weissberg, SMPD
Abbe Rifkin, ASA, SAO
Lt. Willie Hill, Pinecrest PD
Ofcr. Nelson Delgado, VCPD
Lt. Jerome Berrian Jr., MBPD
Sgt. Jose Diez, MPD
Sgt. Carlos Arguelles, M-DPD
Captain Luis Bazo, M-DPD

JUVENILE SUBCOMMITTEE

CO-CHAIRS:

Todd Bass, ASA (305) 637-1300
e-mail: ToddBass@MiamiSAO.com
Sgt. Melissa DeJong, CGPD (305) 460-5632
e-mail: MDeJong@CoralGables.com

Committee Members:

Chief Ian Moffett, MDSPD
Sgt. Mark Schoenfeld, MBPD
Ellen Skidmore, SAO

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
Chief Van Toth, Hialeah Gardens PD
Sgt. Lynnisse Jones-Curry, M-DPD
Capt. Luis Bazo, M-DPD
Ofcr. Alexander Martinez, Corrections
Richard Moss, Director, Miami Dade College School of Justice
Sgt. Michael Weissberg, SMPD
Det. David Adlet, EPPD
Oliver Spicer, Jr., M-DPD
Barry Mankes

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