FOR THE LAW ENFORCEMENT AGENCIES OF MIAMI-DADE COUNTY

The Rap Sheet

KATHERINE FERNANDEZ RUNDLE — MIAMI-DADE STATE ATTORNEY

October 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
September 24, 2014

Agencies represented:

SAO, Miami-Dade PD, City of Miami PD, Coral Gables PD, Miami Beach PD, Miami Springs PD, Aventura PD, Sunny Isles Beach PD, Surfside PD, Miami Gardens PD, North Miami PD, North Miami Beach PD, South Miami PD, Miami Shores PD, University of Miami PD, Opa Locka PD and Miami-Dade Corrections

Agenda Items:

Obtaining historical cell site location information and related paperwork

Howard Rosen, Deputy Chief Assistant State Attorney for Special Prosecutions & Division Chief of the Organized Crime & Narcotics Unit, discussed the law pertaining to obtaining historical cell site location information. He spoke extensively about the 11th Circuit Court of Appeals June 2014 decision in *United States v. Davis*, 754 F.3d 1205 (11th Cir. 2014), in which the Court held that a cellular telephone subscriber has a reasonable expectation of privacy in historical cell site information, and that the obtaining of that data without a warrant is a Fourth Amendment violation. This decision is however not final as early last month, the Court granted the Government's motion for rehearing en banc. Stay tuned!

ASA Rosen explained that the Davis decision, while persuasive, is not controlling because it is not from the U.S. Supreme Court. In addition, Florida's fourth DCA in *Johnson v. State*, 110 So.3d 954 (Fla. 4th DCA 2013); rev. denied at 126 So.3d 1057 (Fla. 2013), held that a warrant was not required to obtain historical cell site location information. Likewise, in *Mitchell v. State*, 25 So.3d 632 (Fla. 4th DCA 2009), the fourth DCA held that historical cell phone site location information does not implicate Fourth Amendment protections. Nevertheless, in an abundance of caution, until the law is settled, we are applying for a warrant to obtain cell site location information. As with all warrants, probable cause will have to be articulated in the supporting affidavit.

Attached you will find our form for an Application for a Warrant Authorizing Historical Cell Site Location Information, as well as a memo which ASA Rosen has authored which contains some common scenarios which we utilize when we are looking to get real time cell site location information.

Continued on next page

IMPORTANT!

Next PPCC meeting, **Wednesday, October 15, 2014 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

For additional information regarding this topic and/or if you have a specific scenario to discuss, you may call ASA Rosen at (305) 547-0668.

Witness List

This is a reminder of an issue we addressed this past June. All police officers who are material witnesses must be listed on the back of the arrest affidavits. Getting information about the officer who found the contraband or who interviewed the defendant at the first Pre-filing Conference creates unnecessary delay in resolving cases.

New Business

We are planning on having presentations on different areas of the law starting with today's presentation by Howard Rosen. Next month, ASA Penny Brill, Chief of the Legal Division and Kathleen Hoague, Deputy Chief Assistant State Attorney will make a presentation of the "Stand Your Ground Law".

Legislative Update and Case law discussed

Recent Case Law

Compiled by Joe Robinson, Chief of the Felony Screening Unit

F.T. v. State, 39 Fla. L. Weekly D2001b, 3rd DCA

In summarizing a fairly complex analysis of evidentiary law, the conclusion drawn by the Third District Court of Appeals in this case is that a loss prevention officer may testify to the price of merchandise by reading from the price on the sales tag only where the defendant is charged under the retail theft statute. It would be inadmissible hearsay if the defendant was charged under the general theft statute. This is because the retail theft statute provides for proof of value as specifically including the sale price: *"Value of merchandise" means the sale price of the merchandise at the time it was stolen or otherwise removed, depriving the owner of her or his lawful right to ownership and sale of said item."* § 812.015(1)(d), Fla. Stat.

Under the general theft statute value is defined as *"Value means the market value of the property at the time and place of the offense or, if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense."* § 812.012(10)(a)1.

The court explained: *"The common understanding of the term "value" is "actual worth" or "market value", the latter serving as the definition under the general theft statute.2 But the Florida Legislature has ascribed a different definition of "value" for retail theft purposes. Where the item stolen is retail merchandise, the "value" is simply the price stated on the price tag affixed to the item at the time it was stolen.3 Therefore, in a retail theft prosecution, the contents of the price tag are being admitted not to prove the truth of the matter asserted (i.e., the item's actual worth or market value) but only to establish its stated value, the only requirement for determining the degree of the offense under the retail theft provision."*

Brown v. State, 39 Fla. L. Weekly D2051a, 3rd DCA

The facts and legal conclusions in this case finding that police officers illegally entered the defendant's residence can be summarized from the opinion as follows:

"Here, it is undisputed that the officers entered the area immediately surrounding and associated with Brown's home, that this area was enclosed by two layers of fencing (each with its own gate), that this area was used as the front and side yard of Brown's residence, and that several "No Trespassing" signs were posted on the outside fence. Pursuant to *Jardines*, the area entered by the officers was the curtilage of Brown's residence and therefore subject to the same Fourth Amendment protections as Brown's house itself. … Here, the officers testified that the curtilage to Brown's residence could not be seen from outside the two fences, and that the officers only saw into the curtilage when they took the step of opening the gates to pass through them. Additionally, Brown posted three "No Trespassing" signs on the outside fence, and Brown's mailbox was located on the outside of the first fence. Because the curtilage surrounding Brown's home was not open or viewable to the public and not a place Brown would have reasonably expected the public to enter, we conclude that Brown exhibited an actual, subjective expectation of privacy that society is prepared to recognize as reasonable. …

Continued on next page

Continued from previous page

(w)hile the officers were free to approach the outside gate and fence to conduct a "knock and talk," the area inside both the outside fence and the second fence surrounding Brown's side yard has the same Fourth Amendment protections as Brown's house.

Brunson v. State, 39 Fla. L. Weekly D2071a 4th DCA

Who can give a valid consent to officers entering your motel room?

Motel management called the police and complained that one of their particular rooms was being used for prostitution and drug use. Upon the police arrival, the manager gave the police the room number and Brunson's name as the renter and indicated she saw another man with Brunson. The police knocked on the door and a *"younger black male"* answered. The police asked if they could come in, and the man consented. Inside the room was Brunson, two females and drugs in open view. The officers asked who rented the room, and Brunson replied it was he. Brunson was arrested for the drugs in the room and more found on his person.

The opinion goes on: *"… (Appellant argued that the search was invalid as the officers entered the room without a warrant or valid consent. Specifically, Appellant argued that the man who answered the door and allowed the officers in did not have the authority to do so. Moreover, the officers should have known better because they knew Appellant was renting the room but did not ask for him when they knocked on the door. … After considering Appellant's argument, the trial court agreed that the officers' initial search of the hotel room was illegal because a reasonable person would not conclude that the individual who answered the door had the authority to consent without confirming that he was the person renting the hotel room. We agree with this ruling. See Williams v. State, 788 So. 2d 334, 337 (Fla. 5th DCA 2001) (holding that officers' entry into a hotel room was illegal based on consent provided by unidentified woman who answered the door because it was unreasonable for the officers to assume the woman had the authority to let them in just by virtue of the fact she answered the door); see also Cooper v. State, 706 So. 2d 369, 371-72 (Fla. 2d DCA 1998) ("The mere fact that an unknown person opens the door when a police officer knocks cannot, standing alone, support a reasonable belief that the person possesses authority to consent to the officer's entry").*

Briefly, this writer believes the appellate court is incorrect in its ruling in that it ignores and fails to discuss the fundamental precept of third-party consent law: assumption of risk. When Brunson allowed the unidentified male to answer his motel room door, he assumed the risk that this other individual would allow entry to whoever was knocking. The statement made in the Cooper case cited above - "The mere fact that an unknown person opens the door when a police officer knocks cannot, standing alone, support a reasonable belief that the person possesses authority to consent to the officer's entry" has no basis in logic nor citation to previous appellate decisions.

The opinion ignores cases in Federal courts which hold exactly the opposite. While it remains the law in the Second, Fourth and Fifth Districts in Florida, it has not been ruled on in the Third District nor in the Florida Supreme Court. If you desire more information on this topic, see Who's That Knocking at Your Door?: Third Party Consents to Police Entry, at The Florida Bar Journal, November 2003.

The safest way to approach such a situation is to ask whoever answers the door if he or she is the room renter, and if not, makes further inquiries from there to find out if the renter is present, and if not, if the renter knows the person answering the door is present in the room.

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
Sgt. Michael Weissberg, SMPD
Captain Luis Bazo, M-DPD

JUVENILE SUBCOMMITTEE
CO-CHAIRS:
Todd Bass, ASA, SAO (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:
Jason Pizzo, ASA, SAO (305) 547-0404
e-mail: JasonPizzo@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. Eric Garcia, M-DPD, (305) 715-3300
e-mail:elgarcia@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:
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
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, ASA, 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**