

# The Rap Sheet

KATHERINE FERNANDEZ RUNDLE

MIAMI-DADE STATE ATTORNEY



March 2018

## 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

Agenda items .....	1-3
Case Law.....	3-4
PPCC Subcommittees.....	5

### Summary of the March 21<sup>st</sup> , 2018 PPCC Meeting

**Agencies represented:** SAO, Miami-Dade PD, Miami Beach PD, Hialeah PD, Coral Gables PD, Aventura PD, Sunny Isles Beach PD, Pinecrest, and Medley PD.

### Agenda Items

#### **Citations**

Officers are writing citations for felony traffic violations but the citations are not being forwarded to our felony division which can cause a defendant to be charged twice for the same offense. Officers need to keep and bring to their felony pre-filing conference, copies of all citations issued to a felony defendant, or **the better practice is to submit them as well as all other case-related documents, i.e, offense incident reports, copies of checks, credit cards, licenses, as attachments in the A-Form system.**

#### **Presentation by Hate Crimes Unit ASA Luis Caso**

The State Attorney is committed to ensuring that individuals are not targeted or victimized due to who they are or how they worship. She created a Hate Crimes Unit to evaluate and handle cases when appropriate, as well as maintain statistics of such crimes.

Florida Statutes 775.085 provides that a crime will be reclassified

*Continued on next page*

### **IMPORTANT!**

**Next PPCC MEETING, April, 18, 2018**

*Continued from previous page*

to a higher-level crime if it can be proven that the defendant's action evidenced prejudice towards a victim that the offender knew or perceived to be a member of a class defined in the statute. These include race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, mental or physical disability or advanced age of the victim.

Florida Statute 775.0861 provides for a reclassification of the crime if the offense is committed on the property of a religious institution while the victim is on the property for the purpose of participating in or attending a religious service.

Florida Statute 806.13(2) makes it a third-degree felony to willfully and maliciously damage or deface any place of worship

If you have a case where you think that the defendant evidenced prejudice in the commission of the crime, you may contact our Hate Crime Unit on-call duty ASA 24 hours for assistance. The on-call number is (786) 495-6716

### **Failure to Return Personal Property**

Before we can prosecute such a case, we must ensure that the following statutory language statement is contained in the leasing agreement or an addendum to that agreement, and the statement is initialed by the person renting or leasing the rental property or equipment:

Failure to return rental property or equipment upon expiration of the rental period and failure to pay all amounts due (including costs for damage to the property or equipment) are evidence of abandonment or refusal to redeliver the property, punishable in accordance with section 812.155, Florida Statutes.

In order to prove the 3rd degree felony charge of failure to redeliver hired or leased personal property or equipment, we must show among other things that the lessee failed to return the property or equipment after receipt of, or within 5 days after return receipt from, the certified mailing of the demand for return of the property or equipment. Merchants are sending letters demanding payments and/or arrangements for payments and/or the return of property or equipment. On occasion, the lessee makes a payment or two and then stopped paying and the company files a police report, based on the original letter. This is not appropriate as the statute requires a demand for the return of the property at the termination of the period for which the property or equipment was leased.

Once the lessee has failed to make payments, letters asking for payments, arrangement for payments and/or the return of the property or equipment can be sent. Then if no payments or arrangements for payments are made and the property or equipment is not returned, a certified letter, return receipt requested, terminating the contract and demanding the return of the property or equipment, should be sent, in accordance with section 812.155, Florida Statutes.

#### (sample letter) **DEMAND FOR RETURN OF PROPERTY**

You are hereby notified that the leasing agreement you signed on \_\_\_\_\_, has been terminated for failure to meet your payment requirements. This is a demand for the immediate return of \_\_\_\_\_ that you that you leased from us on \_\_\_\_\_. Pursuant to Florida Law, you have **5 days from the date of this notice to return our property or equipment.**

*Continued on next page*

*Continued from previous page*

As indicated on your rental agreement, failure to return rental property or equipment upon expiration of the rental period and failure to pay all amounts due (including costs for damage to the property or equipment) are **prima facie evidence of intent to defraud, punishable in accordance with section 812.155, Florida Statutes.**

Unless our property is returned 5 days from the date of this notice, we will refer this matter to the \_\_\_\_\_ Police Department for criminal prosecution.

### **New Firearms Law**

The SAO is reviewing it and will discuss further at the next meeting. It was announced that Legal Counsels for the large police departments are meeting to coordinate logistics relating to the implementation of some aspects of this new law.

### **Written Threats to kill – Section 836.10**

The section was amended to include threats to conduct a mass shooting or an act of terrorism and to prohibit a person from making, posting, or transmitting a threat in a writing or other record, including an electronic record, to conduct a mass shooting or an act of terrorism, in any manner that would allow another person to view the threat.

### **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 account holder (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.

### **Silent Witness Theory by ASA Roberto Fiallo**

Dolan v. State, 743 So.2d 544 (Fla. 4<sup>th</sup> DCA, 1999) set forth two methods of authenticating photographic evidence. The “pictorial testimony” method requires the testimony of a witness to establish that, based upon personal knowledge, the photographs on tape fairly and accurately reflected the events or scene. The second method is the “**silent witness**” method, which provides that the evidence may be admitted upon proof of the reliability of the process which produced the tape or photo.

The “silent witness” theory allows video evidence to be admitted upon proof of the reliability of the process which produced the video. The following factors are considered in determining reliability:

- evidence establishing the time and date of the photographic evidence;
- any evidence of editing or tampering;
- the operating condition and capability of the equipment producing the photographic or video evidence as it relates to the accuracy and reliability of the photographic product;
- the procedure employed as it relates to the preparation, testing, operation, and security of the equipment used to produce the photographic product, including the security of the product itself; and
- testimony identifying the relevant participants depicted in the photographic evidence.

*Continued on next page*

*Continued from previous page*

**Case law submitted by ASA David Gilbert, Chief of the Traffic Fatality Unit**

Aguilar v State \_\_\_\_\_ So.3d \_\_\_, (Fla. 3<sup>rd</sup> DCA 2018) 2018WL443165

In this case the court upheld a warrantless blood draw. The defendant was involved in a multiple car collision wherein one person died and two others suffered serious bodily injury. The lead investigator learned that the defendant was seen racing with another vehicle before the collision. The defendant was trapped in his vehicle when the investigator noticed the defendant's speech was slurred, his eyes were bloodshot, and there was an odor of alcohol coming from the defendant. The defendant was extricated from the vehicle and taken to the hospital with serious bodily injuries. The defendant was placed in a medically induced coma. The lead investigator ordered a blood draw based on his belief that he had probably cause and exigent circumstances. The detective testified at the motion to suppress that in his opinion it would have taken about four hours to get a warrant. He had to do the following: conduct his on-scene investigation, write up the warrant, transmit the warrant to an Assistant State Attorney, transport the approved warrant to the on-duty judge for signing. The motion to suppress was denied and the Third District Court upheld the ruling saying that the totality of the circumstances gave rise to exigent circumstances.

It should be noted that the testimony presented at the motion to suppress was critical to the successful defense of the Investigator's actions. Furthermore, this case occurred before approval of the electronic search warrants procedure now in effect. The amount of time to obtain a warrant has been significantly reduced. The reduction of time in obtaining a warrant, does not preclude a carefully presented set of facts that will support a warrantless blood draw under the proper circumstances. It is recommended that a warrant still be obtained after an exigent circumstances blood draw for two reasons: you will have a back-up blood draw if the exigent circumstances blood draw is suppressed and you can demonstrate to the court the additional amount of time that it actually took, to get the warrant.

*Continued on next page*

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. 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 Bryan Pegues Aventura PD (305) 466-8996;  
e-mail: BPegues@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  
Ofcr. Nelson Delgado, VGPD  
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:**

Scott Dunn, ASA, SAO (305) 547-0132;  
e-mail: ScottDunn@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:**

Natalie Moore, ASA, SAO; 547- 547-0307  
e-mail: TomHeadley@MiamiSAO.com

**Committee Members:**

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

**OPERATIONS SUBCOMMITTEE**

**CO-CHAIRS:**

Captain Richard Rand, NMBPD, (305) 948-2929,  
Richard.rand@nmbpd.org  
Dreama Oliver, SAO, Administrator, Felony Operations,  
(305) 547-0307, dreamaoaliver@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)