

The Rap Sheet

KATHERINE FERNANDEZ RUNDLE

MIAMI-DADE STATE ATTORNEY



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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 Alfredo Ramirez, III
Miami-Dade Police Department
(305) 471-2625
e-mail: aramireziii@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**

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Summary of the September, 2018 PPCC Meeting

Agencies represented: SAO, Miami-Dade PD, Miami Beach PD, Coral Gables PD, Sunny Isles Beach PD, Surfside PD, Pinecrest PD, Surfside PD, Medley PD and Homestead PD

Agenda Items

Failure to Return Personal Property – There are statutory requirements with which a company must comply before a lessee can be charged with failure to return leased/rented personal property and/or equipment, a third degree felony.

Florida law requires that the following statutory language be contained in the leasing/rental agreement or in an addendum to said document, and the statement must be initialed by the person renting/leasing the property/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.

A second requirement involves a demand letter. The company must send a certified letter with return receipt requested, terminating the lease and demanding the return of the property within 5 days of the date of the letter.

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IMPORTANT!

Next PPCC meeting **Wednesday November 28th, 2018 at 2:00 p.m.**

All are invited to attend

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Merchants are sending letters demanding payments and/or arrangements for payments to be made and/or the return of the property. These actions, although necessary at the outset to obtain agreed-upon payments, will not meet the notice requirement. **Once the merchant has exhausted efforts to obtain payments, he/she must send the statutory required notice, via a certified letter, return receipt requested, terminating the contract and demanding the return of the property or equipment, in accordance with Section 812.155 of the Florida Statutes.** See sample letter below.

DEMAND FOR RETURN OF PROPERTY (Sample Letter)

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.**

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.

Legislative update – Discussed

Co-defendant cases – A co-defendant is such when he/she is charged with the same crime as the defendant. For example, when the driver and the passenger occupying a stolen car are arrested and charged with grand theft auto, the passenger is a co-defendant, whose case will often be bound down to county court if it can be proven that he/she knew or should have known that the vehicle was stolen.. However, if the driver is charged with grand theft auto and the passenger is charged with trespass of the vehicle, the passenger is not a co-defendant. His case will go to misdemeanor court whereas the driver's case will go to felony court. Listing the passenger as a co-defendant in a grant theft auto case even if he/she is arrested for trespass may result in the generation of a felony case number, which is not appropriate.

Case Law -- Discussed

Warrants – As we discussed at our last meeting, arrest warrants are generally approved when an investigation is completed and there is sufficient evidence to prove the case beyond a reasonable doubt. A detective may be asked to obtain additional evidence, when warranted, before a warrant is approved. Criminal Intake does have an expedited process when a defendant is being held in a different county.

If additional charges relating to a case where a warrant has been issued are discovered, contact the

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assigned ASA to determine whether the warrant should be amended. That may not be necessary if the defendant is to be arrested shortly after the warrant is signed. In that case, the information can include the new charges if it had not already been filed. If the information was filed, we can file an amended information after the defendant's arrest.

Office of the Statewide Prosecution - This office prosecutes certain organized criminal activities, i.e., robbery, theft, burglary, carjacking, kidnapping, drug violations, etc., which occur in or affect multiple Florida jurisdictions. The main number for the Miami Office is 786-792-6196.

Reminders from Case Screening Supervisor Yvonne O'cana:

Out of Country victim or witness – Officers must obtain full addresses from these witnesses to include their postal codes as letters cannot be sent to foreign countries without a postal code. If at all possible, have all witnesses provide an email address as well. Email communication will reach them a lot faster than regular mail.

Civilian Witnesses - Officers must provide all witness information when they call to schedule their PFCs. In addition, that information must also be provided in the appropriate section in the automated A-Form. As to for business victims, a representative must be provided, even in trespass cases where notice is provided at certain locations, that a police officer is authorized to make a trespass arrest. An officer cannot represent the business unless that officer is working for the business.

Officers' Schedules – We have had numerous instances where officers provide schedules that are different than those listed in E-Notify for them. We cannot stress enough the importance of updating schedule information in E-Notify. The result of this problem is that officers may be scheduled off duty when it is not warranted costing their departments to needlessly spend resources for avoidable overtime.

Case Law by Criminal Intake ASA Roberto Fiallo

In *Johns v State*, --- So.3d ---, (Fla. 2d DCA 2018), Fla. L. Weekly D784, 2018 WL1769147, LEOs discovered a suspicious looking package at a UPS facility. A search warrant was obtained, the package was opened and it contained about ten pounds of marijuana in heat-sealed bags. A surveillance was established at the package's listed delivery address, which was a nondescript duplex in a residential neighborhood. There was only intermittent visual contact for fear of being detected. LEOs observed as follows.

A vehicle arrived at the duplex and the driver spoke with two individuals at the duplex, and made a call on his cell phone. The driver subsequently left the duplex. The detectives decided to try delivering the package to see what would happen. A detective approached the duplex, knocked on the unit door, and waited. No one answered so the detective left and did not leave the package behind. A short time passed and one of the duplex's occupants came from the unit's doorway and appeared to look around the front door and yard before returning inside. The detectives decided to contact with the occupants of the

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duplex. The detectives were allowed inside and one occupant told them that they were not expecting any packages to be delivered. Before concluding the interview at the duplex, the driver of the vehicle observed arriving earlier, returned to the location in a different vehicle as the passenger. The driver of the vehicle was James Johns III. The detectives approached the occupants of the vehicle, and conducted a "Terry" stop. The occupants turned out to be brothers. The detectives got both occupant's drivers licenses, checked for outstanding warrants, and patted both down for weapons. Detectives requested a K-9 unit to join them at the duplex, and one of the occupants vacillated on his consent to allow detectives to search the car. The occupant asked if he was under arrest, the detective replied no, and Johns got into the vehicle and started the engine. The detective then opened the door to the vehicle, told Johns he was being detained, and asked him to step out of the vehicle, shut it off and the detective took the keys and placed them in top of the vehicle. Johns eventually consented to a search of the vehicle (in writing) and a cigar laced with marijuana and shake (loose leaves of marijuana) was located in the vehicle. Subsequently, detectives obtained warrants and additional illegal drugs were found in another vehicle and evidence was found on a cell phone. Johns moved to suppress the evidence and the trial court denied the motion, finding that the detectives had reasonable suspicion for the initial detention. An appeal followed, and the appeal court reversed the trial court, holding that there was no "reasonable suspicion" for the initial detention of Johns, and the subsequent searches were the result of the fruit of the poisonous tree.

The initial detention of Johns was a mere hunch, as there was no reasonable, particularized suspicion. The subsequent consent to search was invalidated by the unlawful detention. "The only connections the circuit court could draw between the package of marijuana that precipitated this investigation and Mr. Johns at the time he was detained were his arrival at a duplex where marijuana was to be delivered and the prior actions of a person Mr. Johns accompanied. But it is well settled that one's mere presence in a place of potential criminal activity does not, by itself, furnish reasonable suspicion to justify an investigatory stop".

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. Thomas Carrigan, UMPD
Lt. Dawn Colon, M-DPD

COMMUNICATIONS SUBCOMMITTEE**CO-CHAIRS:**

Lt. Dawn Colon, M-DPD, (786) 469-3675;
e-mail: dmcolon@mdpd.com

Committee Members:

Lt. Gladys Amato, MPD Major Michael Mills, SMPD
Capt. Janet Gray, M-DCR Capt. Richard Rand, NMBPD
Ray Araujo, ASA, SAO Oliver Spicer, Jr., M-DPD
Det. James Moore, NMBPD

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 Michael Rosengaus, Hialeah PD Abbe Rifkin, ASA, SAO
Audrey Frank-Aponte, ASA, SAO Lt. Derrick Bowman, Pinecrest PD
Det. Lisa Lobello, MBPD Ofcr. Nelson Delgado, VGPD
Ofc. Alexander Martinez, Corrections Sgt. Jerome Berrian Jr., MBPD
Sgt. Henry Guzman, SMPD Sgt. Jose Diez, MPD
Sgt. Carlos Arguelles, M-DPD Lt. Dawn Colon, M-DPD
Richard Adams, M-DPD
Michael Weissberg, Miccosukee PD

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

Committee Members:

Chief Edwin Lopez, MDSPD Ellen Skidmore, SAO
Sgt. Timothy Houser, MBPD

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: LeahKlein@MiamiSAO.com
Capt. Tyrone White, M-DPD, (305) 715-3300
e-mail: TWhite@mdpd.com

Committee Members:

Sandra Lawrence, 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- 547-0186
e-mail: NatalieMoore@MiamiSAO.com

Committee Members:

Chief Edwin Lopez, MDSPD Det. David Adlet, EPPD
Chief Van Toth, Hialeah Gardens PD Oliver Spicer, Jr., M-DPD
Lt. Sergio Alvarez, M-DPD Barry Mankes
Ofcr. Alexander Martinez, Corrections
Lt. R. Rodriguez, SMPD
Michael Weissberg, Miccosukee PD

OPERATIONS SUBCOMMITTEE**CO-CHAIRS:**

Captain Richard Rand, NMBPD, (305) 948-2929,
Richard.rand@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. Dawn Colon, M-DPD, (786) 469-3675;
e-mail: dmcolon@mdpd.com

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