

The Rap Sheet

Katherine Fernandez Rundle

Miami-Dade State Attorney



1 February 2011

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

Naim R. Erched, Assistant Director
Police Services

Miami-Dade Police Department
(305) 471-2625

e-mail: nerched@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	1-2
Case Law	2-3
PPCC Subcommittees.....	4

There will be no PPCC Meeting in February

Summary of PPCC Meeting

January 19, 2011

Agencies represented: SAO, Hialeah PD, Sunny Isles Beach PD, M-DPD, M-DPD Crime Lab, Coral Gables PD, Miami Springs PD, North Miami Beach PD, Miami PD

Agenda Items:

Cannabis Trafficking/Grow House Cases:

There has been a renewed emphasis within the State Attorney's Office to assure that the Motions for Destruction of Cannabis get filed and heard by the court. If you are involved in such a case and the cannabis has not been destroyed within a reasonable amount of time (the motion specifies 120 days), please contact the ASA handling your case.

Police Attendance Slips:

Officers are reminded to bring their attendance slips with them when they appear for PreFiling Conferences in the Felony Screening Unit. If an officer has to go across the street to secure an attendance slip, he or she may take up the time allotted for the PFC to accomplish this. An officer may then be required to wait for the ASA or paralegal to finish the PFC on the next-scheduled case.

Problems with Charges at Booking:

We have recently become aware of three separate instances of charges being entered at booking differently than they appeared on the A-form. In two of these cases, non-bondable charges were changed to bondable charges. While these cases have been addressed, please let Kristi Bettendorf know if this happens to you – if you are advised at booking that the charge on your A-form “does not exist” in the CJIS system, or if you are urged to change subsections or entire statute sections to accommodate a charge listing in CJIS. Remember, you can go to the Miami SAO website and use the link entitled “Publications” to take you to the listing of CJIS charges, which is updated daily.

Continued on next page

IMPORTANT!

Next PPCC meeting, **Wednesday, March, 16, 2010, 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

Continued from previous page

Room for Prisoner Interviews in the Gerstein Building:

This inquiry was made at a meeting a few months ago, in an effort to assure that prisoners could be moved safely from the jail for statements, ideally being brought to the Justice Building via the bridge. I've been advised that it is not possible to designate a room in the Justice Building for interviews of prisoners.

Issues from the Floor:

Request Only eNotices:

David Maer, the Chief of County Court, inquired about officers appearing in person to provide police reports when they have been requested via eNotify. ASAs and other SAO personnel cannot sign off on officers' attendance slips when their appearance is based solely on a "Request Only" eNotice.

There will be no PPCC meeting in February.

The next PPCC meeting will be held on Wednesday, **March 16, 2011** at 1:00 p.m.

All are welcome to attend.

Recent Case Law

Ray v. State, 35 Fla. Law Weekly D1552a (4th DCA, 7/14/10) The defendant in this case was observed driving into an area that the officer was patrolling based upon complaints of dealing in drugs. The officer watched her drive up and stop in the middle of the road. A man walked up to the passenger side of the vehicle and the defendant and the man conducted a hand-to-hand transaction of some sort. What was being exchanged for what the officer could not see. The defendant drove off. The officer followed and activated the lights on her cruiser. After the officer activated the lights, the defendant went through a stop sign without stopping.

This case contains a pretty good discussion of what sort of elements will be considered to be sufficient to establish **reasonable suspicion for a stop** on the basis that an individual has engaged in a **drug transaction**. In this case, the state argued that based upon the nature of the exchange, the officer's narcotics training and the location's reputation as a "drug area", that reasonable suspicion existed. As a back-up argument, the state urged that a valid traffic stop occurred.

Factors which can be evaluated in determining whether reasonable suspicion exists in an alleged drug transaction include

- 1.) whether the officer can see either drugs or money being exchanged,
- 2.) the officer's narcotics experience,
- 3.) the reputation of the location for drug transactions,
- 4.) the extent of the period of surveillance and
- 5.) the history of previous multiple arrests from that site.

The court states that it is not necessary for an officer to actually see drugs being exchanged, and cites to *Burnette v. State* (2d DCA, 1995) where a reasonable suspicion was found to exist where (a) the officer had extensive drug training, (b) the defendant was making an exchange with an identified known drug dealer, and (c) the transaction took place at a location where the police had previously made 30 to 40 drug arrests. Of these three elements, the only one present in this case is the officer's training.

This court has previously held that "an officer's observation of hand-to-hand movements between persons in an area known for narcotics transactions, *without more*, does not provide a founded suspicion of criminal activity." *Belsky v. State*, 2002. They held that, in this case, there were not enough factors present to support a reasonable suspicion. The person with whom the defendant made the exchange was not a known drug dealer. The area, although the subject of recent complaints of drug dealing, did not have a history of extensive drug arrests. And although this officer had narcotics sale training, this did not make up for the lack of other supporting factors.

The traffic stop argument would not work for two reasons. First of all, the court pointed out the officer's testimony wherein she indicated that she stopped the defendant for the hand-to-hand transaction, not the traffic violation. And secondly, the traffic offense was not committed until *after* the officer had already turned on her lights to effectuate the stop.

Continued on next page

Continued from previous page

M.L. v. State, 35 Fla.Law Weekly D2456c (3d DCA, 11/3/10) An officer went to a specific location to recover a missing juvenile. He entered the common area of a building and saw this juvenile, and the missing juvenile, asleep on the floor. The officer saw a bunch of personal belongings strewn around them. He also saw a red bag in between the two of them holding a multi-colored pipe, more outside of the bag than in it. The officer seized the pipe and since the defendant admitted it was his, he was charged with possession of narcotics paraphernalia.

The Third DCA, however, held that the seizure of this pipe cannot be upheld pursuant to the **plain view doctrine**. The court indicated that the state had not proven that it was immediately apparent to the officer that the partially-concealed pipe in the bag constituted evidence of a crime or illegal paraphernalia. The pipe could have been a tobacco pipe or other lawful object. The court concludes by stating that the officer did not observe any suspicious activity before seizing the pipe, there was no evidence that the location was one known for drug activity, the officer was not there investigating drug activity, the room didn't smell like marijuana, there was no evidence that either juvenile appeared to be under the influence of marijuana or any other drug, and there was no evidence that the officer observed marijuana residue in the pipe prior to seizing it.

Bennett v. State, 35 Fla.Law Weekly D2461b (2d DCA, 11/5/10) The defendant was convicted in the trial court of trafficking in cocaine and possession of cannabis and paraphernalia. The basis for the conviction was the defendant's **constructive possession** of these items, since they were not found in his physical possession. The defendant was found by police in a rear cottage-type dwelling behind a main house. The defendant's grandmother lived in the main house. Police were looking for the defendant based on a "felony pick-up order" (not to be confused with a juvenile pick-up order; there was no court involvement in the pick-up order in this case) and a tipster had called indicating that he was seen outside of the house.

Once arrested and advised of his rights, the defendant told the police that he did not live in the cottage and did not know who did, that he had just seen the door open and had run inside. When the officer raised the possibility of trespass or burglary charges, the defendant said that he stayed there sometimes. The defendant gave the officers permission to search the cottage.

In the cottage they found cocaine and cannabis in the living room (on the shelves of an entertainment unit) and in the bedroom, in an open cardboard box filled with men's clothing. A man's shirt was draped across the box and the defendant's driver's license was in the pocket of the shirt. Somewhere in the cardboard box, there was a letter addressed to the defendant.

The court begins its analysis by stating that this is an entirely circumstantial evidence case and, as such, cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence. To prove constructive possession, the state must prove that the defendant knew of the presence of the contraband and had the ability to exercise dominion and control over it. While the jury could reasonably conclude that the defendant knew of the contraband in the living room because it was in plain view, this, in and of itself, is not sufficient to prove that he had dominion and control over it. In order to show that the defendant had dominion and control over the contraband, you would have to prove that the defendant had control over the premises. The court held that this was not proven in this case. The defendant's statement that he "sometimes stayed here" proves at most that he was a visitor. Since his dominion and control over the contraband in the living room cannot be inferred from his control of the premises, then it must be proven by independent evidence. This could come in the form of an admission by the defendant, witness testimony or scientific evidence (i.e., fingerprints). None of those were present in this case.

The contraband in the bedroom requires a different analysis because it was not in plain view, but two items of the defendant's were found in the vicinity of the box, within which the contraband was found. The court found that this evidence did not show that this was Bennett's residence, nor did it suggest how many or when others may have visited or used the cottage. Neither did the evidence prove who owned the clothes in the open box. While the location of his DL and letter in proximity to the drugs might be consistent with his having knowledge of the drugs and dominion and control over them, it is equally susceptible of the reasonable hypothesis that the drugs were in the possession and control of the owner or another occupant of the premises and that Bennett simply threw his belongings over or into the open cardboard box without knowing of the drugs inside. The defendant's convictions were reversed and he was ordered discharged.

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:

Sgt. George Arango, MDPD
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
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
Laurie Collins, M-DPD (305) 471-2625;
e-mail: llcollins@mdpd.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
Lt. Michael Cole, MSPD
Ofcr. Alexander Martinez, Corrections
Abbe Rifkin, ASA, SAO
Lt. Willie Hill, Pinecrest PD
Ofcr. Nelson Delgado, VGPD
Lt. Jerome Berrian Jr., MBPD
Sgt. Jose Diez, MPD
Sgt. Carlos Arguelles, M-DPD
Captain Luis Bazo, M-DPD

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
Sgt. Mark Schoenfeld, MBPD
Ellen Skidmore, SAO

PAWNSHOP SUBCOMMITTEE**CO-CHAIRS:**

Nneka Uzodinma, ASA (305) 547-0459
e-mail: NnekaUzodinma@MiamiSAO.com

Committee Members:

Det. Melissa DeJong, CGPD
Pat Kiel
Jonah Dickstein, ASA

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
Sgt. Jed Burger, Domestic Crimes Unit, MBPD
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:**

Shana Belyeu, ASA, SAO
Audrey Frank-Aponte, ASA, SAO
Brenda Mezzick, 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
Chief Van Toth, Hialeah Gardens PD
Sgt. Lynnise Jones-Curry, M-DPD
Capt. Luis Bazo, M-DPD
Ofcr. Alexander Martinez, Corrections
Richard Moss, Director, Miami Dade College School of Justice
Det. David Adlet, EPPD
Oliver Spicer, Jr., M-DPD
Ofcr. Chad Rosen, Surfside PD
Shana Belyeu, ASA, SAO
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:

Bill Altfield, ASA, SAO
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