

The Rap Sheet

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1 May 2011

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IN THIS ISSUE:

PAGE

Meeting Summary	1-2
Charging Attempted Murder	2-3
PPCC Subcommittees.....	4

Summary of PPCC Meeting April 20, 2011

Agencies represented: Florida Dept. of Corrections/Probation, Aventura PD, Coral Gables PD, Miami Beach PD, M-DPD, M-DPD Forensic Services Bureau, Sunny Isles Beach PD, Surfside PD, Miami PD, Miami Gardens PD

Agenda Items:

Presentation regarding Victim Services:

Maria DiBernardo from the State Department of Corrections/Probation and Parole spoke with us about the VINE (Victim Information & Notification Everyday) program. This is a statewide automated service that lets you track the custody status of offenders in county jails, State Department of Corrections facilities, or those being supervised by Community Corrections. An individual can register to receive this information. For more information, visit www.vinelink.com.

Miami-Dade County Corrections also contracts with the VINE system to provide phone notification to victims regarding the custody status of defendants pre-trial.

Maria Diaz, a supervisor with the SAO Victim/Witness Services Unit, spoke with us about VAN (Victim Access Network) and other available victim services. The SAO fulfills its statutory obligations (Chapter 960) to keep victims informed of the progress of their court case in the form of postcards mailed to the victim advising of upcoming court hearings. VAN also has a feature where a victim can request notifications via email rather than the postcards.

Additional victim services were also discussed, such as DART (Domestic Assistance Response Team), MOVES (Mobile Operations Victim Emergency Services), and our homicide counselors. For additional information on these and other available victim services, please visit the SAO website under "**Services**".

Problems with Charges at Booking:

First of all, the CJIS listing of charges available in the database is back up on the SAO website.

Continued on next page

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

IMPORTANT!

Next PPCC meeting, **Wednesday, May 18, 2011, 1:00 p.m.**
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

Continued from previous page

At the time of this meeting it had been disabled, but has now been repaired and is updated daily. You will find in this issue, and in future issues of The Rap Sheet, a discussion of charges which have been the subject of problems in the past, with suggestions on how to properly charge them. If you have suggestions on particular statute sections you have encountered problems with and would like to see addressed in a future issue, just let Kristi Bettendorf know about it.

Officers Appearing for Misdemeanor Domestic Cases:

We discussed the fact that officer training does not take precedence over trial subpoenas and that the court, not the SAO, schedules trials and may not take officers' days off into account. The importance of keeping the information in the eNotify system accurate and updated was stressed, for those situations when the SAO does have some degree of control over when matters are scheduled. In all cases possible, we will schedule officers for appearances during their duty hours.

Recordings of 911 Calls:

It is important to include, either verbally on the copy of the recording provided to the SAO (i.e., "The following is a true and accurate copy of a 911 recording made on [date] at [time]"), or on the business record certificate that accompanies the copy, the fact that the 911 call was made on a certain date at a certain time. This will establish the relevancy of the recording as evidence in our case.

Investigative Cost Recovery Forms:

We have received some investigative cost recovery forms that are incomplete or contain no dollar amount information. Please make sure that these forms are completed so that we can request reimbursement at sentencing. On the misdemeanor forms, it would be best to staple them directly to the pink (SAO) copy of the A-form so that when the A-form packet is separated, it will remain with the pink copy. If it's stapled or attached to the entire packet, it will often be lost in transit. For felony cases, of course, the forms should be brought with the rest of your police paperwork to the PFC.

ISSUES FROM THE FLOOR:

Misdemeanor Shoplifting Cases:

Lt. Michael Maure from Aventura PD inquired about officers being unnecessarily subpoenaed for trial on misdemeanor shoplifting cases. We will look into the best way to resolve the issue and try to report the resolution at the May meeting.

Victim Advocates being Listed as Witnesses:

Victim Advocate Aifa Alvarez from Miami Beach PD asked about being listed as a witness on cases where she has contacted victims pursuant to her function as a victim advocate. Occasionally, a victim will report something of substance to her, but it is usually simply routine contact to discuss victim services. Her being listed may be the result of the reporting program used by Miami Beach PD, but it will probably have to be dealt with on a case by case basis. I will follow up on individual instances and report back to the PPCC if I learn anything that may be helpful to others similarly situated.

The next PPCC meeting will be held on Wednesday, May 18, 2011 at 1:00 p.m.

**Proper Charging on A-forms:
Attempted Homicide**

There are many different elements to be taken into account when charging attempted murder. Aside from the different degrees and types of murder, other factors must be considered as well, such as the use of a deadly weapon, use of a firearm, or whether the attempted murder was in conjunction with the commission of another crime. The way you charge the offense will affect the defendant's bond status and whether he or she will be properly held for a non-bondable offense.

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Attempted First Degree/Premeditated Murder:

This is chargeable under **§782.04(1)(a)1**. If the facts do *not* include a deadly weapon, then it is a first degree felony and the charge should be written on the A-form as “**Murder/Premeditated/Attempt**” or some combination of these words. If during the attempt a deadly weapon was possessed, displayed or used or if an aggravated battery was committed, then it becomes a first degree felony punishable by life. The statute section should be written as above, but the description on the charge line should make reference to a deadly weapon or an aggravated battery. Example: “**Murder/Premeditated/Attempt/Deadly Weapon**” or “**Murder/Premeditated/Attempt/Agg.Battery**”, depending upon the facts of your case.

Attempted First Degree Felony Murder:

Due to Florida case law, attempted felony murder is charged under **§782.051**. This section should be charged *only* when the murder is attempted in conjunction with the commission, or the attempted commission, of one of the enumerated felonies.

§782.051(1) should be charged when the underlying felony is one of the 17 felonies listed under 782.04(3). This is a first degree felony punishable by life and is non-bondable. The charge should read “**Attempted Felony Murder**”. If a deadly weapon is used or an aggravated battery committed, this same subsection should be used but the description of the charge should include whichever additional element exists in the facts of your case: “**Attempted Felony Murder/Deadly Weapon**” or “**Attempted Felony Murder/Agg.Battery**”. These are life felonies and are also non-bondable.

§782.051(2) should be charged when the underlying felony involved is a felony *other than* those 17 listed in 782.04(3). This is a first degree felony and is bondable. The description of the charge would be the same – “**Attempted Felony Murder**”. The only difference will be in the subsection, which should always be included on your A-form.

§782.051(3) should be charged when the underlying felony is one of the 17 listed in 782.04(3), and someone is injured by a person *other than* the defendant. This is a felony of the second degree and should be charged “**Attempted Felony Murder/Causing Injury**”.

Attempted Second Degree Murder:

§782.04(2) should be charged when the attempt is by an act imminently dangerous to another, depraved and without regard for human life, but without a premeditated design to kill. It should be written “**Murder/2nd Degree/Attempt**” or some combination of these words. This is a second degree felony and is bondable.

If, however, the defendant uses a deadly weapon or a firearm, it becomes a first degree felony. While the same subsection will be used, your description of the charge should add either “**Deadly Weapon**” or “**Firearm**” at the end, depending upon the facts of your case.

There is another degree of attempted second degree murder when it is committed with a deadly weapon *and* with prejudice for the race, ancestry, ethnicity, etc. of the victim. This is a life felony *and* is non-bondable. You should include the additional terms “**Deadly Weapon/Prejudice**” in your charge description.

Attempted Third Degree Murder:

§782.04(4) should be used when the attempted murder is committed in the perpetration of, or the attempt to perpetrate, any felony other than those listed in subsection 782.04(4). This subsection lists 18 felonies, so check the list and if the underlying felony isn't included here, then attempted third degree felony is the correct charge. Of course it should be written “**Murder/3rd Degree/Attempt**” or some combination of these words. There is no intent to kill involved in third degree murder. The attempt is a 3rd degree felony and is a bondable offense.

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.

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