

The Rap Sheet

Katherine Fernandez Rundle

Miami-Dade State Attorney



1 November 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@mdp.d.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

PPCC Meeting Summary	1-2
Case Law	2-3
PPCC Subcommittees.....	4

Summary of PPCC Meeting

October 19, 2011

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

Agenda Items:

Arrest Warrant Procedures:

Marie Jo Toussaint, Division Chief of the SAO Criminal Intake Unit, spoke about the procedures involved in obtaining an arrest warrant through her unit. This is a summary of her presentation:

A detective requesting an arrest warrant for a subject who cannot be located, lives in another county or state or is in state or federal custody, should call Criminal Intake at 305-547-0255, for most criminal violations (unless they would be handled by one of the SAO's specialized units). In our county, a warrant request will be approved only when there is sufficient evidence to prove a case beyond a reasonable doubt; we do not approve warrant requests based on probable cause.

An Intake ASA will speak to the detective to review the facts of the case. If the ASA determines that the case appears provable, the case will be accepted and the detective will be set for a pre-filing conference. The following must be brought to the conference: sworn statements of victims and witnesses, if any, and all police reports and supporting data. Once the documentation is compiled by a paralegal, the Intake ASA will review the completed file. If the warrant request is approved, the detective will be brought back to have the warrant signed by a judge. Once the warrant is signed and entered into the system, an Information charging the subject with the appropriate charges will be filed.

If, upon initial review, the ASA determines that there is insufficient evidence to file the case, the case will not be accepted and the detective will be told what additional steps may be taken to cure the deficiency, if at all possible. Once the deficiency is cured, the detective should re-submit his case. The procedures outlined above will be followed.

If at the final review, the ASA determines that a case is not filable, the case will be closed and the detective will be advised of the case disposition.

New Search Warrant Form:

David Sherman provided a power point presentation and explanation of the procedures involved in the use of the new (and improved!) search warrant form prepared by the SAO. There were some glitches with the previous form which have been corrected in this, the beta version. ASA Sherman would like to get this new format disseminated to all local police departments. He requests that someone be designated the point person from each department, to coordinate with the agency's IT people to make sure that the warrant form will work with the operating system each agency uses.

Continued on next page

IMPORTANT!

Next PPCC meeting, **Thursday, November 17, 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

Please contact him at (305) 547-3350, or send an email to DavidSherman@MiamiSAO.com, to advise if you would be willing to serve as the contact within your department. [If your department regularly sends a representative to the monthly PPCC meeting, someone from your department may have already been designated.]

Jewelers Buying and Selling Gold:

Nneka Uzodinma, Co-Chairman of the Pawnshop Subcommittee, had been asked to look into whether there were any laws or regulations that govern jewelers that buy gold and sometimes melt it down very quickly, which can hamper law enforcement investigations. Nneka reported that jewelers are not governed under the statutes regulating pawnshops (Chapter 539), secondhand dealers, secondary metals recyclers or precious metals dealers (Chapter 538) unless they meet the statutory criteria for one of these categories. Local municipalities and Miami-Dade County do have regulations regarding business licensing, but these do not require jewelers to keep the same sort of records or make their records available to law enforcement agencies as businesses registered under Chapters 538 and 539 must. There are county regulations regarding secondhand dealers, in addition to the state statutes, but if a jeweler is not engaged in the business of selling, trading or exchanging secondhand goods, then these ordinances would not apply to them any more than the state statutes do.

Charging Probation Violations on A-Forms:

Not all judges handling daily first appearance hearings have been inclined to acknowledge probation holds from jurisdictions outside of ours, unless they are properly documented and the jurisdiction has placed a hold as well. If you determine that an individual you arrest on a felony is on probation in another jurisdiction, try to make contact with the defendant's probation officer so that they can lodge a hold with our jail. You should then list the probation violation in the charges section of your A-form. If it is only noted in the narrative section, some judges will not consider that sufficient for them to place a hold pursuant to the Anti-Murder Act.

Issues from the Floor:

Bringing Marijuana to Court on Misdemeanor Cases:

Officers were reminded that they must bring the evidence with them when they go to trial on misdemeanor marijuana cases. The County Court is trying to adjust all judges' schedules so that crimes cases will only be scheduled only on Mondays and Wednesdays, hopefully making it easier for officers to remember which cases involve marijuana evidence.

New Line-Up Standards and Instructions:

A question was raised about single-photo "lineups", vis-à-vis the new lineup standards and procedures being adopted throughout the state. These new procedures relate to standard, 6-person photo or live lineups. They do not apply to law enforcement procedures that may be used when a victim or witness indicates they know a subject and identify them by name. Oftentimes in this situation, officers will want to show such a witness a single photograph of a subject, simply to confirm that the witness and the officer are talking about the same person. Likewise, show-ups at or near the scene of a crime, held in close proximity in time, are not governed by these new standards.

The next PPCC meeting will be held on **Thursday, November 17th** (instead of the usual Wednesday), at the regular time (1:00 p.m.) and place.

Recent Case Law

State v. D.F., 36 Fla. Law Weekly D1679a (3d DCA, 8/3/11) Despite a very well-reasoned dissent by Judge Rothenberg, the majority held that the motion to suppress in this case was properly granted.

Continued on next page

Continued from previous page

The defendant was sitting on an outside stairway in the Lincoln Fields apartment complex when it was the target of a narcotics sweep. There were a total of about 20 officers involved in the operation, wearing bullet proof vests and with firearms drawn. They entered the complex from different directions, announcing "Police" and instructing some individuals (but not D.F.) to "Stop". As officers approached his location, D.F. dropped a bag containing several baggies of marijuana. This was observed by the "eyeball" officer who was watching through binoculars. This detective later went and retrieved the drugs where he saw D.F. drop them.

The court found that D.F. was, in effect, seized by police as he had **submitted to a show of police authority** and that a reasonable person in the same situation would not have felt free to leave. This despite the fact that D.F. testified at the hearing that he *did* feel free to leave...The State argued that there was no show of authority directed specifically at D.F., but the court held that considering the totality of the circumstances and D.F.'s close proximity to the area upon which the numerous armed police were converging, and using an objective (rather than the D.F.'s subjective response) standard, it was quite a show of police authority. The 3d DCA held that because there was sufficient evidence to support the trial court's decision to suppress the drugs, they were bound to uphold the trial court's ruling. State v. Herron, 36 Fla. Law Weekly D1731b (3d DCA, 8/10/11) This defendant was stopped for routine traffic. The officer asked the defendant to exit the car. The officer described the defendant as "excruciatingly nervous and fidgety" and said he could not produce a DL, proof of insurance or vehicle registration. The officer thought the defendant was looking for "an avenue of escape". Because of these circumstances, the officer indicated that he did not feel comfortable returning to his car to run a DAVID search and asked the defendant to put his hands on the roof of the car. Once the defendant placed his hands on the roof, the officer observed a bulge at the small of his back. He patted him down, feeling a firearm and holster and removed it.

The court held that while the law will allow an officer to ask a driver to exit a car on a traffic stop, it does not, in and of itself, give rise to a valid reason for a **weapons pat-down**. Such a pat-down is authorized only when an officer has a reasonable suspicion to believe that a suspect is armed with a dangerous weapon. The court held that the series of events in this case were insufficient to justify a pat-down, and that the after-the-fact observation of the bulge on the defendant cannot be used as justification for the pat-down. The 3d DCA upheld the trial court's suppression of the firearm.

M.J. v. State, 36 Fla. Law Weekly D1877b (3d DCA, 8/24/11) M.J. was adjudicated delinquent for resisting an officer without violence. Officers were dispatched to a burglary in progress. After they had set up a perimeter, they saw M.J. running through an alleyway. An officer dressed in full uniform identified himself and, calling M.J. by his nickname, ordered him to stop. He turned around, smiled and kept on running. Officers had to chase him down the alley, over some fences and into the buildings, all the while ordering him to stop.

The defendant argued at trial that the officers were not executing a legal duty at the time they ordered him to stop and that they did not have a reasonable suspicion of criminal activity. The court disagreed, finding that there was sufficient reasonable suspicion and that they were lawfully executing a legal duty in responding to a burglary in progress.

State v. Martinez, 36 Fla. Law Weekly (3d DCA, 8/31/11) After receiving an anonymous tip about a possible hydroponics lab at a certain location, detectives went to conduct a knock and talk. They smelled "live" marijuana when close to the house, heard faint humming sounds, and uninterrupted air conditioning. Three individuals, including this defendant, were taken from the home while the detective went to obtain a **search warrant**. The search warrant specified that officers could search "the premises, the curtilage, any vehicles or temporary structures within the curtilage and all persons found on the premises". Detectives searched the pick-up truck on the curtilage using the defendant's keys. Inside they found an electric bill for a separate property and a receipt for payment of the bill for this second property in the defendant's wallet. They also searched the mailbox, where they found two more utility bills for the second property addressed to the defendant. A hydroponics lab was found on the premises.

Detectives then went to the second property to conduct a knock and talk there. Again, approaching the premises, the odor of live marijuana was detected, as well as the same sort of humming noise and the uninterrupted running of the A/C. Detectives secured a search warrant for the second property and found a hydroponics lab there as well.

The trial judge suppressed the items found in the defendant's pickup truck and in the mailbox, and all items found at the second residence. The 3d DCA reversed this ruling, stating that the warrant had specified that the police could look for "titles, receipts, and other documents and records...that would lead to the identification of persons responsible for the unlawful possession or distribution of controlled substances". In addition, the court held that both the truck and the mailbox were clearly within the curtilage of the premises and were, therefore, properly searched.

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
Lt. Efrén Lopez, M-DPD
Det. Octavia Bridges, UMPD

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

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. Howard Bennett, 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:**

Audrey Frank-Aponte, ASA, SAO
Brenda Mezick, 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. Lynnis 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
Barry Mankes

OPERATIONS SUBCOMMITTEE**CO-CHAIRS:**

Major Kathy Katerman, NMBPD, (305) 948-2929,
kathy.katerman@nmbpd.org
Dreema Oliver, SAO, Administrator, Felony Operations,
(305) 547-0307, dreemaoliver@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