For the Law Enforcement Agencies of Miami-Dade County

The Rap Sheet

Katherine Fernandez Rundle — Miami-Dade State Attorney

1 September 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**

At the September PPCC Meeting we will have our annual

LEGISLATIVE UPDATE

New and amended laws from the 2011 Legislative Session will be reviewed and discussed

More New Laws Effective July 1, 2011

Chapters 2011-73 and 2011-90:

Both of these laws add controlled substances to the same numbered subsections of Schedule I(c) of 893.03. One can only hope that someone figures the duplication out by the time the new statute books are printed and the numbering will not be 40 to 44 and 40 to 45, but 40 to 51. The names of these controlled substances are long and difficult to spell, but they are, in essence, different chemical compositions of synthetic cannabis and synthetic cocaine ("bath salts"). Chapter 2011-73 states that it is a misdemeanor of the first degree to possess not more than 3 grams of the synthetic cannabinoids; over 3 grams is a felony.

Chapter 2011-161:

This amendment adds an enhanced sentencing section to s. 856.015, which deals with open house parties. A second or subsequent violation of this section is now a first degree misdemeanor. It is also a first degree misdemeanor if a violation causes or contributes to causing serious bodily injury or the death of the minor, or if the minor causes or contributes to causing serious bodily injury or the death of another, as a result of the minor's consumption of alcohol or drugs at the open house party.

Chapter 2011-119:

This contains what is called the "Tourist Safety Act of 2011". The offense of delivering, distributing, or placing (or the attempt to do so) a handbill at or in a public lodging establishment is a first degree misdemeanor. While a second or third violation remains a first degree misdemeanor, additions to this section specify a minimum fine of $2,000 for a second violation and a minimum fine of $3,000 for a third or subsequent violation.

Continued on next page

IMPORTANT!

Next PPCC meeting, **Wednesday, September 21, 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

New subsection 509.144(6) provides that any personal property used (or attempted to be used) as an instrumentality in the commission of a third or subsequent violation is subject to forfeiture under the Florida Contraband Forfeiture Act.

New section 901.1503 provides that an officer may give a notice to appear without a warrant when the officer has probable cause to believe that a violation of 509.144 has occurred and the owner or manager of the public lodging establishment in which the violation occurred and one additional affiant sign an affidavit containing information that supports the officer's determination of probable cause.

This law became effective on June 2, 2011.

****

Recent Case Law

Shively v. State, 36 Fla. Law Weekly D1111b (2d DCA, 5/25/11) All factual circumstances don't fit neatly into the category of a consensual encounter or a stop based on reasonable suspicion. The court found that the situation in this case was an example of an officer involved in a **"community caretaking function".**

Late one night a parking garage attendant called over on off-duty officer working security at that location with regard to the defendant in a vehicle. He was at the exit of the parking garage and couldn't manage to place a parking token into the machine to raise the arm so he could exit the garage. The officer suspected that the defendant was impaired. Vehicles were backing up on the exit ramp due to the defendant's inability to operate the parking exit machine. The officer diverted some of the vehicles and directed the defendant to back out of the exit lane and pull over against the garage wall where he would not block traffic. After the defendant did so, he got out of his vehicle, staggered, and leaned against his car to maintain his balance. The officer smelled alcohol about the defendant and called in a DUI unit. After conducting field sobriety tests, the defendant was arrested for DUI and DWLS. Cocaine was found in his possession in a search incident to his arrest.

The defense argued that the officer did not have sufficient reasonable suspicion to direct him to back out of the exit lane and move his vehicle. The court, instead, found that law enforcement officers engage in what they recognized as "community caretaking functions" necessary for public safety and welfare. Further, the court said, even if the officer's direction to the defendant were to be construed as an investigatory stop, a legitimate concern for the safety of the motoring public can warrant a brief investigatory stop to determine whether a driver is ill, tired, or driving under the influence in situations less suspicious than that required for other types of criminal behavior.

A.L.T. v. State, 36 Fla. Law Weekly D1203a (4th DCA, 6/8/11) Where officers have been given **consent to search** an individual, it is important that the search not exceed the expressed scope of the consent. An officer saw this juvenile sitting on a bicycle. The bike did not appear to have the required registration sticker so the officer approached to question him. The officer asked for permission to search A.L.T. "for weapons or drugs". A.L.T. responded that that was fine. During the search the officers removed A.L.T.'s wallet from his pocket and started looking through it. Inside the wallet, the officer found the Florida ID card of an elderly female. He had another officer run the name and address on the ID and learned that her house had been burglarized 6 days earlier. The officer questioned A.L.T. about the wallet and he indicated that he had found it. After about a 30-minute detention, he let him go and turned the information over to a detective.

A.L.T. was later arrested for the burglary and confessed to a detective. His attorney moved to suppress the victim's ID that was removed from A.L.T.'s wallet and his subsequent confession. The 4th DCA held that the officer exceeded the announced scope of the consent search – that being for weapons and drugs. This was not a consent to a general search, as the State tried to argue, but a search limited to the officer's stated purpose.

State v. Powell, 36 Fla. Law Weekly S264a (6/16/11) This case involving the **adequacy of *Miranda* warnings** has had a long and interesting history. Originally, back in 2004 in Tampa, the defendant was convicted of possession of a firearm by a felon. The form of the *Miranda* warnings used was as follows:

"You have the right to remain silent.
If you give up the right to remain silent, anything you say can be used against you in court.
You have the right to talk to a lawyer before answering any of our questions.
If you cannot afford to hire a lawyer, one will be appointed for you without cost and before any questioning.
You have the right to use any of these rights at any time you want during this interview."

Continued on next page

Continued from previous page

The trial court found that the *Miranda* warnings as given were sufficient and denied the defendant's motion to suppress the statement made. The appellate court (2d DCA) reversed the trial court, finding that the warnings were inadequate. The 2d DCA certified a question to the Florida Supreme Court, asking whether the rights given in this case were sufficient, in that they advised of the right to a lawyer *before* questioning, but did not include specific advice regarding the right to a lawyer *during* questioning. The State argued that the last line of the rights addressed any possible defect in not specifically mentioning the right to an attorney before and during questioning. The Florida Supreme Court held that the *Miranda* warnings were deficient.

The Florida Supreme Court's decision was certified to the United State Supreme Court and the US Supreme Court reversed the Florida Supreme Court's decision. This case that is now being reported is the Florida Supreme Court's new decision on the case, in light of the decision by the US Supreme Court. (That was just how we got to this point; now for the decision:)

The Florida Supreme Court declined to find that different pre-interrogation warnings are required by the Florida Constitution than are required by the Fifth Amendment to the United State Constitution, and so followed the decision of the US Supreme Court. Language in one of the dissenting opinions, however, makes perfect sense: it is good law enforcement practice to make sure that the *Miranda* warnings are as clear as possible.

Fernandez v. State, 36 Fla. Law Weekly D1274a (6/15/11, 3d DCA) The police in this case received an anonymous tip that the defendant had a marijuana hydroponics lab in his home. Police proceeded to the location, only to find the home, on an acre lot, surrounded by tall fences, tall hedges and a closed metal gate at each entrance to the driveway. There was no gate for pedestrian traffic. The mailbox was located outside of the fenced perimeter. Fortuitously, the defendant was leaving his home in his car and activated the remote control to open the metal gate as he exited. An officer slipped through the open gate and walked up to the defendant's car while another officer pulled his car into the driveway, blocking the defendant's exit. Two more officers also entered the property. The first officer advised the defendant that he needed to talk to him and subsequently asked for his **consent to search** the house. Two officers and the defendant walked back toward the house. On the front porch the defendant sat down and asked the officer to clarify what he was asking the defendant to do. The officer said they just wanted consent. The defendant took a few minutes, then refused to sign the consent form but opened the door to the house for police.

The Third DCA held that the initial entry by police onto the defendant's property was an illegal trespass. The State argued that the entry by the police was lawful because the gate was open, but the DCA found that the momentary opening of the gate in order for the defendant to leave was not an open invitation to the public or, by extension, to the police. The court found that the defendant had made his expectation of privacy clear in the manner in which he enclosed his home and its curtilage. The court further held that because the officer did not enter the property through an opening created for entry by a member of the public, the facts of this case could not be compared to the line of "knock and talk" cases which would permit an officer to approach the front door of an unenclosed home. And finally, the court held that the subsequent opening of the door to police and statements made by the defendant did not demonstrate the required break in the chain of events between the illegal entry by police and that the consent was rendered involuntary by the illegal police activity. The appellate court reversed the trial court and ordered the trial court to dismiss the case.

B.M. v. State, 36 Fla. Law Weekly (7/6/2011, 3d DCA) This juvenile was charged with **resisting arrest with violence** and **battery on a law enforcement officer.** At trial, the juvenile tried to present evidence that the officer he was charged with resisting used excessive force during and after the arrest. The juvenile also wanted to introduce evidence that he had brought an internal affairs complaint against the officer. The trial court excluded this evidence and the Third DCA held that this was error.

The 3d DCA cited to case law that clearly provides that a defendant in a criminal prosecution must be given a full and fair opportunity to cross-examine prosecution witnesses in order to show bias or a motive for the witness to be untruthful. This juvenile was not allowed to do this. In addition, the juvenile wanted to provide the testimony of additional witnesses to show that the officer was biased; this was also denied. The court cited to case law which holds that when a prosecution witness is under internal investigation for the incident which gave rise to the charges against the defendant (or when there is a pending civil suit or criminal charge against the witness arising out of the incident), those matters can be inquired into on cross-examination or developed further in the defense case.

Once the court determined that the evidence had been improperly excluded, the question as to whether the exclusion was harmless or not had to be addressed. The court found that because the case was what was described as a "classic swearing match" (i.e., the testimony of the officer conflicting with the testimony of defense witnesses), the court could not find that the exclusion was harmless beyond a reasonable doubt, and the case was reversed and sent back for a new trial.

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: Marie Jo Toussaint@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

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. 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
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**