

The Rap Sheet

KATHERINE FERNANDEZ RUNDLE

MIAMI-DADE STATE ATTORNEY



March 2018

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***

IN THIS ISSUE:

PAGE

Agenda items	1-3
Case Law.....	3-4
PPCC Subcommittees.....	5

Summary of the March 21st , 2018 PPCC Meeting

Agencies represented: SAO, Miami-Dade PD, Miami Beach PD, Hialeah PD, Coral Gables PD, Aventura PD, Sunny Isles Beach PD, Pinecrest, and Medley PD.

Agenda Items

Citations

Officers are writing citations for felony traffic violations but the citations are not being forwarded to our felony division which can cause a defendant to be charged twice for the same offense. Officers need to keep and bring to their felony pre-filing conference, copies of all citations issued to a felony defendant, or **the better practice is to submit them as well as all other case-related documents, i.e, offense incident reports, copies of checks, credit cards, licenses, as attachments in the A-Form system.**

Presentation by Hate Crimes Unit ASA Luis Caso

The State Attorney is committed to ensuring that individuals are not targeted or victimized due to who they are or how they worship. She created a Hate Crimes Unit to evaluate and handle cases when appropriate, as well as maintain statistics of such crimes.

Florida Statutes 775.085 provides that a crime will be reclassified

Continued on next page

IMPORTANT!

Next PPCC MEETING, April, 18, 2018

Continued from previous page

to a higher-level crime if it can be proven that the defendant's action evidenced prejudice towards a victim that the offender knew or perceived to be a member of a class defined in the statute. These include race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, mental or physical disability or advanced age of the victim.

Florida Statute 775.0861 provides for a reclassification of the crime if the offense is committed on the property of a religious institution while the victim is on the property for the purpose of participating in or attending a religious service.

Florida Statute 806.13(2) makes it a third-degree felony to willfully and maliciously damage or deface any place of worship

If you have a case where you think that the defendant evidenced prejudice in the commission of the crime, you may contact our Hate Crime Unit on-call duty ASA 24 hours for assistance. The on-call number is (786) 495-6716

Failure to Return Personal Property

Before we can prosecute such a case, we must ensure that the following statutory language statement is contained in the leasing agreement or an addendum to that agreement, and the statement is initialed by the person renting or leasing the rental property or 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.

In order to prove the 3rd degree felony charge of failure to redeliver hired or leased personal property or equipment, we must show among other things that the lessee failed to return the property or equipment after receipt of, or within 5 days after return receipt from, the certified mailing of the demand for return of the property or equipment. Merchants are sending letters demanding payments and/or arrangements for payments and/or the return of property or equipment. On occasion, the lessee makes a payment or two and then stopped paying and the company files a police report, based on the original letter. This is not appropriate as the statute requires a demand for the return of the property at the termination of the period for which the property or equipment was leased.

Once the lessee has failed to make payments, letters asking for payments, arrangement for payments and/or the return of the property or equipment can be sent. Then if no payments or arrangements for payments are made and the property or equipment is not returned, a certified letter, return receipt requested, terminating the contract and demanding the return of the property or equipment, should be sent, in accordance with section 812.155, Florida Statutes.

(sample letter) DEMAND FOR RETURN OF PROPERTY

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.**

Continued on next page

Continued from previous page

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.

New Firearms Law

The SAO is reviewing it and will discuss further at the next meeting. It was announced that Legal Counsels for the large police departments are meeting to coordinate logistics relating to the implementation of some aspects of this new law.

Written Threats to kill – Section 836.10

The section was amended to include threats to conduct a mass shooting or an act of terrorism and to prohibit a person from making, posting, or transmitting a threat in a writing or other record, including an electronic record, to conduct a mass shooting or an act of terrorism, in any manner that would allow another person to view the threat.

Paper Cases: Checks, Credit Card Receipts and Other Documents

In all paper cases involving checks or credit cards, the name and contact information of the accountholder (whether the real victim or not) must be provided to our Case Screening Unit when an officer calls to schedule a pre-filing conference. In addition, a copy of the document whether it is a check, a credit card receipt or any other document must be provided to the ASA handling the pre-filing conference.

Silent Witness Theory by ASA Roberto Fiallo

Dolan v. State, 743 So.2d 544 (Fla. 4th DCA, 1999) set forth two methods of authenticating photographic evidence. The “pictorial testimony” method requires the testimony of a witness to establish that, based upon personal knowledge, the photographs on tape fairly and accurately reflected the events or scene. The second method is the “**silent witness**” method, which provides that the evidence may be admitted upon proof of the reliability of the process which produced the tape or photo.

The “silent witness” theory allows video evidence to be admitted upon proof of the reliability of the process which produced the video. The following factors are considered in determining reliability:

- evidence establishing the time and date of the photographic evidence;
- any evidence of editing or tampering;
- the operating condition and capability of the equipment producing the photographic or video evidence as it relates to the accuracy and reliability of the photographic product;
- the procedure employed as it relates to the preparation, testing, operation, and security of the equipment used to produce the photographic product, including the security of the product itself; and
- testimony identifying the relevant participants depicted in the photographic evidence.

Continued on next page

Continued from previous page

Case law submitted by ASA David Gilbert, Chief of the Traffic Fatality Unit

Aguilar v State _____ So.3d ___, (Fla. 3rd DCA 2018) 2018WL443165

In this case the court upheld a warrantless blood draw. The defendant was involved in a multiple car collision wherein one person died and two others suffered serious bodily injury. The lead investigator learned that the defendant was seen racing with another vehicle before the collision. The defendant was trapped in his vehicle when the investigator noticed the defendant's speech was slurred, his eyes were bloodshot, and there was an odor of alcohol coming from the defendant. The defendant was extricated from the vehicle and taken to the hospital with serious bodily injuries. The defendant was placed in a medically induced coma. The lead investigator ordered a blood draw based on his belief that he had probably cause and exigent circumstances. The detective testified at the motion to suppress that in his opinion it would have taken about four hours to get a warrant. He had to do the following: conduct his on-scene investigation, write up the warrant, transmit the warrant to an Assistant State Attorney, transport the approved warrant to the on-duty judge for signing. The motion to suppress was denied and the Third District Court upheld the ruling saying that the totality of the circumstances gave rise to exigent circumstances.

It should be noted that the testimony presented at the motion to suppress was critical to the successful defense of the Investigator's actions. Furthermore, this case occurred before approval of the electronic search warrants procedure now in effect. The amount of time to obtain a warrant has been significantly reduced. The reduction of time in obtaining a warrant, does not preclude a carefully presented set of facts that will support a warrantless blood draw under the proper circumstances. It is recommended that a warrant still be obtained after an exigent circumstances blood draw for two reasons: you will have a back-up blood draw if the exigent circumstances blood draw is suppressed and you can demonstrate to the court the additional amount of time that it actually took, to get the warrant.

Continued on next page

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. Dawn Colon, M-DPD
Det. Octavia Bridges, UMPD

COMMUNICATIONS SUBCOMMITTEE**CO-CHAIRS:**

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

Committee Members:

Lt. Gladys Amato, MPD
Capt. Janet Gray, M-DCR
Ray Araujo, ASA, SAO
Det. James Moore, NMBPD
Major Michael Mills, SMPD
Capt. Richard Rand, 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 Bryan Pegues Aventura PD (305) 466-8996;
e-mail: BPegues@AventuraPolice.com

Committee Members:

Lt. Lazaro Artime, Hialeah PD
Audrey Frank-Aponte, ASA, SAO
Lori Fredline, MBPD
Ofc. Alexander Martinez, Corrections
Sgt. Henry Guzman, SMPD
Sgt. Carlos Arguelles, M-DPD
Richard Adams, M-DPD
Abbe Rifkin, ASA, SAO
Lt. Derrick Bowman, Pinecrest PD
Ofcr. Nelson Delgado, VGPD
Sgt. Jerome Berrian Jr., MBPD
Sgt. Jose Diez, MPD
Lt. Dawn Colon, M-DPD

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 Ian Moffett, MDSPD
Sgt. Timothy Houser, MBPD
Ellen Skidmore, SAO

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

Committee Members:

Carrie Soubal, 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- 547-0307
e-mail: TomHeadley@MiamiSAO.com

Committee Members:

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

OPERATIONS SUBCOMMITTEE**CO-CHAIRS:**

Captain Richard Rand, NMBPD, (305) 948-2929,
Richard.rand@nmbpd.org
Dreema Oliver, SAO, Administrator, Felony Operations,
(305) 547-0307, dreemaoliver@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

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