

The Rap Sheet

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

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There will be no
Police-Prosecutor Coordinating Committee
Meeting in July or August

The next scheduled meeting after the summer hiatus
will be on September 18, 2013 at 2:00 p.m.
and will include the annual Legislative Update

More New Laws Effective July 1, 2013

Chapter 2013-160:

This 226-page bill contains a slew of changes to myriad traffic laws. Of note is new subsection 316.081(3), which prohibits individuals who are driving in the farthest left lane of a road, street or highway that has two or more lanes travelling in the same direction from driving **more than 10 mph slower** than the posted speed when they know, or reasonably should know, that a vehicle is trying to overtake them. There are exceptions when they are passing a vehicle themselves, or preparing to make a left turn.

While **texting** while driving for everyone didn't pass, a prohibition against texting **while operating a commercial motor vehicle** was enacted. Civil penalties and license disqualifications are provided for violations.

In addition to an insurance card, drivers can now present to law enforcement officers an **electronic device displaying proof of insurance**. Doing so does not constitute consent for the officer to access any information on the device other than the displayed proof of insurance.

There are a number of changes regarding commercial driver licenses, including the addition of a **commercial learner's permit** as another type of commercial license, adding the category to all appropriate sections.

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IMPORTANT!

Next PPCC meeting, **Wednesday, September 18, 2013 at 2:00 p.m.**

State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136

All are invited to attend

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The section which provided for a court's ability to issue a temporary license once a driver was convicted of **DUI** (322.25(7)) was repealed. New subsection 322.28(2)(e) provides that DUI convictions that occur on the same date resulting from separate offense dates shall be treated as separate convictions, and the offense which occurred earlier in time will be deemed a prior conviction for sentencing purposes. New subsection 322.271(7) provides for certain DUI offender's eligibility for a restricted driving privilege (for business purposes only) pursuant to a hearing by the department.

There is now a definition in the statutes for the "**National Motor Vehicle Title Information System**", and added requirements for searches and entries into the system, but I can't tell from what I read if it's something that is operational at this point, or if all states are participating.

Chapter 2013-219:

Provisions regarding the mandatory reporting of child abuse (in section 39.201) were changed as follows: When the Central Abuse Hotline has electronically transferred a report or call regarding suspect child abuse by an adult other than a parent, or other person responsible for a child's welfare to a law enforcement agency, the law enforcement agency does not have to "re-report" a notice of reasonable cause back to the Hotline. Vice-versa, when a law enforcement agency or the sheriff's office initially reports a matter to the Central Abuse Hotline, the Hotline is not required to electronically transfer such calls or reports to the county sheriff's office. This amendment seeks to eliminate circular reporting.

Chapter 2013-245:

Section 828.12, **cruelty to animals**, was amended to provide that not only the person who intentionally commits the act toward an animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering commit aggravated animal cruelty, but so does the owner or custodian of the animal who fails to act. It remains a third degree felony. New subsections provide that multiple acts of cruelty against the same animal can each be charged as separate offenses, and cruelty against multiple animals can be charged as separate offenses.

New section 828.1615(1)(a) makes it a second degree misdemeanor to **dye or artificially color an animal** under 12 weeks of age, or a fowl or rabbit of any age. It is also a second degree misdemeanor under subsection (1)(c) to sell, offer for sale, or give away as merchandising premiums, baby chickens, ducklings or other fowl under 4 weeks of age or rabbits under 2 months of age to be used as pets, toys or retail premiums.

Statute 895.02, the **illegal fighting or baiting of animals**, was added to the list of offenses within the definition of "**racketeering activities**".

Chapter 2013-246:

In the face of **squatters** taking advantage of the abundance of mortgage foreclosures, changes were made to the law of adverse possession, section 95.18. Requirements were placed upon those claiming **adverse possession**, the most significant being a payment of all outstanding taxes and special improvement liens levied against the property. Once those payments were made, a return is required to be filed with the property appraiser. According to subsection 95.18(9), if the person occupying (or attempting to occupy) the residential structure by claim of adverse possession has not filed such return, they commit a trespass under section 810.08. If, according to 95.18(10), they are occupying (or attempting to occupy) the home by claim of adverse possession and offer the property for lease to another, it is a theft under 812.014.

Chapter 2013-248:

New subsection 119.071(2)(k), in the section dealing with exemptions from public record requirements, provides that a complaint of misconduct filed with an agency against an agency employee, and all information obtained pursuant to an investigation by the agency of the complaint or misconduct, is confidential until the investigation ceases to be active or until the agency provides written notice to the subject employee that the agency has concluded their investigation. This notice must also advise the employee whether the agency intends to proceed with disciplinary action or file charges or not.

Chapter 2013-251:

New subsection 493.6120(5) makes it a third degree felony to knowingly possess, issue, cause to be issued, sell, submit, or offer a fraudulent training certificate, proficiency form, or other official document that declares an applicant to have successfully completed any course of training for private investigative, security or repossession services licensure when the person knew, or reasonably should have known, that it was fraudulent.

Recent Case Law

Van Teamer v. State, 38 Fla. Law Weekly D50c (1st DCA, 2/21/12) This case rather threw a wrench in the works vis-à-vis creating a conflict with the 4th DCA (Aders v. State) on this issue. The 3d DCA hasn't followed either the 1st or 4th DCAs on this point, so this case isn't binding on us unless and until the Florida Supreme Court rules and resolves the conflict.

The issue here is very simple: whether a **discrepancy between a car's color** that an officer sees when he pulls up the record of a tag number, and the color of the vehicle he's running, in and of itself, is sufficient to support an investigatory stop. The Aders case says it is, this case says it isn't. Some of the elements that this court relied upon in finding that it was an insufficient basis for a stop is the fact that it is not illegal in Florida to change the color of a vehicle, and there is no requirement that a change in color must be reported to DHSMV. The court recognizes that while any discrepancy between a vehicle's plates and the registration may legitimately raise a concern that the vehicle is stolen or the plates were swapped from another vehicle, that *in the absence of any other suspicious behavior or circumstances*, a color inconsistency by itself is not enough.

Booker v. State, 38 Fla. Law Weekly D68a (2d DCA, 12/28/12) The **leaving the scene of a crash involving injuries** conviction in this case was reversed due to insufficient evidence. The defendant in this case was DUI and came speeding up on a location where an officer had stopped his vehicle a bit behind and to the side of a disabled vehicle, such that at least a portion of the disabled car was not visible to those travelling on the road. The defendant lost control of his vehicle, it spun around and the back end of the defendant's vehicle struck the patrol car. This impact pushed the officer's car into the disabled car, which was occupied by the injured party. The defendant tried to leave the scene in his vehicle, but between the damage to his car and the officer's quick actions, he was stopped.

The defendant's motion for judgment of acquittal was denied in the trial court, but that decision was reversed by the appeals court as the state had presented insufficient evidence regarding the defendant's knowledge that the accident resulted in an injury. It is not enough to prove that the defendant was involved in a crash that resulted in injury or death and willfully failed to remain on the scene; it must also be proven that the defendant either knew of the resulting injury or death or reasonably should have known from the nature of the accident. Further, when there are multiple impacts (as in this case), the defendant must know of the specific impact that actually resulted in the injury. A couple of elements unique to this case led to the reversal in this case. First of all, when the defendant's vehicle spun, the back of his car struck the officer's. Due to this sequence of events, the defendant wasn't even facing the crash, but his vehicle was facing away from the point of impact. It can't be shown that the defendant even knew that the officer's car subsequently struck the victim's car. As to proving knowledge of the injury, sometimes it can be shown through circumstantial evidence that the damage done to the vehicle was so substantial, that a defendant should have known that an occupant of the vehicle would be injured. Not so in this case, where there was minimal damage to the victim's vehicle.

J.H. v. State, 38 Fla. Law Weekly D387b (3d DCA, 2/20/13) This case discusses the issue of whether **reasonable suspicion for a stop** exists under these facts. Police received an anonymous call that there was a fight between several males at a particular location and one of them was wearing black and carrying a taser. An officer arrived at the dispatch location and saw about 30 people milling around. J.H. was the only person wearing black clothing. The officer did not see anyone fighting. Because of the clothing he was wearing and the fact that he was "sweating, attempting to catch his breath and nervous", the officer ordered J.H. to come towards her and place his hands on her car. She proceeded to pat him down because, she testified, dispatch had advised that the male had a taser. J.H. did not have any suspicious bulges in his clothing. As she was patting him down, she felt a cylindrical object in one of his pockets which she believed to be a firearm. She went to retrieve the object when J.H. grabbed her arm, pushed her and ran. He was later apprehended by another officer.

Because this information was anonymous, it would not provide sufficient reasonable suspicion for a stop unless it was corroborated by independent police investigation that confirmed some details of the tip. There was no such corroboration in this case, and the court commented that there was no case authority that supports sweating or appearing out of breath as an evasive or suspicious activity. The officer could not test the tipster's knowledge or credibility as there was no predictive information in the tip to be observed.

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.

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