FOR THE LAW ENFORCEMENT AGENCIES OF MIAMI-DADE COUNTY

The Rap Sheet

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

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Summary of the April 20th, 2016 PPCC Meeting

Agencies represented: SAO, Miami-Dade PD, City of Miami PD, FDLE, Miami Beach PD, Hialeah PD, Aventura PD, Sunny Isles Beach PD, Coral Gables PD, Homestead PD; Medley PD, University of Miami PD

Agenda Items

Legislative Updates

New legislation discussed

Presentation by the Hate Crimes Unit

ASA Justin Funck advised that the Unit stands ready to assist officers identify the actions that would qualify an offense as a hate crime. The statute is very specific as to the class of people that are covered and it's an enhancement statute. Officers cannot arrest for it but when they come for the pre-filing conference and it's clear that the case involves a hate crime, we can elevate the offense to the next higher level, i.e. a misdemeanor battery will be elevated to a 3rd degree felony, a 3rd degree felony to a 2nd degree and so on. The Unit is available to answer officers' questions and/or to provide training for officers at their police department, upon request. The Unit can be reached by emailing hatecrimeunit@miamisao.com or calling (305) 547-0100 and request to be transferred to the Hate Crimes Unit.

Presentation by Human Trafficking Unit

The Decriminalization of Juvenile Prostitution:
Protecting our Vulnerable Youth
By Human Trafficking ASA Brenda Mesick

As of October 1, 2016, juveniles can no longer be charged with a violation of F. S. 796.07(2)(e), offer to commit, or to commit, or to engage in prostitution, lewdness, or assignation. The Florida legislature decriminalized this subsection only. Juveniles can be charged with violations of other subsections of F.S. 796.07.

The decriminalization of juvenile prostitution may further incentivize human traffickers, commonly known as "pimps," to prey on our most vulnerable youth. According to the FBI, the average age of entry into prostitution in the United States is twelve.[1] We must continue to work vigilantly to identify vulnerable youth and bring them to the attention of the Department of Children and Families.

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IMPORTANT!

Next PPCC meeting, Wednesday, December 21th, 2016
State Attorney's Office • 1350 NW 12 Avenue • Miami FL 33136
All are invited to attend

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It may help to review the criteria involved when a police officer can take a minor into custody under Chapter 39.401. The Florida Safe Harbor Act expanded the definition of a dependent child to include a sexually exploited child. A sexually exploited child includes the act of a child offering to engage in or engaging in prostitution. This definition recognizes that if a child offers to "rent" his or her body to another for a sexual act in exchange for money, food, or shelter and another person acts on that offer, that person has exploited that child. An officer with probable cause to believe that a minor is a sexually exploited child may take that child to the Juvenile Assessment Center (JAC) and call in a report to the DCF abuse hotline.

In addition to the Florida Safe Harbor Act, a law enforcement officer may take a child into custody if the officer has probable cause of the following:

1) That the child has been abused, neglected, or abandoned or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment;
2) That the parent or legal custodian of the child has materially violated a condition of placement imposed by the court; or
3) That the child has no parent, legal guardian, or responsible adult relative immediately known and available to provide supervision and care.

Then the officer shall release the child to the parent or legal custodian of the child or to a responsible adult approved by the Department of Children and Families, or deliver the child to an authorized agent of the department.

Moreover, the Miami-Dade County Juvenile Curfew Ordinance, Ord. No. 95-208, was adopted in part to reduce juvenile victimization and the tragic and traumatic psychological effect of such victimization. Under Ord. No. 95-208, it is unlawful for any person under the age of seventeen to linger, stay, congregate, move about, wander, or stroll in any public or semi-public place in Miami-Dade County, either on foot or in or upon any conveyance or vehicle being driven or parked thereon, during curfew hours. The curfew is between the hours of 11pm and 6am on Sunday night through Friday morning. From Friday evening to Sunday morning the curfew applies between midnight and 6am. An officer shall not take into custody any person pursuant to this ordinance unless the officer reasonably believes that an offense has occurred and that, based on any response or circumstance, no defense in Section 21-205 is present.

The on call Human Trafficking Unit ASA is available at (786) 527-1889 should you have any questions.

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[1] Office of the Inspector General. "The Federal Bureau of Investigation's Efforts to Combat Crimes Against Children." *Chapter 4: Non-Cyber Sexual Exploitation of Children*. Federal Bureau of Investigation, 8 Sept. 2009. Web. 14 Nov. 2016.

Case Law discussed

Case Law

Prepared by Felony Screening Chief Joe Robinson and Intake ASA Roberto Fiallo

State v. Miller, 193 So.3d 1001 --- (Fla. 3rd DCA 2016)

The defendant was charged with driving while his license was revoked as a habitual offender, even though he has never had a Florida driver license. Defense counsel filed a sworn motion to dismiss which was treated by the Court as a motion for a reduction of the charge to the offense of driving without a valid driver license (NVDL). The defendant was found guilty of NVDL and the state appealed. The Third District Court of Appeal affirmed the trial court decision.

The Appellate Court reviewed several Florida appellate cases which dealt with this issue and concluded "*… as a matter of law that having, at some time, a Florida driver's license is an element of a section 322.34(5) offense*" and thus "*a defendant may not be convicted as a habitual traffic offender under section 322.34(5) for driving with a suspended license when no license had ever been issued to that defendant*".

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This decision conflicts with the Second, Fourth and Fifth Districts on this issue and the Court certified the conflict to the Florida Supreme Court.

Sanchez v. State, --- So.3d --- (Fla. 4th DCA 2016), 41 Fla. L. Weekly D2012

In the course of investigating an armed robbery, a **BOLO** was issued by law enforcement, for "two black males fleeing westbound from the store." There was no additional information regarding clothing or vehicle description contained in the **BOLO**.

The defendant, who was a passenger in a vehicle several blocks from the crime scene, was subsequently stopped and arrested. The defendant was convicted of first degree murder, and moved the court to suppress the initial stop, arguing that it was not based on reasonable suspicion. The trial court denied the motion and the defendant appealed. The appellate court reversed the conviction.

The court held that in order to detain a person based on information contained in a **BOLO** under the reasonable suspicion standard, factors to consider include, "the length of time and distance from the offense, route of flight, specificity of the description of the vehicle and its occupants, and the source of the **BOLO** information. Moreover, the time of day, the absence of other persons or vehicles in the vicinity of the sighting, any other suspicious conduct, and other activity consistent with guilt may weigh into the analysis. Whether an officer's suspicion is reasonable is determined by the totality of the circumstances which existed at the time of the stop and is based solely on facts known to the officer *before the stop.*" (citations omitted).

Additionally, the court cited other conduct that would contribute to reasonable suspicion to stop a person:

• **Profusely sweating.** *State v. Davis,* 849 So.2d 398 (Fla. 4th DCA 2003) (finding that nervous behavior and profuse sweating on a cold evening contributed to reasonable suspicion); *see also L.O. v. State,* 44 So.3d 1290 (Fla. 4th DCA 2010).

• **Evasive driving.** *Jemison,* 171 So.3d 808 (considering the defendant's driving in circles around a neighborhood as suspicious activity); *Young v. State,* 33 So.3d 151 (Fla. 4th DCA 2010) (finding that constant lane changing and driving at a high rate of speed amounted to reasonable suspicion); & *Monfiston v. State,* 924 So.2d 61 (Fla. 4th DCA 2006) (finding that driving with car lights off and changing direction immediately after observing the police constituted reasonable suspicion).

• **Driving at a high rate of speed.** *Porter v. State,* 765 So.2d 76 (Fla. 4th DCA 2000) (finding reasonable suspicion to stop the defendant who matched the general description of the **BOLO** and was driving at a high rate of speed).

• **Hiding from the police.** *State v. Leach,* 170 So.3d 56 (Fla. 2d DCA 2015) (finding that the totality of the circumstances, including the defendant's attempt to conceal his identity by hiding behind a car, sufficiently supplemented the vague **BOLO**, creating a reasonable suspicion to stop defendant).

• **Inconsistent or dubious explanations for presence.** *State v. Gibbons,* 617 So.2d 854 (Fla. 2d DCA 1993) (finding reasonable suspicion to stop defendant who matched a generally descriptive **BOLO**, attempted to flee when ordered to stop, and gave the officer an inconsistent and false explanation for his presence); *T.J. v. State,* 452 So.2d 107 (Fla. 3d DCA 1984) (finding reasonable suspicion established where the defendant matched a general **BOLO** and told the officer he was selling avocados but possessed no avocados).

• **An anonymous tip predicting future actions ordinarily not easily predicted.** *Alabama v. White,* 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990) (holding anonymous phone tip that defendant would be leaving a specific apartment, at a particular time, in a particular vehicle established reasonable suspicion); *State v. Santiago,* 657 So.2d 12 (Fla. 2d DCA 1995) (finding reasonable suspicion established where defendants matched a vague **BOLO** description and the vehicle was in the exact place, at the exact time, as described by the **BOLO**).

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Cole vs. State 190 So.3d 185 --- (Fla. 3rd DCA 2016)

The arresting officer was on patrol during the evening of February 3, 2012 when she saw a car with a faded and illegible temporary tag, as well as a tinted film covering the brake lights, making it impossible to determine if the vehicle's lights were on. Before the officer could initiate a stop of the car, the driver suddenly turned into the opposite lane of traffic without signaling and parked in the grassy swale. The officer activated her lights and siren, exited her car, and began walking toward the car. Cole was the driver and only occupant of the car. As the officer headed toward Cole's car, Cole began to exit his car. The officer told Cole to remain inside. Cole handed over his license and registration, and the officer described Cole as very nervous, sweating and stuttering. In response to her questions, Cole told the officer he was going to meet a "good friend" who lived nearby, but when asked, Cole could not provide the friend's name. Given Cole's behavior, the officer requested backup.

The backup officer arrived within a few minutes. The lead officer returned to her police vehicle to conduct further investigation related to the traffic stop. The backup officer engaged in small talk with Cole, who was still seated in his car, and described Cole as looking past her as they spoke, as if he was "visually trying to clear an area" and that that he was on parole. Cole was sweating, bouncing his legs up and down, and looked afraid. Both of his hands were clenched in fists, and he was tightly gripping an ink pen in his right hand. This caused concern for the backup officer, who believed that the pen was being held in such a way that it could be used as a weapon. The backup officer asked Cole to step out of his car so she could conduct a patdown search. She grabbed his wrist before he stepped out of the car and shook the pen out of his hand, then helped Cole out of the car. While taking him out of the car, the officer twisted Cole's arm and turned him around so he was facing away from her and toward his own car and then saw Cole flick his wrist and dust rising from the dirt ground and believed Cole had thrown something under the car. Cole was then handcuffed in order to pat him down. After feeling what felt like plastic bags inside Cole's pocket, Cole was searched and was eventually found in possession of a large amount of cocaine, and more bags were found under the car.

The defense argued the police did not have reasonable suspicion that Cole was armed with a dangerous weapon, thereby rendering the patdown illegal and subsequent search illegal. The 3rd DCA rejected this, holding: *"Here, in light of the totality of circumstances, we conclude there was reasonable suspicion to justify a patdown search of Cole. The stop occurred at approximately 9 p.m. The officer noticed that Cole was sweating, appeared nervous, was fidgety (bouncing his legs up and down), and his fists were tightly clenched. He could not answer some of the officer's questions, and though he said he was going to see a "good friend," Cole could not provide the friend's name or address. Further, just prior to the stop, Cole had made a sudden U-turn into oncoming traffic lanes and parked in a swale facing the wrong direction. Finally, Cole had a pen clenched tightly in one of his hands when the officer approached and initiated contact with him. … Further, given the manner in which Cole was carrying and displaying the pen when the officer approached and engaged with Cole, the officer had a reasonable belief that the pen could be used in a manner to inflict harm on the officer. Based on the totality of the circumstances, we hold there was reasonable suspicion to justify the patdown search of Cole*."

The court further rejected the defendant's claim that, even if the initial patdown search was justified, the officer exceeded the limited scope of a patdown for weapons, resulting in a full and unlawful search. It concluded: "*Although we agree that the officer exceeded the limited scope of a patdown search, we nevertheless conclude that the evidence is not subject to suppression because the drugs found in Cole's sock would have inevitably been discovered."*

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.

ISSUES FROM THE FLOOR

SUBCOMMITTEE REPORTS

Next PPCC Meeting – December 21th , 2016

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