PART III

Sheriff's Office
Collier County
Naples, Florida

[redacted]

[redacted]

FL0110000

DEFENDANT DID THE FOLLOWING ACT(S) WHICH CONSTITUTE A VIOLATION OF THE LAW (ELEMENTS OF THE CRIME, PROBABLE CAUSE STATEMENT

ON 2-12-08 AT APPROXIMATELY 0100 HOURS I MADE CONTACT WITH WOA A WHITE MALE SUBJECT CARRYING A LARGE BACKPACK, LATER IDENTIFIED AS [redacted], WALKING ON SR 29 NEAR CR 850.

THIS AREA IS VERY REMOTE NOT WELL LIGHTED SO I STOPPED TO ENSURE THAT MCELHINEY WAS OK. DURING OUR CONVERSATION, HE STATED HIS NAME WAS [redacted] AND HE HAD JUST GOTTEN OFF A GREYHOUND BUS FROM SOUTH CAROLINA. HE STATED HE HAD NO IDENTIFICATION, COULD NOT PRODUCE A BUS TICKET OR RECEIPT AND HAD NO CASH OR CREDIT CARDS. HE WAS UNABLE TO ACCURATELY TELL ME WHERE HE WAS GOING, ONLY THAT IT WAS A HOUSE NEAR A CURVE ON CR 850.

INV. [redacted] AND VELASQUEZ ARRIVED AT THIS POINT .

SEVERAL ATTEMPTS TO RUN HIS INFORMATION THROUGH SOUTH CAROLINA AND FLORIDA WERE MADE WITH NEGATIVE RESULTS.

I INFORMED [redacted] THAT FOR MY SAFETY DUE TO BEING UNABLE TO CONFIRM HIS IDENTITY OR STORY I WAS GOING TO PAT HIM DOWN FOR WEAPONS. [redacted] TWICE REMOVED HIS HANDS FROM HIS HEAD DURING THE PAT DOWN AT WHICH TIME HE WAS TAKEN TO GROUND IN A PRONE POSITION BY INV. A WALLET WITH DRIVERS LICENSES OUT OF FLORIDA AND SOUTH CAROLINA WERE FOUND IN HIS REAR POCKET.

A CHECK OF [redacted] FLORIDA LICENSE SHOWED TWO ACTIVE WARRANTS OUT OF LEE COUNTY.

[redacted] WAS PLACED UNDER ARREST FOR THE OUTSTANDING WARRANTS AND TRANSPORTED TO IJC.

WARRANT #'S [redacted] DRIVING W/SUSP DL AND 07MM21590 VOP POSS. MARIJUANA U/20 WERE SERVED AT IJC.

IMMOKALEE

12 Feb 08

[redacted]

THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION, OR BELIEF

A. DISARRO 0982

D-8 793-9221

The 2007 Florida Statutes

901.151 Stop and Frisk Law.--

(1) This section may be known and cited as the "Florida Stop and Frisk Law."

(2) Whenever any law enforcement officer of this state encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state or the criminal ordinances of any municipality or county, the officer may temporarily detain such person for the purpose of ascertaining the identity of the person temporarily detained and the circumstances surrounding the person's presence abroad which led the officer to believe that the person had committed, was committing, or was about to commit a criminal offense.

(3) No person shall be temporarily detained under the provisions of subsection (2) longer than is reasonably necessary to effect the purposes of that subsection. Such temporary detention shall not extend beyond the place where it was first effected or the immediate vicinity thereof.

(4) If at any time after the onset of the temporary detention authorized by subsection (2), probable cause for arrest of person shall appear, the person shall be arrested. If, after an inquiry into the circumstances which prompted the temporary detention, no probable cause for the arrest of the person shall appear, the person shall be released.

(5) Whenever any law enforcement officer authorized to detain temporarily any person under the provisions of subsection (2) has probable cause to believe that any person whom the officer has temporarily detained, or is about to detain temporarily, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person, the officer may search such person so temporarily detained only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon. If such a search discloses such a weapon or any evidence of a criminal offense it may be seized.

(6) No evidence seized by a law enforcement officer in any search under this section shall be admissible against any person in any court of this state or political subdivision thereof unless the search which disclosed its existence was authorized by and conducted in compliance with the provisions of subsections (2)-(5).

History.--ss. 1, 2, ch. 69-73; s. 1459, ch. 97-102.

Title XLVI
CRIMES

Chapter 856
DRUNKENNESS; OPEN HOUSE PARTIES; LOITERING; PROWLING; DESERTION
View Entire Chapter
856.021 !Loitering or prowling; penalty.--

(1) !It is unlawful for any person to loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.

(2) !Among the circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flght upon appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flght by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern.

(3) !Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.--s. 1, ch. 72-133; s. 1384, ch. 97-102.

DEP DIVISION OF LAW ENFORCEMENT
GENERAL ORDER 4-3
SEARCHES

EFFECTIVE: May 21, 2001

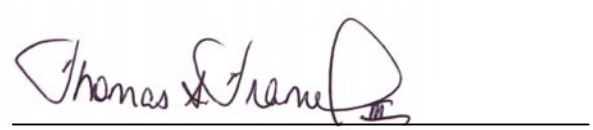
AMENDS:

RESCINDS: GO 6

REFERENCE: Chapter 901, F.S., CFA 18.13

DISTRIBUTIONS: All Certified LEO

AUTHORITY OF:



Director Thomas S. Tramel, III

DATE: 5/3/01

The purpose of this general order is to direct law enforcement personnel in making law enforcement searches.

4-3.1 POLICY

All searches shall be conducted within the provisions of the Constitution of the United States of America, the Constitution of the State of Florida, and Chapter 901, Florida Statutes.

4-3.2 DEFINITIONS

A. Probable Cause – more than bare suspicion; it exists when "the facts and circumstances within the officers' knowledge and which they had reasonable caution in the belief that an offense has been or is being committed" (Brinegar v. U.S., 160 [1949]).

B. Stop and Frisk – The temporary detainment of a person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state or the criminal ordinances of any municipality or county. The temporary detainment is for the purpose of ascertaining the identity of the person and the circumstances surrounding the person's presence abroad which led the member to believe that the person had committed, was committing, or was about to commit a criminal offense. The purpose of a "Stop and Frisk" is to identify and dispel original suspicion of whether a person is legally present at a location. The stop is ended when suspicion is not escalated to probable cause.

4-3.3 PROCEDURES

A. Stop and Frisk - Provisions of Florida's Stop and Frisk Law (Section 901.151, F. S.) provide for the following procedures when questioning an individual prior to any arrest:

1. A member having reasonable indication that a person has committed, is committing, or is about to commit a violation of any state criminal law or any criminal municipal ordinance may temporarily detain the person to ascertain his identity.

2. Upon probable cause, the member may make a "pat down" search of the person to determine if he is armed. The search of the person may be "only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon".

3. A person cannot be detained for any unreasonable time or taken to any place other than the immediate area where the stop and frisk takes place.

4. No evidence seized as a result of stop and frisk may be admitted in court unless the seizure was conducted in compliance with all provision of the stop and frisk law.

5. This law does not permit a search of the person designed to disclose anything but a weapon, unless there is probable cause to search for any other contraband such as controlled substances.

B. Searches incidental to a lawful arrest are authorized under Section 901.21, F. S. These searches may include the area within the person's immediate presence.

C. Consent Searches - Members may ask individuals for permission to search. This permission should be obtained in writing on the "Permission to Search Form" DEP 20-093.

D. Search warrants of private dwellings are pursuant to subsection 933.18, F. S. In all cases wherein a member petitions the court for a search warrant, prior approval shall be obtained from a district supervisor. An Assistant State Attorney should review the petition before it is presented to a judge.

E. Any time a member of the division seizes evidence or recovers property during the course of duty, a complete inventory of all items shall be recorded to include:

1. A full description of items with make, model number, and serial number,

2. The source from whom or where the item was obtained, and

3. The name of the person collecting the item or items.

Here to take a quick look at:

HIIBEL v. SIXTH JUDICIAL DISTRICT COURT OF
NEVADA, HUMBOLDT COUNTY, et al.
CERTIORARI TO THE SUPREME COURT OF NEVADA
No. 03-5554. Argued March 22, 2004--Decided June 21, 2004

http://supreme.justia.com/us/542/177/case.html
(full text of case)

What is it this case that "begins where those cases left off"? I will attempt connect those dots, to make clear what that is, using bold text emphasis and asterisks in parts of the below text of the case:

(a) **State stop and identify statutes often combine elements of traditional vagrancy laws with provisions intended to regulate police behavior in the course of investigatory stops. They vary from State to State, but all permit an officer to ask or require a suspect to disclose his identity.** In Papachristou v. Jacksonville, 405 U. S. 156, 167-171, this Court invalidated a traditional vagrancy law for vagueness because of its broad scope and imprecise terms. The Court recognized similar constitutional limitations in Brown v. Texas, 443 U. S. 47, 52, where it invalidated a conviction for violating a Texas stop and identify statute on Fourth Amendment grounds, and **in Kolender v. Lawson, 461 U. S. 352, where it invalidated on vagueness grounds California's modified stop and identify statute that required a suspect to give an officer "credible and reliable " identification when asked to identify himself**, id., at 360. **This case begins where those cases left off.** Here, the initial stop was based on reasonable suspicion, satisfying the Fourth Amendment requirements noted in Brown. Further, **Hiibel has not alleged that the Nevada statute is unconstitutionally vague, as in Kolender. This statute is narrower and more precise. In contrast to the "credible and reliable" identification requirement in Kolender, the Nevada Supreme Court has interpreted the instant statute to require only that a suspect disclose his name. It apparently does not require him to produce a driver's license or any other document. If he chooses either to state his name or communicate it to the officer by other means, the statute is satisfied and no violation occurs.** Pp. 3-6.

(b) The officer's conduct did not violate Hiibel's Fourth Amendment rights. Ordinarily, an investigating officer is free to ask a person for identification without implicating the Amendment. INS v. Delgado, 466 U. S. 210, 216. **Beginning with Terry v. Ohio, 392 U. S. 1, the Court has recognized that an officer's reasonable suspicion that a person may be involved in criminal activity permits the officer to stop the person for a brief time and take additional steps to investigate further. Although it is well established that an officer may ask a suspect to identify himself during a Terry stop, see, e.g., United States v. Hensley, 469 U. S. 221, 229, it has been an open question whether the suspect can be arrested and prosecuted for refusal to answer,** see Brown, supra, at 53, n. 3. ***The Court is now of the view that Terry principles permit a State to require a suspect to disclose his name in the course of a Terry stop.*** Terry, supra, at 34. The Nevada statute is consistent with Fourth Amendment prohibitions against unreasonable searches and seizures because it properly balances the intrusion on the individual's interests against the promotion of legitimate government interests. See Delaware v. Prouse, 440 U. S. 648, 654. **An identity request has an immediate relation to the Terry stop's purpose, rationale, and practical demands, and the threat of criminal sanction helps ensure that the request does not become a legal nullity.** On the other hand, the statute does not alter the nature of the stop itself, changing neither its duration nor its location. Hiibel argues unpersuasively that the statute circumvents the probable-cause requirement by allowing an officer to arrest a person for being suspicious, thereby creating an impermissible risk of arbitrary police conduct. **These familiar concerns underlay Kolender, Brown, and Papachristou. They are met by the requirement that a Terry stop be justified at its inception and be "reasonably related in scope to the circumstances which justified" the initial stop.** Terry, 392 U. S., at 20. **Under those principles, an officer may not arrest a suspect for failure to identify himself if the identification request is not reasonably related to the circumstances justifying the stop.** Cf. Hayes v. Florida, 470 U. S. 811, 817. **The request in this case was a commonsense inquiry, not an effort to obtain an arrest for failure to identify after a Terry stop yielded insufficient evidence.** The stop, the request, and the State's requirement of a response did not contravene the Fourth Amendment. Pp. 6-10.

(c) **Hiibel's contention that his conviction violates the Fifth Amendment's prohibition on self-incrimination fails because disclosure of his name and identity presented no reasonable danger of incrimination. The Fifth Amendment prohibits only compelled testimony that is incriminating**, see Brown v. Walker, 161 U. S. 591, 598, **and protects only against disclosures that the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used,** Kastigar v. United States, 406 U. S. 441, 445. **Hiibel's refusal to disclose was not based on any articulated real and appreciable fear that his name would be used to incriminate him, or that it would furnish evidence needed to prosecute him.** Hoffman v. United States, 341 U. S. 479, 486. **It appears he refused to identify himself only because he thought his name was none of the officer's business. While the Court recognizes his strong belief that he should not have to disclose his identity, the Fifth Amendment does not override the Nevada Legislature's judgment to the contrary absent a reasonable belief that the disclosure would tend to incriminate him. Answering a request to disclose *a name* is likely to be so insignificant as to be incriminating only in unusual circumstances.** See, e.g., Baltimore City Dept. of Social Servs. v. Bouknight, 493 U. S. 549, 555. **If a case arises where there is a substantial allegation that furnishing identity at the time of a stop would have given the police a link in the chain of evidence needed to convict the individual of a separate offense, the court can then consider whether the Fifth Amendment privilege applies, whether it has been violated, and what remedy must follow. Those questions need not be resolved here.** 10-13.

118 Nev. 868, 59 P. 2d 1201, affirmed.

"...a name"... thus, Hiibel ned on,y have given "a name, any name that he may have wished to call himself that day or any day.

Terry stops require a legitimate suspect(s); nothing in Hiibel says that during a Terry Stop, much less a citizen (not suspected) at liberty, must produce identity documentation, simply that: "The Court is now of the view that Terry principles permit a State to require a suspect to disclose his name in the course of a Terry stop." And: "Answering a request to disclose a name is likely to be so insignificant as to be

incriminating only in unusual circumstances." And of the Nevada Statute or any other in this situational circumstance: "If he chooses either to state his name or communicate it to the officer by other means, the statute is satisfied and no violation occurs."

Thus, all that has changed with Hiibel is that you must respond to an identification, name, request IF you are a [Terry] suspect. If you are at liberty, not a suspect, you may remain silent.

Right at the outset, the officer articulates the reason for conversing with the citizen, i.e., he is not a suspect and does meet the requirements of Terry -- this is not a Terry Stop -- this is nothing more than a simple conversation and the officer has no authority to request ID or require any responses to his questions from the citizen at liberty. (I use "citizen" because he is no suspect as there is no suspected crime.) Therefore, in this example, the [subsequently arrested] citizen did not have to reveal any name in any way, he may have remained completely silent and, in fact, stated: "I need no assistance, thank you." Relevant FL Statute 901.151 (2007), "FL Stop and Frisk law."