

Case: State v. Cartner, 39 FLW D1443a (Fla. 5th DCA)

Date: July 11, 2014

Subject: Probable cause to arrest defendant for solicitation of a minor for an unlawful sexual act after the state established that the defendant was the first to explicitly mention sex during chat session with undercover detective, and police adequately identified the defendant through DHSMV records prior to arrest

FACTS: While working as a “chat” person during a Task Force sting operation, a detective posted a message on a dating website, identifying herself as the aunt of a 14 year old girl, and stating that she and her niece were interested in “hanging out” and “having fun.” The detective received responses from a party using the screen name “Big Blues 83.” Included in these responses was a photograph purporting to be the man using that screen name, along with a number of sexually explicit e-mails and instant messages. The “aunt” and “Big Blues 83” arranged to meet at a local Starbucks, and the suspect advised the aunt “if you don’t like me you can tell me and no harm done.” In the meantime, investigators matched the photograph provided by “Big Blues 83” to a driver license photo contained in the DAVID database, and also obtained vehicle registration information on the suspect (the case is silent as to what investigative techniques may have been utilized by the investigators to specifically identify the suspect.) When the suspect arrived at the appointed time, in the vehicle registered to him, he was arrested. The defendant filed a motion to suppress all evidence against him, arguing that there was no probable cause to arrest him. The trial court agreed, finding that Cartner’s arrest was premature because law enforcement had insufficient evidence, prior to the arrest, establishing that the defendant was in fact “Big Blues 83,” and that the planned meeting at Starbucks was not for the purpose of having sex, but simply so the parties could meet and decide if they “liked” each other. The state appealed.

RULING: The 5th District Court of Appeal reversed the trial court, and ruled that sufficient evidence existed which both adequately identified the suspect, and which established a violation of Section 847.0135 prohibiting the solicitation of minors to commit a sexual act.

DISCUSSION: The appellate court noted that “to establish probable cause, the State must demonstrate that an officer had reasonable grounds to believe that the arrestee committed a crime.” (Citing *Hughes v. State*, 132 So.3d 933 (Fla 1st DCA 2014). In the instant case, matching the photograph provided by Cartner to his photo in the DAVID database, along with his arrival in a vehicle registered to him, at the time and place agreed to, was sufficient to identify him as the perpetrator. As to the legal sufficiency of the communications, the court found that the state presented evidence that “Big Blues 83” used a computer to solicit the under-aged “niece” to commit an illegal sex act, that the transcripts established that “Big Blues 83” was the first to mention sex between the parties, and that his comments made clear his intent to engage in sexual contact with a minor (the opinion does not, however, provide further details as to the content of the communications.)

COMMENTS: Note that in this case, the defendant assisted in his identification by voluntarily sending a photograph to the undercover detective. Their subsequent ability to match this photo to a known photo in a law enforcement database was persuasive to the appellate court. Great caution must be taken, however, when seeking an arrest warrant or making a PC arrest on a subject based on computer communications alone. The individual who subscribes to internet service at a particular location may not be the person engaging in the unlawful communications. Make sure to work closely with your prosecutors or agency legal advisors when establishing probable cause in these cases.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.