TENTH CIRCUIT

Legal Advisor

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TRAFFIC STOPS

BY PETER STERNLICHT

When writing a report regarding what led you to stop a vehicle either for a traffic infraction or other behavior we see that at times officers use conclusory language in their reports for the stop. In some instances this is fine but in others it is not.

Stating that you stopped a vehicle for a "traffic infraction" will never suffice. You always need to put in the nature of the infraction. Some traffic stops are self-explanatory in the officer's report. A statement that the defendant's vehicle was stopped for having an expired tag or running a stop sign/red light do not require any further detail.

On the other hand some traffic stops for violation of a traffic statute do require further detail in your report. An example is when you stop a vehicle for failure to use a turn signal under Florida Statute 316.155. Simply stating the defendant turned without using a turn signal is not enough. The statute requires that the failure to give the signal must affect the movement of another vehicle. This was the holding of the Florida Supreme Court in *State* v. *Riley*, 638 So. 2d 507 (Fla. 1994). Therefore you need to put in your report how the defendant's failure to use a turn signal affected another vehicle.

There are also times when an officer will write that a vehicle was stopped because it was acting suspiciously. You need to put specific facts in your report that led you to the conclusion that the vehicle was acting suspiciously. The facts would need to establish a reasonable suspicion that criminal activity was afoot.

A word about "citizen contacts." Frequently an officer will write in a report that he or she initiated a "citizen contact" with the defendant without any more being written. It is import that you detail the circumstances regarding your contact with the defendant. If the situation is a "citizen contact" a reasonable person must know that he or she is free to leave. (See the *Hrezo* case below.) We must know the factual circumstances that led you to come into contact with the defendant.

Putting the details or circumstances regarding the preceding issues in your report is important for

several reasons. First, you may avoid a deposition. If all you put in your report is that the defendant's vehicle was stopped because it was acting suspiciously, a defense lawyer will probably want to depose you to find out what led you to stop the vehicle. Second, a motion to suppress may not be filed if there is sufficient detail as to why a vehicle was stopped. Third, and most important, your credibility may suffer at a motion to suppress and/or a trial. Leaving out important details in your report will be used to attack your credibility. Since it will be several months before you are deposed or the case goes to court (and you will have written numerous reports and have stopped other vehicles for traffic infractions in the meantime), your report will serve to refresh your memory. This enhances your credibility in deposition, at a motion to suppress if one is filed, and most importantly at trial before a jury.

**********FROM THE COURTS**********

MORE FACTS NEEDED TO ESTABLISH FOUNDED SUSPICION OF CRIMINAL ACTIVITY

The defendant was charged with possession of cocaine and filed a motion to suppress. The facts on which the motion was based were that a police officer was approached by a woman who told him that she had seen a black man approach an older white man in front of a store. The white man put something in his pocket and gave the black man cash. As a result of this information, the officer detained the defendant and obtained consent to search him. The search produced a cocaine rock. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Second District reversed, holding that the woman's information without other factors such as the history of the neighborhood for drug dealing or the number of drug arrests at that site was insufficient to create a founded suspicion of criminal activity. *Ford v. State*, 26 FLW D259 (Fla. 2d DCA Jan. 17, 2001).

COVERED CONCRETE SLAB ATTACHED TO APARTMENT WAS PART OF A DWELLING UNDER THE BURGLARY STATUTE

The defendant was charged with burglary of a dwelling. At his trial, the evidence established that he stole a ceiling fan which was lying on a cement slab immediately outside the sliding back doors of an apartment. The slab was covered by a ceiling which was supported by posts but was otherwise not enclosed. He was convicted as charged. On appeal, the Fifth District affirmed, holding that the slab was an attached porch within the definition of dwelling in the burglary statute. *Weber v. State*, 26 FLW D280 (Fla. 5th DCA Jan. 19, 2001).

FELONY CHILD ABUSE STATUTE IS CONSTITUTIONAL

The defendant was charged with felony child abuse and filed a motion to dismiss, asserting that section 827.03, Florida Statutes was unconstitutional. The trial court granted the motion, but on appeal, the Fourth District reversed, holding that the statute is not overbroad and that the term "mental injury" which is used in the statute is not unconstitutionally vague. *State v. DuFresne*, 26 FLW D288 (Fla. 4th DCA Jan. 24, 2001).

INTENTIONALLY RAMMING AN OCCUPIED VEHICLE CAN BE AGGRAVATED BATTERY

The defendant was charged with aggravated battery. At his trial, the evidence established that he was discovered removing construction materials from a storage facility. When an employee of the facility attempted to block the defendant's exit, the defendant rammed his truck into the vehicle in which the employee was sitting. The defendant was convicted as charged. On appeal, the Supreme Court affirmed, holding that the question of whether an object is sufficiently closely connected to a person such that touching or striking the object would be a battery on that person will depend upon the circumstances of each case and is generally a question of fact for the jury. *Clark v. State*, 26 FLW S69 (Fla. Feb. 8, 2001)

USE OF EMERGENCY AND TAKE DOWN LIGHTS TURNED CITIZEN ENCOUNTER INTO A DETENTION

In this Polk County case, the defendant was charged with possession of cocaine and paraphernalia and filed a motion to suppress. The facts on which the motion was based were that an officer saw the defendant's car parked in a public park at night. He approached in his vehicle to make a citizen contact and tell the occupant that the park was closed. Before walking up to the defendant's car, he turned on his emergency lights and his take down lights. When he asked the defendant for identification, he spotted paraphernalia in the car. This led to the defendant's arrest and the finding of the cocaine. The trial court denied the motion, and the defendant was convicted as charged. On appeal, however, the Second District reversed, holding that the activation of the emergency and take down lights turned the citizen encounter into a detention which was not justified because the officer had no suspicion of criminal activity. *Hrezo v. State*, 26 FLW D363 (Fla. 2d DCA Jan. 31, 2001).

FAILURE TO RETURN PROPERTY ON DEMAND CAN BE THEFT

The defendant was charged with grand theft and filed a motion to dismiss, asserting that the state could not establish a *prima facie* case. The facts on which the motion was based were that the defendant was a member of student government at a state university. As such, he was allowed the use of a laptop computer. At some point, university officials demanded the return of the laptop pursuant to student government rules, but the defendant refused to do so. The trial court granted the motion, but on appeal, the Fifth District reversed, holding that a theft can occur when a person who has the right to possession of property demands its return and the property is not relinquished. *State v. Siegel*, 26 FLW D378 (Fla.)

OFFICERS APPEARANCE FOR COURT AND DEPOSITIONS

Since 1988, a policy has existed between the Witness Management Program of the 10th Judicial Circuit and the law enforcement agencies regarding officer absences. Any officer who is going to be unavailable for court, for any reason (i.e. vacation, training or sickness), must notify the witness Management Program in writing as soon as the officer knows the dates that he/she will be unavailable. The Witness Management Program sends out a Vacation/School list every Friday to the Office of the State Attorney and the Office of the Public Defender with the information that has been received that week. The attorneys attempt to avoid setting a case when the officer is unavailable. When subpoenas are delivered to the law enforcement agencies for service, the officer, who receives a subpoena for a time that he/she is unavailable, is responsible for contacting the attorney who issued the subpoena to be released. The officer is NOT to assume that because his/her name is on the Vacation/School list that it excuses the officer from the subpoena after it has been served. Officers may fax the Vacation/School information to the Witness Management Office at 534-4034. If you have any questions with regard to this policy, feel free to contact Wayne Durden at 534-4834 or Beverly White at 534-4022.

DWLSR - FELONY VERSUS MISDEMEANOR

A defendant may be charged with Felony DWLSR where the defendant operates a motor vehicle and

1) the defendant is an Habitual Traffic Offender, or
2) the defendant has two or more prior DWLSR convictions for offenses occurring after October 1, 1997, or
3) the defendant has had his/her driver's license permanently revoked pursuant to 322.26 or 322.28.

If the defendant is charged with the felony, he/she must be taken to jail. A sworn report must be prepared for the felony packet. Sometimes the charging officer does not know if the defendant qualifies for felony prosecution. In those instances, once our Misdemeanor Division determines that the defendant is eligible for felony prosecution, it forwards the case to the Felony Intake Division. A request is then sent to the officer asking for a sworn report concerning the incident.

Please remember that the one method of enhancement is based upon prior **convictions not suspensions**. A defendant may have numerous suspensions if he/she never comes to court. It is only once a defendant is convicted in court that the prior conviction may be used to increase the charge in the new case..

Tenth Circuit
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