TENTH CIRCUIT

# Legal Advisor

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## WHEN AND HOW TO USE DRUG-TRAINED CANINE DURING VEHICLE STOPS

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The following is a summary of the ever changing law involving vehicle searches and the resulting issues of bare suspicion, reasonable suspicion, probable cause, and illegal detention.

You may stop a vehicle you suspect of carrying drugs even when you have just a bare suspicion and the information you have does not rise to a reasonable suspicion or probable cause if you observe a traffic violation. If no traffic violation is apparent and you have just a bare suspicion of criminal activity you may not stop the vehicle. An example of a bare suspicion would be a car leaving a known drug location or recognizing the driver of a vehicle as a person with a drug record. It does not matter if the traffic violation observed is one for which you have never previously issued a ticket. Where the only basis for the stop is a traffic violation, you may not hold the vehicle and driver on the side of the road any longer than it would reasonably and normally take to write a traffic ticket. If you want to search the vehicle for drugs, either get permission or have a canine sniff the vehicle before you can finish writing the ticket. Be aware that more and more cases are being lost in suppression hearings when officers only get verbal permission to search instead of a written form. If you are waiting on a dog to arrive and you have used up the normal period of time to write a ticket you must let the vehicle go. Please note that the passengers are free to leave the scene at any time.

You may not order the driver and passenger to step out of the car in order for the dog to sniff the vehicle. If you do, it will turn a traffic stop into an illegal detention and any contraband located in the resulting search will be suppressed. Once the canine alerts to the presence of drugs in the vehicle you have probable cause. At that point, you can and should order the people out of the car to conduct your search based on the dog alert. Many traffic violations are based on the vehicle's faulty equipment. If you observe a cracked tail light lense you may not stop the vehicle unless part of the lense is gone letting white light shine through. Always take a picture if you want the case to hold up in court. Another ripe area for stops is temporary tag placement. It must be mounted on the bumper or customary place for the tag or attached to the inside of the rear window in an upright position so as to be clearly visible from the rear of the vehicle. Again take a picture if you want the case to hold up in court. The license tag must be illuminated by at least one light. If one light is burned out but the tag is still illuminated by another light you may not stop the vehicle.

As usual, common sense must prevail on your stops and one picture is worth a thousand less words by a defense attorney. If you have a reasonable suspicion of criminal activity you may stop the vehicle and detain it long enough to satisfy yourself that either drugs are present or they are not. This may even involve moving the vehicle to a different location to view the underside for hidden compartments, if necessary, to satisfy your reasonable suspicions. You may order the occupants of the vehicle to get out prior to a dog sniff of the exterior of the vehicle if you have reasonable suspicion.

If you have probable cause for a stop you do not need to have a dog sniff done prior to searching, and you may order the occupants out fo the vehicle.

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

**FACTS SUPPORTED RECKLESS DRIVING ARREST**

The defendant was charged with possession of a firearm by a convicted felon and carrying a concealed firearm and filed a motion to suppress evidence. The facts on which the motion was based were that an officer stopped the defendant after the officer saw the defendant travel at a high rate of speed and go airborne after crossing railroad tracks, causing another driver to veer out of the way. A subsequent search revealed a firearm. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Third District affirmed, holding that the officer had probable cause to arrest the defendant for reckless driving. *Washington v. State*, 27 FLW D424 (Fla. 3d DCA Feb. 20, 2002).

**COURT MAKES PROOF OF DWLSR-HTO EASIER**

In these Polk County cases, the defendants were charged with driving on a suspended license as habitual traffic offenders and filed motions to dismiss, asserting that the state could not establish a *prima facie* case because it could not produce certified copies of previous traffic convictions on which the habitual traffic offender status was based. The state conceded that it could not produce the convictions, and the court granted the motions. On appeal, the Second District reversed, holding that in habitual traffic offender prosecutions, the state need only prove a defendant's HTO status and not the convictions underlying that status. *State v. Fields*, 27 FLW D476 (Fla. 2d DCA Feb. 27, 2002).

**TIME LAPSE VIDEOS MAY BE USED AS EVIDENCE**

The defendant was charged with two counts of child abuse. At her trial, the state sought to introduce a time lapse videotape which showed the incident from which the charges arose. The defense objected, but the court overruled the objection. The defendant was convicted as charged. On appeal, she argued that time lapse videos should not be allowed into evidence because since they use less frames for second, they alter the motion that is depicted. The First District rejected this argument and affirmed. *Jefferson v. State*, 27 FLW D524 (Fla. 1st DCA Mar. 6, 2002).

**DESCRIPTION OF PROPERTY IN SEARCH WARRANT WAS INSUFFICIENT**

The defendant was charged with burglary and arson and filed a motion to suppress evidence seized during the execution of a search warrant. The facts upon which the motion was based were that after officers developed the defendant as a suspect in an arson, they obtained a search warrant for his residence. The warrant stated that items to be seized were "certain evidence relating to Arson and Burglary, to-wit: Clothing, shoes, and other physical evidence relating to the Crime of Arson and Burglary." The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Second District reversed, holding that the warrant failed to describe the items to be seized with sufficient particularity. *Ingraham v. State*, 27 FLW D530 (Fla. 2d DCA Mar. 8, 2002).

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