



Legal Advisor

Volume 18, Issue 8

August / September 2004



Jerry Hill

State Attorney

Important Bartow Phone #s:

- Switchboard 534-4800
- Misdemeanor Intake 534-4928
- Misdemeanor 534-4926
- Victim Assistance 534-4989
- Felony Intake 534-4987
- Felony 534-4964
- Investigations 534-4804
- Violation of Probation 534-4803
- Child Abuse/Neglect 534-4857
- Homicide Division 534-4959
- On Call Pager 819-1526
- Worthless Checks 534-4874
- Juvenile Division 534-4905
- Fax 534-4945
- Witness Management:**
- Misdemeanor/Traffic 534-4021
- Felony 534-4020

UNIFORM D.U.I. AFFIDAVITS AND REPORTS

BY DAVID HAAS

Back in 2002, the Florida legislature passed several changes to Florida Statute 316.193, the DUI statute, and 943.05(2)(d). The most prominent portion of the legislation amended the DUI statute and its penalties. However, the bill also required the creation of uniform DUI probable cause affidavits and alcohol influence reports. This was done to assist in the finding of probable cause at first appearance hearings. Often in times past, when a driver refused any field sobriety tasks or breathalyzer tests, the citation was sometimes determined to lack probable cause.

While the bill went into effect on July 1, 2002, it stated that these reports shall be adopted and implemented by July 1, 2004. The Florida Department of Law Enforcement

has generated drafts of these uniform documents and they should now be used in all DUI arrests. While the failure to use these uniform affidavits and reports does not prohibit prosecution or the validity of such an arrest, these forms should be adopted by all of our circuit's agencies as soon as possible.



David Haas is the Assistant State Attorney in the Economic and Environmental Crimes Unit. David has been with the State Attorney's Office since September 2001.

Inside this Issue

Uniform Alcohol Influence Report Form	2
Uniform Probable Cause Affidavit	3
Employee Birthdays (September)	4
From the Courts	4
From the Courts	5
Employee Birthdays (October)	5
Top Cops	6
Note from the Editor	6

Florida Department of Law Enforcement
DRAFT

UNIFORM ALCOHOL INFLUENCE REPORT

DATE OF ARREST _____ CASE No. _____ UTC No. _____

THE FOLLOWING PERSON WAS ARRESTED FOR A VIOLATION OF s.316.193, F.S.:

Name: _____

DRIVING AND/OR CRASH SCENE OBSERVATIONS:

(See Attachments _____)

OBSERVATIONS OF THE DRIVER:

(See Attachments _____)

FIELD SOBRIETY EXERCISES:

(See Attachments _____)

FDLE Form AIR – March 2004, Ref. 11C-4.009

NOTE: *A copy of the Uniform Alcohol Influence Report is available in both PDF and Word format. If you would like a copy, please e-mail your request to ldiaz@sao10.com.*

Florida Department of Law Enforcement DRAFT

UNIFORM PROBABLE CAUSE AFFIDAVIT

DATE OF ARREST _____

THE FOLLOWING PERSON WAS ARRESTED FOR A VIOLATION OF s.316.193, F.S.:

Name: _____

Date of Birth: _____ Driver License No. _____

Case No. _____ UTC No. _____

I ESTABLISHED PROBABLE CAUSE TO BELIEVE THAT THE ABOVE PERSON WAS IN VIOLATION OF s.316.193, F.S. (___See Attachments)

Signature of L.E.O./Affiant _____ I.D. No. _____

Sworn to or affirmed and subscribed before me this _____ day of _____, _____.

By _____

____ who is personally known or ____ who produced the following identification _____

Signature _____ Print Name _____

____ L.E.O. ID # _____ ____ Notary

FDLE Form PCA – March 2004, Ref. 11C-4.009

NOTE: *A copy of the Uniform Probable Cause Affidavit is available in both PDF and Word format. If you would like a copy, please e-mail your request to ldiaz@sao10.com.*

SAO Employee Birthdays

October 2004

October 2

Arlene Waltz, Juvenile

October 5

Lori Sturgill, Worthless Checks

October 6

Sonda Swafford, VOPS/ERP

October 8

Ann Henderson, Misd. Intake

October 10

Candace Preston, Hardee SAO

October 14

Jennifer Ordenez, Misdemeanor

Stacey VonLeue, Lakeland SAO

October 16

Josephine Colon, Juvenile

October 19

Christie Coe, Child Support Enf.

October 23

Debi Patrucco, Felony 2

October 24

Hope Pattey

October 26

Harold Bennett, Felony 5

October 30

Mike Klockenkemper, ERP

Laurie Brayton, Mailroom

October 31

Brandy Watson, Juvenile

...FROM THE COURTS...

TRAFFICKING MAY BE BASED ON WEIGHT OF UNPROCESSED MARIJUANA PLANTS.

The defendant was charged with trafficking in cannabis and filed a motion to dismiss, asserting that the state could not prove a *prima facie* case. The facts on which the motion was based were that the defendant was charged with having possession of fifty-five cannabis plants having a weight of thirty pounds. The trial court granted the motion and reduced the charge to possession of cannabis, ruling that there

was not a sufficient number of plants to charge trafficking and that the state could not use the weight criteria to justify the charge because the marijuana was not processed. On appeal, the Third District reversed, holding that the state may use the weight of unprocessed marijuana plants to sustain a trafficking charge. *State v. Velasquez*, 29 FLW D1539 (Fla. 3d DCA June 30, 2004).

SINGLE DEATH PUNCH SUFFICIENT FOR MANSLAUGHTER CONVICTION.

The defendant was charged with manslaughter. At his trial, the evidence established that during an after school confrontation between two groups of students, the victim was arguing with another teen. Without warning, the defendant who was standing by the other teen hit the victim in the eye with his fist. The victim fell to the ground and died shortly thereafter.

Although the defendant hit the victim some more after he fell, the medical examiner's evidence indicated that the first blow was what killed the victim. The defendant was convicted as charged, and on appeal the Second District affirmed, holding that the evidence was sufficient to support a manslaughter conviction. *Acosta v. State*, 29 FLW D1550 (Fla. 2d DCA June 30, 2004).

SEARCH WARRANT AFFIDAVIT PROVIDED PROBABLE CAUSE.

The defendant was charged with sexual battery and kidnapping and filed a motion to suppress evidence obtained during the execution of a search warrant at his residence. The affidavit on which the warrant was based alleged that the defendant had lured the victim into his car in a public place by showing her a police badge and identifying himself as a police officer. He then handcuffed her and drove her to a building where he repeatedly sexually assaulted her at gunpoint. Afterward, he drove her to another public place where he

released her. The application for the warrant sought authorization to search for a gun, a badge, handcuffs, and other evidence of the crime at the defendant's residence. The trial court granted the motion, but on appeal the Fifth District reversed, holding that although the affidavit contained no direct evidence that the items to be searched for were in the defendant's residence, there was a substantial basis for inferring that they would be there. *State v. Weil*, 29 FLW D1560 (Fla. 5th DCA July 2, 2004).

Happy Birthday!



EDITOR'S NOTE:

This combined August / September edition of the Legal Advisor is coming to you late as a result of Hurricanes Charley, Frances, and Jeanne. We hope to return to our regular schedule of publication during the coming months.

...FROM THE COURTS...

WHEN A WEAPON IS NOT A WEAPON.

The defendant was charged with robbery with a deadly weapon. At his trial, the evidence established that when a store manager tried to stop the defendant from leaving the store with items he had shoplifted, the defendant who appeared intoxicated said he had a gun and threatened to shoot. The manager then allowed the defendant to leave. The defendant mounted a bicycle and road directly into a police car.

The police arrested him and discovered a box cutter on him. He was convicted as charged. On appeal, the First District reversed and reduced the conviction to robbery without a weapon, holding that a box cutter does not qualify as a weapon under the robbery statute when it is not used as a weapon. *Holley v. State*, 29 FLW D1665 (Fla. 1st DCA July 20, 2004).

OFFICER GAVE ENOUGH INFORMATION TO ALLOW INTRODUCTION OF REFUSAL EVIDENCE.

The defendant was charged with DUI. At her trial, the arresting officer testified that when he asked the defendant to submit to a breath test, he told her that her refusal to do so could result in a suspension of her license. However, he did not tell her that if she had a prior refusal, a second refusal would be a misdemeanor. She refused to take the test. The defense

objected to this evidence, but the court overruled the objection. The defendant was convicted as charged. On appeal, the Fifth District affirmed, holding that as long as a defendant is told of some adverse consequence of a refusal, the refusal is admissible in evidence. *Grzelka v. State*, 29 FLW D1803 (Fla. 5th DCA Aug. 6, 2004).

ARREST WAS NOT INVALID BECAUSE OF POSSIBLE DEFENSE TO CHARGE.

The defendant was charged with possession of cocaine and drug paraphernalia and filed a motion to suppress evidence. The facts on which the motion was based were that when an officer stopped the defendant for riding a bicycle at night without a light, the officer discovered that there was an outstanding 1993 warrant for the defendant's arrest for petit theft. He arrested the defendant and searched him, finding cocaine and paraphernalia. At the

hearing on the motion, the defense argued that the arrest was invalid because the statute of limitations had run. The trial court denied the motion, and on appeal, the Fifth District affirmed, holding that an arrest is not made invalid by the fact that a defendant might have a legal defense to the charge for which he is arrested. *Abdullah v. State*, 29 FLW D1859 (Fla. 5th DCA Aug. 13, 2004).

CRIME OF FAILURE TO RETURN LEASED PROPERTY IS CONSTITUTIONAL.

In this Polk County case, the defendants were charged with failure to return leased property in violation of section 812.155(3), Florida Statutes. They filed motions to dismiss, asserting that section 812.155(3) was an unconstitutional special law. The

trial court agreed with their analysis and granted the motions. On appeal, the Second District reversed, holding that section 812.155(3) is not a prohibited special law. *State v. Rose*, 29 FLW D1548 (Fla. 2^d DCA June 30, 2004).

EMPLOYEE BIRTHDAYS

SEPTEMBER 2004

September 1

Kevin Abdoney,

Special Prosecution

September 2

Joan Hughes, Highlands SAO

September 3

Cheryl Hooks, Felony 2

Sonya Colson, ERP

September 4

Arley Smith, Records

September 9

Tammy Every, FCIC/NCIC

A'leshia Browning, Felony 3

September 10

Melissa Hooks,

Child Support Enforcement

September 11

Rachel Stringer, Mailroom

September 12

John Aguero, Homicide

September 14

Cari Daniels,

Special Prosecution

September 17

Martin Hodges,

Investigations

September 20

Meley Lorren,

Child Support Enforcement

September 25

Debbie Colson, Felony

Teresa Campbell,

Highlands SAO

September 27

Vanessa Caruthers,

Domestic Violence

Happy Birthday!





Hardee County

124 South 9th Avenue
Wauchula, FL 33873
Phone: (863) 773-6613
Fax: (863) 773-0115

Highlands County

411 South Eucalyptus
Sebring, FL 33870
Phone: (863) 402-6549
Fax: (863) 402-6563

Polk County

P.O. Box 9000, Drawer SA
Bartow, FL 33831-9000
Phone: (863) 534-4800
Fax: (863) 534-4945

Child Support Enforcement

215 N. Floral Avenue
Bartow, FL 33830
Phone: (863) 519-4749
Fax: (863) 519-4759

Lakeland Branch Office

930 E. Parker Street, Suite 238
Lakeland, FL 33801
Phone: (863) 499-2596
Fax: (863) 499-2650

Winter Haven Branch Office

Gill Jones Plaza
3425 Lake Alfred Rd. 9
Winter Haven, FL 33881
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The "Legal Advisor" is published by:
Office of the State Attorney
Tenth Judicial Circuit
P. O. Box 9000, Drawer SA
Bartow, FL 33831

TOP COPS

I would like to take this opportunity to recognize Sergeant Dave Black and Corporal Burney Hayes of the Lake Wales Police Department and Detective Carl Smith from Bartow Police Department. These detectives assisted me in putting together a video buy/bust case from 2002 where the defendant sold cocaine near a local school. The first trial ended with a hung jury. However, three weeks later we tried the case again and convicted him, as charged. The case agents, Detective Smith and Sgt. Black, had excellent presence on the stand. They had total command not only of the facts of their case but knowledge of what transpired in the depositions leading up to trial, neutralizing defense attempts to confuse them in cross-examination. Both were poised, confident, and well prepared. Corporal Hayes's knowledge of his city and of its citizens played an integral part in putting on these facts. His delivery on the stand is honest and straightforward, and resonates with jurors. Thanks to these officers' outstanding work, the jury was out less than an hour in the second trial.

Torie Avalon, Assistant State Attorney, Felony Division 5

ADMINISTRATION FOLK



Pictured from left to right are Sam Cardinale, Carolyn Blair and Chip Thullbery. Sam, a former reporter with The Ledger, is the Executive Director and has been with our office since February 2002. Carolyn Blair is the Human Resource Director and has been with our office since July 1988. Chip Thullbery is the Administrative Assistant State Attorney. He has been with our office since April 1982.



Pictured from left to right are Terri Cassano, Lorena Diaz, Donna Roberson and Peggy Murray. Terri Cassano joined the State Attorney's Office as the Fiscal Director in October 1984. Lorena Diaz joined the SAO in August 1998. Donna Roberson, is Carolyn's assistant and has been with us since September 1997. Peggy Murray is Terri's assistant and has been with us since May 1997.