



Legal Advisor

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March 2004



JERRY HILL

STATE ATTORNEY

UNIFORM TRAFFIC CITATION REVIEW

by Pete Mislovic, Misdemeanor Intake

In the November, 2002 Legal Advisor, the article titled: "Misdemeanor Miscellanea" was published. A year and a half later, I am still spending between one to one and a half hours per day in the Clerk's Office correcting the statute numbers on approximately 150 citations per week. Because of this problem, I would like to address this issue once again.

For those of you who may not know, deputy clerks working in the various Clerk's offices **DO NOT** have the legal authority to change, alter or amend statute numbers on a criminal traffic citation. A uniform traffic citation is a charging document under Florida law, and therefore only a law enforcement officer or assistant state attorney may make changes to them. For this reason, it is very important that you use the correct statute number, including subsections, when you issue a criminal traffic citation. Traffic cases move too quickly to contact each officer who writes a traffic ticket and then wait for him or her to come to Bartow to correct the ticket. Below is a listing of the most frequently used statutes for criminal traffic citations:

- 316.061(1): Leaving the Scene of an Accident.
- 316.063 (1): Failure to Leave Information-Accident.
- 316.067: False Information After Accident.
- 316.072 (3): Refusal to Obey Police/Fire Officers.
- 316.191 (2)(A): Racing on Highway.

- 316.192 (1): Reckless Driving.
- 316.192(5): Reckless Driving w/Alcohol A Factor.
- 316.193 (1): Driving Under the Influence.
- 316.1935 (1): Fleeing to Elude (Misdemeanor).
- 320.02 (1): No Motor Vehicle Registration.
- 320.061: Unlawful Tag Alteration.
- 320.131(3): Unlawful Use of Temporary Tag.
- 320.261: Attaching Unassigned Tag.
- 322.03(1): No Driver License.
- 322.03(4): No License to Operate Motorcycle.
- 322.03(5): Expired Driver License (+4 Months).
- 322.031(1): Violation of Non-Resident Requirements.
- 322.16(1): Violation of DL Restrictions.
- 322.32(1): Possession/Display of Suspended DL.
- 322.32 (2): Lending DL to Another Person.

IMPORTANT BARTOW PHONE NUMBERS

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

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APRIL 2004

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1st
Joe Williams, Felony Intake

14th
Melissa White, CSE
Mark Levine, Felony-3

16th
Terry Bergum, Investiga-
tions

17th
Donna Smith, Highlands
SAO

18th
John Berndt, Post Conv.

24th
Maria Zucker, CSE

27th
Angie Harmon, CSE

29th
Heather White, Highlands
Dave McNeal, Felony 4

30th
Joann Bradley, VOPS
Carol Atwell, Highlands



Pete Mislovic is an Assistant State Attorney in the Misdemeanor Intake Division. In addition to his case load, Pete is also the Division Chief. He has been with the office since 1989.

- 322.34(2): Driving on Suspended/Revoked DL.
• 322.035: Permitting Unauthorized Minor to Drive.
• 322.036: Permitting Unauthorized Person to Drive.
• 322.53(1): No Commercial Driver License.
• 322.54(1): Improper Class of Driver License.
• 322.57(1): No Motorcycle Endorsement on License.

FACTUAL BASIS FOR CRIMINAL TRAFFIC ARRESTS

There are occasions when a defendant is arrested on certain criminal charges and goes to a First Appearance hearing with the Uniform Traffic Citation as the only charging document. These defendants are often ROR'd (released on their own recognizance without posting bond or being placed on Pretrial Release Supervision) because the judge finds no probable cause to hold that person. Recently, a defendant was arrested and charged with DUI but refused to take the breath test. The arresting officer wrote REFUSAL on the citation, and the judge ruled there was no probable cause to hold the defendant since there were no facts to support the charge.

Although not many, there are a

few criminal traffic charges where a supplement should be included with the traffic citation so judges will have a factual basis (unless you don't care if the defendant you just arrested gets ROR'd). These charges are:

- 1. Reckless Driving.
2. Reckless Driving w/Alcohol a Factor.
3. DUI with a Refusal.
4. Leaving the Scene of an Accident.
5. Any Felony Traffic Charge.

You can keep your defendant in jail with a simple supplement with the citation that includes enough facts to allow the judge to find probable cause at First Appearance hearings.

DWLSR AND NVDL: IDENTITY AND SWORN REPORTS

Traffic citations are often issued for these two charges with a date to appear in court, and the person charged is released. More and more frequently a defendant will appear in court and claim someone else used his/her name. On an arrest case, a book-in photo and prints are available for comparison. With a Notice to Appear, the only items available for comparison are the signature on the bottom of the ticket and a thumb print. In these cases it is important to get a good print that can be compared if necessary in the future. A picture, either Polaroid or digital, is very helpful if a camera is available.

Sworn reports with these cases are helpful, and may be necessary when we determine the person you wrote the ticket for is an Habitual Traffic Offender (HTO) or we determine the true identity of the person to whom you gave the ticket. As both incidents involve felony charges, a complete felony packet must be submitted before a felony information can be filed. With an HTO charge, appellate courts have ruled this jurisdictional, and the county court cannot take a plea. If the felony packet with sworn reports is not prepared, the case must be dropped, since it cannot be prosecuted in county court. With more HTO cases coming in and with the rise in people using other peoples names (leading to uttering, for-

Happy Birthday!



We will be closed on:
Friday, April 9, 2004
in observance of
Good Friday.

UNIFORM TRAFFIC CITATION REVIEW

gery and perhaps felony false information to law enforcement charges), having a report from the beginning will save steps and cases later on.

ATTACHING UNASSIGNED TAG

You may no longer *arrest* a person based solely on the charge of attaching an unassigned tag. An essential element of this charge is physically putting or attaching the unassigned tag to the vehicle. I have never seen a case cross my desk where the arresting officer sees

the defendant put the unassigned tag on the vehicle. This is a misdemeanor charge, which is NOT committed in the presence of that arresting officer. Chapter 901 does not include this charge in the listed crimes for which an arrest can be made when a misdemeanor is not committed in your presence. If you run a tag and find it is not assigned to the vehicle it is on, you may still stop the vehicle and give the driver a ticket if appropriate, but you may not arrest the driver unless your investigation uncovers probable cause to arrest on other charges.



I wanted to take a moment to recognize Detective Jim O'Neill of the Lakeland Police Department for his outstanding work in helping us resolve a Scheme to Defraud Case (<\$20,000) against the elderly. In this case, the defendants pretended to do roof work on victims' homes, then bullied the elderly into paying them money for "services rendered." Because of Detective O'Neill's hard work and perseverance, we were able to negotiate a plea adjudicating them guilty of these charges and received nearly \$10,000.00 restitution for the victims.

- Assistant State Attorney Vince Patrucco, Felony Intake

I wanted to take a moment to recognize Detective Jon Harkins and Deputy Dan Cone of the Polk County Sheriff's Office, Jeff Foggy of the FDLE – Tallahassee, Dan Radcliffe of the FDLE – Daytona, Dr. Stephen Nelson and our own Martin Hodges for all of their hard work and assistance in preparing for the Trinidad murder case. Although the jury returned a verdict of not guilty, the fact that this case even went to the jury is a credit to their hard work and perseverance.

- Assistant State Attorney Torie Avalon, Felony Division 5

I wanted to take this opportunity

to recognize the outstanding trial support and dedication of the Lakeland Police Department, specifically Detective Scott Kercher, Ofc. Michael Cochran and Crime Scene Tech Kimberly Walden.

In a recent case, the defendant (who is both a Habitual Felony Offender and a Prison Release Offender) was charged with Aggravated Battery w/Deadly Weapon involving Great Bodily Harm (stabbing). Detective Kercher and CST Walden took the time to meet with me at the Police Department to discuss the case, review the evidence, make sure the appropriate photos were prepared for trial and even took me to the crime scene to explain the case in detail and how the events unfolded.

Although their testimony was not required, I also wanted to thank Officer Hutton, Officer Jett and Detective Gullede for their patience during the trial. Often, decisions on what testimony is needed at trial are made during the course of the trial.

Finally, I would like to recognize the job well done by Detective Kercher during the course of obtaining the defendant's taped statement. His interview was thorough and the defendant's own words aided in the conviction.

- Assistant State Attorney Dave McNeal, Felony Division 4

NEWS...

Sebring Chief of Police Tom Dettman named Officer Lucretia Milbrecht 2003's Police Officer of the Year and Barbara Boss as Civilian Employee of the Year. According to a recent article in the Highlands Today Newspaper, Milbrecht was recognized by her peers during 2003 for consistently going the extra distance to ensure that both her co-workers and the community she serves received her prompt attention in a sincere and empathetic manner. Boss was recognized for her dependability and generosity.

The Polk County Police Chief's Association honored two Polk County Sheriff's deputies at a ceremony held Saturday, January 3, 2004, by naming them Law Enforcement Officer of the Year for Polk County, and runner-up.

- D/S Robert Arndt, a 5-year veteran of the Polk County Sheriff's Office was named Law Enforcement Officer of the Year for his heroic efforts in saving the life of a driver trapped in a burning vehicle. The 3-car crash occurred on February 1, 2003, at the intersection of I-4 and S.R. 33 in Lakeland.
- D/S Pilot Milton "Nat" Manning, an eight year veteran of the agency and one of the agency's pilots, was named runner-up for the high honor for his lifesaving efforts in rescuing a capsized boater last year. This incident occurred at Crystal Lake in Lakeland on October 5, 2003.



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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

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Lakeland Branch Office

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Fax: (863) 499-2650

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...FROM THE COURTS...

KNOWLEDGE IS AN ELEMENT OF FAILURE TO REGISTER AS A SEX OFFENDER

The defendant was charged with violating the sexual offender registration laws by failing to report a change of address. At his trial, the court gave an instruction to the jury at the state's request and over defense objection that the state did not have to prove knowledge or prove that the defendant intended to violate the statute. The defendant was con-

victed as charged. On appeal, the Supreme Court reversed, holding that in order for a defendant to be found guilty of violating the registration statute, the state must prove that the defendant had knowledge of the registration requirements. *State v. Giorgetti*, 29 FLW S95 (Fla. Mar. 4, 2004).

OFFICERS MAY NOT CREATE THEIR OWN EXIGENT CIRCUMSTANCES

The defendant was charged with possession of cocaine and marijuana and filed a motion to suppress. The facts on which the motion was based were that officers arrested a man for possession of cocaine after they saw him engage in a hand to hand drug transaction. When they asked if he had more cocaine, he said that he did in an apartment nearby. They accompanied him to the apartment, and when they knocked, the defendant answered the door. The officers immediately smelled burning marijuana and saw cocaine and marijuana on a table. They entered the apartment and seized the drugs. The trial

court granted the motion to suppress. On appeal, the state argued that the officers had the right to enter the apartment and seize the drugs because of exigent circumstances, namely the possible destruction of the drugs. The Fourth District rejected this argument and affirmed, holding that the doctrine of exigent circumstances did not apply because the officers themselves created the exigent circumstances by going to the apartment without first obtaining a search warrant. *State v. Garcia*, 29 FLW D381 (Fla. 4th DCA Feb. 11, 2004).

DEFENDANT DID NOT HAVE RIGHT OF PRIVACY IN

HOTEL CORRIDOR

The defendant was charged with trafficking in cocaine and filed a motion to suppress evidence. The facts on which the motion was based were that after receiving complaints from other guests, a hotel registration clerk called police to complain about the defendant engaging in drug trafficking at the hotel. With the permission of hotel management, the police had a drug dog sniff at the doors along the hall where the defendant's room was located. The dog alerted at the defendant's door. Using this information and care-

fully documenting the dog's training and experience, the police obtained a search warrant for the defendant's room. When they executed it, they found several packages of cocaine. The trial court denied the defendant's motion, and he was convicted as charged. On appeal, the Fifth District affirmed, holding that a defendant does not have a reasonable expectation of privacy in a hotel corridor. *Nelson v. State*, 29 FLW D514 (Fla. 5th DCA Feb. 27, 2004).

DEFENDANTS MAY BE CHARGED WITH MULTIPLE COUNTS OF

AGGRAVATED ASSAULT

The defendant was charged with two counts of aggravated assault on a law enforcement officer. At trial, the evidence established that he attempted to crash into a car in which two officers were riding. The officers swerved to avoid the collision. The defendant was convicted as charged. On appeal, he argued that he could only be con-

victed of one count of aggravated assault arising out of any one incident. The Fourth District rejected this argument, holding that the legislature intended the aggravated assault statute to allow for multiple convictions from a single incident. *Bryan v. State*, 29 FLW D429 (Fla. 4th DCA Feb. 18, 2004).