



Legal Advisor

Jerry Hill,
State Attorney

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FELONIES AND MISDEMEANORS... WHAT HAPPENS AFTER THE ARREST

By Wade Warren

TRANSFORMING CRIMES: MORE THAN MEETS THE EYE

Here are three of scenarios that officers see every week. A shoplifter is caught leaving a store with \$30 in merchandise. A person is arrested in a sting operation for offering to engage in an act of prostitution. A routine traffic stop for speeding turns up a driver whose license is suspended. What do they all have in common? If you said they are all misdemeanor offenses, think again. Each of these cases involve charges that might actually be felonies based on the offender's prior record.

In the Retail Theft example, if the person has two or more convictions for theft, Felony Petit Theft can be charged. The prior offenses do not have to be for Petit or Retail Theft. Grand Theft charges count as well. They do, however, have to be convictions. If you have arrested the same person for multiple thefts over the course of a few weeks and the cases are still pending in the system, they cannot be used for enhancement until a judgment and sentence has occurred.

The same holds true for an Offering to Commit Prostitution charge. If the defendant has two prior convictions for that charge,

BARTOW PHONE NUMBERS:

SWITCHBOARD 534-4800

MISDEMEANOR INTAKE 534-4928

MISDEMEANOR 534-4926

DOMESTIC VIOLENCE 534-4882

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FELONY INTAKE 534-4987

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WITNESS MANAGEMENT FELONY 534-4020

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HOLIDAY CLOSINGS

The Office of the State Attorney, Tenth Judicial Circuit will be closed on the following dates:

Friday
November 11, 2005
Veteran's Day

Thursday and Friday
November 24, 2005
November 25, 2005
Thanksgiving Day

Friday and Monday
December 23, 2005
December 26, 2005
Christmas Holidays

FELONIES AND MISDEMEANORS... WHAT HAPPENS AFTER THE ARREST

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Wade Warren is an Assistant State Attorney in the Felony Intake Division. Wade has been with the office since October 1986.

the third one can be charged as a felony. This may help to discourage some of the persons engaged in this occupation.

The suspended or revoked driver's license charge has a multitude of ways in which it can be increased to a felony. The most common would be that the offender's driving privilege has been revoked for five years as a Habitual Traffic Offender. (Please note that an individual need never have been issued a license in order for his privilege to drive to be affected.) In fact, even though the five years have passed, if the individual has never had the license reinstated, this charge would still apply. Another

method for enhancement would be if the defendant had the privilege revoked permanently for a DUI conviction. Finally, if the defendant has two prior convictions for driving while license suspended or revoked (although the prior convictions must have occurred after October of 1997) the charge may be filed as a felony.

Our office has had a longstanding policy of requiring sworn statements for victims and eyewitnesses on felony cases. While they are extremely helpful, they have not usually been required in misdemeanor or juvenile cases. However, the examples we have been discussing demonstrate the importance of ascertaining the defendant's criminal history at the time of the original arrest. If it turns out that the defendant's charge can be enhanced to a felony, additional investigation and time will need to be expended to meet our felony filing requirements. If the work is done initially when all the witnesses are available it may reduce time intensive efforts to locate them later. Clerks at convenience stores or retail establishments are notoriously prone to changing locations within a relatively short time.

FELONIES AND MISDEMEANORS...
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One caveat to using prior convictions should be noted. At trial we are often required to prove up the convictions. This is generally done by introducing a certified copy of the judgment and sentence. These can easily be obtained for prior Polk County charges. Those from other Florida counties usually can be obtained, but at a much slower speed. Other states have proven to range from problematic to almost impossible. These factors should be kept in mind when deciding whether the case is suitable for enhancement.

Enhanced charges for misdemeanors have some tremendous benefits. A felony will have a higher standard bond and the offender is more likely to remain incarcerated pending the resolution of

the case. At sentencing, the potential disposition, including the length of probation is of a greater duration. Felony convictions also have a greater impact on the individual's sentencing score sheet than do misdemeanors. This makes it worth the extra effort to establish their prior convictions.

So the next time you are dealing with a misdemeanor crime, take a few moments to make sure there are no likely enhancements that will require another officer or yourself to reinvestigate the case. If you have questions concerning local convictions you can always contact our office for assistance during regular business hours. Make your cases strong, your actions smart, and be safe.

...FROM THE COURTS...

FOURTH AMENDMENT DOES NOT APPLY TO ACTIONS OF PRIVATE SECURITY GUARDS.

The defendant was charged with a felony and filed a motion to suppress evidence. The facts on which the motion was based were that the defendant was stopped and searched by private security guards at a flea market. The security guards found a firearm. The trial court denied the motion to suppress,

and the defendant was convicted. On appeal, the Third District affirmed, holding that the Fourth Amendment did not apply to the search since the security guards were not government agents. *Alexander v. State*, 30 FLW D1339 (Fla. 3d DCA May 25, 2005).

EMPLOYEE BIRTHDAYS NOVEMBER 2005

November 1
Monica Hernandez, Hardee SAD

November 6
Connie Strickland, WH SAD

November 7
JJ Branam, Felony Intake
Cindy Norris, F-4
Susan Ojeda, Child Support
Tiffany Richard, VOPS

November 8
Ali McGraw, Misdemeanor

November 10
Ralph Guerra, F-5

November 15
John Flynn, F-4

November 17
Sheryl Phillips, Child Support

November 19
Cindy Rhaden, Homicide

November 20
Peggy Murray, Juvenile
Melody Stratton, F-3

November 22
Ashley Gaines, Child Support
Terri Gregg, Misdemeanor
Kathy Slappey, Investigations

November 25
Donna Carnett, F-6

November 29
Chip Thullbery, Administration

November 30
Bonnie Parker, Felony Intake

Happy Birthday!





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Lakeland, FL 33801
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...FROM THE COURTS...

AGREEMENT TO COOPERATE WITH POLICE DOES NOT WAIVE SPEEDY TRIAL.

The defendants were charged with sale of a controlled substance and filed motions for discharge under the speedy trial rule. The facts on which the motions were based were that after the defendants were arrested, they agreed to assist law enforcement in a drug investigation by conducting controlled buys and were then released. Law enforcement officers agreed not to file charges until the defendants' assistance was complete. There was no discussions of or signing of speedy trial waivers. Subsequently, the officers found the defendants' levels of cooperation to be

unsatisfactory, and the defendants were again arrested and charged after the running of the speedy trial time period. The trial court granted the motions for discharge and on appeal, the Supreme Court affirmed, holding that a criminal defendant's agreement to cooperate with police, standing alone, does not act as a waiver of the right to a speedy trial or otherwise prevent the running of the time in which a defendant must be brought to trial. *Bulgin v. State*, 30 FLW S368 (Fla. May 19, 2005).

SUSPENDING OBJECT FROM REAR VIEW MIRROR IS NOT A CIVIL INFRACTION.

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 officers stopped the defendant's car because they saw two air fresheners hanging from the defendant's rear view mirror which they believed to be a civil infraction. During the stop a drug dog alerted on the trunk of the defendant's vehicle. A search of the trunk

revealed cocaine. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Second District reversed, holding that the stop of the defendant was illegal because driving with an air freshener or other object suspended from the vehicle's rear view mirror does not constitute a traffic infraction. *Gordon v. State*, 30 FLW D1240 (Fla. 2d DCA May 13, 2005).

SEARCH WARRANT AFFIDAVIT WAS INSUFFICIENT.

The defendant was charged with several drug offenses and filed a motion to suppress evidence seized during the execution of a search warrant, asserting that the state's application for the warrant lacked probable cause. The facts on which the motion was based were that police submitted an affidavit in support of the warrant in which they stated that a confidential informant whose reliability they did not discuss made a controlled buy from the defendant

"under the direction of" law enforcement. The trial court denied the motion, and the defendant was convicted. On appeal, the Fifth District reversed, holding that the affidavit was insufficient to establish probable cause because there was no showing of the informant's liability or of how the informant was under the control of law enforcement during the buy. *Martin v. State*, 30 FLW D1708 (Fla. 5th DCA July 15, 2005).