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Legal Advisor

Jerry Hill, State Attorney

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A FEW WAYS TO HELP IMPROVE THE PROSECUTION OF CRIMINAL TRAFFIC OFFENSES

by David E. Stamey, Director, Misdemeanor Division

Criminal traffic cases make up approximately sixty percent of the cases that are prosecuted in the County courts of the Tenth Judicial Circuit. All of these cases are charged originally and enter the system by Uniform Traffic Citation (UTC): some by arrest, some by Notice to Appear, some by summons from the clerk of the Court. However, the procedures and habits of the various law enforcement agencies differ greatly in how they handle and present these cases for prosecution. The goal of this article is to point out bad procedures and habits, explain the problems and inefficiencies these bad procedures create, and then request you to follow certain procedures that will improve the prosecutions of your cases.

FINGERPRINT, FINGERPRINT, FINGERPRINT.

Almost daily, prosecutors in court are faced with defendants telling judges that someone else used their name during a traffic stop. If the encounter resulted in a criminal charge, the prints from the arrest or from the notice to appear **should** easily confirm or dispel this claim. Therefore, when you use a UTC as a notice to appear, you **must** obtain a thumbprint of the subject on the citation. A print should be obtained even if the subject provides you with his driver's license. If the subject does not have his driver's license in his possession, a print becomes even **more** important. Photos from the D.A.V.I.D system can be helpful for immediate ID verification, but these photos should not be used as a substitute for a thumbprint of the subject. When it is discovered through print comparison that a false name has been used, the real culprit will be charged with the appropriate (Uttering a Forged Instrument, Forgery, False Name to LEO, etc.) charges in addition to the driving offense.

Many times people charged with the offense of Driving While Li-

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BARTOW PHONE NUMBERS:

SWITCHBOARD	534-4800
MISDEMEANOR INTAKE	534-4928
MISDEMEANOR	534-4926
DOMESTIC VIOLENCE	534-4882
VICTIM ASSISTANCE	534-4861
FELONY INTAKE	534-4987
FELONY	534-4964
INVESTIGATIONS	534-4804
VIOLATION OF PROBATION	534-4803
CHILD ABUSE / NEGLECT	534-4857
HOMICIDE DIVISION	534-4959
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WORTHLESS CHECKS	534-4874
JUVENILE DIVISION	534-4905
FAX - MAILROOM	534-4945
WITNESS MANAGEMENT MISDEMEANOR/TRAFFIC	534-4021
WITNESS MANAGEMENT FELONY	534-4020
WITNESS MANAGEMENT FAX	534-4034

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cense is Suspended or Revoked (DWLSR) come into court and claim that someone used their name while receiving a civil infraction. This infraction then goes unpaid and results in the innocent person's driver's license being suspended for failure to pay fines. The judge, knowing that this practice happens frequently, obtains from the clerk's office the original civil infraction. All too often, it is discovered from the citation that the subject did not have his driver's license in his possession. However, despite this fact, the officer failed to obtain a thumbprint. These events many times lead a frustrated and sympathetic judge to find the defendant not guilty of the charge. Therefore, it is suggested that on all infractions where the subject has no driver's license in his/her possession, thumbprints be obtained.

Criminal Traffic Offenses and Reports

At some point in the past, some agencies and their officers decided that reports weren't necessary on criminal traffic offenses charged by UTC. With the exception of DUI, they choose to submit only the citation, foregoing a report and instead relying (sometimes) on notes written on their pink copy of the UTC.

And yes, while it is true that some criminal traffic charges are self explanatory, the practice of not providing reports to the prosecutor creates many problems. The most obvious one being the reason for the stop. Every defense attorney wants to know why his client was stopped. We do not have your pink copy of the UTC, and most often we do not receive copies of any civil infractions that were given to the defendant at the time of the criminal charge. Our not knowing (and being unable to provide this information to the defense) often leads to needless phone calls (messages and return phone calls), defense motions to the court, and depositions.

Not providing reports also creates problems in the criminal discovery process. The other witnesses present (LEO or civilian), evidence, and admissions by the defendant should be made known to the prosecutor (and eventually to the defense attorney). The benefits that are created by providing this information are great (speedier resolution of strong cases) while the potential consequences of not providing the information are harmful to the case (needless delays of the case and possible exclusion of witnesses and evidence) and many times embarrassing to the prosecutor and officer. Witnesses, evidence, and statements made by the defendant that are learned of and disclosed late (sometimes the morning of trial) cause embarrassment for the prosecutor and officer, and frustration for the judge.

Additionally, preparing reports can only aid your testimony at trial, and prevent lapses in memory.

DWLSR: With Knowledge vs. Without Knowledge.

The need for reports are most evident in the cases of DWLSR. Not only do they provide information on the reason for the stop, they provide information that sheds light on the reason you charged the defendant with a crime (with knowledge) as opposed to an infraction (without knowledge). Often a prosecutor at the case filing stage is left to wonder why you charged the defendant with a crime instead of citing him with an infraction. The process becomes even more challenging when the citation has inconsistencies on its face. Many times a DWLSR citation comes into our office with the criminal statute number [322.34(2)] used, however the officer has checked the box on the citation that reads "Infraction which does not require appearance in court." The flip side of that problem is

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when the officer uses the civil infraction statute number [322.34(1)], but checks the box that reads "Criminal violation. Court appearance required. As indicated below." This situation happens **regularly**, and without the benefit of a brief report, leaves the clerk of the court and the prosecutor to guess what the officer's intentions were.

Often, where a driver has his license suspended for either failure to pay fines or for a financial responsibility (insurance coverage), the deciding factor on whether to charge a crime or a citation, is the statement\admission of the driver. This statement\admission, where the driver acknowledges that he knew his license was suspended, needs to be communicated to the prosecutor. A brief report containing the driver's statement\admission is the best way to accomplish this.

Willful and Wanton Reckless Driving.

Reckless driving is another charge that often lacks reports. Reckless driving is **not** a self explanatory (one size fits all) charge. Instead, many factors are considered and weighed by officers when they make the decision to file the criminal charge of reckless driving as opposed to the civil infraction of careless driving. Each of these factors should be communicated to the prosecutor making the filing decision. A brief detailed report is the best way to accomplish this.

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Print Names on Citations.

Another area of prosecution where a lack of reports causes problems is in the area of witness identification. When the prosecutor relies solely on the citation to identify the arresting officer, and the officer has illegible handwriting, misidentification can occur. When misidentification occurs the wrong officer gets subpoenaed. This mistake usually gets corrected, but often too late to salvage the hearing or trial, and at a cost of expense and delay. So in an effort to prevent these types of mistakes please print your name on the UTC under your signature or better yet, prepare and submit a brief report.

D.U.I. Repeat Offenders: No Bond Until they see the Judge.

Other than a few exceptions, all people charged with D.U.I. are arrested. Most of these arrested individuals are transported to the Polk County Jail. However, some agencies are choosing to release their arrested subjects from their custody after eight (8) hours of incarceration or once their breath alcohol level drops below 0.05. However, because the Tenth Judicial Circuit Administrative Order No.2-49.6 (a.k.a. the Uniform Bond Schedule) states that "Alleged offender charged with Driving Under the Influence under Section 316.193, Florida Statutes, who has one or more prior convictions for Driving Under the Influence will be held without bond until first appearance hearing," this practice should be discontinued for repeat offenders. Instead, all subjects arrested for D.U.I. who have prior convictions for same, should be transported to the Polk County Jail where they will remain until they see the Judge.

Your attention to these matters will make all of our lives much easier.

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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
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Fax: (863) 519-4759

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

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...FROM THE COURTS...

CONSENT TO SEARCH WAS VALID.

The defendant was charged with possession of cocaine, marijuana, and drug paraphernalia. He filed a motion to suppress. The facts on which the motion was based were that after an officer stopped the defendant for riding a bicycle without his lights on, the officer asked the defendant if he had anything on him which the officer should know about. The defendant said he did not. The officer then asked if he could search him, and the defendant agreed. The officer found a chap stick in the defendant's pocket and opened it, finding the marijuana and cocaine. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Fifth District affirmed, holding that the search was valid because the defendant gave a general consent to search and did not verbally or physically indicate a withdrawal of that consent. *Allen v. State*, 30 FLW D1951 (Fla. 5th DCA Aug. 19, 2005).

A BLOWGUN MAY BE A DEADLY WEAPON.

The defendant, a juvenile, was charged with aggravated battery. At his trial, the evidence established that he shot his victim with darts from a blow gun. The court found him guilty, and the Fourth District affirmed, holding that a blow gun may be a deadly weapon. *V.M.N. v. State*, 30 FLW D2038 (Fla. 4th DCA Aug. 31, 2005).

DOG ALERT ON CAR WITHOUT MORE DOES NOT JUSTIFY ARREST OF RIVER.

The defendant was charged with a felony drug offense and filed a motion to suppress. The facts on which the motion was based were that after a drug dog alerted on his car, police arrested and searched him, finding drugs. The trial court denied the motion, and he was convicted as charged. On appeal, the First District reversed, holding that a dog alert on a person's vehicle, without more, does not establish probable cause for the arrest of that person. *Williams v. State*, 30 FLW D2281 (Fla. 1st DCA Sept. 23, 2005).

FAILURE TO RETURN DRIVERS LICENSE TAINTED CONSENT.

The defendant was charged with carrying a concealed firearm and filed a motion to suppress evidence. The facts on which the motion was based were that when officers approached the defendant who was sitting in his parked car, they asked to see his license. He gave it to them, and they conducted a warrant's check which came back negative. Without returning the license, they asked for consent to search the car. The defendant agreed. A search disclosed a gun concealed in the car. The trial court granted the motion, and on appeal, the Fourth District affirmed, holding that the failure to return the driver's license tainted the consent. *State v. Campbell*, 30 FLW D2226 (Fla. 4th DCA Sept. 21, 2005).

CONFESSIONS MAY BE OBTAINED BY MISSTATEMENT OF FACT.

The defendant was charged with murder and filed a motion to suppress his confession. The facts on which the motion was based were that the defendant confessed after the police falsely told him that his DNA was found on the victim's body. The trial court denied the motion, and the defendant was convicted of second degree murder. On appeal, the Third District affirmed, holding that a confession obtained by a misstatement of fact is admissible as long as it is voluntarily made. *Fonte v. State*, 30 FLW D2250 (Fla. 3d DCA Sept. 21, 2005).