OFFICE OF THE STATE ATTORNEY, TENTH JUDICIAL CIRCUIT

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As we begin a new year, I would make the observation that the people of the Tenth Judicial Circuit are very fortunate to be protected by our law enforcement community. I hope they appreciate your dedication and commitment to their safety. I know that my staff and I do. They join me in wishing you a happy and healthy 2007.

TRAFFIC STOPS FOR EQUIPMENT VIOLATIONS

BY KAREN TRUSSELL

Vehicle stops based on traffic violations for inadequate equipment have been the subject of prior Legal Advisor issues. Recently, our office has been contacted by law enforcement officers regarding a debate as to current case law pertaining to specific statutes. As previously addressed, the United States Supreme Court ruled that the argument of a pretextual vehicle stop in order to search for contraband is irrelevant as long as the stop was based on a valid traffic infraction. Although this ruling allows officers to stop vehicles suspected of transporting controlled substances and to check the validity of the driver's license, the initial basis for the stop must still be legal.

One area of discussion is Section 316.155, Florida Statutes, concerning the use of a turn signal. In State v. Riley, 638 So.2d 507 (Fla.1994), the Supreme Court of Florida specifically ruled, "If no other vehicle is affected by a turn from the highway, then a signal is not required by the statute. If a signal is not required, then a traffic stop predicated on failure to use a turn signal is illegal and any evidence obtained as a result of that stop must be suppressed." That case was further relied on in the Second District Court of Appeal case of S.A.S. v. State, 884 So.2d 1167 (Fla. 2d DCA 2004) when considering the wording of the F.S. 316.155(1) which reads, in part, "...in the event any other vehicle may be affected by the movement." The court interpreted the statute to mean that if there was no evidence that another driver was actually affected by the defendant's turn, then the officer lacked probable cause for the stop, thus rendering the stop illegal.

There has also been concern regarding vehicle stops for cracked windshields based on the location in the glass. Although there have been various court rulings in the past, the Second District Court of Appeal in the case of Hilton v. State, 901 So.2d 155, (Fla. 2d DCA 2005) ruled that a law enforcement officer may stop a vehicle to conduct a safety inspection under Section 316.610, Florida Statutes, even if the crack is not on the driver's side of the vehicle. However, it should also be noted that the court has certified the issue for review by the Florida Supreme Court so the matter is subject to change in the future.

When you write your arrest affidavits and narrative reports it is important to keep in mind that the elements for each offense must be included. These will be necessary in order for the judge to find probable cause at the First Appearance Hearing and for our office to file an Information. Most law enforcement officers do a good job of providing the required information. Even though many departments have new officers and schedule which include extremely long hours, it is essential to provide detailed reports. One important item to include on the arrest affidavit is the reason for the initial traffic stop. As explained above, a more substantial description is needed than "traffic infraction."

Another area that lends itself to report brevity is a vehicle stop in which the defendant is charged with driving while license suspended or revoked. While the officer may know the reason the defendant's vehicle was stopped, it must be clearly mentioned. For example, if the vehicle is stopped because the investigating officer cannot read the temporary tag, the resulting stop is lawful. However, once it is subsequently discovered that the temporary tag is valid, barring further justification for detention, the investigating officer may only give an explanation as to the reason for the stop. State v. Diaz,

TRAFFIC STOPS FOR EQUIPMENT VIOLATIONS

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850 So.2d 435(Fla 2003. Conversely, if the law enforcement officer has knowledge that the defendant's driver's license is suspended at the time of the stop, the basis for the arrest is legal.

At the time a felony arrest is made in which the defendant is being charged with any criminal traffic offenses, the defendant needs to be booked into the jail on those charges as well. It would also be helpful to list each traffic charge on the arrest affidavit with the word "duplicate" in parenthesis beside it and attach the citations. If the criminal traffic charges are not turned in at the jail but rather are filed with the Clerk's Office, our office may not even be aware of the traffic charges until well after the defendant is released from jail. This often results in separate misdemeanor traffic files being created and numbered in County Court. Also keep in mind that when you make a felony arrest, an Information must be filed within 21 days or the defendant will be eligible for release from jail. By providing your complete felony packet as soon as possible, you reduce the need for a mandatory appearance by you and the victims/witnesses at a preliminary hearing.

Many topics concerning vehicle stops and making an arrest have been covered in past Legal Advisor articles. Please go to our web site http://www.sao10.com to review those prior articles.

...FROM THE COURTS...

SEIZURE OF PROPERTY ABANDONED BEFORE STOP WAS LEGAL.

The defendant was charged with possession of cocaine and filed a motion to suppress. The facts on which the motion was based were that while police with lights and sirens activated were following the defendant, the defendant threw an object out of his car. He then pulled over to the side of the road. The police detained him and retrieved the object which turned out to be a pill bottle containing cocaine. Finding that the stop of the defendant was illegal, the trial court granted the defendant's motion, but on appeal, the Second District reversed, holding that when the defendant abandoned the cocaine, he had not been seized because he had not submitted to the officers' show of authority. *State v. Battis*, 31 FLW D896 (Fla. 2d DCA Mar. 24, 2006).

CONFINEMENT IN FREEZER DURING ROBBERY WAS NOT KIDNAPPING.

The defendant was charged with burglary, robbery, and kidnapping. At his trial, the evidence established that he and two confederates broke into a restaurant after it had closed. A manager was ordered to get money from a safe and two employees were ordered to walk into a freezer and stay there. One of the perpetrators closed the freezer door on them. After the robbers left, the manager told the employees it was safe, and they opened the freezer door and came out. The defendant was convicted as charged. On appeal, the Third District reversed the kidnapping convictions, holding that the convictions could not stand because the movement and confinement of the employees was slight, inconsequential, and incidental to the robbery. *Frederick v. State*, 31 FLW D1426 (Fla. 3d DCA May 24, 2006).

FELONY CRUELTY TO ANIMALS EXPLAINED

The defendant was charged with felony cruelty to animals. At his trial, the evidence established that he encountered an opossum in his garage. He shot it with a BB gun and chased it away. Later when it was still away from the house, he shot it numerous times with the BB gun. An animal control officer who saw the opossum said that it was severely injured by the shooting and appeared to be suffering extremely. As a result, it was necessary to euthanize the animal. The defendant was convicted as charged. On appeal, he argued that his conviction should be reversed because the state had failed to show that he intended for the animal to suffer a cruel death. The Fourth District rejected this argument and affirmed, holding that the state need not show that the defendant intended a cruel death but only that he intended to commit an act which caused a cruel death. *Bartlett v. State*, 31 FLW D1449 (Fla. 2d DCA May 24, 2006).

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...FROM THE COURTS...

HANDCUFFS ARE A MEANS OF PROTECTION.

The defendant was charged with depriving a law enforcement officer of means of protection or communication. At his trial, the evidence established that while an officer was attempting to handcuff the defendant, the defendant grabbed the handcuffs and took them away from the officer. The defendant was convicted as charged. On appeal, the Fourth District affirmed, holding that handcuffs can be a means of protection. Rodriguez v. State, 31 FLW D1505 (Fla. 4th DCA May 31, 2006).

FRAUDULENT TEMPORARY TAG IS NOT A COUNTERFEIT LICENSE PLATE.

The defendant was charged with possession of a counterfeit license plate in violation of section 320.26(1)(a), Florida Statutes. He filed a motion to dismiss, asserting that the state could not establish a prima facie case. The facts on which the motion was based were that the defendant was found in possession of a fraudulent temporary tag. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Second District reversed, holding that a temporary tag is not a license plate as defined in section 320.26. Herrera-Lara V. State, 31FLWD1638(Fla. 2nd DCA June 16, 2006).

INFORMATION GAINED FROM RUNNING TAG JUSTIFIED STOP

The defendant was charged with trafficking in cocaine and filed a motion to suppress. The facts on which the motion was based were that an officer noticed the defendant's car, and although it was moving along in a normal fashion, she ran its tag. The response came back as "no record found." As a result, she stopped the car, and when the defendant could not produce a drivers license, she arrested him. A search incident to that arrest revealed cocaine. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Second District affirmed, holding that the stop of the vehicle was reasonable. Ellis v. State, 31 FLW D1734 (Fla. 2d DCA June 28, 2006).

DEFENDANT'S CONDUCT WAS NOT DISORDERLY.

In this Highlands County case, the defendant was charged with, among other things, disorderly conduct. The evidence at his trial established that when a police officer attempted to question the defendant about an incident, the defendant told him to mind his own business and screamed obscenities at him. The defendant was convicted as charged. On appeal, the Second District reversed, holding that speech alone will not support a conviction for disorderly conduct unless the speech amounts to fighting words. Barry v. State, 31 FLW D2065 (Fla. 2d DCA Aug. 4, 2006).

DEFENDANT'S ACTIONS DID NOT AMOUNT TO TAMPERING.

The defendant was charged with tampering with evidence. At his trial, the testimony established that as an officer approached the defendant who was riding a bicycle, the defendant opened a pill container, dropped cocaine rocks to the ground, and threw the container about five feet. The officer saw this happen and retrieved the rocks and the container. The defendant was convicted as charged, but on appeal the Fourth District reversed, holding that the defendant's actions did not amount to tampering since the objects he dropped could be and were easily retrieved. Obas v. State, 31 FLW D1860 (Fla. 4th DCA July 12, 2006).

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