



Legal Advisor

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Misdemeanor	534-4926
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WITNESS MANAGEMENT FAX	534-4034

I want to take a moment to wish you all a Safe and Happy New Year. We whom you serve are blessed to live under your protection and care. You are public servants in the truest sense of the word, and I and my staff are grateful for all you do.

Best

TRAFFIC STOPS AND DRUG K-9 SEARCHES

By Nicole Alex, Felony 1 Division Chief

When conducting a traffic stop you must begin the traffic stop immediately upon stopping the vehicle. Courts have held that you may not wait for back-up unless you are able to articulate a specific reason to do so. Officer safety, however is most important! Even if you cannot give a specific reason to wait for back-up, if you feel calling for back-up is prudent, then do so. Just be aware that if you cannot articulate a reason, the court may throw out the search. Once you begin the traffic stop and you decide you want to search the vehicle either get consent to search or have a K-9 sniff the vehicle before you finish writing the traffic citation.

If you do get consent to search the vehicle always try to get it in writing. While that is not always possible, it certainly makes it easier to argue later at a suppression hearing that the consent was valid if it was obtained in writing as well as given verbally. If the driver of the vehicle does not consent to a search of the vehicle you still have the option of calling for a K-9 to respond to do an exterior sniff of the vehicle.

If you call for a K-9 officer to respond to your traffic stop you may not wait for the K-9 officer to arrive to complete the stop. You must proceed normally with your traffic stop and when you have completed the traffic stop you must allow the driver to leave the scene. The detention of the driver must last no longer than is reasonably necessary for

you to write the traffic citation and make the customary license, tag, insurance and registration checks. When you have completed those tasks you must give the citation, license and all additional documentation you obtained to the

driver. You may not take a moment longer than is reasonably necessary to issue the traffic citation. Case law is clear that if a traffic stop is unnecessarily prolonged in order to permit a drug sniff the search is illegal and the evidence will be suppressed.

When conducting a traffic stop there are things that can prolong the stop outside of writing your citations. For example, if the driver of the vehicle is not the owner of the vehicle and the owner is not present, as an officer you have a responsibility to run the tag information on the vehicle. Under that circumstance if you have completed your citations but the information on the vehicle has not come back the traffic stop is not completed. The traffic stop is not considered complete until the information on the vehicle is re-



Assistant State Attorney Nicole Alex has been with the State Attorney's Office since August 18, 2003. In addition to her case load, Nicole also serves as Division Chief of Felony-I.

TRAFFIC STOPS AND DRUG K-9 SEARCHES

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turned, if it can be obtained within a reasonable time. Waiting for a reasonable period of time for tag information is not considered extending the traffic stop.

There may be circumstances where the officer conducting the traffic stop is a K-9 officer. The exact same rules apply to you. You may not wait for another unit to respond before beginning or completing your traffic citations. You must begin the traffic stop and complete it within a reasonable time. If another unit responds and can take over writing the traffic citations and making the customary license, tag, insurance and registration checks then you may walk your K-9

around the vehicle. This activity may, however, in no way extend the traffic stop. As a K-9 officer, you also have the option of calling for an additional K-9 officer to walk a dog while you are completing your traffic stop. That decision is up to you. You may not stop during your traffic investigation to conduct the sniff, and you may not detain the driver once the traffic citations are completed to conduct a sniff of the vehicle.

Should you have any questions regarding this topic or would like copies of any case law, please contact Nicole Alex 534-4834.

...FROM THE COURTS...

OFFICER HAD PROBABLE CAUSE TO SEARCH TRUNK

The defendant was charged with possession of marijuana and filed a motion to suppress evidence. The facts on which the motion was based were that an officer stopped a vehicle in which the defendant was a passenger for speeding. When he approached the car, he smelled a strong odor of raw marijuana. A search of the driver revealed a small amount of marijuana wrapped in a plastic bag. The officer then searched the interior of the vehicle finding no marijuana. At that point he opened the trunk and found approximately one-half pound of marijuana. The trial court denied the motion, and the defendant was convicted. On appeal, the First District affirmed, holding that the totality of the circumstances provided probable cause for the search of the trunk. *Kimball v. State*, 32 FLW D618 (Fla. 1st DCA Mar. 2, 2007).

OFFICER HAD RIGHT TO ASK DEFENDANT TO GET OUT OF CAR

The defendant was charged with possession of cocaine and paraphernalia and filed a motion to suppress evidence. The facts on which the motion was based were that after completing a traffic stop during which he decided not to issue a traffic citation, the officer involved asked the defendant for consent to search the defendant's car. When the defendant agreed the officer asked him to get out of the car during the search. As the defendant did so he dropped a glass pipe from his right hand. The officer seized the pipe and found that it contained cocaine residue. The trial court granted the motion, but on appeal, the Fourth District reversed, holding that it was legal for the officer to ask the defendant to get out of the car before the officer conducted the consent search. *State v. Boles*, 32 FLW D719 (Fla.

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...FROM THE COURTS...

4th DCA Mar. 14, 2007).

SEARCH OF PROBATIONER'S RESIDENCE APPROVED

In this Polk County case, the defendant was charged with possession of methamphetamine and paraphernalia and filed a motion to suppress statements and evidence. The facts on which the motion was based were that detectives received a tip from a confidential informant that the defendant who was on probation was selling methamphetamine from his house. After checking with the defendant's probation officer to ascertain that there was a warrantless search condition on his probation order, they went to the defendant's house to conduct a search. They did not obtain a warrant, and they were not accompanied by the probation officer. When they arrived at the home, they were met by the defendant. After they explained their purpose and read him his *Miranda* rights, the defendant took them to his bedroom where they discovered the methamphetamine and paraphernalia. At that point, the defendant made several incriminating statements and was arrested. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Second District affirmed, holding that where a probationer has a warrantless search condition, law enforcement officers who have

a reasonable suspicion that the probationer is engaged in criminal activity may conduct a search for investigatory purposes without a warrant and without the presence of a probation officer. *Bamberg v. State*, 32 FLW D858 (Fla. 2d DCA Mar. 30, 2007).

ALLOWING DRUNK PERSON TO DRIVE WAS CULPABLE NEGLIGENCE

The defendant was charged with manslaughter by culpable evidence. At his trial, the evidence established that the defendant was at a bar with two others. The defendant and one of his companions were intoxicated. When they got ready to leave, the other companion who was sober offered to drive the defendant's truck. The defendant refused and left in the truck with his intoxicated companion as his only passenger. At some point the defendant allowed the companion to drive, and thereafter the companion ran a stop sign and crashed into another vehicle, killing two of its occupants. The companion's blood alcohol level was found to be 0.182 percent. The defendant was convicted as charged, and on appeal the Third District affirmed, holding that the defendant's actions met the definition of culpable negligence. *Hernandez v. State*, 32 FLW D1423 (Fla. 3d DCA June 6, 2007).