



# Legal Advisor

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**Jerry Hill**  
State Attorney

## THE TRAFFIC STOP

By: Mitchell A. Ladner

In last month's Legal Advisor (March 2004), article titled: "Uniform Traffic Citation Review", Peter Mislovic touched upon the need for officers to make sure that when a criminal citation is issued the correct statute number is written on the ticket. The article went on to list most of the common criminal infractions received by our office. I want to continue on with that topic because one of the best resources available for proactive law enforcement is the traffic stop. A traffic stop can ultimately lead to misdemeanor or felony drug arrests and/or cases involving firearms. The purpose of this article is to identify when an officer can search a vehicle and what areas may be searched. We often receive motions to suppress on drug cases arising from traffic stops. The following areas will cover some of the more frequent challenges received.

### MAKING THE TRAFFIC STOP

In 1996, the United States Supreme Court established a bright line rule that if an officer has probable cause to believe a traffic infraction exists, then a traffic stop may be conducted regardless of the officer's underlying intent. Prior to this decision, if an officer had a hunch that a vehicle being driven on the road had drugs inside and then found a reason to stop the car, any contraband found within the car was subject to suppression because the defendant could argue it was a pretextual stop. It is this rule that enables an officer to search a vehicle after a valid arrest for a criminal traffic infraction. For example, while on patrol you observe a vehicle with a suspicious driver, someone who has obviously seen your presence and is now praying with all his might that when the light turns green, you go the other way and do not fall in behind his car. You have all seen this driver. Now, when the light does turn green you fall

in behind the car and notice that the tag expired two years ago. You run the tag number and sure enough the tag is expired. You then hit the overhead lights and conduct a traffic stop. To your amazement, when you meet the driver and ask for his drivers license, registration, and insurance you get the following response, "I don't have a license, I was just going to the store to get some milk for my new born baby because we ran out and my wife can't drive." The driver's personal information is then checked, and it is discovered that the driver is a habitual traffic offender.

In this example it is evident that the driver may be arrested for two criminal offenses. It is imperative that when an officer makes a traffic stop which may ultimately lead to an arrest and discovery of contraband that the underlying infraction is really an infraction. In *Jackson vs. State*, two officers patrolling in a high crime area observed a person driving a car with no rear window. The officers conducted a traffic stop and ultimately found contraband in the car. All items seized were suppressed because the court found that rear windows were not required equipment on automobiles.

#### 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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## EMPLOYEE BIRTHDAYS

MAY 2004

2nd  
Steele Goff, Highlands

5th  
Theresa Henderson, Misd

6th  
Terry Wolfe, Highlands  
Stephanie Browder, CSE

7th  
Annette Cunningham, Homicide

14th  
Christina Thrower  
Bob Stamper

16th  
Mike Cusick

17th  
Diane Starke

20th  
Deb Oates  
Chuck Zeller

24th  
Beverly Cone

26th  
Derek Christian

28th  
David Stamey

29th  
Jerry Hill, State Attorney  
GiniBeth Henderson, Fel. Intake

31st  
Carolyn Blair, Admin

*Happy Birthday!*



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## THE TRAFFIC STOP



*Mitch Ladner is an Assistant State Attorney in the Felony 1 Division. Prior to joining the SAO, Mitch was a police officer with the City of Lake Alfred. In addition to his case load, Mitch also serves as the Division Chief over Felony 1. He has been with this office since August 2000.*

### SEARCH AND POSSIBLE SEIZURE

Now, assuming that the driver has been arrested, a search incident to arrest can be performed on both the driver and the passenger compartment of the vehicle. Law enforcement may search the entire passenger compartment of the vehicle including the glove box, center console and any containers, boxes, clothing, luggage, etc. found within the passenger area of the car. You may search any container that is capable of holding or concealing another object and it does not matter whether it is open or closed. **Be aware that this only applies** to the passenger compartment and not the trunk area of the car. If the defendant just so happens to be driving an S.U.V., such as a Suburban or Explorer, the Courts have stated that the luggage area is subject to search even if the area is covered with a vinyl shade or some other type of item designed to retract from the rear seat and extend to the back of the vehicle.

Another key issue to be aware of is that in order to have a valid search incident to arrest the defendant must actually be taken into custody. The courts have not allowed a search incident to arrest where the officer only issued a notice to appear or a criminal citation directing the defendant to appear in court at a later date. That statement is confusing because Florida Statute **901.28 Notice to appear for misdemeanors or violations of municipal or county ordinances: effect on authority to conduct search** states, "The issuance of a

notice to appear shall not be construed to affect a law enforcement officer's authority to conduct an otherwise lawful search, as provided by law." The reason this statute can cause confusion and ultimately lead to a valid motion to suppress when relied upon by law enforcement is our Florida Constitution dictates that Florida Courts are bound by United States Supreme Court rulings on search and seizure issues. In 1998 the U.S. Supreme Court ruled in *Knowles v. Iowa* that an individual must be under arrest prior to search incident to arrest.

Though a search incident to arrest only allows the officer to search the entire passenger area for contraband, many officers rely on an inventory search to continue searching the trunk area and any belongings found therein for contraband. That is inconsistent with the true purpose of an inventory search which is to protect the owners property while the car is in the possession of the police and/or prevent the owner from filing claims against the police for lost or damaged items. **Items that are found during an inventory search will generally be admissible so long as the search was conducted in compliance with the department's policy.** The department policy will set out the parameters of the search, such as whether containers found in the trunk can be opened. Be fully advised that if you search the trunk area and find contraband **you cannot** go back after the fact and simply claim that a search for drugs was in fact an inventory search.

### CONSENT TO SEARCH

Do not despair if the traffic stop does not lead to a valid arrest. You may still be able to search the car. If in the course of the traffic stop the driver is acting nervous or your gut instinct is that there may be contraband concealed within the car, simply tell the driver that the traffic stop is over and that he is free to leave. You can then ask the driver if he would consent to a search of the vehicle. There is no requirement that the officer have probable cause before asking a driver for consent to search. Keep in mind that the consent must be voluntary. It is not necessary that you tell the driver that he can refuse to give consent. Please remember that if there are problems with the original stop, obtaining consent will not cure the problem with the stop.

Remember, should it become necessary for a court to determine whether the consent was voluntarily given by the driver, the court will consider the length of the detention,

## THE TRAFFIC STOP

the age and experience of the person giving consent, the person's education, and whether any threats were made in order to get consent. Be careful to explain in detail the exact circumstances in your arrest report surrounding the person giving consent. Also be aware that a person who gives consent can limit the area and scope of the search. For example, if the driver says you can search the entire passenger compartment but not the glove box, then that is the scope and limit of the search. If you exceed the limits given, then the search and any items found will more than likely be suppressed. Finally, a person who gives consent can withdraw the consent either verbally or by an act. In *Pierre v. State*, a case decided by the Second District Court of Appeal, police stopped a car for a civil infraction, the driver gave consent to search, and got out of the car. While the police were searching the car the driver ran. The police gave chase and apprehended the driver. They returned him back to the vehicle and resumed the search. The police ultimately found cocaine in the car which was suppressed because the court ruled that the act of running

was a withdrawal of consent to search. Note that the court went on to say that the act of running did not give probable cause for an arrest; therefore the cocaine was not lawfully seized under search incident to arrest.

### CONCLUSION

The traffic stop is an asset because it allows law enforcement officers, who are not assigned to a special drug unit, the opportunity to make solid drug cases. When making the traffic stop be careful to make sure the reason for the stop is valid, i.e. no tag light. If the facts as they develop allow for an arrest be sure to actually place the defendant under arrest and book the person into the county jail in order to validate a search incident to arrest. Also, if facts do not develop that warrant an arrest then ask for consent to search. If you ask for consent try and have the driver sign a consent form or if practical, have another officer as a witness. In closing, be sure all the details of the traffic stop are recorded in detail in the offense report.

# Top Cops

I would like to take a moment to recognize Officer David Brooks of the Bartow Police Department for his work in the Jerry Sanders / Sexual Battery case. Officer Brooks was very accessible, promptly returned my phone calls and was always available to answer any questions I had about the case. He took the time to go through and explain the DNA evidence to me and located additional reports which were very important to the case. In a jury trial, the defendant was found guilty as charged, was adjudicated guilty and sentenced to 30 years Florida State Prison.

- Assistant State Attorney Rey Ojeda, Special Prosecution

I would like to recognize Sgt. Mike Rowan of the Avon Park Police Department for his assistance in a recent prosecution for Attempted Armed Robbery and Attempted Murder. The victims in this case were migrant farm workers and because their location was unknown, the negotiations were at a standstill.

Sgt. Rowan took the initiative to

locate these victims and was successful in locating them in North Carolina. He even drove to North Carolina and drove the victims back to Florida where they were available for depositions and videotaped perpetuation of their testimony. Negotiations were soon revived and both defendants pled soon thereafter to cases which just shortly before had seemed hopeless.

Thank you Sgt. Rowan for going beyond the call of duty (and beyond state borders) to secure a positive outcome on this case!

- Assistant State Attorney David Ward, Highlands County State Attorney's Office

I would like to recognize Deputy Sheriff Myron Eppel for his diligent work on several cases he has with our office. As updates become available to him, he calls, e-mails and faxes these updates to me all the time!

- Certified Legal Intern Sharon Franklin, Misdemeanor Division



### Winter Haven Police Dept.:

Major Fred DeLoach of the Winter Haven Police Department retired March 26, 2004, after having served 29 years. Major DeLoach began his law enforcement career in August 1975. He began his career as a road patrol officer and worked his way up through the ranks to Major.

Congratulation on your retirement and thank you for your many years of service to the citizens of the Tenth Judicial Circuit.

### Polk County Sheriff's Office:

On Wednesday, March 17, 2004, a promotional ceremony was held at the Central County Jail in Bartow to announce the promotions of several members of the sheriff's office.

Sgt. William "Bill" Mann, who's been with the agency for 14 years, was promoted to the rank of Lieutenant.

D/S Kimberly Garrett, who's been with the agency for 20 years, was promoted to the rank of Sergeant.

D/S Shawn Sloan, who's been with the agency for 11 years, was promoted to the rank of Sergeant.

CST Laurie Ward, who's been with the agency for 22 years, was promoted to the rank of Crime Scene Administrator.

CST Roberta Case, who's been with the agency for 15 years, was promoted to the rank of Crime Scene Supervisor. C

Congratulations on your recent promotions!



#### Hardee County

124 South 9th Avenue  
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  
Phone: (863) 519-4749  
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...

### OFFICERS WERE NOT PERFORMING OFFICIAL DUTIES WHEN ASSAULTED

The defendant was charged with two counts of aggravated assault on a law enforcement officer. At trial, the evidence established that two off-duty police officers were hired by an apartment complex to provide security. While they were patrolling in a marked police unit, the defendant attempted to crash into them. They swerved to avoid

the collision. The defendant was convicted as charged, but on appeal the Fourth District reduced the convictions to aggravated assault, holding that the evidence did not establish that at the time of the defendant's actions the officers were engaged in the performance of official police duties. *Bryan v. State*, 29 FLW D429 Fla. 4<sup>th</sup> DCA Feb. 18, 2004).

### OFFICER'S USE OF CHILD ABUSE REPORT WAS PREMATURE

The defendant was charged with making a false report of child abuse and filed a motion to suppress. The facts on which the motion was based were that after the victim made a complaint to police, an officer obtained an audiotape of the defendant's call to the child abuse hotline and played it for the victim in order to obtain a voice identification. The trial court ruled that the officer's action violated section 39.202(4), Florida

Statutes, and suppressed the audiotape, any transcript of the call, the victim's voice identification, and subsequent statements made by the defendant to police. On appeal, the Second District affirmed, holding that the officer acted illegally in disclosing the tape of the call to the victim prior to a determination that the call was false. *State v. White*, 29 FLW D554 (Fla. 2d DCA Mar. 5, 2004).

### CONDITIONAL INVOCATION OF RIGHTS DID NOT PREVENT FUTURE QUESTIONING

The defendant was charged with first-degree murder and filed a motion to suppress his confession to police. The facts on which the motion was based were that after the body of a prison inmate was found, law enforcement officers read the defendant who was also an inmate his *Miranda* rights and asked him for a statement. The defendant replied, "Not at this time," but he did not ask for an attorney. Approximately seven hours later, he was again given *Miranda* warnings after

which he confessed to killing the victim. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the Supreme Court affirmed, holding that the statement was admissible because when the defendant first invoked his rights he did not ask for an attorney, his invocation was conditional, and he was not again questioned for a significant amount of time. *Globe v. State*, 29 FLW S119 (Fla. Mar. 18, 2004).

### AUTOMOBILE IS NOT A DEADLY WEAPON UNDER THE ROBBERY STATUTE

The defendant was charged with robbery with a deadly weapon, and he filed a motion to dismiss, asserting that the state could not establish a *prima facie* case that the robbery was committed with a deadly weapon. The facts on which the motion was based were that the defendant drove by a woman and snatched her purse. Although he drove on, she refused to let go and was dragged along until the strap on the purse

broke and she fell to the ground. The trial court denied the motion, and the defendant pled no contest. On appeal, the Supreme Court reversed, holding that an automobile cannot be a deadly weapon for purposes of the robbery statute because it is not carried by the defendant during the course of the robbery. *State v. Burris*, 29 FLW S149 (Fla. Apr. 8, 2004).