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# LEGAL ADVISOR



*OFFICE OF THE STATE ATTORNEY TENTH JUDICIAL CIRCUIT*

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# Aggravated Fleeing to Elude

Assistant State Attorney: Jaenea Nortje

On its face, the elements of aggravated fleeing to elude seem pretty straightforward. Courts give the following instruction to juries for aggravated fleeing to elude trials:

**To prove the crime of [Aggravated] Fleeing to Elude a Law Enforcement Officer, the State must prove the following four elements beyond a reasonable doubt:**

- 1. The Defendant was operating a vehicle upon a street or highway in Florida.**
- 2. The Defendant, knowing he had been directed to stop by a duly authorized law enforcement officer, willfully fled in a vehicle in an attempt to elude a law enforcement officer.**
- 3. The law enforcement officer was in an authorized law enforcement patrol vehicle with agency insignia and other jurisdictional markings prominently displayed on the vehicle and with siren and lights activated.**
- 4. During the course of the fleeing or the attempt to elude, the defendant drove at a high speed or in any manner demonstrating a wanton disregard for the safety of persons or property.**

The appellate courts, however, have been very particular when evaluating the facts in aggravated fleeing to elude cases. Consider the following:

You're investigating a disturbance in a restaurant parking lot. You are wearing your agency issued uniform. Everyone out there knows you're a police officer. While you are trying to figure out if a particular man was involved in the disturbance, he starts his vehicle and attempts to leave. He makes eye contact with you as you hold your hand out and yell "stop!" However, he keeps going and peels out of the parking lot at a high rate of speed.



Assistant State Attorney:  
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However, he keeps going and peels out of the parking lot at a high rate of speed.

You get into your marked patrol vehicle (where your agency's insignia is prominently displayed) and begin to follow him – lights and siren activated; he turns onto another street about a block away from you. When you turn onto that street behind him, you turn off your siren. You watch as he blatantly runs two

stop signs. You decide to take a parallel road and turn off your blue lights. You continue to track him from the parallel road where you have to drive 15 to 20 mph over the speed limit to keep up with him.

After several minutes, you get on the road behind the suspect and watch as he runs a stop sign with a flashing red light before coming to a stop at an intersection with a red light. You turn your lights and sirens back on and he finally gives up and pulls over.

Is this an aggravated fleeing to elude?

No.

An appellate court found that in a scenario like the one described above, this was not an aggravated fleeing to elude. The appellate court reasoned that because the pursuing officer did not have his lights and sirens on during most of the pursuit, not all four elements had been met. The Court found that the aggravating factors (i.e. the willful, wanton disregard for the safety of others that occurred while he was running all those stop signs and traveling at a high rate of speed) occurred while the lights and sirens were not on. Therefore, the conviction for aggravated fleeing to elude could not be sustained and the conviction was reduced to simple fleeing to elude. See *Steil v. State*, 974 So. 2d 589 (Fla 4th DCA 2008).



Given the particularity of the appellate courts, it's important that you remember certain key details regarding your pursuit in an aggravated fleeing to elude case. It will only be one case out of hundreds you will have worked in any given year. It's hard to remember all the details, months, if not years, down the road. That's where good report writing comes into play. Including the following details in your reports will aid us in making filing decisions on your cases and will aid you should you be questioned about these facts long after the chase:

1. Include when you had your lights and sirens on. Be specific. Where was defendant in relation to your vehicle when you activated your lights and sirens? Did you have them on the whole time? If not, specifically at what points did you turn them off and then back on?

2. Include details regarding other drivers on the road. What effect did the defendant's high speeds or running stop signs, etc. have on other drivers? Did they have to swerve to avoid him? Also, this information helps us show knowledge. Are other drivers seeing your lights and sirens and pulling over to get out of the way? We can use this to argue that, if they can see you, the defendant should have been able to see you as well.

3. Length of pursuit in time and distance. How long did you follow him before he finally pulled over? How many blocks or miles did you travel? Defense attorneys love asking this question during deposition and you should expect that question to come from us at trial. If you include this information in your report initially, you won't have to guess later.

4. Include whether or not your vehicle is marked with agency insignia prominently displayed. Pictures of your car are helpful to show the jury during trial.

Details matter. No one expects you to remember the specifics off the top of your head months later. You are expected, however, to include these details in your report so that you can easily refresh your recollection. Remember the law isn't always as black and white as it may appear. Please keep these points in mind when you write up your next fleeing to elude case.

# FROM THE COURTS...



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## SEXUAL BATTERY ON A MENTALLY DEFECTIVE PERSON

The supreme court held that mental defectiveness, as defined in the sexual battery on a mentally defective person statute, is different from competence to testify. The court reversed the First DCA's ruling that suggested that for a victim to be "mentally defective" under the sexual battery statute, the victim must display "a total or complete lack of mental capacity or understanding." Instead, the supreme court held the standard is as defined in the statute. *Dudley v. State*, 39 Fla. L. Weekly S335a (Fla. May 15, 2014).

## POSSESSION OF PRESCRIPTION DRUGS WITHOUT PRESCRIPTION. SEARCH AND SEIZURE

The defendant was a passenger in a vehicle stopped because the driver failed to stop at a stop sign. The driver consented to a search of the vehicle. The defendant's purse was in the vehicle. The officer testified that upon beginning his search of the vehicle, he noticed the "faint odor" of marijuana. The officer searched the purse and found a pill box, removed some pills and returned to the patrol vehicle to look them up on drugs.com. He determined the pills were Ritalin and tramadol. He then read the defendant her *Miranda* rights. The defendant's motion to suppress was denied. On appeal, the Second District reversed, holding that the officer did not have reasonable suspicion that the defendant had committed or was about to commit a crime. Nothing on the pill box gave the officer a reasonable suspicion that the defendant had committed or was about to commit a crime. The officer did not know that the pills illegal when he opened the box. *Gay v. State*, 39 Fla. L. Weekly D997a (Fla. 2<sup>nd</sup> DCA May 14, 2014).

