The Rap Sheet

Legal News for Law Enforcement in Brevard and Seminole Counties

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Message from State Attorney Norm Wolfinger

This issue of the Rap Sheet deals with some of the practical situations that law enforcement face on a daily basis: First, vehicle stops based on vehicle safety observations. Reading the case law and the court's rationale, it is apparent that the stopping officer would be well served if they noted in their report in detail their observations that caused him/her to reasonably believe the vehicle was unsafe. Otherwise accompanying charges may be lost. Second, the Rap Sheet points out that an officer needs to know that the traffic laws are often very specific and we are bound by them. The case discussed deals with taillights….or is it tail lamps! Third, we added some discussion on persons running from the law or lying to the law and the consequences. Last but not least, a growing concern to our office is the 2005 "Stand Your Ground Law" and its impact on maintaining law and order on our streets. Each of these situations are ones you most likely have been personally involved in at some point in your career, or you will be in the future. Hopefully the articles will be of assistance to you the next time you encounter a similar situation.

Enjoy, be safe, and have a great summer.

Norm

TRAFFIC SAFETY/INSPECTION STOPS
by Christopher R. White

There are times when officers on the street see vehicles that they believe are unsafe and stop them, only to find that the person driving was DUI, had no license, had drugs in the car, or has committed or commits some other offense. An arrest is made and the case comes to the State Attorney's Office for prosecution. The validity of the criminal case will first be determined by the legality of the stop. Because these situations occur so frequently, a quick review of some of the particular types of stops and their legality seems appropriate.

Windshield Defects

Because case law dealing with stops for windshield cracks has played a significant role in developing the case law relating to safety inspection stops generally, we will start here with the most significant case.

In Hilton v. State, 961 So.2d 284 (Fla. 2007), the Florida Supreme Court considered whether an officer's stop of a car with a cracked windshield was justified because having a cracked windshield violated the requirements of Section 316.2952, Florida Statues or because it violated Section 316.610, Florida Statutes. Section 316.2952(1) states that a vehicle must have: "A windshield in a fixed and upright position, which windshield is equipped with safety glazing as required by federal safety-glazing material standards," As the statute does not indicate it must not have cracks the court ruled that having a crack in the windshield does not violate the statute.

The Florida Supreme Court then examined the requirements of Section 316.610, F. S. and the language stating: "(1) Any police officer may at any time, upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, require the driver of the vehicle to stop and submit the vehicle to an inspection . . . ." First, the court determined that the language "not in proper adjustment or repair" does not allow a stop anytime a required piece of equipment is damaged, and must be read to allow a stop for this only if the damage or deficiency makes the vehicle unsafe. The court then stated that:

> Based on the foregoing analysis, we must next consider whether the facts of the instant case support a conclusion that a reasonable officer would have believed that the crack in Hilton's windshield violated the "unsafe" requirement of section 316.610, and, therefore, whether the stop of Hilton's vehicle was constitutionally valid. Id. at p.

In the Hilton case the testimony about the crack was sparse and seemed to indicate that it in fact was not unsafe. The court ruled the State had not shown that the crack would make the windshield unsafe. Please understand that in reality, the question to be

addressed is not whether the crack in fact made the windshield unsafe but whether the officer had an objectively reasonable basis to believe the windshield was unsafe. That is the standard by which the legality of a stop for a cracked windshield will be determined. If the windshield has a significant amount of damage in an area where the damage would obstruct the driver's view or might collapse and cause injury to occupants of the vehicle it would seem the stop would be justified. If an arrest on criminal charges results from the stop, photographs of the damage from inside and outside of the vehicle would be great evidence to help explain why the crack(s) made the windshield unsafe.

Taillamps aka Taillights and Stoplamps aka Brakelights

As you cruise through your jurisdiction you note that the left taillight of the car ahead of you is out. Florida Statute 316.221 uses the term "taillamps" rather than "taillights and requires that every vehicle have at least two "taillamps" on the rear. Case law sometimes uses the term "taillights." It seems clear that these are two red lights in the rear of the vehicle that remain lit when the vehicle's lights are on. There is a separate requirement in Florida Statute 316.222 that every vehicle shall have at least two stop lamps also. We usually refer to these as brakelights. On most vehicles of recent vintage, the vehicle will have a taillight/stoplight assembly on each rear corner of the vehicle and will also have a light somewhere in the center of the vehicle either in the trunk or rear window which acts as an additional brakelight.

The first question is how many lights are operating. It has been the law for a while now that if the vehicle is equipped with three brake lights, and two are still operative, the vehicle meets the requirements of Section 316.221, F.S. which only requires two operating brake lights. See Wilhelm v. State, 515 So. 2d 1343 (Fla.1987), State v. Burger, 921 So.2d 847 (Fla.App. 2 Dist.,2006), and Zarba v. State, 993 So.2d 1000 (Fla. App 2, 2007). However, F.S. 316.221 requires that the vehicle have two taillights, and if the vehicle has a taillight out, the center light in vehicles I have observed only functions as a brake light and not as a taillight. Therefore I submit a taillight out will normally constitute a violation of F.S. 316.222 because there is only one taillight functioning. In addition F.S. 316.222 requires that the two taillamps be mounted on the same level and as far apart laterally as possible, so if the vehicle has a center light that operates as a taillight as well as a brake light it seems it would still not meet the statutory requirements.

As I am sure you realize, Section 316.610 of the Florida Statutes provides in part:

> **316.610. Safety of vehicle; inspection.-**It is a violation of this chapter for any person to drive ... any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or property, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped in any manner in violation of this chapter, or for any person

> to do any act forbidden or fail to perform any act required under this chapter.
>
> (1) Any police officer may at any time, upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, require the driver of the vehicle to stop and submit the vehicle to an inspection and such test with reference thereto as may be appropriate. [Emphasis added]

Though many in law enforcement believe an inoperative taillight or brake light is an unsafe condition, this is unfortunately not the standard by which the reasonableness of the stop will be determined in court. Why the reduction of lights by 50% or 33% is not a safety concern is truly a mystery to me as well, but the courts have so far rejected those arguments.

In State v. Perez-Garcia, 917 So.2d 894 (Fla. App 3, 2005), the District Court of Appeals held that a vehicle with an in-operative rear brake light would be in unsafe condition and therefore an officer has authority to stop the vehicle pursuant to F.S. 316.610. God bless them! On appeal the Florida Supreme Court quashed the DCA's opinion and remanded the case to them to consider in light of the decision in Hilton v. State, 961 So.2d 284 (Fla. 2007). The reason the Florida Supreme Court thought the Hilton case, which was a cracked windshield case, was relevant and answered the question is not clear. The Third DCA remanded the case to the trial court with no further explanation, and it has not resurfaced yet. It would appear that the Florida Supreme Court ruled that as long as there are still two operable brake lights, having a brake light out is not justification for a stop pursuant to 316.610, F.S. Why they ruled that way is not clear.

The Hilton case cited earlier drew heavily from a case involving a cracked taillight cover or lens. In Doctor v. State, 596 So. 2d 442, 446 (Fla. 1992), the Florida Supreme Court considered whether a stop was legal when made because the taillight of the vehicle stopped was cracked. As the Hilton opinion noted, in Doctor the court first considered whether the crack was a violation of the statute dealing with the taillight requirements for motor vehicles. Once the court determined the taillight still emitted a red light visible from 1,000 feet as required, it examined whether the crack caused the taillight to be unsafe. The court determined that it was not unsafe, and found the stop was illegal, resulting in the suppression of the trafficking amount of cocaine. Based on this ruling, a mere crack in a taillight or brake light lens is not unsafe as long as the light emanating from it is still red. If the taillight was damaged such that the light emanating it was not given a red hue from the lens it seems this would violate the statute.

Conclusion

The law does not allow law enforcement officers to randomly stop vehicles to determine whether there are any violations of the equipment requirements of Chapter 316, Florida Statutes. In order to stop a vehicle an officer must have an objectively reasonable basis to believe either the vehicle is unsafe due to a violation of a specific statute requiring safety equipment such as headlamps, tail lamps or stop lamps (otherwise known as headlights, tail lights and brake lights) or, that statutorily required equipment is damaged or inoperable such that it makes the vehicle unsafe.

Thanks to guidance from the courts, we are now aware that a windshield crack is not per se an unsafe condition. If it obscures the driver's vision it may be unsafe and justify a stop pursuant to 316.610 F.S. depending on its size. As a practical matter, if a criminal case results from the stop please take pictures of the crack so we can show the court what you saw.

It seems the Florida Supreme Court has determined in the Perez-Garcia case that an inoperable brake light does not constitute an unsafe condition under 316.610 F.S. and does not violate 316.222, F.S. if there are still two operating brake lights. The statute only requires two stop lamps and there is nothing unsafe as long as two are working.

However, tail lights are a horse of a different color. F.S. 316.221 requires not only that there be two tail lamps, but that they be placed at the same level and as far apart laterally as possible on the vehicle. Modern vehicles do not have a third center tail light – only a brake light. Therefore, the loss of one tail light leaves one tail light. Even if the vehicle for some reason has a center tail light and one of the side lights is not operable, this requirement is not met because they are probably not level with one another or as far apart laterally as possible.

Whether dealing with one of the three above provisions establishing safety equipment requirements or with other such provisions, unless the equipment is in conflict with the specific requirements of the pertinent statute, you must justify the stop on the basis that the equipment was in violation of Florida Statute 316.610 because it was unsafe. I hope this article helps you understand what the courts have found to be unsafe and what they have found not to be unsafe.

PRACTICE POINTS

The following thoughts derive from experiences our Assistant State Attorneys have had with cases that may provide some insight into ways to avoid problems in cases and put together the best case possible. Here are a couple such suggestions:

- Take photographs of crime scenes and of injuries to victims. Crime scene technicians typically photograph everything at the scene. Why? Because you

can never determine at the time of your investigation what may become important to the case as the defendant tries to figure out a story to escape justice. I realize officers on the road do not have the time to take a complete set of crime scene photos, but in my experience "a picture is worth a thousand words" because it is more persuasive, more undeniable and records things that witnesses may not notice because they did not seem relevant at the time. Due to CSI and other criminal justice television shows we are seeing more and more that juries expect physical evidence in cases, and photographs fit the bill nicely.

- In murder investigations, if there is any indication that the defendant is intoxicated when apprehended near in time to the criminal event, have blood samples drawn so that testing for drugs or alcohol can be done. This is particularly important in murder cases where the State seeks the death penalty because there are two statutory mitigating circumstances that are based on the defendant's mental state at the time of the crime. See F.S. 921.141 (e) & (f) which establish it is a mitigating factor if the defendant was under the influence of extreme mental or emotional disturbance or if the defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the law was substantially impaired. The defense virtually always attempts to establish these mitigators in the penalty phase of capital trials and impairment due to alcohol or drugs can be highly relevant to these issues.

NEW CASE LAW

C.E.L. v. State**,** 24 So.3d 1181, 34 Fla. L. Weekly S663 (Fla. 2009),

C.E.L., a juvenile was in a high crime area when two police officers wearing police vests approached where he was located. He immediately ran, the officers yelled for him to stop, and when he did not the officers chased him down and arrested him for obstructing without violence by running from them. At his trial in juvenile court for obstructing/resisting without violence in violation of Florida Statute 843.02, the defendant made a motion for judgment of acquittal arguing that the officers did not have the right to command him to stop because they did not have a reasonable suspicion he was engaged in criminal activity. The judge denied it and found him guilty and adjudicated him delinquent. On appeal to the Second District Court of Appeals, that court affirmed the conviction. C.E.L. v. State, 995 So.2d 558 (Fla.App. 2 Dist.,2008). The Child sought review by the Florida Supreme Court due to conflict between the holding in his case and holdings by other District Courts of Appeal.

D.T.B., also a juvenile, was approached by uniformed officers while standing with someone at a tree where drug transactions had occurred previously. D.T.B. bolted and ran from the officers who yelled for him to stop, and pursued and caught him. They charged him with obstructing without violence and the case proceeded to juvenile court. The defendant argued that his flight did not constitute resisting without violence because

the officers had no right to demand him to stop, citing to Illinois v. Wardlow, 528 U.S. 119, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). The trial judge denied the defense motion to dismiss and adjudicated D.T.B. delinquent. On appeal, the trial court's decision was overruled and the appellate court held that the United States Supreme Court's decision in Wardlow, supra, merely held that under these facts the officers had the right to make a Terry stop which allowed only a brief detention to investigate further what the suspect was doing. His flight after the officers demanded he stop did not constitute resisting arrest without violence.

This conflict between these two District Courts came to be heard by our Florida Supreme court last year, and the resulting decision is worthy of discussion because it resolves the issue here in Florida.

In C.E.L. v. State, 24 So.3d 1181, 34 Fla. L. Weekly S663 (Fla. 2009), our Florida Supreme Court considered the issue in light of the existing law, with great deference to the decision in Illinois v. Wardlow, supra. Tracking the requirements of Florida Statute 832.05, the court considered the defense argument that the probable cause to arrest must exist before the officers shout for the suspect to stop. The court, citing the language of Wardlow found that the first element of the charge of resisting without violence is that the officer(s) must be in the performance of a legal duty, and found that this element was satisfied because the flight of the suspect in a high crime area gives the officer(s) reasonable suspicion to warrant a Terry stop. Terry v. Ohio, 392 U.S. 1, 30, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) Therefore, it was lawful for them to command him to stop to allow them to further investigate his suspicious behavior.

While being in a high crime area does not itself provide reasonable suspicion of criminal activity to justify a stop, when officers approach someone in a high crime area they have the right to ignore the officers and go about their business. If they walk away or they refuse to answer questions their behavior is not suspicious and does nothing to supply the factual basis for finding reasonable suspicion to conduct a Terry stop, much less an arrest. However the United States Supreme Court in Wardlow and the Florida Supreme Court in C.E.L. have both determined that running on the approach of officers in a high crime area provides officers with reasonable suspicion to believe criminal activity is occurring.

The second element that must be proven to establish the crime of resisting an officer without violence is that the defendant's action, by his words, conduct, or a combination thereof, constituted obstruction or resistance of that lawful duty. The courts all had far less trouble with this element of the crime and in the C.E.L. case the court ruled that after a suspect begins running, when the officers command him to stop and he does not do so, he has in fact resisted the officer without violence.

The court's decision in the C.E.L. case established that throughout Florida, when someone in a high crime area runs on being approached by officers wearing clothing with police insignia or in uniform and there is no alternative justification for them running, these two facts give officers reasonable suspicion to believe there is criminal activity, justifying a Terry detention. If they command him to stop and he fails to do so, he has committed the crime of resisting or obstructing an officer without violence.

State v. Legnosky, 27 So.3d 794 (Fla. 2nd DCA, 2010)

This case addressed whether it constituted resisting or obstruction an officer without violence for the defendant to lie to a deputy seeking to serve an order on someone. Based on information he had received that she might be at Legnosky's residence, Deputy Mark Darst went there looking for Shannon Coteral so he could serve her with a Marchman Act order. He was met at the door by Jason Gonzalez, who advised she was not in the apartment, but the deputy could look around. While he was still there, Legnosky, the legal resident of the apartment, came out from a bedroom. When the Deputy inquired of him where Coteral was he replied: "She's not here, she's already been served. She's been taken to a rehab. I haven't seen her in several days." Subsequently the Deputy discovered Coteral hiding in a bedroom closet. He charged Legnosky with obstructing without violence by lying to him and discovered he was in possession of controlled substances. His counsel filed a motion to suppress and argued that the arrest for obstruction was illegal because Legnosky's lies were legally insufficient to constitute obstruction without violence as defined in Florida Statute 843.02. The trial court granted his motion and suppressed the evidence in the case and the appeal to the District Court of Appeals followed.

The District Court quickly concluded that Deputy Darst was engaged in executing legal process, leaving for consideration only the question whether lying to the Deputy by telling him she was not there constituted obstructing or resisting. The court observed that the Fourth District Court of Appeals has held that if an officer observes a drug buy and is trying to make an arrest when a "lookout" warns the suspect the officer is coming, which allows him to escape, the "lookout" is guilty of obstruction without violence. Porter v. State, 582 So.2d 41, 42 (Fla. 4th DCA 1991). The court also referred to the holding in Caines v. State, 500 So.2d 728, 729 (Fla. 2d DCA 1987), where the court found that giving a false name constitutes obstruction without violence. Although here the lies by Legnosky did not deter the Deputy from serving Coteral, the court concluded that the issue is not whether the words obstructed the officer, but whether they were intended to hinder or stop the officer from completing his task.

The District Court found that the lies were in fact intended to hinder or stop Deputy Darst from completing his legal duty. The fact the defendant was not successful in his attempt because Deputy Darst searched and found her does not change the fact that the lies constituted obstruction. The trial court's ruling was reversed.

McDaniel v. State, 24 So.3d 654, 34 Fla. L. Weekly D2548 (Fla 2d DCA 2009)

In 2005 the legislature enacted a new law commonly referred to as the "Stand Your Ground" law, which created/amended FS 776.012, 776.013, 776.031 and 776.032 and established immunity from both prosecution and civil liability for any person who uses force or deadly force justifiable as described in FS 776.012, 776.013 or 776.031. See the immunity language in FS 776.032.

In McDaniel v. State, supra, the defendant filed a motion to dismiss pursuant to Rule 3.190(b) of the Florida Rules of Criminal Procedure. He alleged that he was immune

from prosecution pursuant to section 776.032(1), Florida Statutes (2007), because he has a valid defense of justifiable use of force under section 776.013, commonly known as the "castle doctrine," and section 776.031, the "defense of others" statute. McDaniel alleged that he was at home with his mother when the victim came to the door demanding entry to retrieve some of his belongings. Although the victim had lived there with them recently, according to McDaniel, that day they had a physical fight during which the victim tried to strangle McDaniel, who managed to escape and return to his mother's house. When the victim came to the house his mother and he tried to deny him entrance, but he forced the door open at which time McDaniel struck him several times with a machete. The State filed a traverse of the motion, treating it as if it was filed pursuant to Rule 3.190(c)(4), F.R.Cr.P., and alleged that there are several factual disputes regarding the victims residency at the house and whether the defendant's mother let him in the house. The State argued that these factual disputes required that the motion to dismiss be denied.

McDaniel filed a response to the State's traverse alleging this was not a "(c)(4)" motion, but a Rule 3.190(b) motion raising the defense of immunity under FS 776.032. An evidentiary hearing was held and both sides presented evidence. At the close of evidence the State argued that there were sufficient disputed facts to justify letting a jury decide the case, while the defendant argued that this is not a Rule 3.190(c)(4) motion, and the facts supported the defense position that he was entitled to immunity because the victim forced his way into the home and because he was defending his mother and his home.

The trial court denied the motion to dismiss and the case was tried, resulting in a guilty verdict and a prison sentence. On appeal, the Second District Court addressed whether the trial court's ruling on the motion to dismiss was correct. The District Court first ruled that when a defendant claims immunity the trial court must consider all of the evidence and determine whether the defendant has established by a preponderance of the evidence that he is entitled to immunity. Conflicts in the testimony do not relieve the judge of that responsibility. The court cited to Peterson v. State, 983 So.2d 27, 29 (Fla. 1st DCA 2008). Because the State argued throughout the hearing that a conflict in the evidence would require that the motion be denied, and because the judge never explained the basis for his ruling, the appellate court reversed the conviction and remanded the case for a new hearing on the motion to dismiss, and directed the trial judge to employ the correct standard of review.

The District Court directed that if after rehearing the motion to dismiss, the judge grants the motion, he shall dismiss the information with prejudice. If the judge denies the motion he should reinstate the conviction. Recognizing that the Fourth DCA has ruled that a motion to dismiss based on a claim of immunity should be weighed as the State had argued (like a Rule 3.190(c)(4) motion) the Court also certified conflict with the Fourth DCA's decision in Velasquez v. State, 9 So.3d 22, 24 (Fla. 4th DCA 2009).

To date our Fifth District Court of Appeals has not addressed these issues and we are in a quandary as to what will be determined to be the correct procedure for a court to use in determining whether a defendant who claims immunity is entitled to be found immune. The position of the Second DCA expressed here results in a defendant's guilt being

determined by a judge regardless whether the evidence is in conflict. The proposition that the judge should resolve any such conflicts and determine which witnesses are telling the truth certainly results in judicial economy – but is justice being done? Hopefully the Florida Supreme Court will consider that when it rules on this issue.

NEW LEGISLATION

We will issue a legislative review in a special issue of the RAP Sheet soon, but there was one new law passed that went into effect on May 13th, 2010, that needs to be addressed here to be timely. HB 325 addresses the very hot topic of red light cameras at intersections. Although this law will not directly affect prosecutors or most law enforcement officers, for those cities who have enacted or are considering enacting laws providing for the use of traffic cameras this is crucial information.

HB 325 preempts to the State government the power to approve or regulate the use of cameras to enforce traffic laws, then authorizes counties and municipalities to use "traffic infraction detectors" under certain circumstances. It sets forth the requirements as to how many images must be captured and what they need to show for a citation to be issued, who can be cited and what the fines will be for a violation. Counties and cities that wish to use cameras at intersections to detect and cite citizens who run red lights, need to comply with the requirements of this statute. The law is effective May 13, 2010, except as otherwise provided.