

LAW ENFORCEMENT NEWSLETTER

May 2015

A MESSAGE FROM BILL CERVONE STATE ATTORNEY

As we come to the end of the Spring, the legislature is also busily wrapping up this year's session. It's been said that no one is safe until they formally recess, and that is certainly true this year.

At this point, we have defeated multiple bills that were moving forward that would impact law enforcement. Among the most interesting are attempts to greatly re-vamp juvenile processes and records expungements.

In terms of juvenile procedure, two areas were being considered. First, efforts were being made to curtail

the State's ability to directly file an adult information. Those would include requirements that all transfers to adult court be approved by the court beforehand, which would return us to the way things were in the 70s and 80s. This would be regardless of the juvenile's record or the nature of his crime, and would in my view open a Pandora's Box of unintended consequences, not to mention requiring un-necessary lengthy court proceedings. Second, proposals were circulating in both houses of the legislature to greatly expand the citation process for juveniles as an alternative to a juvenile formally being charged. One of these proposals, which has fortunately

been withdrawn already, went so far as to establish a quota system requiring that a certain percentage of cases from each agency proceed by citation as opposed to formal charging. Again, this would have been regardless of the nature of the crime or the background of the juvenile.

A second area that was headed towards major revisions deals with records sealing and expungement. To summarize, efforts are being made to expand that process so that it would be virtually automatic, sometimes for even repeat offenders and regardless of the outcome of the case. Obviously, the expungement of criminal history information would severely impact the ability of those of us who are making judgements about how to deal with defendants and cases to know who we are really dealing with. While the goal of helping people maintain employability and eligibility for various educational and other programs is good, there could again be unintended consequences to law enforcement.

At this writing it appears that these efforts have all failed to pass, at least for this year, although nothing will be final on these or other matters for several more weeks. They will no doubt be re-introduced next year if they do not pass this year. As al-

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NEWSLETTER NOW ON-LINE

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Continued: MESSAGE FROM STATE ATTORNEY
BILL CERVONE

ways the Fall issue of the Legal Bulletin will highlight what has actually passed. Until then, all of us should monitor and weigh in on these proposals through our various associations. The law enforcement community works most effectively

in Tallahassee when we speak with a single voice, and I would encourage those of you who are active in your statewide associations to urge that kind of co-operation, which over the last few years seems to have diminished.

CONGRATULATIONS TO...

ASA Jamie Whiteway, who passed the Florida Bar exam and was sworn as a Bar member in April. Jamie was also recognized by the University of Florida Law School as the graduate in her class who had performed the highest number of pro bono hours, a recognition that last year went to ASA Kate Artman.

Gilchrist County Sheriff Bobby Schultz, who was honored as Man of the Year by the Gilchrist County Chamber of Commerce in February.

Gilchrist County Sheriff's Office deputies who were recognized at the Department's annual awards dinner in February, including Michelle Jones, Investigator of the Year and recipient of the Capt. Tony Cruse Community Award, Amanda Colson and James Kitlen, Deputies of the Year, Nichole Certain, Correctional Officer of the Year, Kerry Koehler, Communications Officer of the Year, and Jeannie Roberts, Civilian Employee of the Year. Also recognized by GCSO with its One Team, One Mission award was Assistant State Attorney Robert Willis

Several Gainesville Police Department officers who retired in January and February, including Lt. Will Halvosa after 30 years of service, Ed Posey, Joe Mayo, Bret Starr, Richard Roberts and Frances Belyew.

Also from GPD promotions announced in February include Jorge Campos, Anthony Ferrara and Brian Helmerson to the rank of Captain, and Jamie Kurnick, Paris Owens, Joe Raulerson and Tscharna Senn to the rank of Lieutenant.

The Newberry High School Academy of Criminal Justice program and director Patrick Treese, which recently participated in a statewide conference and competition and placed third in the state. Academy students placed in the top five in multiple events, including first place finishes in Prepared Speaking and Advanced Firearms with one student earning Top Gun recognition with a perfect 300 out of 300 on the advanced course of fire. The Academy also held its annual awards ceremony on April 30th. Among those recognized were Paige Reece as Outstanding Criminal Justice Student, Brandon Gunter as winner of the Christa Hoyt Memorial Award and former ASA Angie Chesser as Outstanding Advisory Board Member. Victoria Stone and P.J. Darling also were each awarded criminal justice scholarships funded in part by the local law enforcement community to further their education at the college level.

The Williston Police Department held its annual awards banquet in conjunction with the Williston Fire Department on March 13th. Among department recognitions were Sharon Brannon, recipient of the David W. Moss Humanitarian Award, Colleen Stevens, Dispatcher of the Year, Dave Drennan, Reserve Officer of the Year, Brooke Willis, Civilian of the Year, and Dave Johnson, Officer of the Year.

SAO Deputy Chief Investigator Darry Lloyd, who was named the Phil Beta sigma Florida Man of the Year.



Law Enforcement Memorial Dates

Law Enforcement memorials will be held in several locations in the circuit on Thursday, May 7th. Your attendance and participation is always encouraged and appreciated.

The Alachua County Law Enforcement Memorial will be at 6:30pm at the Veterans Memorial Park in Gainesville.

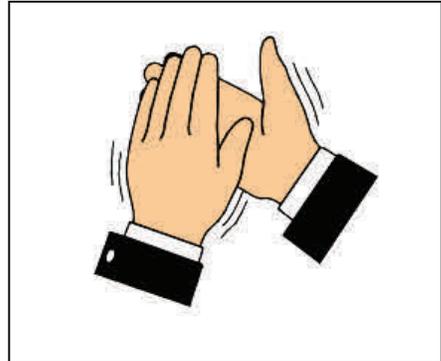
Baker County's memorial will be at the Sheriff's Office at 7pm.

The combined Bradford-Union County memorial will be at the Lakefront Center in Lake Butler at 6pm.



SAO Staff Changes

Effective May 1st, ASA Jamie Whiteway was re-assigned to the Levy County office, where she will handle County Court cases. ASA David Byron, who has been covering that caseload while Jamie waited for her Bar exam results, will return to the Alachua County Court division on May 1st as well.



IN MEMORIAM

Former ASA and long time private practitioner Gloria Fletcher passed away on February 26th. After her years as a prosecutor Gloria dedicated much of her private practice to the representation of law enforcement officers

Retired GPD officer and Waldo Police Chief A. W. Smith died on April 17th. At the time of his death A.W. continued to work security at the Gainesville federal courthouse.

Both will be deeply missed by our law enforcement community.



Any changes in agency email addresses should be reported to our office at clendenin@sao8.org.

For a copy of the complete text of any of the cases mentioned in this or an earlier issue of the Legal Bulletin, please call Chief Investigator Paul Clendenin at the SAO at 352-374-3670.

DUI CHECKPOINTS

Contributed by ASA Josh Wright and Jon Ramsey

On this past New Year's Eve, the Levy County Sheriff's Office conducted a DUI checkpoint. During this checkpoint, a man drove up to the checkpoint with his valid driver's license, registration, and insurance card hanging in a Ziploc bag from his closed driver's window. The Defendant did this in an effort to not roll down his window. Further, he displayed a sign stating the following:

I remain silent

No searches

I want my lawyer

Please put any tickets under windshield wiper.

I am not required to sign - §318.14(2)

I am not required to hand you my license - §322.15

Thus I am not opening my windows.

I will comply with clearly stated orders.

In light of this incident, it is important that we address the relevant legal issues at hand in order to adequately inform law enforcement officers of what they are permitted to do under the law, how to deal with future situations similar to the above, and what we the future will entail. Within this memo, we will specifically address each of the assertions that are displayed on the car referenced above and the legal accuracy of them.

First, the assertion that an individual is not required to sign a citation is not entirely true. Pursuant to Section 318.14(2) of the Florida Statutes, an individual is required to sign citations for certain infractions. Specif-

ically, a driver must sign citations that require mandatory hearing or citations that involve other criminal traffic violations listed under Section 316 of the Florida Statutes. If the citation is not for one of those violations, then law enforcement must certify the citation was delivered to the individual. Therefore, the statement on the card, "I am not required to sign - §318.14(2)" is not completely accurate. The determining factor will be what violation the driver is being cited for. Should a driver refuse to sign a qualifying citation under §318.14(2), the driver could be charged with a misdemeanor of the second degree. §318.14(3), Fla. Stat. (2014).

The next claim of, "I am not required to hand you my license - §322.15" is also not entirely accurate. Section 322.15 of the Florida Statutes requires a driver to "present or submit" their license upon demand of a law enforcement officer. The purpose of this law is for law enforcement officers to inspect an individual's driver's license to ensure it is legible, not faded, altered, mutilated, or defaced. While the statute does not define present or submit, the argument can be made that the colloquial understanding of present and submit requires and individual to give the law enforcement officer their license for inspection. "submit." *Merriam-Webster Online Dictionary*. 2015. <http://www.merriam-webster.com/dictionary/submit>. (17 February 2015).

Furthermore, law enforcement is not going to be able to fully determine whether a license is altered without actually being able to hold and touch the license. Therefore, the claim that a driver is not required to hand an officer their license is not accurate.

Finally, the last issue is whether a driver is required to roll down his window. This issue is obviously the most important when it comes to DUI checkpoints. The law on this particular issue is not direct and does not unequivocally state that an individual must roll down their window at a DUI checkpoint. Nevertheless, when balancing the overwhelming government and public interest in preventing DUIs with the minimal intrusion on an individual's Fourth Amendment rights, there is a strong argument to be made for requiring an individual to roll down their window at a DUI checkpoint.

In *Rinaldo v. State*, the Fifth District Court of Appeals addressed this issue...sort of. 787 So. 2d 208 (Fla. 5th DCA 2001). In that case, the defendant approached a DUI checkpoint and rolled past the police officer signaling him to stop his vehicle. Another officer pulled the defendant over. The officer, because the vehicle's windows were tinted and the officer could only see the top of the defendant's head, asked the

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defendant to roll down his window or open his door. The defendant did neither. The officer then opened the defendant's door for officer safety. The defendant immediately pulled the door shut, to which the officer, again, opened the door and positioned himself to keep the door open. The officer then asked the defendant for his driver's license, registration, and proof of insurance. During this encounter, the officer observed indicators of impairment on the defendant including an odor of alcohol on the defendant's breath, bloodshot and watery eyes, flushed face, and slurred speech. Ultimately, the defendant was arrested for DUI, carrying a concealed firearm, resisting arrest without violence, and no proof of insurance.

The defendant moved to suppress the physical evidence and statements observed at the DUI checkpoint claiming, among other things, that the officers obtained the evidence pursuant to an unlawful roadblock and an unlawful detention. Specifically, the defendant argued that because a stop at a DUI checkpoint is not founded on any founded suspicion, they are more akin to consensual encounters. The defendant further argued that because these stops are consensual encounters, an individual is free to ignore the officer's directions and refuse to answer any of his questions.

The court in *Rinaldo* found the stop of the Defendant at the DUI checkpoint was not a consensual counter. In accordance with the United States Supreme Court's previous decision, a seizure occurs when a vehicle is stopped at a checkpoint. *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 450 (1990). The validity of the stop turns upon whether the officers carry out the checkpoint stop pursuant to "a plan embodying specific neutral criteria which limits the conduct of the individual officers" rather than reasonable suspicion. *State v. Jones*, 483 So. 2d 433 (Fla. 1986).

Based on the court's reasoning, an individual stopped at a DUI checkpoint is not free to ignore an officer's request for documents or to thwart the officer's ability to observe him for signs of impairment. Nowhere in the *Rinaldo* case does it directly say an officer can require an individual to roll down their window. However, a strong argument can be made that an individual not rolling down their window after being lawfully stopped a DUI checkpoint would be thwarting an officer's ability to observe him for signs of impairment.

The court in *Rinaldo* further addressed what an officer can require from an individual after the officer develops reasonable suspicion from the actions of the suspect after he has been stopped at a DUI checkpoint. The court found that when an individual's conduct both before and during a roadblock raises reasonable suspicion that he was engaged in a criminal

activity, such as obstructing or attempting to obstruct an officer, the officer may lawfully order the driver out of the vehicle.

The court was careful not to draw a bright line rule in allowing an officer to ask an individual out of their car in every DUI checkpoint stop. The court acknowledged that previous cases do permit an officer, as a matter of course, to order a driver of a lawfully stopped car to exit his vehicle. *Pennsylvania v. Mimms*, 434 U.S. 106 (1977). However, the court distinguished *Mimms* from the facts of *Rinaldo* because the stop in *Mimms* was based on a traffic violation rather than a DUI checkpoint.

It is important to note that the Florida courts in *Rinaldo* and *Jones* both continuously focus on the balance between a driver's Fourth Amendment rights and the legitimate government interest in preventing DUIs. Within both cases, the courts expressed that driving an automobile over public highways is not an absolute right. *Jones*, 483 So. 2d 433, 439. In order to safeguard Floridians against impaired drivers, motorists should reasonably accept the minor inconvenience which they may

Continued: DUI CHECKPOINTS

endure at a properly run DUI roadblock. *Id.*; *Rinaldo* at 212. Motorists are not privileged to refuse an officer's reasonable requests at a valid roadblock and must accept the minor inconvenience which they may endure. *Id.*

So what does this all mean? The short answer is that Florida case law is unsettled as to whether a driver has to roll down his window at a DUI checkpoint. An officer should recognize that the relevant Florida law does not directly say an individual must roll down their window at a DUI checkpoint. However, there is a strong argument that refusing to do so would not only thwart an officer's ability to observe an individual for signs of impairment, but it would defeat the very purpose of a DUI checkpoint.

An officer should also be cognizant of the fact that additional conduct by the individual can amount to enough rea-

sonable suspicion to require the individual to exit their vehicle. In *Rinaldo*, the court considered many factors including the defendant driving past the first officer without stopping, the defendant's refusal to roll down his window or open his door, the defendant's hesitation in handing over his driving information, along with the defendant's "vocal" passenger. The court found that these factors, taken in their totality, were enough for the officer to believe that the defendant was engaged in obstructive conduct. Ultimately, whether there are enough facts to amount to reasonable suspicion will depend on how well the officer can articulate what he observed and how those observations are indicative of a crime occurring or having occurred.

In sum, an officer should keep in mind the purpose of a DUI checkpoint and what they are looking for.

An officer should also be aware of how an individual is acting both before and during a DUI checkpoint. Until the Florida courts directly address whether a driver has to roll down his window at a DUI checkpoint, this issue will remain contested and the subject of future motions to suppress.



The SAO Is Now On Twitter

The SAO has established a Twitter feed to better disseminate information to the media and others such as law enforcement agencies. Like us at #8THCIRCUITSAO. For more information contact Deputy Chief Investigator Darry Lloyd at 352-374-3670.



US Supreme Court Limits Vehicle Drug Searches

The United States Supreme Court issued an opinion on April 21st that limits the ability of law enforcement to conduct a dog sniff of a stopped vehicle. Fortunately, the opinion is closer to an affirmation of than a change to existing Florida law.

In the case, which occurred in Nebraska, police stopped a car because they had observed it run off of the pavement onto the shoulder of the road after midnight and then suddenly jerk back onto the road. The driver said that he had veered off the road to avoid a pothole. After checking the driver's license, registration and insurance information the officer decided to issue a warning. That process only took a few minutes and after it was "out of the way" the officer asked permission to search the vehicle with a drug sniffing dog. The driver refused and the officer told him he could not leave until the dog arrived. About five minutes later, a second officer arrived with the dog, which of course alerted to the presence of drugs. Acting on that alert, officers found a bag of narcotics.

In reversing the resulting conviction, which had been upheld at lower levels of federal court, the Supreme Court held that routine traffic stops may not be delayed and turned into drug searches with trained detection dogs, specifically stating that "[Police may not prolong detention of a car and driver beyond the time reasonably required to address the traffic violation." While a legitimate traffic stop justifies officers in checking the motorist and his license, the Court said, such a stop does not give officers authority to conduct an "unrelated" investigation involving drugs. "Authority for the seizure...ends when tasks tied to the traffic infraction are - and reasonably should have been - completed."

Under existing Florida law, law enforcement officers have already been precluded from any detention of a driver for

longer than required to deal with the cause of the stop. This has been so for many years. In 1992, for example, the 2nd DCA held that it was impermissible to detain a vehicle stopped because an officer could not read the tag in the window for longer than necessary to do so. In 2003, the Florida Supreme Court likewise stated that once an officer has totally satisfied the purpose for which he has stopped a vehicle and absent some other circumstance he has no reasonable grounds or legal basis for continued detention and may not continue to detain the driver. In that case, the stop was to inspect a temporary tag on which the officer could not read the expiration date, and the court precluded even the extra time to ask for a license.

The bottom line is clear. When you make a traffic stop you are limited to whatever time it takes to resolve the reason for the stop, whether that be issuance of a citation or something else. Once that time is past, you must have developed something else (the smell of burnt cannabis for example) to do other than send the driver on his way. Consent to remain for a search, of course, would be another option and if that is the situation it should be carefully documented and explained to the motorist to avoid later problems.

The full text of the opinion, [Rodriguez vs United States](#), can be found on the Supreme Court website.



5 'Rules' for Winning Courtroom Testimony

LIFE isn't easy for a LEO testifying in the courtroom. This is especially true when being cross-examined by an experienced defense attorney whose focused purpose is to discredit you — even if you're telling the truth. In fact, the Supreme Court sanctions attempts by the defense to undermine the credibility of even truthful witnesses, saying:

"If [defense counsel] can confuse a witness, even a truthful one, or make him appear unsure or indecisive, that will be his normal course."

Why would our highest court encourage defense attorneys to subvert the truth? The Court explained:

"Our interest in not convicting the innocent permits counsel to put the State to its proof, to put the State's case in the worst possible light, regardless of what he thinks or knows to be the truth."

Here are five golden rules for winning testimony. Remember that "winning" testimony is one that the jury believes. That's it. Don't try to help the prosecutor get a conviction. That's their job. Your job is to tell the truth and ensure the jury believes you. If you try and help the prosecutor, you appear biased — an appearance that makes the jury distrust you.

These rules work on direct examination by the prosecutor and cross examination by the defense attorney — but they're harder to stick to on cross:

1. Be Sincere

An officer should be modest, respectful, and sincerely interested in the accuracy and truth of her testimony, regardless of who is asking the questions. Communicate to the jury that you understand the trial and your testimony are important to the community and everyone involved.

You can't fake sincerity — it must come from a genuine desire. The defense attorney has a job to do. So do you. Stay focused on your job and don't take it personal when the defense attorney tries to do his.

2. Be Brief

Remember the adage that "less is more." Limit your testimony to concisely answer the questions posed and you're less likely to get flustered, confused, or caught in inconsistencies. Most witnesses get impeached when they volunteer information, argue with counsel, or make spontaneous, unresponsive remarks.

Any information you volunteer provides more material for the defense to cross examine you. Don't explain why you know something unless you're asked. If it's important, the prosecutor can ask you to explain on re-direct examination.

3. Be Clear

Cops understand vigilance. When testifying, you must be vigilant to avoid errors, inconsistencies, and confusion. Jurors often equate their confusion with reasonable doubt. Don't assist the defense in creating such doubt.

Avoid police jargon. On the stand you can sound pompous, officious or ridiculous.

Here's an exercise: Make up some flash cards. On one side, write a phrase or sentence the way you now talk on the stand. On the other side, write the same phrase in plain English. Have one of your kids, a spouse, or friend work with you to translate your cop jargon. For example:

He indicated = He said

I have been employed by = I've worked for

I exited the patrol vehicle = I got out of the car

I observed = I saw

I ascertained the location of the residence = I found the house

I proceeded to the vicinity of = I went to

I apprehended the perpetrator = I arrested the man

I observed the subject fleeing on foot from the location = I saw him running away

4. Be Fair

The prosecutor may unwittingly try to draw you into an advocate's role during pretrial preparation. Defense counsel will likely try to portray you as an advocate during cross. Avoid both. You are, and should portray yourself as, an impartial, conscientious public servant whose job is fact-finding. Be respectful, courteous, forthright, and fair on the stand and jurors will trust you and your testimony.

5. Use Self-Restraint

Remember the police code of ethics where you promised "to develop self-restraint?" It's as important in court as on the street. A testifying officer must have the discipline to remain poised and calm in the face of badgering, innuendoes and direct personal attacks. An officer who loses control on the stand loses credibility.

Remember the Rules

This Golden Rule of Christianity — Do unto others as you would have them do unto you — is embraced in slightly varied expressions by most of the major religions. It's simple, but it can be difficult when dealing with people who don't subscribe to it — people who instead believe, "Do it to them before they can do it to you."

The above rules will help you overcome instances in the courtroom when your questioner seems to abide by the latter credo.

Always keep in mind that police are given great power and authority, and as a consequence, jurors expect more of them than they do witnesses. Follow these rules — even when it's hard — and you'll meet their expectations.

Editor's Note:

This article appeared in PoliceOne .com on February 18, 2015. The author, Val Van Brocklin was a state and federal prosecutor for over 10 years. Val is now an international law enforcement trainer and writer. She has been a regular contributor to a number of law enforcement publications and has been featured in the Calibre Press Online Street Survival Newsletter, Police Chief magazine, The Law Enforcement Trainer magazine, and The Royal Canadian Mounted Police Gazette.