CAO 2015-016

To: Edward J. Hudak, Jr.

From: Israel U. Reyes, Manuel A. Guarch, The Reyes Law Firm, P.A., Police Legal Advisors

Approved: Craig Leen, City Attorney for the City of Coral Gables

RE: Legal Opinion Regarding Presentation Of Driver License's Pursuant To Florida Statutes Section 322.15

Date: March 5, 2015

I. QUESTION PRESENTED

Does the language of Florida Statutes Section 322.15 (1) require that, upon demand by a police officer, a motorist must physically provide an officer with the motorist's Driver License?

II. SHORT ANSWER[1]

Yes. It is the opinion of this Firm that Florida Statutes Section 322.15 (1) requires that, upon demand by a police officer, a motorist must physically provide an officer with the motorist's Driver License and that merely displaying the front of the Driver License from behind a window, without granting the officer access to the license for inspection, is a violation of the statutory requirement.

III. BACKGROUND

The Coral Gables Police Department has sought an opinion regarding the proper interpretation and application of Florida Statutes Section 322.15 (2014). This question was initially presented with respect to the application of the aforementioned statute in relation to DUI/Sobriety Checkpoints. The impetus for this inquiry sterns from the use of the "Fair DUI" flyer by drivers at DUI/sobriety checkpoints. Attached is a copy of the front and back of the flyer that is available on the website www. FairDUI.org and attached hereto. The back of the flyer informs the user to

[1] This Office, due to an immediate and urgent operational need, following the presentation of this issue prior to the Department's participation in a multi-agency DUI Checkpoint sponsored by the City of Miami Police Department, provided a brief answer to the question presented, and adopted the analysis of the Florida Traffic Safety Resource Prosecutor Program in a Memorandum dated February 18, 2015. See Memorandum Re: Use of "Fair DUI" flyer at CUI/sobriety checkpoints and e-mail adopting a portion of said Memorandum dated February 20, 2015 attached hereto. This Opinion formalizes that adoption and expands on the analysis in order to provide further direction.

"show them your license, registration and insurance through the window," and that "[y]ou are required to •display' them, but you don't have to hand them over. So don't open your window." While the flyer was intended to be used at DUI Checkpoints, the
Department has resolved to establish a protocol for responding if this same tactic is used during the course of a regular or routine traffic stop.[2]

IV. DISCUSSION & ANALYSIS

At present, Florida Statutes Section 322.15 (2014) provides, in relevant part:

> **322.15 License to be carried and exhibited on demand; fingerprint to be imprinted upon a citation.-**
>
> (1) Every licensee shall have his or her driver license, which **must be fully legible with no portion of such license faded, altered, mutilated, or defaced,** in his or her immediate possession at all times when operating a motor vehicle and **shall present or submit the same** upon the demand of a law enforcement officer or an authorized representative of the department. A licensee may present or submit a digital proof of driver license as provided in s. 322.032 in lieu of a physical driver license.
>
> (2) Upon the failure of any person to display a driver license as required by subsection (1), the law enforcement officer or authorized representative of the

[2] As a general matter, it should be noted that an officer may make a stop if that officer has reasonable suspicion that a traffic offense has been committed. *State v. Frierson*, 926 So. 2d 1139 (Fla. 2006) ("[A] stop for the violation of motor vehicle laws is similar to the investigative detention in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), and may be made when there is founded suspicion."); *Hilton v. State*, 961 So. 2d 284, 295 (Fla. 2007) (referring to a windshield crack: "if the crack as it existed and as it was observed by the officers would have created an objectively reasonable suspicion that Hilton's vehicle was unsafe in violation of section 316.610, then the stop would be valid"); ("[A] stop for the violation of motor vehicle laws is similar to the investigative detention in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), and may be made when there is founded suspicion"); *State v. Eady*, 538 So. 2d 96, 97 (Fla. 3d DCA 1989) (officer may make a stop if that officer has reasonable suspicion based on the officer's "visual or aural perception" that a traffic offense has been committed); *See also Carter v. State*, 120 So. 3d 207 (Fla. 5th DCA 2013) (court recognized that an officer can make a stop based on reasonable suspicion of a traffic violation, but here the State failed to show that the officer had reasonable suspicion for running a stop sign because the officer could not recall if he saw it and he did not testify as to what the other officer told him); *Leslie v. State*, 108 So. 3d 722 (Fla. 5th DCA 2013) (officer did not have reasonable suspicion where he made a mistake of law based on his erroneous belief that a center view mirror is required whether or not there are adequate side view mirrors); *State v. Allen*, 978 So. 2d 254 (Fla. 2d DCA 2008) (officer may make a traffic stop based on reasonable suspicion that the vehicle is speeding, but court found that officer had probable cause of speeding based on officer's observation of vehicle, including fact that officer had to "'accelerate quite a bit, to catch defendant, speed limit was 25 m.p.h. and officer had to go well over 50 m.p.h. to catch defendant); *State v. Young*, 971 So. 2d 968 (Fla. 4th DCA 2008) (court said when defendant ran a stop sign, officer "had reasonable suspicion to stop the defendant for the traffic infraction." 971 So. 2d at 971); *State v. Joy*, 637 So. 2d 946 (Fla. 3d DCA 1994); *Department of Highway Safety and Motor Vehicles v. Roberts*, 938 So. 2d 513 (Fla. 5th DCA 2006), review denied, 946 So. 2d 1069 (Fla. 2006) (court agreed that a stop could be based on reasonable suspicion of speeding, but found that the facts did not support an investigatory stop here because there was "little or no specifics about the officer's vantage point when he reached the conclusion that Respondent was speeding.").

> department stopping the person **shall require the person to imprint his or her fingerprints upon any citation issued by the officer** or authorized representative, or the officer or authorized representative shall collect the fingerprints electronically.

§ 322.15, Fla. Stat. (2014) (emphasis added).

However, the language of the aforementioned statute was amended to its current form in 2014. Prior to the amendment, subsection (1) read as follows;

> (1) Every licensee shall have his or her driver's license, which must be fully legible with no portion of such license faded, altered, mutilated, or defaced, in his or her immediate possession at all times when operating a motor vehicle and **shall display the same** upon the demand of a law enforcement officer or an authorized representative of the department.

§ 322.15, Fla. Stat. (20 13) (emphasis added).

It was in 2014 that the legislature amended Florida Statutes Section 322.15 to revise the requirement contained therein regarding the "display" of a physical driver license upon the demand of a law enforcement officer, to instead require motorists to "present or submit" the same upon demand of a law enforcement officer.[3]

It is important to note that the statute requires that the driver license be "fully legible with no portion of such license faded, altered, mutilated, or defaced." *Id.* This would include not only the front of the license, but the back as well. This may not be apparent through mere visual inspection of the driver license through the vehicle's window. Also, because Florida Driver Licenses have magnetic stripes on the back, it is also reasonable to allow the officer to inspect that portion to verify that it has not been tampered with or otherwise illegally altered, etc. Officers will have to determine for themselves whether they can determine that the driver license is fully legible without fading alteration, mutilation or defacement, or even whether they are viewing a validly issued license, and not a counterfeit license, through the vehicle window. In addition, Florida driver licenses contain holograph images or watermarks that appear when the license is viewed at certain angles. Without being able to manipulate the license themselves, officers may not be able to see the hologram or watermarks properly.

Nevertheless, the statute, as amended on July 1, 2014, requires the driver "present or submit" their license to the officer. This would seem to indicate that the driver must give his or her license to the officer, not just display it through the window.[4]

Neither verbs "present" nor "submit" are defined in Florida Statutes Section 322.01 - Definitions, nor is the formerly used word "display." A court's purpose in construing a statute is

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[3] The Amendment also allowed for the submission or presentment of digital proof of driver license in lieu of physical license.

[4] The analysis contained in this Opinion and this Opinion as a whole should in no way be construed or otherwise interpreted to mean that the prior version of Florida Statutes Section 322.15, and the use of the word "display" as opposed to" present or submit" did not allow an officer to physically examine a Driver License and/or did not require motorists to produce the license to an officer for examination. Rather, any potential ambiguity that may have existed from the use of the word "display" has now been completely resolved and clarified by the use of the phrase "present or submit" in Florida Statutes section 322.15(1).

to give effect to the Legislature's intent. *See State v. Burris*, 875 So.2d 408 (Fla. 2004); *State v. J.M.*, 824 So.2d 105 (Fla. 2002). When a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. Instead, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent. *See State v. Burris*, 875 So.2d 408 (Fla. 2004); *Lee County Elec. Coop., Inc. v. Jacobs*, 820 So.2d 297 (Fla. 2002). In statutory interpretation, Florida courts will look to dictionary definitions to determine the plain and ordinary meaning of words. *Martinez v. Iturbe*, 823 So. 2d 266, 267 (Fla. 3d DCA 2002). Thus, we need to see the dictionary definitions of the operative terms.

Merriam-Webster defines the verb "present" as "to give or bestow formally. "[5]" It also defines the verb "submit" as "to present or propose to another for review, consideration, or decision" and "to deliver formally."[6] In contrast the verb "display" is defined as "to put (something) where people can see it" or "to put or spread before the view."[7] The plain meaning dictionary definitions of the words "present" and "submit" indicate that the driver must give their license to the officer. Indeed, both words require that something be given as part of their definitions. However, the word "display" does not require that anything be given, but rather placed or put somewhere where it can be viewed. A plain reading of the statute, as amended, would indicate that a driver must give ("present or submit") their Driver License to the officer.

A review of the House of Representatives Final Bill Analysis of House Bill HB 7005, which contained the amendment to Florida Statutes Section 322.15, specifically notes that the bill "also amends s. 322.15(1), F.S. to revise the requirement to display a physical driver license upon the demand of a law enforcement officer, to instead, be required to present or submit the same upon demand of a law enforcement officer."[8] Thus it is clear that the legislature's intent in amending the statute was to ensure that the requirement to "present or submit" was not the same as to "display" a Driver License, and this particular change was not just for electronic Driver Licenses. If the legislature understood the words "present or submit" to mean the same as "display," the amendment would have been meaningless and unnecessary.

This interpretation is supported by the legislature's use of the aforementioned terms in other statutory provisions. Aside from the dictionary definitions of the words "submit," "display," and "present," the legislature's intention to utilize one over the other, and the distinction which can be drawn may be inferred from the use of the same words in other provisions of Florida Statutes. For example, Florida Statutes Section 320.0848, Persons who have disabilities; issuance of disabled parking permits; temporary permits; permits for certain providers of transportation services to persons who have disabilities, subsection (2)(a) provides as follows:

> (2) Disabled parking permit; persons with long-term mobility problems.-
> (a) The disabled parking permit is a placard that can be placed in a motor vehicle so as to be visible from the front and rear of the vehicle. Each side of the placard must have the international symbol of accessibility in a contrasting color in the center so as to be visible. One side of **the placard must display the applicant's**

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[5] http://www.merriam-webster.com/dictionary/present

[6] http://www.merriam-webster.com/dictionary/submit

[7] http://www.merriam-webster.com/dictionary/display

[8] the Final Bill Anlysis for HB 7005 can be found at the following URL:
http://www .myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName-=h7005z2.THSS.DOCX&Document Type:Analysis&BiiiNumber= 7005&Session:o:2014

> **driver license number or state identification card number along with a warning that the applicant must have such identification at all times while using the parking permit.** In those cases where the severity of the disability prevents a disabled person from physically visiting or being transported to a driver license or tax collector office to obtain a driver license or identification card, a certifying physician may sign the exemption section of the department's parking permit application to exempt the disabled person from being issued a driver license or identification card for the number to be displayed on the parking permit.

In the above section, the meaning of the word "display," as used in the 2013 version of Section 322.15, is in line with the dictionary definition of "display" described above, where the intent to is make the information visible.

However, within the same section, in subsection (e), the legislature used the word "submit" in reference to an application in line with the dictionary definition of "submit" above, where the clear intent of the legislature is to require individuals to "present or propose to [the department] for review, consideration, or decision ... "

> (e) To obtain a replacement for a disabled parking permit that has been lost or stolen, a person must **submit an application on a form prescribed by the department**, provide a certificate of disability issued within the last 12 months pursuant to subsection (1), and pay a replacement fee in the amount of $1, to be retained by the issuing agency. If the person submits with the application a police report documenting that the permit was stolen, there is no replacement fee.

Similarly, subsection (10) uses a derivative of the term "submit" in a similar context, in line with the dictionary definition discussed infra, wherein it requires

> (10) The department shall develop and implement a means by which persons can report abuse of disabled parking permits by telephone hotline or by **submitting a form online or by mail**.

This use of a derivative of the term "submit" is consistent with the dictionary definition discussed infra, wherein it requires the individual "to present or propose to another for review, consideration, or decision" and "to deliver formally" the form in question online or by mail.[9]

The creator of the flyer, Palm Beach County-based attorney Warren Redlich, has indicated on his website (www.fairdui.org) that the statute has changed from "display" to "present or submit." However, on his website, attorney Redlich has stated that "showing your license through the window is still 'presenting' it." In support of this argument, Redlich claims that "the purpose of the change was for electronic driver licenses on smart phones, not for physical licenses." As indicated by Redlich, the statute was changed to allow for the use of electronic drivers licenses, but the statute was also changed in regards to physical licenses as well.

It could be argued that, had the Legislature intended that the requirement that a driver "present or submit" their driver license, then the use of the words "present or submit" would only

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[9] http://www.merriam~webster.com/d ictionary/submit

be used in the added part of the statute that allowed for electronic driver licenses. Instead, the amended statute specifically changed the requirement of "display," to "present or submit," specifically for physical driver licenses. In addition, the Legislature added the language allowing for the use of electronic driver licenses, and used the same "present or submit" language in the revised portion of the statute. If, as attorney Redlich suggests, the purpose of the change was not for physical licenses, then it is doubtful that the statutory language would have changed as it pertains to physical driver licenses. But, because the amended language was applied specifically, and separately, to physical, as well as electronic driver licenses, there should be no question that the amendment statute requires a driver to "present or submit" a physical and/or electronic driver license to a law enforcement officer upon request.

In addition, and aside from any other founded suspicion of a crime or DUI, should an officer find that a driver's license, registration or insurance is not valid, the officer is not required to allow the driver to continue driving knowing that one or more of his or her required documents may not be valid. At this point, the officer may require the driver to exit the vehicle. A passenger or another person may be available to drive the vehicle.

CONCLUSION AND RECOMMENDATION

It is the opinion of this Firm, in accordance with our independent analysis, that pursuant to Florida Statutes Section 322. 15 (I), a driver must present or submit his or her driver license to an officer upon demand and that this requires the individual to physically provide the license to the officer, not merely to display it through a car window. This will allow the officer to inspect the driver license to ensure it is not "faded, altered, mutilated, or defaced." *Id.*

In the event that an individual refuses to produce their Driver License, the officer should command the individual to present the Driver License in accordance with Florida Statues Section 322.15. If the individual refuses, the officer should advise them that they are ordering them to produce the license as they are required to by Florida Statues section 322.15(I), and that if the individual persists in refusing to comply, they will be arrested for obstructing the officer in the execution of his/her duties under Florida Statutes section 843.02.[10]

Florida Statutes Section 843.02, Resisting officer without violence to his or her person, provides as follows;

> Whoever shall resist, obstruct, or oppose any officer ... in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Id.

To convict a defendant of resisting or obstructing an officer without violence, the state must prove: (1) the officer was engaged in the lawful execution of a legal duty, and (2) the actions of the defendant obstructed, resisted, or opposed the officer in the performance of that legal duty. *S.L. v. State*, 96 So .3d 1 080 (DCA 3d 2012).

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[10] If the individual concedes and submits the Driver license to the officer in accordance with the Demand, the officer should maintain possession of the Driver license while drafting and issuing the Uniform Traffic Citation for the initial traffic offense. The officer should return the Driver License at the same time as the officer delivers the citation. This will avoid any potential issue in this context regarding a motorist's refusal to accept the citation or directing the officer to place the citation under the windshield wiper.

In the circumstances described herein, the officer must be prepared to fully articulate the legal duty they were engaged in, specifically the attempted examination of the Driver Licens, and the motorists obstruction of that duty, by refusing to allow the officer to examine same .. In these circumstances, the officer should explain to the motorist that their refusal to lower the window is obstructing them in their performance of their duties and that the continued refusal will result in arrest. Additionally, in accordance with Florida Statutes Section 322.15(2), "[u]pon the failure of any person to display a driver license as required by subsection (l), the law enforcement officer. .. stopping the person shall require the person to imprint his or her fingerprints upon any citation issued by the officer ... or the officer ... shall collect the fingerprints electronically." The individual should be further informed of this requirement under Florida Law. If the person continues to refuse to produce their license to the officer and will not lower their window to submit their fingerprint in accordance with the aforementioned section, said refusal constitutes a violation of Florida Statutes section 843.02. As with any arrest, the officers should be diligent in articulating the circumstances surrounding an arrest for any of the reasons discussed herein. The officer should describe in detail the basis for the stop, the interactions with the motorist, the citable offenses, and all the facts constituting the motorists obstruction of the officer's legal duty, and how said actions impacted the officer's ability to perform that duty.

Finally, it is important to note that an officer has the ability, following a lawful traffic stop, to order the occupant of the vehicle to exit the vehicle. *Pennsylvania v. Mimms*, 434 U.S. 106, Ill (1977) (officers conducting routine, lawful traffic stop may order driver out of vehicle for limited investigation, even absent reasonable suspicion that the defendant was engaged in criminal activity, without running afoul of the Fourth Amendment.); *Billips v. State*, 777 So. 2d 1094 (Fla. 3d DCA 2001) (even if officers lacked probable cause to seize vehicle after stopping it based on belief that it had been used to leave scene of possible homicide, officers were legally justified in ordering driver to exit vehicle in order to conduct limited investigation, and thus driver committed obstruction of justice by striking officers with her fists and elbows while being forcibly removed from car.).[11] Therefore, a lawfully stopped individual's refusal to exit the vehicle may constitute obstruction under Florida Statutes section 843.02 and failure to obey a lawful command under Florida Statutes Section 316.072.[12]

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[11] This does not apply in the case of CUI Checkpoints.

[12] Florida Statutes Section 316.072(3) provides;

> (3) Obedience to police and fire department officials.--It is unlawful and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully to fail or refuse to comply with any lawful order or direction of any law enforcement officer, traffic crash investigation officer as described in s. 316.640, traffic infraction enforcement officer as described in s. 316.640, or member of the fire department at the scene of a fire, rescue operation, or other emergency. Notwithstanding the provisions of this subsection, certified emergency medical technicians or paramedics may respond to the scene of emergencies and may provide emergency medical treatment on the scene and provide transport of patients in the performance of their duties for an emergency medical services provider licensed under chapter 401 and in accordance with any local emergency medical response protocols.

Herbello, Stephanie

From: Leen, Craig
Sent: Thursday, March 05, 2015 3:07 PM
To: 'Manuel Guarch'; Hudak, Edward
Cc: Israel Reyes; Herbello, Stephanie; Chen, Brigette; Figueroa, Yaneris
Subject: RE: Legal Opinion - Florida Statutes Section 322.15
Attachments: Presentation of Driver License-322.15 (Final w-attach).pdf

I adopt this as a City Attorney Opinion pursuant to section 2-201(e)(1) of the City Code. Stephanie, please place in the opinion folder, with a notation that I have adopted it.

Craig E. Leen, City Attorney
Board Certified by the Florida Bar in
City, County and Local Government Law
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Manuel Guarch [mailto:mguarch@reyeslawfirmpa.com]
Sent: Thursday, March 05, 2015 2:40 PM
To: Hudak, Edward
Cc: Leen, Craig; Israel Reyes
Subject: Legal Opinion - Florida Statutes Section 322.15

Chief Hudak,

Please see the attached Opinion on the matter regarding the presentation of Driver License's pursuant to Florida Statutes Section 322.15 with which Mr. Leen concurs. If you have any questions, as always, please feel free to contact us.

Regards,

Manuel Guarch, Esq.
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THE REYES LAW FIRM, P.A.

ATTORNEYS AND COUNSELORS

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THE REYES LAW FIRM, P.A.

ATTORNEYS AND COUNSELORS

LEGAL OPINION

To: Edward J. Hudak, Jr.
Interim Chief of Police
City of Coral Gables Police Department

Via: Craig Leen, City Attorney
City of Coral Gables

From: Israel U. Reyes, Managing Partner
Manuel A. Guarch, Associate
The Reyes Law Firm, P.A.
Police Legal Advisors

Date: March 5, 2015

Re: Presentation/Submission of Driver License Pursuant to §322.15, Fla. Stat. (2014).

I. QUESTION PRESENTED

Does the language of Florida Statutes Section 322.15 (1) require that, upon demand by a police officer, a motorist must physically provide an officer with the motorist's Driver License?

II. SHORT ANSWER[1]

Yes. It is the opinion of this Firm that Florida Statutes Section 322.15 (1) requires that, upon demand by a police officer, a motorist must physically provide an officer with the motorist's Driver License and that merely displaying the front of the Driver License from behind

[1] This Office, due to an immediate and urgent operational need, following the presentation of this issue prior to the Department's participation in a multi-agency DUI Checkpoint sponsored by the City of Miami Police Department, provided a brief answer to the question presented, and adopted the analysis of the Florida Traffic Safety Resource Prosecutor Program in a Memorandum dated February 18, 2015. See Memorandum Re: Use of "Fair DUI" flyer at DUI/sobriety checkpoints and e-mail adopting a portion of said Memorandum dated February 20, 2015 attached hereto. This Opinion formalizes that adoption and expands on the analysis in order to provide further direction.

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III. BACKGROUND

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[2] As a general matter, it should be noted that an officer may make a stop if that officer has reasonable suspicion that a traffic offense has been committed. *State v. Frierson*, 926 So. 2d 1139 (Fla. 2006) ("[A] stop for the violation of motor vehicle laws is similar to the investigative detention in Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), and may be made when there is founded suspicion."); *Hilton v. State*, 961 So. 2d 284, 295 (Fla. 2007) (referring to a windshield crack: "if the crack as it existed and as it was observed by the officers would have created an objectively reasonable suspicion that Hilton's vehicle was unsafe in violation of section 316.610, then the stop would be valid"); ("[A] stop for the violation of motor vehicle laws is similar to the investigative detention in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), and may be made when there is founded suspicion"); *State v. Eady*, 538 So. 2d 96, 97 (Fla. 3d DCA 1989) (officer may make a stop if that officer has reasonable suspicion based on the officer's "visual or aural perception" that a traffic offense has been committed); *See also Carter v. State*, 120 So. 3d 207 (Fla. 5th DCA 2013) (court recognized that an officer can make a stop based on reasonable suspicion of a traffic violation, but here the State failed to show that the officer had reasonable suspicion for running a stop sign because the officer could not recall if he saw it and he did not testify as to what the other officer told him); *Leslie v. State*, 108 So. 3d 722 (Fla. 5th DCA 2013) (officer did not have reasonable suspicion where he made a mistake of law based on his erroneous

IV. DISCUSSION & ANALYSIS

At present, Florida Statutes Section 322.15 (2014) provides, in relevant part:

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> (2) Upon the failure of any person to display a driver license as required by subsection (1), the law enforcement officer or authorized representative of the department stopping the person **shall require the person to imprint his or her fingerprints upon any citation issued by the officer** or authorized representative, or the officer or authorized representative shall collect the fingerprints electronically.

§ 322.15, Fla. Stat. (2014) (emphasis added).

However, the language of the aforementioned statute was amended to its current form in 2014. Prior to the amendment, subsection (1) read as follows;

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belief that a center view mirror is required whether or not there are adequate side view mirrors); *State v. Allen*, 978 So. 2d 254 (Fla. 2d DCA 2008) (officer may make a traffic stop based on reasonable suspicion that the vehicle is speeding, but court found that officer had probable cause of speeding based on officer's observation of vehicle, including fact that officer had to "'accelerate quite a bit'" to catch defendant, speed limit was 25 m.p.h. and officer had to go well over 50 m.p.h. to catch defendant); *State v. Young*, 971 So. 2d 968 (Fla. 4th DCA 2008) (court said when defendant ran a stop sign, officer "had reasonable suspicion to stop the defendant for the traffic infraction." 971 So. 2d at 971); *State v. Joy*, 637 So. 2d 946 (Fla. 3d DCA 1994); *Department of Highway Safety and Motor Vehicles v. Roberts*, 938 So. 2d 513 (Fla. 5th DCA 2006), review denied, 946 So. 2d 1069 (Fla. 2006) (court agreed that a stop could be based on reasonable suspicion of speeding, but found that the facts did not support an investigatory stop here because there was "little or no specifics about the officer's vantage point when he reached the conclusion that Respondent was speeding.").

> **display the same** upon the demand of a law enforcement officer or an authorized representative of the department.

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It was in 2014 that the legislature amended Florida Statutes Section 322.15 to revise the requirement contained therein regarding the "display" of a physical driver license upon the demand of a law enforcement officer, to instead require motorists to "present or submit" the same upon demand of a law enforcement officer.[3]

It is important to note that the statute requires that the driver license be "fully legible with no portion of such license faded, altered, mutilated, or defaced." *Id.* This would include not only the front of the license, but the back as well. This may not be apparent through mere visual inspection of the driver license through the vehicle's window. Also, because Florida Driver Licenses have magnetic stripes on the back, it is also reasonable to allow the officer to inspect that portion to verify that it has not been tampered with or otherwise illegally altered, etc. Officers will have to determine for themselves whether they can determine that the driver license is fully legible without fading alteration, mutilation or defacement, or even whether they are viewing a validly issued license, and not a counterfeit license, through the vehicle window. In addition, Florida driver licenses contain holograph images or watermarks that appear when the license is viewed at certain angles. Without being able to manipulate the license themselves, officers may not be able to see the hologram or watermarks properly.

[3] The Amendment also allowed for the submission or presentment of digital proof of driver license in lieu of physical license.

Nevertheless, the statute, as amended on July 1, 2014, requires the driver "present or submit" their license to the officer. This would seem to indicate that the driver must give his or her license to the officer, not just display it through the window.[4]

Neither verbs "present" nor "submit" are defined in Florida Statutes Section 322.01 – Definitions, nor is the formerly used word "display." A court's purpose in construing a statute is to give effect to the Legislature's intent. *See State v. Burris*, 875 So.2d 408 (Fla. 2004); State v. J.M., 824 So.2d 105 (Fla. 2002). When a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. Instead, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent. *See State v. Burris*, 875 So.2d 408 (Fla. 2004); *Lee County Elec. Coop., Inc. v. Jacobs*, 820 So.2d 297 (Fla. 2002). In statutory interpretation, Florida courts will look to dictionary definitions to determine the plain and ordinary meaning of words. *Martinez v. Iturbe*, 823 So. 2d 266, 267 (Fla. 3d DCA 2002). Thus, we need to see the dictionary definitions of the operative terms.

Merriam-Webster defines the verb "present" as "to give or bestow formally."[5] " It also defines the verb "submit" as "to present or propose to another for review, consideration, or decision" and "to deliver formally."[6] In contrast the verb "display" is defined as "to put (something) where people can see it" or "to put or spread before the view." [7] The plain meaning dictionary definitions of the words "present" and "submit" indicate that the driver must give their

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[4] The analysis contained in this Opinion and this Opinion as a whole should in no way be construed or otherwise interpreted to mean that the prior version of Florida Statutes Section 322.15, and the use of the word "display" as opposed to " present or submit" did not allow an officer to physically examine a Driver License and/or did not require motorists to produce the license to an officer for examination. Rather, any potential ambiguity that may have existed from the use of the word "display" has now been completely resolved and clarified by the use of the phrase "present or submit" in Florida Statutes section 322.15(1).

[5] http://www.merriam-webster.com/dictionary/present

[6] http://www.merriam-webster.com/dictionary/submit

[7] http://www.merriam-webster.com/dictionary/display

license to the officer. Indeed, both words require that something be given as part of their definitions. However, the word "display" does not require that anything be given, but rather placed or put somewhere where it can be viewed. A plain reading of the statute, as amended, would indicate that a driver must give ("present or submit") their Driver License to the officer.

A review of the House of Representatives Final Bill Analysis of House Bill HB 7005, which contained the amendment to Florida Statutes Section 322.15, specifically notes that the bill "also amends s. 322.15(1), F.S. to revise the requirement to display a physical driver license upon the demand of a law enforcement officer, to instead, be required to present or submit the same upon demand of a law enforcement officer."[8] Thus it is clear that the legislature's intent in amending the statute was to ensure that the requirement to "present or submit" was not the same as to "display" a Driver License, and this particular change was not just for electronic Driver Licenses. If the legislature understood the words "present or submit" to mean the same as "display," the amendment would have been meaningless and unnecessary.

This interpretation is supported by the legislature's use of the aforementioned terms in other statutory provisions. Aside from the dictionary definitions of the words "submit," "display," and "present," the legislature's intention to utilize one over the other, and the distinction which can be drawn may be inferred from the use of the same words in other provisions of Florida Statutes. For example, Florida Statutes Section 320.0848, Persons who have disabilities; issuance of disabled parking permits; temporary permits; permits for certain providers of transportation services to persons who have disabilities, subsection (2)(a) provides as follows:

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[8] the Final Bill Anlysis for HB 7005 can be found at the following URL: http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h7005z2.THSS.DOCX&DocumentType=Analysis&BillNumber=7005&Session=2014

(2) Disabled parking permit; persons with long-term mobility problems.--

(a) The disabled parking permit is a placard that can be placed in a motor vehicle so as to be visible from the front and rear of the vehicle. Each side of the placard must have the international symbol of accessibility in a contrasting color in the center so as to be visible. One side of **the placard must display the applicant's driver license number or state identification card number along with a warning that the applicant must have such identification at all times while using the parking permit**. In those cases where the severity of the disability prevents a disabled person from physically visiting or being transported to a driver license or tax collector office to obtain a driver license or identification card, a certifying physician may sign the exemption section of the department's parking permit application to exempt the disabled person from being issued a driver license or identification card for the number to be displayed on the parking permit.

In the above section, the meaning of the word "display," as used in the 2013 version of Section 322.15, is in line with the dictionary definition of "display" described above, where the intent to is make the information visible.

However, within the same section, in subsection (e), the legislature used the word "submit" in reference to an application in line with the dictionary definition of "submit" above, where the clear intent of the legislature is to require individuals to "present or propose to [the department] for review, consideration, or decision…"

(e) To obtain a replacement for a disabled parking permit that has been lost or stolen, a person must **submit an application on a form prescribed by the department**, provide a certificate of disability issued within the last 12 months pursuant to subsection (1), and pay a replacement fee in the amount of $1, to be retained by the issuing agency. If the person **submits** with the application a police report documenting that the permit was stolen, there is no replacement fee.

Similarly, subsection (10) uses a derivative of the term "submit" in a similar context, in line with the dictionary definition discussed infra, wherein it requires

(10) The department shall develop and implement a means by which persons can report abuse of disabled parking permits by telephone hotline or by **submitting a form online or by mail.**

This use of a derivative of the term "submit" is consistent with the dictionary definition discussed *infra*, wherein it requires the individual "to present or propose to another for review, consideration, or decision" and "to deliver formally" the form in question online or by mail.[9]

The creator of the flyer, Palm Beach County-based attorney Warren Redlich, has indicated on his website (www.fairdui.org) that the statute has changed from "display" to "present or submit." However, on his website, attorney Redlich has stated that "showing your license through the window is still 'presenting' it." In support of this argument, Redlich claims that "the purpose of the change was for electronic driver licenses on smart phones, not for physical licenses." As indicated by Redlich, the statute was changed to allow for the use of electronic drivers licenses, but the statute was also changed in regards to physical licenses as well.

It could be argued that, had the Legislature intended that the requirement that a driver "present or submit" their driver license, then the use of the words "present or submit" would only be used in the added part of the statute that allowed for electronic driver licenses. Instead, the amended statute specifically changed the requirement of "display," to "present or submit," specifically for physical driver licenses. In addition, the Legislature added the language allowing for the use of electronic driver licenses, and used the same "present or submit" language in the revised portion of the statute. If, as attorney Redlich suggests, the purpose of the change was not for physical licenses, then it is doubtful that the statutory language would have changed as it pertains to physical driver licenses. But, because the amended language was applied specifically, and separately, to physical, as well as electronic driver licenses, there should be no question that the amendment statute requires a driver to "present or submit" a physical and/or electronic driver license to a law enforcement officer upon request.

[9] http://www.merriam-webster.com/dictionary/submit

In addition, and aside from any other founded suspicion of a crime or DUI, should an officer find that a driver's license, registration or insurance is not valid, the officer is not required to allow the driver to continue driving knowing that one or more of his or her required documents may not be valid. At this point, the officer may require the driver to exit the vehicle. A passenger or another person may be available to drive the vehicle.

CONCLUSION AND RECOMMENDATION

It is the opinion of this Firm, in accordance with our independent analysis, that pursuant to Florida Statutes Section 322.15 (1), a driver must present or submit his or her driver license to an officer upon demand and that this requires the individual to physically provide the license to the officer, not merely to display it through a car window. This will allow the officer to inspect the driver license to ensure it is not "faded, altered, mutilated, or defaced." *Id.*

In the event that an individual refuses to produce their Driver License, the officer should command the individual to present the Driver License in accordance with Florida Statues Section 322.15. If the individual refuses, the officer should advise them that they are ordering them to produce the license as they are required to by Florida Statues section 322.15(1), and that if the individual persists in refusing to comply, they will be arrested for obstructing the officer in the execution of his/her duties under Florida Statutes section 843.02.[10]

Florida Statutes Section 843.02, Resisting officer without violence to his or her person, provides as follows;

> Whoever shall resist, obstruct, or oppose any officer ... in the lawful execution of any legal duty, without offering or doing violence to the person of the officer,

[10] If the individual concedes and submits the Driver License to the officer in accordance with the Demand, the officer should maintain possession of the Driver License while drafting and issuing the Uniform Traffic Citation for the initial traffic offense. The officer should return the Driver License at the same time as the officer delivers the citation. This will avoid any potential issue in this context regarding a motorist's refusal to accept the citation or directing the officer to place the citation under the windshield wiper.

> shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Id.

To convict a defendant of resisting or obstructing an officer without violence, the state must prove: (1) the officer was engaged in the lawful execution of a legal duty, and (2) the actions of the defendant obstructed, resisted, or opposed the officer in the performance of that legal duty. *S.L. v. State*, 96 So.3d 1080 (DCA 3d 2012).

In the circumstances described herein, the officer must be prepared to fully articulate the legal duty they were engaged in, specifically the attempted examination of the Driver Licens, and the motorists obstruction of that duty, by refusing to allow the officer to examine same. . In these circumstances, the officer should explain to the motorist that their refusal to lower the window is obstructing them in their performance of their duties and that the continued refusal will result in arrest. Additionally, in accordance with Florida Statutes Section 322.15(2), "[u]pon the failure of any person to display a driver license as required by subsection (1), the law enforcement officer... stopping the person shall require the person to imprint his or her fingerprints upon any citation issued by the officer... or the officer... shall collect the fingerprints electronically." The individual should be further informed of this requirement under Florida Law. If the person continues to refuse to produce their license to the officer and will not lower their window to submit their fingerprint in accordance with the aforementioned section, said refusal constitutes a violation of Florida Statutes section 843.02. As with any arrest, the officers should be diligent in articulating the circumstances surrounding an arrest for any of the reasons discussed herein. The officer should describe in detail the basis for the stop, the interactions with the motorist, the citable offenses, and all the facts constituting the motorists obstruction of the officer's legal duty, and how said actions impacted the officer's ability to perform that duty.

Finally, it is important to note that an officer has the ability, following a lawful traffic stop, to order the occupant of the vehicle to exit the vehicle. *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977) (officers conducting routine, lawful traffic stop may order driver out of vehicle for limited investigation, even absent reasonable suspicion that the defendant was engaged in criminal activity, without running afoul of the Fourth Amendment.); *Billips v. State*, 777 So. 2d 1094 (Fla. 3d DCA 2001) (even if officers lacked probable cause to seize vehicle after stopping it based on belief that it had been used to leave scene of possible homicide, officers were legally justified in ordering driver to exit vehicle in order to conduct limited investigation, and thus driver committed obstruction of justice by striking officers with her fists and elbows while being forcibly removed from car.).[11] Therefore, a lawfully stopped individual's refusal to exit the vehicle may constitute obstruction under Florida Statutes section 843.02 and failure to obey a lawful command under Florida Statutes Section 316.072.[12]

[11] This does not apply in the case of DUI Checkpoints.

[12] Florida Statutes Section 316.072(3) provides;

> (3) Obedience to police and fire department officials.--It is unlawful and a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully to fail or refuse to comply with any lawful order or direction of any law enforcement officer, traffic crash investigation officer as described in s. 316.640, traffic infraction enforcement officer as described in s. 316.640, or member of the fire department at the scene of a fire, rescue operation, or other emergency. Notwithstanding the provisions of this subsection, certified emergency medical technicians or paramedics may respond to the scene of emergencies and may provide emergency medical treatment on the scene and provide transport of patients in the performance of their duties for an emergency medical services provider licensed under chapter 401 and in accordance with any local emergency medical response protocols.

FLORIDA TRAFFIC SAFETY RESOURCE
PROSECUTOR PROGRAM

MEMORANDUM

TO: Florida Law Enforcement Officers, Legal Advisors, and Prosecutors

FROM: Garett M. Berman, Florida TSRP Prosecutor

DATE: February 18, 2015

RE: Use of "Fair DUI" flyer at DUI/sobriety checkpoints

This is in response to several inquiries regarding the use of the "Fair DUI" flyer by drivers at DUI/sobriety checkpoints. Attached is a copy of the front and back of the flyer that is available on the website www.FairDUI.org. Although not necessarily in order as they appear on the flyers, this memo addresses the front of the flyer that is made visible to officers at a checkpoint and the instructions to the users that appear on the back of the flyer.

As always, the opinions and analyses expressed herein may not necessarily be the same as those in all law enforcement agencies and State Attorney Offices in Florida. Please consult your local law enforcement agency's legal counsel or the State Attorney's Office in your jurisdiction regarding any issues of applicability or application in your jurisdiction.

"Please put any ticket under windshield wiper."

Pursuant Fla. Stat. 318.14(2), for all infractions, other than those that require a mandatory hearing under Fla. Stat. 318.19, 316.1001 or any other criminal traffic violation listed in Chapter 316, "the officer must certify by electronic, electronic facsimile, or written signature that the citation was delivered to the person cited." "This certification is prima facie evidence that the person cited was served with the citation." The flyer seems to suggest to the user that the user has the ability to tell the officer how that officer shall certify that the citation was delivered upon the individual cited. There is no legal basis for this. It is the officer, not the driver, that determines how the officer will certify that the citation has been delivered to the driver. If a citation is issued, it would be the decision of the citing officer whether placing the citation under the windshield wiper would constitute delivery to the person cited, such that it would meet the certification of delivery requirement under the statute.

Florida Public Safety Institute, Tallahassee Community College - 75 College Drive, Suite 135 - Havana, FL 32333
850.201.7740(office) - 850.201.7013(fax)

Funded by FDOT

"I am not required to sign – §318.14(2)."

The front of the flyer makes this statement generally, and incorrectly, as there may be instances in which a driver may be required to sign a citation. However, the back of the flyer correctly points out the occasions where a driver may be required to sign a citation. Pursuant to Fla. Stat. 318.14(2), "except as provided in Fla. Stat. 316.1001(2) and 316.0083, any person cited for a violation requiring a mandatory hearing listed in Fla. Stat. 318.19 or any other criminal traffic violation listed in Chapter 316 must sign and accept a citation indicating a promise to appear."

As the flyer correctly indicates, pursuant to Fla. Stat. 318.19, the driver does not have to sign a citation unless it is for: an infraction that results in a crash that causes (1) the death or (2) serious bodily injury of another; failing to stop for a properly stopped school bus displaying a stop signal under Fla. Stat. 316.172; violation of improper load limits under Fla. Stat. 316.520(1) or (2); or speeding in excess of 30mph or more above the speed limit under Fla. Stat. 316.183(2), 316.187, or 316.189. Other exceptions may apply as listed in Fla. Stat. 316.1001(2) and 316.0083.

A review of the caselaw pertaining to Fla. Stat. 318.14 would seem to suggest differently. *See Robinson v. City of Miami*, 867 So.2d 431 (3rd DCA 2004); *Buckely v. Haddock*, 292 Fed.Appx. 791 (C.A.11 (Fla.) 2008); *Snover v. City of Stark, Florida*, 398 Fed.Appx. 445 (C.A.11 (Fla.) 2010).

However, law enforcement and prosecutors should be cautioned that, while none of these cases has been overruled, they do rely on a previous version of Fla. Stat. 318.14(2), which has since been amended. In the prior version, Fla. Stat. 318.14(2) stated that "any person cited for *an infraction under this section* must sign and accept a citation indicating a promise to appear." (emphasis added). This emphasized portion was amended to read "any person cited for *a violation requiring a mandatory hearing listed in s. 318.19 or any other criminal traffic violation listed in chapter 316* must sign and accept a citation indicating a promise to appear." (emphasis added). The current version of the state became effective June 4, 2010. Therefore, as currently written in the statute, if the violation is not one of the violations specifically listed in 318.14(2), the driver/individual cited does not have to sign the citation.

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

The back of the flyer also informs the user to "Show them your license, registration and insurance through the window," and that "You are required to 'display' them, but you don't have to hand them over. So don't open your window."

This seems to be the most questionable part of the flyer, and the issue that will most certainly only be resolved through litigation. Pursuant to Fla. Stat. 322.15(1), every driver "shall have his or her driver license, which must be fully legible with no portion of such license faded, altered, mutilated, or defaced, in his or her immediate possession at all times when operating a motor vehicle and shall present or submit the same upon demand of a law enforcement officer or an authorized representative of the department." The statute, effective July 1, 2014, amended the

word "display" to "present or submit," in addition to allowing a licensee to submit a digital proofer of driver license in lieu of a physical license.

The statute requires that the driver license be legible and free from fading, alteration, mutilation or defacement. This would include not only the front of the license, but the back as well. This may not be apparent through mere visual inspection of the driver license through the vehicle's window. Officers will have to determine for themselves whether they can determine that the driver license is fully legible without fading alteration, mutilation or defacement, or even whether they are viewing a validly issued license, and not a fake license, through the vehicle window. In addition, Florida driver licenses contain holograph images or watermarks that appear when the license is viewed at certain angles. Without being able to manipulate the license themselves, officers may not be able to see the hologram or watermarks properly.

Nevertheless, the statute, as amended on July 1, 2014, requires the driver "present or submit" their license to the officer. This would seem to indicate that the driver must give his or her license to the officer, not just display it through the window.

Neither verbs "present" nor "submit" are defined in Fla. Stat. 322.01 – Definitions, nor is the formerly used word "display." A court's purpose in construing a statute is to give effect to the Legislature's intent. *See State v. Burris*, 875 So.2d 408 (Fla. 2004); *State v. J.M.*, 824 So.2d 105 (Fla. 2002). When a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. Instead, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent. *See State v. Burris*, 875 So.2d 408 (Fla. 2004); *Lee County Elec. Coop., Inc. v. Jacobs*, 820 So.2d 297 (Fla. 2002).

Merriam-Webster defines the verb "present" as "to give something to someone in a formal way or in a ceremony," or "to make (something) available to be used or considered." It also defines the verb "submit" as "to give (a document, proposal, piece of writing, etc.) to someone so that it can be considered or approved." In contrast the verb "display" is defined as "to put (something) where people can see it."

The plain meaning of the words "present" and "submit" indicate that the driver must <u>*give*</u> their license to the officer. Indeed, both words require that something be given as part of their definitions. However, the word "display" does not require that anything be given, but rather placed or put somewhere where it can be viewed. A plain reading of the statute, as amended, would indicate that a driver must give ("present or submit") their driver license to the officer.

A review of the House of Representatives Final Bill Analysis of House Bill HB 7005, which contained the amendment to Fla. Stat. 322.15, specifically notes that the bill "also amends s. 322.15(1), F.S. to revise the requirement to display a physical driver license upon the demand of a law enforcement officer, to instead, be required to present or submit the same upon demand of a law enforcement officer." Thus it is clear that the legislature's intent in amending the statute was to ensure that the requirement to "present or submit" was not the same as to "display" a driver license, and this particular change was not just for electronic driver licenses.

The creator of the flyer, Palm Beach County based attorney Warren Redlich, has indicated on his website (www.fairdui.org) that the statute has changed from "display" to "present or submit." However, on his website, attorney Redlich has stated that "showing your license through the window is still 'presenting' it." In support of this argument, Redlich claims that "the purpose of the change was for electronic driver licenses on smart phones, not for physical licenses." As indicated by Redlich, the statute was changed to allow for the use of electronic drivers licenses, but the statute was also changed in regards to physical licenses as well.

It could be argued that, had the Legislature intended that the requirement that a driver "present or submit" their driver license, then the use of the words "present or submit" would only be used in the added part of the statute that allowed for electronic driver licenses. Instead, the amended statute specifically changed the requirement of "display," to "present or submit," specifically for physical driver licenses. In addition, the Legislature added the language allowing for the use of electronic driver licenses, and used the same "present or submit" language in the added portion of the statute. If, as attorney Redlich suggests, the purpose of the change was not for physical licenses, then it is doubtful that the statutory language would have changed as it pertains to physical driver licenses. But because the amended language was applied specifically, and separately, to physical, as well as electronic driver licenses, there should be no question that the amendment statute requires a driver to "present or submit" a physical and/or electronic driver licenses to a law enforcement officer upon request.

In addition, and aside from any other founded suspicion of a crime or DUI, should an officer find that a driver's license, registration or insurance is not valid, the officer is not required to allow the driver to continue driving knowing that one or more of his or her required documents may not be valid. At this point, the officer may require the driver to exit the vehicle. A passenger or another person may be available to drive the vehicle.

"Thus I am not opening my window."

This is another issue that may only be resolved through litigation as well. In refusing to open or roll-down the window, the driver defeats the purpose of the DUI/sobriety checkpoint—to keep the road free from impaired drivers. There seem to be no cases that specifically address the issue of whether a motorist has a right to not roll down their window. There also seems to be no cases that seem to specifically address the issue of whether an officer at a DUI/sobriety checkpoint has lawful authority to order a driver to roll down their window.

The purpose of most DUI/sobriety checkpoints is to detect and apprehend impaired drivers who are under the influence of alcohol, and/or chemical substances and/or controlled substances, and who pose an immediate threat to the safety of the general public, as well as to ensure that motorists have proper and valid vehicle documentation (driver license, vehicle registration and insurance). It could be argued that by not rolling down their window at a DUI/sobriety checkpoint, the driver is undermining the purposes of the DUI/sobriety checkpoint. It is therefore necessary to examine the relevant and applicable caselaw on the issues and concerns dealing with DUI/sobriety checkpoints.

One of the first cases to deal with the issue of a fixed checkpoint involved the search for illegal aliens. *See United States v. Martinez-Fuerte*, 428 US 543 (1976). In *Martinez-Fuerte*, several cases were consolidated involving the prosecutions for offenses relating the transportation of illegal Mexican aliens. In each instance, the issue of whether the Fourth Amendment was violated turned primarily on whether a vehicle could be stopped at a fixed checkpoint for brief questioning of its occupants even though there is no reason to believe the particular vehicle contains illegal aliens. The Court held that such stops are consistent with the Fourth Amendment. But what seems to be of most importance of this case is what it would seem to suggest with regards to what officers may be allowed to do at a DUI/sobriety checkpoint, much like they were allowed to do with regards to checkpoints to search for illegal aliens—that is, to make contact and question the driver of the vehicle, which would seem to suggest that there may be a requirement that a drier roll down their window at a DUI/sobriety checkpoint.

In *Martinez-Fuerte*, the Court analyzed its ruling in *Almeida-Sanchez v. United States*, 413 US 266 (1973), where the Court addressed the question of whether a roving-patrol unit constitutionally could *search* a vehicle for illegal aliens simply because it was in the general vicinity of the border. The Court recognized that important law enforcement interests were at stake but held that searches by roving patrols impinged so significantly on Fourth Amendment privacy interests that a search could be conducted without consent only if there was probable cause to believe that a car contained illegal aliens, at least in the absence of a judicial warrant authorizing random searches by roving patrols in a given area. *Id.* at 273.

The Court also analyzed its ruling in *United State v. Brignoni-Prince*, 422 US 873 (1975), where the Court was presented with the question of under what circumstances could a roving patrol stop motorists in the general area of the border for a brief inquiry into their residence status. The Court found that the interference with Fourth Amendment interests involved in such a stop was "modest," while the inquiry served significant law enforcement needs. *Id.* at 880. The Court held that a roving-patrol stop need not be justified by probable cause and may be undertaken if the stopping officer is :aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion." *Id.* at 884.

In *Martinez-Fuerte*, one of the defendant's contended primarily that the routine stopping of vehicles at a checkpoint is invalid because *Brignoni-Prince* must be read as proscribing any stops in the absence of reasonable suspicion. *Martinez-Fuerte*, 428 US at 556. However, the Court disagreed. The Court noted that a "requirement that stops on major routes inland always be based on reasonable suspicion would be impractical because the flow of traffic tends to be too heavy to allow the particularized study of a given car that would enable it to be identified as a possible carrier of illegal aliens." *Id.* at 557. The Court stated that such a requirement would eliminate any deterrent to such conduct to well-disguised smuggling operations. *Id.*

The *Martinez-Fuerte* Court went on to state that "While the need to make routine checkpoints stops is great, the consequent intrusions on Fourth Amendment interests is quite limited." *Id.* at 557. The Court noted that the stop does intrude on a motorists' right to "free passage without interruption," and arguably on their right to personal security. *Id.* at 557-58; *citing to Carroll v. United States*, 267 US 132 (1925).

However, the Court wrote that such a checkpoint stop "involves only a brief detention during which **'(a)ll that is required of the vehicle's occupant is a response to a brief question or two and possibly the production of a document** evidencing a right to be in the United States.' *United State v. Brignoni-Prince*, supra, 422 US, at 880." *Martinez-Fuerte*, 428 US, at 558. (emphasis added).

The Court went on to state:

> Neither the vehicle nor its occupants are searched, and visual inspection of the vehicle is limited to what can be seen without a search. This objective intrusion, the stop itself, the questioning and the visual inspection also existed in roving patrol stops. But we view checkpoints stops in a different light because the subjective intrusion, the generating of concern or even fright on the part of lawful travelers is appreciably less in the case of a checkpoint stop. In *Ortiz* [*United State v. Ortiz*, 422 U.S. 891 (1975)], we noted:
>
> "[T]he circumstances surrounding a checkpoint stop and search are far less intrusive than those attending a roving-patrol stop. Roving patrols often operate at night on seldom-traveled roads, and their approach may frighten motorists. At traffic checkpoints the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion." 422 U.S., at 894-895, 95 S.Ct., at 2587.

Martinez-Fuerte, 428 U.S., at 558.

"Routine checkpoint stops do not intrude similarly on the motoring public." *Id.* at 559. The Court noted that the potential for interference with legitimate traffic is minimal and that checkpoints both appear to and actually involves less discretionary enforcement activity. *Id.* "The regularized manner in which established checkpoints are operated is visible evidence, reassuring to law-abiding motorists, that the stops are duly authorized and believed to serve the public interest." *Id.* Moreover, the Court found, a claim that particular checkpoint was operated or located unreasonably, is subject to post-stop judicial review. *Id.*

The defense also claimed that checkpoint operations involve a significant extra element on intrusiveness because only a small percentage of vehicles are referred into the secondary inspection area, thereby stigmatizing those diverted and reducing the equal treatment of all motorists. The Court responded by finding that diversion into the secondary inspection area "are made for the sole purpose of conducting a routine and limited inquiry into residence status that cannot feasibly be made of every motorist where the traffic heavy." *Id.* at 560. The objective intrusion of the stop and the inquiry, the Court held, thus remains minimal. *Id.* "Moreover, selective referrals rather than questioning the occupants of every car, tend to advance some Fourth Amendment interests by minimizing the intrusion on the general motoring public." *Id.*

In discussing the procedures followed at checkpoints, the Court stated that "the reasonableness of the procedures followed in making these checkpoint stops makes the resulting intrusion on the interests of motorists minimal." *Id.* at 562. The Court found that the purpose of the stops is legitimate and in the public interest. *Id.* As the Court noted, "it is constitutional to refer motorists selectively to the secondary inspection area... on the basis of criteria that would not sustain a roving patrol stop." *Id.* at 563. "Accordingly, we hold that the stops and questioning at issue may be made in the absence of any individualized suspicion at reasonably located checkpoints. *Id.* at 562. In summary the Court held that stops for brief questioning routinely conducted at permanent checkpoints are consistent with the Fourth Amendment and need not be authorized by warrant. *Id.* at 566.

It could be argued that the purpose of the checkpoint in *Martinez-Fuerte* (to detect and apprehend illegal aliens) is no different from that of a DUI/sobriety checkpoint (to detect and apprehend impaired drivers). Both instances would require contact with the driver and/or possible passengers, during which the Court noted "(a)ll that is required of the vehicle's occupant is a response to a brief question or two and possibly the production of a document...." *United State v. Brignoni-Prince*, supra, 422 US, at 880." *Martinez-Fuerte*, 428 US, at 558. Thus, it could be argued that the United State Supreme Court, where a checkpoint follows constitutionally valid guidelines or procedures, law enforcement can require the driver to roll down their windows for such brief questioning. Otherwise, it would undermine the purpose of the checkpoint—both in *Martinez-Fuerte* in searching for and apprehending illegal aliens, as well as at DUI/sobriety checkpoints in searching for and apprehending impaired drivers.

All arguments aside, the most distinguishing element of *Martinez-Fuerte* is that it did not deal with checkpoints aimed at detecting and apprehending impaired drivers. However, that changed with *Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990). In *Sitz*, the Court held that sobriety checkpoints aimed at detecting and apprehending impaired drivers are constitutional.

In *Sitz*, the Michigan Department of State police conducted a sobriety checkpoint according to set guidelines. Under these guidelines, checkpoints would be set up at selected sites along state roads. All vehicles passing through a checkpoint would be stopped and their driver briefly examined for signs of intoxication. In cases where a checkpoint officer detected signs of intoxication, the motorist would be directed to a location out of the traffic flow where an officer check the motorist's driver's license and vehicle registration and, if warranted, conduct further sobriety tests. Should the field sobriety tests and officer's observations suggest that the driver was intoxicated, an arrest would be made. All other drivers would be permitted to continue on their way. *Id.* at 447. The checkpoint lasted one hour and fifteen minutes and contact was made with 126 vehicles. The average delay on motorists was about 25 seconds. Two drivers were detained on suspicion of DUI and requested to submit to Standardized Field Sobriety Testing; one driver was arrested or DUI. Another driver was subsequently arrested for DUI after driving through the checkpoint. *Id.* at 448.

Prior to the checkpoint, Michigan residents filed a complaint seeking an injunction preventing the use of the checkpoints. The trial court ruled that the checkpoints violated the Fourth

Amendment, and the Michigan Court of Appeals affirmed the ruling. The Michigan Supreme Court denied the petitioner's application for leave to appeal, and the United State Supreme Court granted certiorari. *Id.*

In coming to its conclusion in *Sitz*, the Court stated that the cases of *Martinez-Fuerte, supra*, and *Brown v. Texas*, 443 U.S. 47 (1979), were the relevant authorities here. The Court looked at the three-program balancing test that was established in *Brown* which could be applied to any type of police action in the context of a warrantless search or seizure. The three prongs included: (1) the gravity of public concerns served by the seizure, (2) the degree to which the seizure advances the public interest (the effectiveness of the roadblock), and (3) the severity of the interference with individual liberty (the intrusion on the motorist). *Id.* at 50-51.

As to the first prong, the Court noted that impaired driving is a valid public concern. "No one can seriously dispute the magnitude of the drunken driving problem of the States' interest in eradicating it." *Sitz, 496 U.S.* at 451. As to the second prong, the Court found that the trial court was wrong in deciding that the checkpoint failed the "effectiveness" part of the test. The Court noted that "[e]xperts in police science might disagree over which of several methods of apprehending drunken drivers is preferable as an ideal. But for purposes of Fourth Amendment analysis, the choice among such reasonable alternatives remains with the government officials who have a unique understanding of, and responsibility for, limited public resources, including a finite number of police officers." *Id.* at 453-54. The Court compared the testimony at trial that experience in other States demonstrated that sobriety checkpoints resulted in drunken driving arrests around one percent of all motorists stopped with the record of *Martinez-Fuerte*, which showed that illegal aliens were found in only 0.12 percent of the vehicle passing through the checkpoint. *Id.* at 455. Nevertheless, the Court noted that it sustained the constitutionality of the checkpoints in *Martinez-Fuerte*, and that there was no justification for a different conclusion in *Stiz*. *Id.* Lastly, as to the intrusion on the motorist, the Court held that because the checkpoint was conducted pursuant to the guidelines, "the intrusion resulting from the brief stop at the sobriety checkpoint is for constitutional purposes indistinguishable from the checkpoint stops we upheld in *Martinez-Fuerte*." *Id.* at 453.

"In sum, the balance of the State's interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of the state program." *Id.* at 455.

The Florida Supreme Court has also addressed the issue of the constitutionality of DUI/sobriety checkpoints. In *State v. Jones*, 483 So.2d 433 (Fla. 1986), the Florida Supreme Court set forth several factors which must be considered in evaluating whether any particular DUI/sobriety checkpoint passes constitutional muster: (1) a written set of uniform guidelines detailing all procedures and personnel, (2) the selection procedures of vehicles, (3) proper lighting and sufficient warning on the roadway in advance of the stop, (4) the checkpoint should be easily identifiable, and (5) the degree of intrusion and length of detention must be kept to a minimum. *Id.* at 437-40. It is worth nothing that Court in *Jones* cites to *Martinez-Fuerte, supra,* and *Brown, supra,* in finding DUI/sobriety checkpoints constitutional. Specifically, the Court noted the fact that "law enforcement officers stopped every vehicle at the checkpoint for brief questioning." *Id.* at 436.

The *Jones* court stated:

> The public, however, must keep in mind that the privilege of driving an automobile over public highways does not amount to an absolute organic right. Our government provides the roadways of Florida as a benefit to the public at large. Accordingly, this state retains the extensive authority to safeguard the driving public via its police power. If the holder of a driver's license cannot utilize the privilege of driving on our public streets and highways in a careful manner and respect the rights of others to do likewise, that driver becomes a public nuisance and should either be temporarily or permanently excluded from those roads. In order to safeguard Floridians against such drivers, motorists should reasonably accept the minor inconvenience which they may endure at a properly run DUI roadblock.

438 So.2d at 438 (citations omitted).

It could therefore be argued, that if a DUI/sobriety checkpoint adheres to the factors enumerated in *Jones*, specifically that the written set of uniform guidelines detailing all procedures and personnel and sets forth specific procedures that checkpoint officers make contact with the driver, have the driver roll down the window for brief questioning, obtain the driver's license, registration and insurance, and to determine a driver's possible impairment, such guidelines would be constitutional in light of the holdings in *Jones, Sitz,* and *Martinez-Fuerte*.

The Fourth District Court of Appeal, in *Rinaldo v. State*, 787 So.2d 208 (4th DCA 2001), following the precepts set forth in *Jones*, *Sitz*, and *Martinez-Fuerte*, held that a defendant's removal from his vehicle at a DUI checkpoint was not a violation of his Fourth Amendment rights. In *Rinaldo*, a multi-agency DUI checkpoint was conducted by various law enforcement agencies within Broward County under a mutual aid agreement. The checkpoint was set up using cones, signs and flashing lights to alert the motoring public and created a deceleration area for vehicles to flow from multiple lanes into one. The defendant was directed to divert into the checkpoint area but ignored the point officer's directions. Another officer pulled over the defendant and approached the driver's side of the vehicle. The vehicle's windows had dark tint and the driver's side window was partially open. The defendant refused to comply with the officer's command to open the window further or open the door. Concerned for his safety, the officer opened the vehicle door himself, which the defendant continued to close, until the officer was able to position himself to keep the door open. The officer requests the defendant's license, registration and proof of insurance. After a brief delay, the defendant produces his license and then proceeds to hold and hand-held tape recorder up to the officer's face, before producing his registration and insurance. The officer requests to speak with the driver at the read of his vehicle. The defendant has difficulty exiting the vehicle and uses the side of the vehicle to support himself as he walked to the rear of the vehicle. The defendant refuses to respond to any questions asked by the officer. The officer makes other observations of impairment including, an odor of alcohol on the defendant's breath, bloodshot eyes, flushed face, and slurred speech.

Based on the officer's observations, the defendant was arrested for DUI. A search of the defendant then revealed a .22 caliber handgun in his back pocket. The defendant was charged with DUI, carrying a concealed weapon, resisting without violence, and no proof of insurance.

The defendant moved to suppress the stop claiming that the checkpoint guidelines failed to address the detention procedures to be followed by law enforcement upon encountering a motorist who fails to fully cooperate and comply with checkpoint commands, thereby violating his Fourth Amendment rights. In addition, the defendant claimed that the officers used an aggressive approach in opening the vehicle door and ordering him out of the vehicle. The trial court denied the defendant's motion, and the Fourth DCA affirmed, holding that the checkpoint was lawful and that the removal of the defendant from his vehicle did not violate his Fourth Amendment rights.

The *Rinaldo* court stated:

> The court explained that "[b]ecause DUI roadblocks involve seizures made without any articulable suspicion of illegal activity," an advance plan with neutral and specific criteria is necessary to limit the amount of police officer discretion and reduce the risk of abuse. The court noted that "[i]deally, these guidelines should set out with reasonable specificity procedures regarding the selection of vehicles, *detention techniques*, duty assignments, and the disposition of vehicles." *Jones*, 483 So.2d at 438. (emphasis added). However, the court went on to say that "if the guidelines fail to cover each of these matters they need not necessarily fail. Rather, courts should view each set of guidelines as a whole when determining the plan's sufficiency."

Rinaldo, 787 So.2d at 211.

The court further noted that checkpoint guidelines in *Rinaldo* provided that "[e]very encounter with a stopped vehicle included a request for documentation and some preliminary questioning and observation for signs of alcohol impairment." *Id.* at 212. The court did note that "ideal" checkpoint guidelines might anticipate a driver who refuses to cooperate at a DUI checkpoint, such a plan would be *per se* unconstitutional. *Id.* **"Motorists are neither expected nor privileged to refuse to obey these minimal, necessary and legitimate demands at a valid roadblock."** *Id.* (emphasis added).

Moreover, the court noted, "as the state points out, **a driver who is lawfully stopped for a DUI checkpoint is under a legal obligation to respond to an officer's requests for certain information and documents,** and the driver's refusal to respond to these requests may constitute the misdemeanor offense of obstructing or opposing an officer." *Id.* (emphasis added). If a driver engages in obstructive conduct under Fla. Stat. 843.02, "then standard police detention and arrest procedures, rather than checkpoint guidelines, would govern the officer's handling of the situation." *Id.*

The court agreed that the detention of a motorist for a more extensive investigation requires a satisfaction of "an individualized reasonable suspicion standard." *Id.* at 213. However, the court did not agree with the defendant that the circumstances surrounding the checkpoint were insufficient to provide the officer with reasonable suspicion that the defendant was engaged in criminal activity. "As we stated earlier, motorists are obligated to comply with an officer's reasonable requests at a valid roadblock and must 'accept the minor inconvenience which they may endure.' *Jones*, 483 So.2d at 438." *Rinaldo*, 787 So.2d at 213-14.

The purpose of DUI/sobriety checkpoints is to detect and apprehend impaired drivers and attempting to use a flyer such as the one at issue in order to avoid making contact with checkpoint officers undermines the purposes of a DUI/sobriety checkpoint. As the court in *Rinaldo* noted:

> **Refusing to interact with an officer and allow the officer an opportunity to observe the driver for signs of impairment defeats or frustrates the very purpose of the roadblock, i.e., to detect impaired drivers. Here, appellant's conduct both before and during the roadblock was sufficient to raise reasonable suspicion that he was engaged in criminal activity, i.e., obstructing or attempting to obstruct or oppose an officer during the lawful execution of a duty.** (emphasis added).

Id. at 214. The court further noted that the defendant did "drive past the roadblock without stopping and then refuse to roll down his window or open his door when approached," "insisted on keeping his door closed, even after [the officer] opened it, leading the officer to believe that appellant was trying to prevent him from having a clear view inside his vehicle," "hesitated in handing over his driving documents and appeared... to be deliberately interfering with the officer's performance of his roadblock duties." *Id.* These circumstances, the court held, gave the officer reasonable suspicion to believe that the defendant was engaged in obstructive conduct, and additionally gave the officer reason to fear for his safety and to order the defendant out of his vehicle.

Under *Rinaldo* and the preceding caselaw, it seems clear that a driver's refusal, at a DUI/sobriety checkpoint, to interact with officers by refusing to roll down their window, or through a slightly lowered window, and refusal to present or submit their driver license to the officer, defeats or frustrates the very purpose of the DUI/sobriety checkpoint as stated in *Jones*, 438 So.2d at 438, and reiterated in *Rinaldo*, 787 So.2d at 213. While the issue of whether the driver must answer the officer's questions at a DUI/sobriety checkpoint or whether they can remain silent may still be at issue, at a minimum, according to the caselaw, the driver must roll down their window at a DUI/sobriety checkpoint, submit their driver license, registration and insurance to the officer and allow the officer to ask them a limited set of questions. Whether the driver chooses to respond is up to the driver—although caselaw makes it clear that doing so may result in obstructive conduct which could subject the driver to arrest for obstructing or opposing the officer's lawful execution of a legal duty.

A driver who fails to obey the lawful orders of an officer at a DUI/sobriety checkpoint may be in violation of Fla. Stat. 316.072 – Obedience to and effect of traffic laws. Fla. Stat. 316.072(3) states that it is unlawful and a misdemeanor of the second degree for any person willfully to fail or refuse to comply with any lawful order or direction of any law enforcement officer. This would include any officer at a DUI/sobriety checkpoint. Be aware that, although it has been argued in the past, Fla. Stat. 316.072(3) is *not* limited to orders given in emergency situations. *Koch v. State*, 39 So.3d 464 (2nd DCA 2010) (statute making it unlawful "willfully to fail or refuse to comply with any lawful order or direction" of a law enforcement officer, traffic crash investigation officer, traffic infraction enforcement officer, or "member of the fire department, rescue operation, or other emergency" was not limited to orders given in emergency situations, except with respect to orders given by a member of the fire department; language referring to emergency situations applied only to members of the fire department, and not the other personnel listed in the statute). The driver may also be in violation of Fla. Stat. 843.02 – Resisting officer without violence to his or her person, if the driver resists, obstructs, or opposes any officer in the execution of legal process or one who is in the lawful execution of a legal duty, without offering or doing violence to the person of the officer.

"I remain silent."
"No searches."
"I want my lawyer."

Requiring the driver of a vehicle at a DUI/sobriety checkpoint to roll down their window and presenting or submitting their driver license to the officer, does not, require a driver to say anything, nor does it, without more, require the driver to consent to a search or subject him or her to an unreasonable search. Roadside questioning of a motorist detained pursuant to a routine traffic stop does not constitute custodial interrogation for the purposes of *Miranda*. *See Berkemer v. McCarty*, 468 U.S. 420 (1984); *and State v. Burns*, 661 So.2d 842 (5th DCA 1995) (however both of these cases deal with a routine traffic stop and not DUI/.sobriety checkpoints). Furthermore, as well settled by caselaw, the right to counsel does not attach until the initiation of adversary criminal proceedings, "whether by way of formal charge, preliminary hearing, indictment, information or arraignment." *Kirby v. Illinois*, 406 U.S. 682, 689 (1972); *Langlier v. Coleman*, 861 F.2d 1508, 1510 n.3 (Fed. 11th Cir. 1988); *Traylor v. State*, 596 So.2d 957 (Fla. 1992). None of the these statements on the flyer should be construed as valid reasons for a driver of a vehicle who is stopped at a DUI/sobriety checkpoint, to not roll down their window, or to not present or submit their driver license, registration and proof of insurance to an officer.

Conclusion

Just because a driver displays this flyer at a DUI/sobriety checkpoint, officers should not be fooled into thinking they have no recourse but to allow the driver to proceed through the checkpoint without making any contact.

Based on the caselaw and the requirements therein, a DUI/sobriety checkpoint that adheres to strict and specific guidelines that include, among other procedures, instructing a motorist to roll

down their window so that checkpoint officers may conduct a brief questioning of the driver, have an opportunity to make observations of the driver for signs of impairment, and for the driver to present or submit their diver license, registration and insurance documentation, should be held to constitutionally valid. This, of course, assumes that the checkpoint guidelines are otherwise in compliance with the prerequisites set forth by the Supreme Courts of the United States and the State of Florida.

If you have any questions, please feel free to contact Garett Berman, via telephone at (850) 566-9021 or via e-mail at GarettBerman@FloridaTSRP.com, or Sharon Traxler via telephone at (850) 566-2022 or via e-mail at SharonTraxler@FloridaTSRP.com.

Summary/Recommendations

- The officer determines how to deliver the citation to the person cited.
- The driver may be required to sign the citation for any of the following:
  - A criminal traffic violation listed in Chapter 316
  - An infraction that results in a crash causing serious bodily injury or death of another as defined in Fla. Stat. 316.1933(1)
  - Failing to stop for a properly stopped school bus displaying a stop signal, under Fla. Stat. 316.172
  - A violation of improper load limits under Fla. Stat. 316.520(1) or (2)
  - A speeding violation in excess of 30 mph above the speed limit
- The driver must present or submit his or her driver license to the officer
- The officer should inspect the driver license to ensure it is not faded, altered, mutilated, or defaced.
- The officer should run the computer check of the driver's documentation to ensure that the license, registration and proof of insurance are valid
- The driver may be required to roll down their window to present or submit their driver license, registration and proof of insurance and to answer brief questioning
- A driver who fails to respond to an officer's request for this information and documentation may constitute the offense of obstructing or opposing an officer
- Checkpoint guidelines and procedures should include (but not be limited to):
  - Instructing the driver roll down their window
  - Informing the driver of the reason for the checkpoint
  - Any questions to be asked of the driver
  - Requesting of driver license, registration and proof of insurance
  - Ensure that all driver documentation is valid
  - Although it is not required, the officer in charge may want to consider how they will deal with drivers displaying the flyer or other difficult drivers
- Be aware that driver displaying this flyer may also be video/audio taping their encounter at the checkpoint
  - Be sure to treat each driver with courtesy and respect
  - It is recommended that officers give drivers, displaying the flyer or not, a few opportunities to comply with the requests given before using any lawful force
- Always document everything, especially in dealing with difficult situations.

Please remember that the opinions and analyses expressed herein may not necessarily be the same as those in all law enforcement agencies and State Attorney Offices in Florida. Please consult your local law enforcement agency's legal counsel or the State Attorney's Office in your jurisdiction regarding any issues of applicability or application in your jurisdiction.

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