
LEGAL BULLETIN

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

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ACCIDENT REPORT PRIVILEGE

Application of the accident report privilege, found at s. 316.066(4) Fla. Stat., has often been a source of confusion for Troopers and the Courts. It is important to understand and comply with its requirements in order that statements made by those "involved in a crash" are admissible in administrative, civil and criminal proceedings, which are likely to follow a crash investigation, especially where there is a DUI arrest. The following is a series of practice pointers to be utilized when confronted with proving a person was the operator of a vehicle when a crash is involved.

1. What is the basis for the privilege and whom does it protect?

The purpose is to encourage candor in making crash reports for use in determining the nature and causes of vehicle crashes. The intent of the law is to protect a person's Fifth Amendment privilege against self-incrimination during the accident-reporting phase of an investigation. It provides, in relevant part, as follows:

... each crash report made by a person involved in a crash and any statement made by such person to a law enforcement officer for the purpose of completing a crash report required by this section shall be without prejudice to the individual so reporting. No such report or statement shall be used as evidence in any trial, civil or criminal. However, subject to the applicable rules of evidence, a law enforcement officer at a criminal trial may testify as to any statement made to the officer by the person involved

in the crash if that person's privilege against self-incrimination is not violated. s. 316.066(4), *ibid.*

"Persons involved in a crash" has been interpreted to include a driver, owner or occupant involved in a crash. Brackin v. Boles, 452 So.2d 540 (Fla. 1984). This rule was recently confirmed in White v. Consolidated Freightways, 25 Fla. Law Weekly D2327 (Fla. 1st DCA Sept. 25, 2000). It does not apply to witnesses (bystanders) who observed the crash. McTevia v. Schrag, 446 So.2d 1183 (Fla. 4th DCA 1984). However, it could apply to the driver and occupants of a vehicle who were not at fault in a crash, if these individuals raise the privilege as to themselves at the administrative hearing, since they may also be considered "involved." It does not apply to spontaneous statements made by any of the foregoing persons who voluntarily make statements to the Trooper without direct questioning, such as, "Oh, Officer, I just didn't see that stop sign." Perez v. State, 630 So.2d 1231 (Fla. 2d DCA 1994). A suspected hit and run driver is not entitled to the accident report privilege. Cummings v. State, 26 Fla. Law Weekly D 126 (Fla. 2d DCA 2000)

2. So how does the Trooper place the defendant behind the wheel where the only evidence arises from a crash investigation?

Physical evidence observed at the scene is not covered by the privilege and sometimes it alone can be enough. For instance, in a crash involving two vehicles, two drivers and no other occupants, the person to whom the at-fault vehicle is registered or in which is found their personal belongings should establish evidence of operation, at least for administrative and civil cases. Skid marks, vehicle position, types of personal injury and

vehicle damage are other types of admissible evidence. Hammond v. Jim Hinton Oil Co., 530 So.2d 995 (Fla. 1st DCA 1988). Field sobriety tests are not covered by the privilege. State v. Edwards, 463 So.2d 551 (Fla. 5th DCA 1985).

The privilege does not apply to a person who has been Mirandized, s. 316.066(4) *supra*. If you are the crash investigator and believe that alcohol or drugs may be involved, following the crash investigation you should "switch hats" and advise the individuals that you are conducting a criminal investigation to include the reading of the Miranda Warning. Troopers called to a scene to conduct a DUI investigation must also Mirandize those involved who are subjects of the criminal investigation, in order to insure the admissibility of their statements, even if the crash investigator identifies the driver/suspect, unless the crash investigator got the statement after Miranda. Statements made after Miranda do not violate the privilege against self-incrimination and should be admissible in all hearings, State v. Marshall, 695 So.2d 686 (Fla. 1997); State v. Norstrom, 613So.2d437 (Fla. 1993). Witnesses (bystanders) who are not involved in the crash do not have to be Mirandized. Other persons involved, including passengers, do not need to be Mirandized because their privilege against self-incrimination would ordinarily not become an issue. Please ensure, especially for the Administrative Suspension hearings that often proceed on written documents only, that your probable cause or arrest affidavit contains information about the Miranda Warning and that you re-asked the question of who was driving along with the appropriate answer after the warning was given. Your paperwork must show how you place the defendant behind the wheel, either after Miranda or by some other means, such as a spontaneous statement, physical evidence you observed, or other witness/bystander information. In your investigation, use of Miranda and your documentation of how the information was obtained are critical elements in the suspension process.

3. If the only evidence I have of vehicle operation is through the crash investigation, should I arrest a person for DUI even though the privilege could apply?

Yes. The privilege would not apply to statements given after Miranda. The privilege is also waivable, see section 90.507 Fla. Stat. When a Trooper has developed probable cause for an arrest through an investigation, which can include hearsay statements, an appropriate arrest or charge may be made. See section 316.645 Fla. Stat.; Department of Highway Safety and Motor Vehicles v. Smith, 687 So.2d 30 (Fla. 1st DCA 1997).

4. Does the privilege apply to administrative suspension hearings conducted by the Department pursuant to section 322.2615, Fla. Stat.?

Yes. These same considerations need to be dealt with in the hearings before the Department's Bureau of Administrative Review. Nelson v. Department of Highway Safety and Motor Vehicles, 757 So.2d 1264 (Fla. 3d DCA 2000); Department of Highway Safety and Motor Vehicles v. Perry, 702 So.2d 294 (Fla. 5th DCA 1997).

5. What does the future hold?

The Department currently has a case on appeal to the First District on the extent of the accident report privilege, including what constitutes a spontaneous statement and the effect of admissions made post-Miranda. If the Hearing Officer is in doubt about application of the privilege to a particular case, they should call one of the Department's attorneys.

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