



REQUEST FOR PUBLIC RECORDS FROM ANONYMOUS SOURCE MAY NOT BE DENIED ANALYSIS OF CHANDLER v. CITY OF GREENACRES (FOURTH DCA)

This is a summary of a recent appellate decision involving public records of which employees of the Department should be aware. The full opinion is posted on the Fourth DCA's website.

In this case, a member of the public made a public records request to the city by e-mail. The e-mail address did not identify the person's name, but the body of the e-mail used the pronouns "I" and "me." Three other e-mails were sent to city employees requesting documents from the same e-mail address. The city clerk responded to the messages by notifying the sender to fill out a form on the city's web page for obtaining public documents. No form was filled out, and five months later, a sender from the same e-mail address again e-mailed the city and asked when the sender would receive the documents.

Again, the clerk informed the sender that the city's form needed to be filled out in order for the city to determine the cost of production of the documents.

A month later, the sender of the e-mail, Joel Edward Chandler, filed an action in court, demanding production of the records and also seeking attorney's fees and costs. The trial court dismissed the petition, and Chandler appealed.

On appeal, the city argued that it did not improperly deny access to the requested records, but rather wanted to obtain payment prior to furnishing the records. The city argued that the requirement for the requester to fill out the city's form was merely an attempt to obtain an "address or other identifiable source of payment of the associated costs."

Citing to well-established case law, the Fourth DCA rejected

this argument, noting that "[T]he Public Records Act does not condition the inspection of public records on any requirement that the person seeking to inspect records reveal that person's background information." Furthermore, "[a] requester's motive for seeking a copy of documents is irrelevant" to the requester's right to access the records.

The Fourth DCA agreed with an Attorney General Advisory Opinion which stated that "[a] person requesting access to or copies of public records . . . may not be required to disclose his [or her] name, address, telephone number or the like to the custodian, unless the custodian is required by law to obtain this information prior to releasing the records."

The Fourth DCA concluded that:

The city could not properly condition disclosure of the

public records, to the then-anonymous requester on filling out the city's form and giving an "address or other identifiable source for payment of the associated costs." The city could have sent an estimate of costs through e-mail to the requester just as it could through regular mail, had the request been made via paper by an anonymous requester. Requiring appellant to provide further identifying information prior to disclosure could have a chilling effect on access to public records and is not required by the Public Records Act.

Thus, in keeping with other decisions, this case makes clear that the custodian of public records may not require a requester to fill out a form, provide any identification, or make a public records request in writing. Further, it is a reminder to respond to such requests in a timely manner.

By: Nicholas Merlin

PLEASE WELCOME OUR NEW LEGAL ADVISORS

The Office of General Counsel has opened a new regional legal office in Bradenton to provide FHP Troops C, F, and J with assistance concerning legal issues arising in Southwest Florida. Attorney Karen Lloyd and Paralegal Cindy Pritchett are glad to be co-located with our troopers and look forward to discussing general legal issues related to their activities, including traffic enforcement, DUI, forfeiture, and any other questions concerning civil litigation.

The Office of General Counsel also opened a new regional legal office last year in Miami. Attorney Natalia Costea and Paralegal Judy Medina are co-located with Troop E. They have participated recently in forfeiture training and law enforcement training related to Ch. 322 administrative license suspensions.

In Tallahassee, the Office of General Counsel welcomed this year Attorneys Todd Sumner, Nicholas Merlin, and Danielle Roth. Todd is handling rule-making and legislative matters while Nick is the new Troop A Legal Advisor and Danielle is working with CVE Troop I while also advising Motorist Services regarding dealer licensing issues and title matters.

Our attorneys are eager to serve the Patrol, Administrative Services, and Motorist Services as the need arises.



FORFEITURES: THE RIGHT TO AN ADVERSARIAL PRELIMINARY HEARING

In *re* Forfeiture of 2003 Chevrolet, 932 So. 2d 623 (Fla. 2d DCA 2006) holds that the failure to request an adversarial hearing by certified mail within 15 days of seizure does not result in waiver of the right to a hearing where the Department receives actual notice of the request. In this case, the Department seized a vehicle for leaving the scene of a crash with serious bodily injury and gave proper notice to the owner of his right to an adversarial hearing. The Florida Statutes specifically provide that the person whose property is seized has a right to an adversarial hearing and must make the request by certified mail, return receipt requested within 15 days of receiving the notice of seizure. The hearing must be set within 10 days after the request is received, or as soon as practicable thereafter.

In this case, the claimant's attorney initially sent a request for a hearing to the Department by regular mail, not certified mail as required by §932.703(2)(a), F.S. but within the 15 day period. The Department notified the claimant's attorney that the request for hearing did not comply with the mailing requirements of the statute and the attorney then mailed a proper request, but by that time the request was past the 15 day window. Because the hearing was not properly requested within 15 days, the Department did not set it for hearing. Because there was no hearing set, the circuit court reviewed the complaint and affidavits and the judge found probable cause on that basis. The claimant moved to set aside the order finding probable cause, and

argued that the Department had received actual notice of his request for a hearing. The trial court agreed, set aside the order finding probable cause, and ordered the return of the vehicle. The Department appealed and argued that the requirements of the forfeiture statute must be strictly construed, therefore, the claimant's failure to request a hearing by certified mail within 15 days waived his entitlement to an adversarial preliminary hearing. The Second District Court of Appeal disagreed.

The Second District Court held that the trial court correctly observed that "[d]ue process mandates that the provisions of the forfeiture act be strictly interpreted in favor of the persons being deprived of their property." Therefore, the district court held, in agreement with the lower court, that the Department should have set an adversarial preliminary hearing. The district court found, however, that the trial court went too far in returning the vehicle and the proper remedy would have been to set the case for hearing with proper notice to the claimant. The district court reversed the order returning the vehicle and remanded for further proceedings, presumably to proceed with the adversarial hearing. This case makes clear that whenever the Department has actual notice that the claimant wants a hearing the Department should schedule a hearing even if the notice sent is defective. This would seem to include instances where a claimant not only sends defective notice but also instances in which claimants somehow place the Department on notice that they are requesting a hearing. For example, making a phone call to the Department instead of sending a certified letter.

By: Natalia Costea

BULLET PROOF JURATS *(Continued on page 5)*

Did you know that your "jurats" are being attacked every day? My what? Your jurats. You know, those little clauses at the bottom of your probable cause affidavits and breath test refusal affidavits where you swear that what you are saying is true. That's right. Creative defense attorneys are looking for and finding defects in them, and then using

those defects to argue that charges should be dismissed or that driver license suspensions should be invalidated and set aside. And your lawyers – Assistant State Attorneys, and attorneys for the Department of Highway Safety – are daily defending them, both in criminal court and in administrative suspension proceedings.

Let's talk about how you can make them "bullet-proof" or at least a lot less vulnerable to attack.

First, it is helpful to examine the function of an affidavit. Affidavits are used to validate and authenticate written statements, and basically turn written statements into sworn statements in the absence of a live witness in court. If the witness appeared in per-

son, he would simply take an oath in front of the judge or trier of fact swearing to or affirming the truthfulness of his testimony, and then provide the testimony. There are several types of notarial certificates, but the one used on an affidavit is the *jurat* because it requires an oath. By using a *jurat*, a notary guarantees that the signer personally appeared before the

LEGISLATIVE CHANGES TO CH. 322 FORMAL REVIEW HEARINGS

Under a recently amended version of section 322.2615(11), if the arresting officer or breath technician fails to appear at a formal administrative review hearing after having been served with a subpoena, the Department must invalidate the administrative DUI suspension. Once the formal review hearing is concluded, there is no longer a chance for the non-appearing witness to show just cause or provide a reason for failing to appear.

This new law applies to formal review hearings for cases involving both "refusal" and driving with an unlawful breath-alcohol level or "DUBAL." It applies to all cases in which DUI arrests were made after July 1, 2013. However, the law applies only to the arresting officer or breath technician and not to other witnesses. If any other subpoenaed witness fails to appear at the formal review hearing, then the driver can enforce the subpoena by filing for enforcement in the criminal DUI case. At the enforcement hearing, the judge can order the witness to attend the formal review hearing or face contempt charges. If the driver refuses to enforce the subpoena, there is no requirement that the hearing officer invalidate the administrative license suspension.

Does this new law mean that law enforcement officers involved in DUI arrests will start seeing a lot more subpoenas for formal review hearings? Actually, they will be seeing less because less formal review hearings are being held due to another recent amendment to Chapter 322 which allows first time DUI of-

fenders to waive the right to a formal review hearing and obtain a BPO (Business Purposes Only) license immediately. This new amendment to section 322.271(7), applies only to those arrested for DUI after July 1, 2013, who are without any prior DUI convictions or administrative suspensions. Drivers cannot have any prior convictions of DUI in any state, prior convictions for reckless driving that were reduced from a DUI criminal charge, or drug-related traffic offenses. Additionally, drivers must enroll in a DUI school substance abuse education course prior to receiving a BPO license. Drivers who qualify for a waiver, have only 10 days from the time of their DUI arrest to request the waiver. A driver who chooses waiver cannot change his/her mind and seek a formal review hearing because it has been waived.

A driver who waives the right to a hearing will have either a suspension for driving with an unlawful breath-alcohol level or refusing to take a breath test on his/her permanent driving record. The suspension on the driving record will not be removed even if the criminal DUI case is dismissed. The waiver option has given the Department an opportunity to track suspended drivers who might not have sought a formal review hearing and taken the risk of driving without a permit during their suspension period. While many drivers are still challenging their administrative DUI suspensions by requesting formal review hearings, recent numbers show a sharp decrease in the amount of hearings being held. And that translates into more time patrolling the roads for our troopers.

By: Jason Helfant

JOHN'S GEMS - PRUDENT PURCHASING ADVICE

The following advice is meant for both the regular employees of the Florida Department of Highway Safety and Motor Vehicles and those who provide legal counsel to them.

Chapter 287 of the Florida Statute governs most of what is purchased by the Department. Individual items purchased by use of a P-Card are not covered within this article and should be made in accordance with Department policy and procedures.

There are a very limited number of individuals within the agency who have the legal authority to enter into contracts on behalf of the Department. The following individuals have been authorized to enter into contracts on behalf of the Florida Department of Highway Safety and Motor Vehicles:

Terry L. Rhodes, Executive Director
 Leslie Palmer, Chief of Staff
 Deana Metcalf, Director of Administrative Services
 Jonathan Kosberg, Chief of Purchasing and Contracts
 Reggie Hough, Chief of Office Services

If you are not one of the above listed individuals make sure that you have the authority to enter into the agreement you are considering. *(Continued on page 4)*

Within chapter 287 there are various methods of procurement. Some of the most common include:

Request for a quote.—An oral, electronic, or written request for written pricing or services information from a state term contract vendor for commodities or contractual services available on a state term contract from that vendor.

Invitation to bid.—The invitation to bid shall be used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.

Request for proposals.—An agency shall use a request for proposals when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables. Various combinations or versions of commodities or contractual services may be proposed by a responsive vendor to meet the specifications of the solicitation document.

Invitation to negotiate.—The invitation to negotiate is a solicitation used by an agency which is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.

Choosing the correct method of procurement should be based on a discussion between you, your supervisor and the purchasing department. Once the decision has been made as to the best method of procuring the item(s) you are seeking, the purchasing office will help guide you through the remainder of the process.

General tips for the procurement of goods and services:

- * Have a plan as to what, when, and where you would like to purchase your goods or services.
- * Be as specific as you can be with respect to what it is you want to buy.
- * Give yourself enough time to go through the process of procuring the goods and services you need.
- * Contact the purchasing office to determine a time frame for making the purchase in your particular case.
- * Talk with your supervisors to make sure you have authorization to proceed with the purchase.
- * Finally, remember the old saying that procrastination on your part does not constitute an emergency for anyone else.

By: John McCarthy

ANONYMOUS 911 CALLER'S REPORT FOUND SUFFICIENTLY RELIABLE BY UNITED STATES SUPREME COURT TO UPHOLD TRAFFIC STOP AND DRUG ARREST

The United States Supreme Court recently decided the case of *Prado, Navarette, et al. v. California*, in which two California Highway Patrol officers stopped a pickup truck that matched an anonymous caller's description of a vehicle that had run her off the road. The anonymous caller described the brand name and model for the pickup truck as well as the truck's license plate number. Law enforcement located the truck only 18 minutes after the 911 call.

When the officers approached the truck, they smelled marijuana and arrested the driver and passenger after finding 30 pounds of marijuana in the truck's bed. The defendants tried to suppress this evidence by arguing that the traffic stop was illegal in violation of the Fourth Amendment. Their motion to suppress was denied. The California Court of Appeal affirmed the trial court's ruling and so did the United States Supreme Court, which held that the traffic stop was lawful because running another car off the road suggests the sort of impairment that characterizes drunk driving.

The Supreme Court found that while that conduct might be explained by another cause such as driver distraction, reasonable suspicion "need not rule out the possibility of innocent conduct." *United States v. Arvizu*, 534 U.S. 266, 277 (2002). Based on the anonymous 911 call, the officer was justified in proceeding from the premise that the truck in question had, in fact, caused the caller to be run off the road. Although the stopping officer failed to observe any suspicious conduct during the short period he followed the truck, that did not dispel the reasonable suspicion of drunk driving derived from the tip, and the officer was not required to observe the truck for a longer period of time before stopping the driver.

Even though the officers did not observe the reported behavior, under the totality of the circumstances, the officers had reasonable suspicion that the driver was intoxicated based on the driving pattern reported by the anonymous caller and her description of the vehicle. "By reporting that she had been run off the road by a specific vehicle, the caller necessarily claimed an eyewitness basis of knowledge. The apparently short time between the reported incident and the 911 call suggests that the caller had little time to fabricate the report. And a reasonable officer could conclude that a false tipster would think twice before using the 911 system..." This case makes it clear that officers may rely on eyewitness testimony even if it is from an anonymous caller as long as it is specific enough and recent enough to establish a reasonable suspicion that criminal activity is underway.

By: Damaris Reynolds

the signer personally appeared before the notary, was given an oath by the notary attesting to the truthfulness of the document, and signed the document in the notary's presence. Thus, affidavits serve as a method of authenticating statements. The word *jurat* comes to us from the Spanish word *jurare* (to swear) which emanated from the Latin word *juratum* (sworn). The jurat may seem like an archaic, unnecessary formality, but nothing could be further from the truth. And while Florida Statute section 117.10 permits law enforcement officers to administer oaths/act as notaries when engaged in the performance of official duties, and exempts law enforcement affidavits from many of the technical requirements found in Florida Statutes, Chapter 117, your affidavits are still subject to a number of procedural requirements.

A few reminders, for both affiants (arresting officers) and attesting officers (notaries):

It is important that the notary or attesting officer positively *identify* the signer, as he/she is certifying that the signer attested to the truthfulness of the document's contents under penalty of perjury.

You need not indicate in the jurat the specific *type* of identification you are relying on in identifying the signer (whether the affiant was personally known by the notary or produced identification), because Fla. Stat. §117.10 exempts you from this notarial requirement. However, if the jurat form displays blocks delineating the method of identification, check or X the appropriate box.

The attesting officer *must* administer an oath to the affiant or arresting officer per Fla. Stat. §117.03. If no other wording is prescribed, you may use the following language when administering an oath for an affidavit: "Do you solemnly swear or affirm that the statements made by you in this document are true and correct to the best of your knowledge?" "I so swear", "I so affirm", and "Yes" are all acceptable answers. When administering oaths, parties should raise their right hands. The left hand may be used in cases of disability.

Sign the affidavit and/or the jurat, in the space allotted for your signature. Both the "affiant" (generally the arresting officer) and the "attestor" (notarizing officer) must sign. In no case should you simply *initial* the affidavit or the jurat. These items must contain full signatures.

Try to make your signature legible. However, if it is generally not legible, do not change it when signing an affidavit. It should be consistent with other signatures you have made.

Do not notarize your own signature. This is prohibited by Florida Statute §117.10 and Chapter 117.

Always neatly *print* your name near your signature (below or above it, or to the left or right of it; or in the block designated for that purpose, if there is one). This applies to both affiants and attesting officers.

Specify the agency of each officer – e.g., 'Florida Highway Patrol' or 'Pinellas County Sheriff's Office' – so there is no problem connecting the arresting officer and notarizing officer to his/her respective agency. If you are taking an arrestee to a county jail, your affidavit will often be signed in front of someone from another agency; make sure it is clear who everyone works for.

Officer identification numbers/badge numbers in probable cause affidavits are neither required nor prohibited by law. Your agency may prescribe them. If you do include this number, it may strengthen the affidavit, as the number further confirms the officer's identity and provides another link to his particular law enforcement agency.

Specify whether the individual administering the oath and witnessing the signature is a notary or a law enforcement officer. Sometimes, the jurat form contains 2 blocks for this purpose, one of which should be checked.

Always include the date (month, day, year) the oath is administered and the jurat is being completed, e.g., "June 12, 2014" (usually the same date as the arrest).

No notary seal is needed if the attesting officer is a law enforcement officer and not a regular notary. Florida Statute §117.10 dispenses with this requirement.

The affiant and attesting officer should read over the jurat after completing it. Ensure it makes sense, and is filled out the way it is designed to be filled out, before submitting it through the chain of command.

Affidavits are and have historically been important to the legitimacy of our judicial system. This is because evidence in legal proceedings is often submitted through affidavits or sworn statements rather than through appearance and live testimony of those with personal knowledge of an event. The jurat is a critical piece of the affidavit, as it goes to the integrity of the fact-finding process and "perfects" your statement. It is crucial then that this clause be filled out fully and correctly after an oath is administered.

By: Karen Lloyd

On May 27, 2014, the United States Supreme Court issued its opinion in a case involving the use of force by police officers in West Memphis, Arkansas. The lower court previously held that the officers used excessive force in violation of Fourth and Fourteenth Amendments, when they fired three shots into a driver's car and then 12 additional shots as the driver sped away. Both the driver and his passenger died from a combination of gunshot wounds and injuries resulting from their subsequent crash.

In an opinion written by Justice Alito, the Supreme Court reversed the decision of the lower court and found that the officers' conduct did **not** violate the Fourth Amendment but, even if it had, the officers would be entitled to qualified immunity as the plaintiff (the daughter of the deceased driver who attempted to flee from the officers) did not cite to any case law that clearly established that the use of lethal force to end a high-speed car chase is unconstitutional.

According to the facts in this case, around midnight on July 18, 2004, a West Memphis police officer stopped a white Honda Accord because of a broken headlight. The officer noticed an indentation in the windshield and also believed the driver, Donald Rickard, was showing erratic behavior while he was unable to produce his driver's license. When the officer asked Rickard to step out of his vehicle, he fled, leading six police officers on a high-speed chase on Interstate 40, heading across the Mississippi River, and into Memphis, Tennessee. Rickard passed dozens of vehicles and then rammed a police vehicle causing his vehicle to spin out and hit another police vehicle. Rickard then put his car in reverse in an attempt to escape, while two police officers, including Officer Plumhoff, approached his vehicle and pounded on the passenger-side window. Rickard then hit a third police vehicle, as Officer Plumhoff fired three shots into Rickard's car. Rickard reversed in a 180 degree arc and drove onto another street forcing an officer to step to the side to avoid being hit. As Rickard continued to flee down the side street, two officers fired 12 shots toward Rickard's car, at which point he lost control of the car and crashed into a building. Both Rickard and his passenger died.

Rickard's daughter sued the six police officers, as well as the mayor and chief of police of West Memphis, alleging that the officers used excessive force. According to Ms. Rickard, the Fourth Amendment did not allow the officers to use deadly force to terminate the chase; and, even if the officers were allowed to fire their guns, they were not permitted to fire as many rounds as they did.

The Supreme Court first looked at the question of whether the law enforcement officers used excessive force in violation of the Fourth Amendment and analyzed the question from the perspective of "a reasonable officer on the scene, rather than with 20/20 vision of hindsight." The Court noted that it had previously held that a "a police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death." According to the Court, when the shots were fired at Rickard's car, a reasonable police officer could only have concluded that Rickard was intent on continuing his flight and, if allowed to do so, Rickard would pose a deadly threat for other persons on the road. The Court added that, even after shots were fired, he was able to drive away as police officers tried to block his path. Therefore, the Court held "it is beyond serious dispute that Rickard's flight posed a grave public safety risk and...the police acted reasonably in using deadly force to end that risk;" and, "if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended."

The Court also held that Rickard's Fourth Amendment rights cannot be "enhanced" just because he had a passenger in his vehicle. According to the Court, "it was Rickard who put [the passenger] in danger by fleeing and refusing to end the chase, and it would be perverse if his disregard to [the passenger's] safety worked to his benefit." The Court concluded that under the circumstances in this particular case, the Fourth Amendment did not prohibit the police officers from "using the deadly force that they employed to terminate the dangerous car chase that Rickard precipitated." In addition, the Court held that the police officers were entitled to qualified immunity because their conduct did not violate any clearly established law.

By: Sandee Coulter

In April of 2013, the United States Supreme Court ruled that in order to seize a blood sample from a drunk driver, a search warrant is necessary unless an exception to the warrant requirement applies. The Supreme Court specifically held that the natural dissipation of alcohol from a suspect's blood in a routine DUI investigation in itself was not an exception to the requirement that a warrant be obtained prior to a search or seizure. The Supreme Court held that the exigent circumstances exception to the warrant requirement must be established on a case-by-case basis under the totality of the circumstances. In the wake of that ruling, questions and misinformation have arisen. The following has been developed to provide guidance to our FHP Troopers on how to comply with the *Missouri v. McNeely* ruling.

The U.S. Supreme Court decision in *McNeely*, changes the way that mandatory, felony blood draws under 316.1933, Fla. Stat., are to be handled. Misdemeanor DUI blood draws under 316.1932, Fla. Stat., remain unchanged and were not affected by the decision. Thus, the procedures for a Misdemeanor DUI remain unchanged. However, when Troopers encounter a felony blood draw under 316.1933 the following these procedures (which are also described in FHP Policy 17.04) apply.

As always, you must develop probable cause that an at-fault suspect was operating a motor vehicle, that the suspect was under the influence of alcohol or controlled substances and that the suspect caused or contributed to a crash that has resulted in serious bodily injury or death. These elements should be established by way of physical on-scene evidence, spontaneous admissions, information provided by other witnesses or by post-Miranda admissions of the suspect. It is not necessary to establish that the alcohol or drugs have caused impairment as in a normal DUI case, only that drugs and/or alcohol were involved. Serious injury is defined as a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ. Whether or not an injury is a "serious injury" is determined by the Trooper based upon the information available at the time of the blood draw request. The Trooper should have a good faith belief that serious bodily injury has occurred. The fact that an injury is later determined not to be serious is not relevant. It is only relevant that there was a reasonable belief that the injury was serious at the time of the request.

Once these elements have been established, the Trooper may seek to draw a blood sample as part of the investigation. The first step is simply to ask the suspect for consent to take a blood sample. If the suspect driver consents to the blood draw, there is no need for a warrant. Consent should be obtained without any coercion, threats, or promises and the implied consent warnings should not be given. When the suspect refuses to consent or is unable to consent it will be necessary to obtain a warrant unless another exception to the warrant requirement can be established. When seeking a warrant, the investigating Trooper should contact the on-call Assistant State Attorney or Troop Legal Advisor as soon as possible in order to expedite the warrant process. The investigating Trooper should explain the circumstances of the case and the need to obtain a search warrant for a blood draw. As soon as possible the Trooper should begin preparing a probable cause affidavit for the search warrant by using the templates on the MDT. The affidavit and warrant should then be forwarded to a judge for execution. If the suspect is or has been transported to a medical facility outside the county of the crash, the affidavit and warrant should be directed to a judge in the county where the medical facility where the suspect is being treated is located. Coordination with the on-call ASA or your Troop legal advisor will be critical during this period. If an attorney is not available you should attempt to go straight to the on-duty judge with your affidavit.

If a warrant is obtained, the blood sample should be taken using a FHP assigned blood draw kit. Blood samples must be drawn by medical personnel, pursuant to the request of or acting under the authority of a law enforcement officer and must be taken in a healthcare facility (which can include an ambulance present at the scene). Where a suspect refuses to comply, reasonable force may be used to obtain a blood sample. If the medical facility declines to do so you should retain custody of the suspect and attempt to make alternative arrangements by calling EMS or taking the person to a fire station that has EMS. Following the blood draw, the suspect would be released from custody and subsequently arrested based on the blood test results. *(Continued on page 8)*

If a warrant cannot be obtained in a timely manner, the investigating Trooper should have medical personnel “take a blood sample.” A blood sample should be drawn using your FHP assigned blood kit without obtaining a warrant where exigent circumstances are present that make obtaining the warrant in a timely manner unlikely. You **MUST** be able to demonstrate and document in your reports the exigent circumstances that justify why obtaining a warrant was unreasonable.

Such exigent circumstances include, but are not limited to, the following:

- Time necessary to obtain a warrant.
- The number of Troopers working a case.
- The nature of the deaths or serious bodily injuries.
- The on-call ASA was unavailable or unresponsive.
- The on-call Judge was unavailable or unresponsive.
- The Driver was going into surgery or was about to receive medical treatment which would negatively impact a blood sample (e.g., suspect about to be given morphine).
- Time elapsed from when crash occurred to need to draw blood.
- Time necessary to discover the accident had occurred.
- The suspect was transported to another county for treatment.
- Any other reason that would justify **not** delaying your drawing blood.

Generally, the passage of time necessary to get a warrant or the time elapsed from when the accident occurred cannot be the only exigent circumstance used to justify a warrantless blood draw. However, time elapsed or time necessary to get a warrant taken together or in combination with other circumstances should be sufficient. Please note that the evidentiary value of a blood sample is generally relevant only when taken within four (4) hours of the accident. When the suspect is being treated at a hospital or medical facility for injuries sustained, a medical blood sample is typically drawn by medical personnel. When medical blood testing has been conducted, the Trooper investigating the case can either obtain the results of the medical blood test or the actual medical blood sample vials for subsequent testing. Medical blood testing result records can be obtained either by a search warrant or by a subpoena issued by the State Attorney’s Office. The medical blood sample vials are typically held for 3 to 10 days by the hospital. A search warrant should be obtained for the blood sample vials and the sample vials should be submitted to FDLE for testing. Please check with your local FHP legal advisor or ASA regarding warrants or subpoenas for medical blood samples and medical blood results.

By: Richard Coln

ANALYSIS OF RILEY v. CALIFORNIA (U.S. SUPREME COURT)

On June 25, 2014, the U.S. Supreme Court decided the case of *Riley v. California*. Riley was stopped for a traffic violation, and was subsequently arrested for weapons charges. During search incident to arrest, the arresting officer found and seized a cell phone from Riley’s pocket. The cell phone contained a term commonly associated with a street gang. Post-arrest, a specialist in street gangs examined the cell phone and found photographs and videos connecting Riley with a shooting that had occurred a few weeks earlier. The State of California charged Riley and sought an enhanced sentence based on his gang membership. Riley filed a motion to suppress all the evidence the police had found on his cell phone. The trial court denied his motion to suppress, and Riley was convicted. The California Court of Appeal affirmed his conviction. Riley appealed to the U.S. Supreme Court which found that police generally may not, without a warrant, search information on a cell phone seized from an arrestee.

The degree of intrusion on an individual’s privacy must be weighed against the need to promote a legitimate governmental interest. A search of digital information on a cell phone implicates greater individual privacy interests than a brief physical search and does not promote the same governmental interests of officer safety and destruction of evidence.

By: Damaris Reynolds

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