ORIGINAL

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State Bar Court of California
Hearing Department
Los Angeles
REPROVAL

PUBLIC MATTER

Counsel For The State Bar	Case Number(s):	For Court use only
Jaime Vogel **Deputy Trial Counsel** **845 S. Figueroa St.** **Los Angeles, CA 90017** **(213) 765-1373** Bar # **289669**	**10-C-00886-CV**	FILED EC APR 03 2018 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent **Scott Lee Adkins** **198 S Carol Malone Blvd** **Grayson, KY 41143-1352** **(954) 242-6974** Bar # **194809**	Submitted to: **Settlement Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **PUBLIC REPROVAL** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter of: **SCOTT LEE ADKINS** Bar # **194809** A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted **May 01, 1998**.

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.

(3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **12** pages, not including the order.

(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- ☒ Costs are added to membership fee for calendar year following effective date of discipline (public reproval).
- ☐ Case ineligible for costs (private reproval).
- ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- ☐ Costs are entirely waived.

(9) The parties understand that:

(a) ☐ A private reproval imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproval was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.

(b) ☐ A private reproval imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

(c) ☒ A public reproval imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

(1) ☐ **Prior record of discipline**

(a) ☐ State Bar Court case # of prior case

(b) ☐ Date prior discipline effective

(c) ☐ Rules of Professional Conduct/ State Bar Act violations:

(d) ☐ Degree of prior discipline

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline.

(2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.

(3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.

(4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.

(5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.

(6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.

(7) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.

(9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.

(11) ☐ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.

(12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.

(13) ☐ **Restitution:** Respondent failed to make restitution.

(14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.

(15) ☒ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.

(1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.

(2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.

(3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigation and proceedings.

(4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.

(5) ☐ **Restitution:** Respondent paid $ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.

(6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.

(7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.

(8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

(9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

(10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

(11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.

(13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Record of Discipline. Please see page 9.
Pre-trial Stipulation. Please see page 9.

D. Discipline:

(1) ☐ **Private reproval (check applicable conditions, if any, below)**

(a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).

(b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

(2) ☒ **Public reproval (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

(1) ☒ Respondent must comply with the conditions attached to the reproval for a period of **one year.**.

(2) ☒ During the condition period attached to the reproval, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of reproval. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the reproval conditions period, Respondent must promptly meet with the probation deputy as directed and upon request.

(5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproval. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproval during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

(6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of reproval with the probation monitor to establish a manner and schedule of compliance. During the reproval conditions period, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

(7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reproval.

(8) ☐ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

☒ No Ethics School recommended. Reason: **Respondent resides in another jurisdiction. A comparable alternative to Ethics School is provided in section F(2) below.**

(9) ☒ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

(10) ☒ Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reproval.

☐ No MPRE recommended. Reason:

(11) ☐ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions ☐ Law Office Management Conditions

☐ Medical Conditions ☐ Financial Conditions

F. Other Conditions Negotiated by the Parties:

(1.) Respondent recognizes that a repeat conviction for DUI suggests an alcohol and/or drug problem that needs to be addressed before it affects Respondent's legal practice. Respondent agrees to take the steps necessary to control the use of alcohol and/or drugs such that it will not affect respondent's law practice in the future. Respondent's agreement to participate in an abstinence-based self-help group (as defined herein), as a condition of discipline, is part of respondent's efforts to address such concerns.

As a condition of reproval, and during the period of reproval, respondent must attend a minimum of two (2) meetings per month of any abstinence-based self-help group of respondent's choosing, including without limitation Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T., S.O.S., etc. Other self-help maintenance programs are acceptable if they include a subculture to support recovery, including abstinence-based group meetings. (See O'Conner v. Calif. (C.D. Calif. 1994) 855 F. Supp. 303 [no First Amendment violation where probationer given a choice between AA OCTC STIP. MANUAL 15 Revised 7/17/17 and a secular program.]) Respondent is encouraged, but not required, to obtain a sponsor during the term of participation in these meetings.

The program called "Moderation Management" is not acceptable because it is not abstinence based and allows the participant to continue consuming alcohol.

Respondent must contact the Office of Probation and obtain written approval for the program respondent has selected prior to attending the first self-help group meeting. If respondent wants to change groups, respondent must first obtain the Office of Probation's written approval prior to attending a meeting with the new self-help group.

Respondent must provide to the Office of Probation satisfactory proof of attendance of the meetings set forth herein with each Quarterly Report submitted to the Office of Probation. Respondent may not sign as the verifier of his or her own attendance.

Respondent is encouraged, but is not required, to participate in the Lawyers' Assistance Program, to abstain from alcohol and illegal drugs, and to undergo random urinalysis testing

(2.) As a further condition of reproval, because respondent resides out of state, respondent must either 1.) attend a session of State Bar Ethics School, pass the test given at the end of that session, and provide proof of the same to the Office of Probation within one (1) year of the effective date of the discipline herein; or 2.) complete six (6) hours of live, in person, or live online-webinar Minimum Continuing Legal Education ("MCLE") approved courses in legal ethics offered through a certified MCLE provider in Kentucky or California and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: SCOTT LEE ADKINS

CASE NUMBER: 10-C-00886-CV

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved other misconduct warranting discipline.

Case No. 10-C-00886 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

2. On January 14, 2010, the State Attorney of the Seventeenth Judicial Court of Florida, Case No. 10890MM10A, charged respondent with one count of violation of Fla.Stat. §316.1932 (unlawfully refusing to submit to testing), a misdemeanor; one count of violation of Fla.Stat.§ 316.193 (driving under the influence of alcohol and/or chemical substance), a misdemeanor; one count of violation of Fla.Stat.§316.061 (being involved in a crash resulting in damage to another vehicle or other property), a misdemeanor; one count of violation of Fla.Stat §316.062 (failing to remain at the scene of the crash and provide information), a misdemeanor; one count of violation of Fla.Stat. §322.16 (driver's license violation), a misdemeanor; and one count of violation of Fla.Stat.§316.192 (reckless driving), a misdemeanor.

3. On June 17, 2011, respondent entered into a plea bargain, pled guilty, and was convicted of one count of violating Fla.Stat.§ 316.061/316.062 (being involved in a crash involving damage to vehicle or property/ duty to give information and render aid), a misdemeanor. Respondent was also convicted of one count of violating Fla.Stat. §316.192 (reckless driving), a misdemeanor. (A copy of the aforementioned Florida Statutes are attached hereto as Exhibit 1.) The remaining charges were dismissed. The court sentenced respondent to 50 hours of community service, pay court fines, and restitution.

4. On December 7, 2017, in State Bar Case No. 10-C-00886, the Review Department referred respondent's conviction for violating Fla.Stat §§ 316.061 and 316.062 and Fla.Stat. §316.192 to the Hearing Department for hearing and decision recommending discipline, in the event that the Hearing Department finds that the facts and circumstances surrounding the misdemeanor violation involved moral turpitude or other misconduct warranting discipline.

FACTS:

5. On December 05, 2009, at approximately 12:40 a.m., respondent was driving a 2006 white Chrysler automobile in Broward County in the State of Florida. Respondent was driving in the 2600

block of North Dixie Hwy, Pompano Beach, Florida, when respondent collided with the rear bumper of a Mercedes vehicle. Respondent did not stop at the scene of the accident to provide his insurance information.

6. Respondent then drove southbound on Federal Highway at a high rate of speed. The respondent also followed closely behind vehicles, abruptly changing lanes without signaling. Upon observing respondent, Deputy Dedej, of the Broward County Sheriff's Office, conducted a traffic stop of respondent at 600 N. Federal Hwy, Pompano Beach, Florida.

7. While Deputy Dedej spoke to respondent during the traffic stop, respondent's breath smelled of alcohol, respondent had blood shot eyes, and slurred speech. Respondent was also unsteady as he exited the vehicle.

8. Deputy Hager and Deputy Dedej conducted field sobriety tests which included horizontal gaze nystagmus, walk and turn, and one leg stand. Respondent was unable to successfully complete the field sobriety tests.

9. Deputy Hager asked respondent to provide a breath sample to determine respondent's blood alcohol level. Respondent refused. Deputy Hager arrested respondent for a violation of Fla. Stat §316.193 (driving under the influence).

RESPONDENT'S PRIOR CONVICTION:

10. On January 16, 2006, at approximately 1:40 a.m., respondent was driving a red Nissan while under the influence of alcohol in Oakland Park, Florida.

11. Respondent was pulled over by Sergeant McGregor, of the Broward County Sheriff's Office, at 4400 N. Dixie Hwy, Oakland Park, Florida. Respondent immediately exited his vehicle and started cursing at the officer. McGregor handcuffed respondent and sat him on the curb pending the arrival of Officer Grady. Respondent's breath smelled of alcohol, his eyes were red, and his speech was slurred.

12. Officer Grady arrived at the traffic stop to assist with the DUI investigation. When questioned, respondent would not indicate how much alcohol he consumed. Respondent refused to participate in any field sobriety test. Respondent also refused to provide a breath sample to test his blood alcohol level.

13. Respondent was placed under arrest for suspicion of driving under the influence.

14. On March 15, 2007, in the Seventeenth Judicial Court of Florida, Case No. 06023411MM10A, respondent pled no contest to violating Fla.Stat. §316.193 (driving under the influence), a misdemeanor and Fla.Stat. §316.192 (reckless driving), a misdemeanor. (A copy of the aforementioned Florida Statutes are attached hereto as Exhibit 2.) This was a first offense for respondent. He was placed on 6 months of probation. Respondent completed probation on September 14, 2007.

CONCLUSIONS OF LAW:

15. The facts and circumstances surrounding the above-described violation(s) did not involve moral turpitude but did involve other misconduct warranting discipline.

AGGRAVATING CIRCUMSTANCES.

None.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to the State Bar on May 1, 1998 and has no record of prior discipline. Respondent had practiced law for over 11 years without any discipline prior to the misconduct, which is entitled to significant weight in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 598 [over 10 years without prior discipline entitled to significant weight in mitigation].)

Pretrial Stipulation: Respondent has acknowledged his wrongdoing by entering into this stipulation prior to trial, which is entitled to mitigation for saving State Bar time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigation was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Respondent's culpability in this proceeding is conclusively established by the record of his convictions. (Bus. & Prof. Code §6101, subd.(a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097.) Respondent is presumed to have committed all of the elements of the crimes of which he was convicted. (*In re*

Duggan (1976) 17 Cal.3d 416, 423; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct.Rptr. 581, 588.) Respondent was convicted of a misdemeanor violation of Florida Annotated Statutes ("Fla.Stat.") §§ 316.061/316.062, crash involving damage to vehicle or property / duty to give information and render aid. Respondent was convicted of an additional misdemeanor in violation of Fla.Stat. §316.192, reckless driving.

Respondent's misconduct of reckless driving and failing to give information or render aid is not a crime of moral turpitude per se. (*In re Kelley* (1990) 52.Cal.3d 487, 494.) In attorney discipline cases, moral turpitude should be defined with the aim of protecting the public, promoting confidence in the legal system, and maintaining high professional standards. (*In re Lesansky* (2001) 104 Cal.Rptr.2d 409, 16.) "Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney's conduct would be likely to undermine public confidence." (*Id.* at p. 16, 104 Cal.Rptr.2d 409, 17 P.3d 764.) The facts and circumstances surrounding respondent's misconduct also do not involve moral turpitude as it does not fall into the category of particular crimes "that are extremely repugnant to accepted moral standards such as...serious sexual offenses." (*In re Fahey* (1973) 8 Cal.3d 842, 849). Respondent's conduct was not related to the practice of law. Respondent's misconduct was nonetheless serious because it caused damage to the rear bumper of another person's vehicle. Respondent did not stay at the scene of the accident to provide information or render aid. Also, respondent has a prior conviction from 2007 for driving under the influence and reckless driving. Therefore, respondent's misconduct warrants discipline.

Since respondent's criminal conviction does not involve moral turpitude Standard 2.16(b) is applicable. Standard 2.16(b), provides for suspension or reproval for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline. Respondent's misconduct is significantly mitigated by respondent's 11 years in practice without a prior record of discipline and entry into a pretrial stipulation. Given the facts and circumstances of this case, a public reproval is appropriate to protect the public, the courts, and the legal profession, maintain the highest professional standards, and preserve public confidence in the legal profession.

This level of discipline is consistent with case law. In *In re Kelley, supra*, 52 Cal.3d 487, an attorney was convicted twice for driving under the influence of alcohol within a 31-month period. The attorney had no prior record of discipline and was publicly reproved and referred to the State Bar Program for Alcohol Abuse. The Supreme Court stressed that the attorney's conduct, though it had not caused significant harm, was in violation of a court order pertaining to the attorney's criminal probation.

Similar to the attorney in *In re Kelley*, respondent has been previously convicted of a crime related to the use of alcohol; driving under the influence in 2007. While respondent was not in violation of a court order, respondent's conduct caused property damage to another vehicle. The similarities show that a level of discipline on the lower end of the range provided for in the Standard is appropriate.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of March 16, 2018 the discipline costs in this matter are $2,629. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

Respondent may not receive MCLE credit for completion of State Bar Ethics School to be ordered as a condition of reproval. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of:	Case number(s):
SCOTT LEE ADKINS	10-C-00886-CV

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

Date	Respondent's Signature	Print Name
3/28/2018		Scott Lee Adkins
3/29/		
Date	Respondent's Counsel Signature	Print Name
3/29/2018		Jaime M. Vogel
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:	Case Number(s):
SCOTT LEE ADKINS	10-C-00886-CV

REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

☒ The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.

☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.

☐ All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

4/3/18
Date

DONALD F. MILES
Judge of the State Bar Court

Fla. Stat. § 316.061

Copy Citation

The Florida code and constitution are updated through all legislation signed and in effect as of the 2017 Regular Session and 2017 Special Session A and 2018 Regular Session ch. 2.

LexisNexis® Florida Annotated Statutes Title XXIII. Motor Vehicles (Chs. 316-325) Chapter 316. State Uniform Traffic Control.

§ 316.061. Crashes involving damage to vehicle or property.

(1) The driver of any vehicle involved in a crash resulting only in damage to a vehicle or other property which is driven or attended by any person shall immediately stop such vehicle at the scene of such crash or as close thereto as possible, and shall forthwith return to, and in every event shall remain at, the scene of the crash until he or she has fulfilled the requirements of s. 316.062. A person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Notwithstanding any other provision of this section, $5 shall be added to a fine imposed pursuant to this section, which $5 shall be deposited in the Emergency Medical Services Trust Fund.

(2) Every stop must be made without obstructing traffic more than is necessary, and, if a damaged vehicle is obstructing traffic, the driver of such vehicle must make every reasonable effort to move the vehicle or have it moved so as not to block the regular flow of traffic. Any person failing to comply with this subsection shall be cited for a nonmoving violation, punishable as provided in chapter 318.

(3) Employees or authorized agents of the Department of Transportation, law enforcement with proper jurisdiction, or an expressway authority created pursuant to chapter 348, in the exercise, management, control, and maintenance of its highway system, may undertake the removal from the main traveled way of roads on its highway system of all vehicles incapacitated as a result of a motor vehicle crash and of debris caused thereby. Such removal is applicable when such a motor vehicle

crash results only in damage to a vehicle or other property, and when such removal can be accomplished safely and will result in the improved safety or convenience of travel upon the road. The driver or any other person who has removed a motor vehicle from the main traveled way of the road as provided in this section shall not be considered liable or at fault regarding the cause of the accident solely by reason of moving the vehicle.

History

S. 1, ch. 71-135; s. 3, ch. 74-377; s. 2, ch. 75-72; s. 9, ch. 76-31; s. 22, ch. 85-167; s. 3, ch. 85-337; s. 30, ch. 92-78; s. 296, ch. 95-148; s. 6, ch. 96-350; s. 83, ch. 99-248; s. 3, ch. 2002-235.

▼ Annotations

Case Notes

Criminal Law & Procedure: Criminal Offenses: Miscellaneous Offenses: General Overview

Criminal Law & Procedure: Criminal Offenses: Miscellaneous Offenses: Fleeing & Eluding: General Overview

Criminal Law & Procedure: Criminal Offenses: Vehicular Crimes: General Overview

Criminal Law & Procedure: Criminal Offenses: Vehicular Crimes: Hit & Run Accidents: General Overview

Criminal Law & Procedure: Criminal Offenses: Vehicular Crimes: Hit & Run Accidents: Elements

Criminal Law & Procedure: Criminal Offenses: Vehicular Crimes: Traffic Regulation Violations: General Overview

Criminal Law & Procedure: Double Jeopardy: Double Jeopardy Protection: Multiple Punishments

Fla. Stat. § 316.062

Copy Citation

The Florida code and constitution are updated through all legislation signed and in effect as of the 2017 Regular Session and 2017 Special Session A and 2018 Regular Session ch. 2.

LexisNexis® Florida Annotated Statutes Title XXIII. Motor Vehicles (Chs. 316-325) Chapter 316. State Uniform Traffic Control.

§ 316.062. Duty to give information and render aid.

(1) The driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle or other property which is driven or attended by any person shall give his or her name, address, and the registration number of the vehicle he or she is driving, and shall upon request and if available exhibit his or her license or permit to drive, to any person injured in such crash or to the driver or occupant of or person attending any vehicle or other property damaged in the crash and shall give such information and, upon request, exhibit such license or permit to any police officer at the scene of the crash or who is investigating the crash and shall render to any person injured in the crash reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.

(2) In the event none of the persons specified are in condition to receive the information to which they otherwise would be entitled under subsection (1), and no police officer is present, the driver of any vehicle involved in such crash, after fulfilling all other requirements of s. 316.027 and subsection (1), insofar as possible on his or her part to be performed, shall forthwith report the crash to the nearest office of a duly authorized police authority and submit thereto the information specified in subsection (1).

(3) The statutory duty of a person to make a report or give information to a law enforcement officer making a written report relating to a crash shall not be construed as extending to information which would violate the privilege of such person against self-incrimination.

(4) A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

History

S. 1, ch. 71-135; s. 13, ch. 91-255; s. 297, ch. 95-148; s. 84, ch. 99-248.

▼ Annotations

Case Notes

Criminal Law & Procedure: Criminal Offenses: Miscellaneous Offenses: General Overview

Criminal Law & Procedure: Criminal Offenses: Vehicular Crimes: General Overview

Criminal Law & Procedure: Criminal Offenses: Vehicular Crimes: Hit & Run Accidents: General Overview

Criminal Law & Procedure: Criminal Offenses: Vehicular Crimes: Hit & Run Accidents: Elements

Criminal Law & Procedure: Criminal Offenses: Vehicular Crimes: Vehicular Homicide: Elements

Criminal Law & Procedure: Interrogation: Miranda Rights: General Overview

Criminal Law & Procedure: Pretrial Motions & Procedures: Dismissal

Criminal Law & Procedure: Defenses: Statutes of Limitations

Criminal Law & Procedure: Jury Instructions: Particular Instructions: Elements of the Offense

Fla. Stat. § 316.192

Copy Citation

The Florida code and constitution are updated through all legislation signed and in effect as of the 2017 Regular Session and 2017 Special Session A and 2018 Regular Session ch. 2.

LexisNexis® Florida Annotated Statutes Title XXIII. Motor Vehicles (Chs. 316-325) Chapter 316. State Uniform Traffic Control.

§ 316.192. Reckless driving.

(1)

(a) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(b) Fleeing a law enforcement officer in a motor vehicle is reckless driving per se.

(2) Except as provided in subsection (3), any person convicted of reckless driving shall be punished:

(a) Upon a first conviction, by imprisonment for a period of not more than 90 days or by fine of not less than $25 nor more than $500, or by both such fine and imprisonment.

(b) On a second or subsequent conviction, by imprisonment for not more than 6 months or by a fine of not less than $50 nor more than $1,000, or by both such fine and imprisonment.

(3) Any person:

(a) Who is in violation of subsection (1);

(b) Who operates a vehicle; and

(c) Who, by reason of such operation, causes:

1. Damage to the property or person of another commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. Serious bodily injury to another commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The term "serious bodily injury" means an injury to another person, which consists of 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.

(4) Notwithstanding any other provision of this section, $5 shall be added to a fine imposed pursuant to this section. The clerk shall remit the $5 to the Department of Revenue for deposit in the Emergency Medical Services Trust Fund.

(5) In addition to any other penalty provided under this section, if the court has reasonable cause to believe that the use of alcohol, chemical substances set forth in s. 877.111, or substances controlled under chapter 893 contributed to a violation of this section, the court shall direct the person so convicted to complete a DUI program substance abuse education course and evaluation as provided in s. 316.193(5) within a reasonable period of time specified by the court. If the DUI program conducting such course and evaluation refers the person to an authorized substance abuse treatment provider for substance abuse evaluation and treatment, the directive of the court requiring completion of such course, evaluation, and treatment shall be enforced as provided in s. 322.245. The referral to treatment resulting from the DUI program evaluation may not be waived without a supporting independent psychosocial evaluation conducted by an authorized substance abuse treatment provider, appointed by the court, which shall have access to the DUI program psychosocial evaluation before the independent psychosocial evaluation is conducted. The court shall review the results and recommendations of both evaluations before determining the request for waiver. The offender shall bear the full cost of this procedure. If a person directed to a DUI program substance abuse education course and evaluation or referred to treatment under this subsection fails to report for or complete such course, evaluation, or treatment, the DUI program shall notify the court and the department of the failure. Upon receipt of such notice, the department shall cancel the person's driving privilege, notwithstanding the terms of the court order or any suspension or revocation of the driving privilege. The department may reinstate the driving privilege upon verification from the DUI program that the education, evaluation, and treatment are completed. The department may temporarily reinstate the driving privilege on a restricted basis upon verification that the offender is currently participating in treatment and has completed the DUI education course and evaluation requirement. If the DUI program notifies the department of the second failure to complete treatment, the department shall reinstate the driving privilege only after notice of successful completion of treatment from the DUI program.

Fla. Stat. § 316.193

Copy Citation

LexisNexis® Florida Annotated Statutes Title XXIII. Motor Vehicles (Chs. 316-325) Chapter 316. State Uniform Traffic Control.

§ 316.193. Driving under the influence; penalties.

(1) A person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle within this state and:

(a) The person is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893, when affected to the extent that the person's normal faculties are impaired;

(b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or

(c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

(2)

(a) Except as provided in paragraph (b), subsection (3), or subsection (4), any person who is convicted of a violation of subsection (1) shall be punished:

1. By a fine of:

a. Not less than $500 or more than $1,000 for a first conviction.

b. Not less than $1,000 or more than $2,000 for a second conviction; and

2. By imprisonment for:

a. Not more than 6 months for a first conviction.

b. Not more than 9 months for a second conviction.

3. For a second conviction, by mandatory placement for a period of at least 1 year, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. The installation of such device may not occur before July 1, 2003.

(b)

1. Any person who is convicted of a third violation of this section for an offense that occurs within 10 years after a prior conviction for a violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the court shall order the mandatory placement for a period of not less than 2 years, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. The installation of such device may not occur before July 1, 2003.

2. Any person who is convicted of a third violation of this section for an offense that occurs more than 10 years after the date of a prior conviction for a violation of this section shall be punished by a fine of not less than $2,000 or more than $5,000 and by imprisonment for not more than 12 months. In addition, the court shall order the mandatory placement for a period of at least 2 years, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. The installation of such device may not occur before July 1, 2003.

3. Any person who is convicted of a fourth or subsequent violation of this section, regardless of when any prior conviction for a violation of this section occurred, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, the fine imposed for such fourth or subsequent violation may be not less than $2,000.

(c) In addition to the penalties in paragraph (a), the court may order placement, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 for at least 6 continuous months upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person if, at the time of the offense, the person had a blood-alcohol level or breath-alcohol level of .08 or higher.

(3) Any person:

(a) Who is in violation of subsection (1);

(b) Who operates a vehicle; and

(c) Who, by reason of such operation, causes or contributes to causing:

1. Damage to the property or person of another commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. Serious bodily injury to another, as defined in s. 316.1933, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. The death of any human being or unborn child commits DUI manslaughter, and commits:

a. A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

(I) At the time of the crash, the person knew, or should have known, that the crash occurred; and

(II) The person failed to give information and render aid as required by s. 316.062.

For purposes of this subsection, the term "unborn child" has the same meaning as provided in s. 775.021(5). A person who is convicted of DUI manslaughter shall be sentenced to a mandatory minimum term of imprisonment of 4 years.

(4) Any person who is convicted of a violation of subsection (1) and who has a blood-alcohol level or breath-alcohol level of 0.15 or higher, or any person who is convicted of a violation of subsection (1) and who at the time of the offense was accompanied in the vehicle by a person under the age of 18 years, shall be punished:

(a) By a fine of:

1. Not less than $1,000 or more than $2,000 for a first conviction.

2. Not less than $2,000 or more than $4,000 for a second conviction.

3. Not less than $4,000 for a third or subsequent conviction.

(b) By imprisonment for:

1. Not more than 9 months for a first conviction.

2. Not more than 12 months for a second conviction.

For the purposes of this subsection, only the instant offense is required to be a violation of subsection (1) by a person who has a blood-alcohol level or breath-alcohol level of 0.15 or higher.

(c) In addition to the penalties in paragraphs (a) and (b), the court shall order the mandatory placement, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person for not less than 6 continuous months for the first offense and for not less than 2 continuous years for a second offense, when the convicted person qualifies for a permanent or restricted license.

(5) The court shall place all offenders convicted of violating this section on monthly reporting probation and shall require completion of a substance abuse course conducted by a DUI program licensed by the department under s. 322.292, which must include a psychosocial evaluation of the offender. If the DUI program refers the offender to an authorized substance abuse treatment provider for substance abuse treatment, in addition to any sentence or fine imposed under this section, completion of all such education, evaluation, and treatment is a condition of reporting probation. The offender shall assume reasonable costs for such education, evaluation, and treatment. The referral to treatment resulting from a psychosocial evaluation shall not be waived without a supporting independent psychosocial evaluation conducted by an authorized substance abuse treatment provider appointed by the court, which shall have access to the DUI program's psychosocial evaluation before the independent psychosocial evaluation is conducted. The court shall review the results and recommendations of both evaluations before determining the request for waiver. The offender shall bear the full cost of this procedure. The term "substance abuse" means the abuse of alcohol or any substance named or described in Schedules I through V of s. 893.03. If an offender referred to treatment under this subsection fails to report for or complete such treatment or fails to complete the DUI program substance abuse education course and evaluation, the DUI program shall notify the court and the department of the failure. Upon receipt of the notice, the department shall cancel the offender's driving privilege, notwithstanding the terms of the court order or any suspension or revocation of the driving privilege. The department may temporarily reinstate the driving privilege on a restricted basis upon verification from the DUI program that the offender is currently participating in treatment and the DUI education course and evaluation requirement has been completed. If the DUI program notifies the department of the second failure to complete treatment, the department shall reinstate the driving privilege only after notice of completion of

treatment from the DUI program. The organization that conducts the substance abuse education and evaluation may not provide required substance abuse treatment unless a waiver has been granted to that organization by the department. A waiver may be granted only if the department determines, in accordance with its rules, that the service provider that conducts the substance abuse education and evaluation is the most appropriate service provider and is licensed under chapter 397 or is exempt from such licensure. A statistical referral report shall be submitted quarterly to the department by each organization authorized to provide services under this section.

(6) With respect to any person convicted of a violation of subsection (1), regardless of any penalty imposed pursuant to subsection (2), subsection (3), or subsection (4):

(a) For the first conviction, the court shall place the defendant on probation for a period not to exceed 1 year and, as a condition of such probation, shall order the defendant to participate in public service or a community work project for a minimum of 50 hours. The court may order a defendant to pay a fine of $10 for each hour of public service or community work otherwise required only if the court finds that the residence or location of the defendant at the time public service or community work is required or the defendant's employment obligations would create an undue hardship for the defendant. However, the total period of probation and incarceration may not exceed 1 year. The court must also, as a condition of probation, order the impoundment or immobilization of the vehicle that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h).

(b) For the second conviction for an offense that occurs within a period of 5 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 10 days. The court must also, as a condition of probation, order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization, for a period of 30 days or for the unexpired term of any lease or rental agreement that expires within 30 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant and must occur concurrently with the driver license revocation imposed under s. 322.28(2)(a)2. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h). At least 48 hours of confinement must be consecutive.

(c) For the third or subsequent conviction for an offense that occurs within a period of 10 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 30 days. The court must also, as a condition of probation, order the

impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization, for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant and must occur concurrently with the driver license revocation imposed under s. 322.28(2)(a)3. The impoundment or immobilization order may be dismissed in accordance with paragraph (e), paragraph (f), paragraph (g), or paragraph (h). At least 48 hours of confinement must be consecutive.

(d) The court must at the time of sentencing the defendant issue an order for the impoundment or immobilization of a vehicle. The order of impoundment or immobilization must include the name and telephone numbers of all immobilization agencies meeting all of the conditions of subsection (13). Within 7 business days after the date that the court issues the order of impoundment or immobilization, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of each vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the vehicle.

(e) A person who owns but was not operating the vehicle when the offense occurred may submit to the court a police report indicating that the vehicle was stolen at the time of the offense or documentation of having purchased the vehicle after the offense was committed from an entity other than the defendant or the defendant's agent. If the court finds that the vehicle was stolen or that the sale was not made to circumvent the order and allow the defendant continued access to the vehicle, the order must be dismissed and the owner of the vehicle will incur no costs. If the court denies the request to dismiss the order of impoundment or immobilization, the petitioner may request an evidentiary hearing.

(f) A person who owns but was not operating the vehicle when the offense occurred, and whose vehicle was stolen or who purchased the vehicle after the offense was committed directly from the defendant or the defendant's agent, may request an evidentiary hearing to determine whether the impoundment or immobilization should occur. If the court finds that either the vehicle was stolen or the purchase was made without knowledge of the offense, that the purchaser had no relationship to the defendant other than through the transaction, and that such purchase would not circumvent the order and allow the defendant continued access to the vehicle, the order must be dismissed and the owner of the vehicle will incur no costs.

(g) The court shall also dismiss the order of impoundment or immobilization of the vehicle if the court finds that the family of the owner of the vehicle has no other private or public means of transportation.

(h) The court may also dismiss the order of impoundment or immobilization of any vehicles that are owned by the defendant but that are operated solely by the employees of the defendant or any business owned by the defendant.

(i) The court may also dismiss the order of impoundment or immobilization if the defendant provides proof to the satisfaction of the court that a functioning, certified ignition interlock device has been installed upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person.

(j)

1. Notwithstanding the provisions of this section, s. 316.1937, and s. 322.2715 relating to ignition interlock devices required for second or subsequent offenders, in order to strengthen the pretrial and posttrial options available to prosecutors and judges, the court may order, if deemed appropriate, that a person participate in a qualified sobriety and drug monitoring program, as defined in subparagraph 2., in addition to the ignition interlock device requirement. Participation shall be at the person's sole expense.

2. As used in this paragraph, the term "qualified sobriety and drug monitoring program" means an evidence-based program, approved by the department, in which participants are regularly tested for alcohol and drug use. As the court deems appropriate, the program may monitor alcohol or drugs through one or more of the following modalities: breath testing twice a day; continuous transdermal alcohol monitoring in cases of hardship; or random blood, breath, urine, or oral fluid testing. Testing modalities that provide the best ability to sanction a violation as close in time as reasonably feasible to the occurrence of the violation should be given preference. This paragraph does not preclude a court from ordering an ignition interlock device as a testing modality.

3. For purposes of this paragraph, the term "evidence-based program" means a program that satisfies the requirements of at least two of the following:

a. The program is included in the federal registry of evidence-based programs and practices.

b. The program has been reported in a peer-reviewed journal as having positive effects on the primary targeted outcome.

c. The program has been documented as effective by informed experts and other sources.

(k) All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the vehicle or, if the vehicle is leased or rented, by the person leasing or renting the vehicle, unless the impoundment or immobilization order is dismissed. All provisions of s. 713.78 shall apply. The costs and fees for the impoundment or immobilization must be paid directly to the person impounding or immobilizing the vehicle.

(l) The person who owns a vehicle that is impounded or immobilized under this paragraph, or a person who has a lien of record against such a vehicle and who has not requested a review of the impoundment pursuant to paragraph (e), paragraph (f), or paragraph (g), may, within 10 days after the date that person has knowledge of the location of the vehicle, file a complaint in the county in which the owner resides to determine whether the vehicle was wrongfully taken or withheld from the owner or lienholder. Upon the filing of a complaint, the owner or lienholder may have the vehicle released by posting with the court a bond or other adequate security equal to the amount of the costs and fees for impoundment or immobilization, including towing or storage, to ensure the payment of such costs and fees if the owner or lienholder does not prevail. When the bond is posted and the fee is paid as set forth in s. 28.24, the clerk of the court shall issue a certificate releasing the vehicle. At the time of release, after reasonable inspection, the owner or lienholder must give a receipt to the towing or storage company indicating any loss or damage to the vehicle or to the contents of the vehicle.

(m) A defendant, in the court's discretion, may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced pursuant to this section in a residential alcoholism treatment program or a residential drug abuse treatment program. Any time spent in such a program must be credited by the court toward the term of imprisonment.

For the purposes of this section, any conviction for a violation of s. 327.35; a previous conviction for the violation of former s. 316.1931, former s. 860.01, or former s. 316.028; or a previous conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, driving with an unlawful breath-alcohol level, or any other similar alcohol-related or drug-related traffic offense, is also considered a previous conviction for violation of this section. However, in satisfaction of the fine imposed pursuant to this section, the court may, upon a finding that the defendant is financially unable to pay either all or part of the fine, order that the defendant participate for a specified additional period of time in public service or a community work project in lieu of payment of that portion of the fine which the court determines the defendant is unable to pay. In determining such additional sentence, the court shall consider the amount of the unpaid portion of the fine and the reasonable value of the services to be ordered; however, the court may not compute the reasonable value of services at a rate less than the federal minimum wage at the time of sentencing.

(7) A conviction under this section does not bar any civil suit for damages against the person so convicted.

(8) At the arraignment, or in conjunction with any notice of arraignment provided by the clerk of the court, the clerk shall provide any person charged with a violation of this section with notice that upon conviction the court shall suspend or revoke the offender's driver license and that the offender should make arrangements for transportation at any proceeding in which the court may take such

action. Failure to provide such notice does not affect the court's suspension or revocation of the offender's driver license.

(9) A person who is arrested for a violation of this section may not be released from custody:

(a) Until the person is no longer under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893 and affected to the extent that his or her normal faculties are impaired;

(b) Until the person's blood-alcohol level or breath-alcohol level is less than 0.05; or

(c) Until 8 hours have elapsed from the time the person was arrested.

(10) The rulings of the Department of Highway Safety and Motor Vehicles under s. 322.2615 shall not be considered in any trial for a violation of this section. Testimony or evidence from the administrative proceedings or any written statement submitted by a person in his or her request for administrative review is inadmissible into evidence or for any other purpose in any criminal proceeding, unless timely disclosed in criminal discovery pursuant to Rule 3.220, Florida Rules of Criminal Procedure.

(11) The Department of Highway Safety and Motor Vehicles is directed to adopt rules providing for the implementation of the use of ignition interlock devices.

(12) If the records of the Department of Highway Safety and Motor Vehicles show that the defendant has been previously convicted of the offense of driving under the influence, that evidence is sufficient by itself to establish that prior conviction for driving under the influence. However, such evidence may be contradicted or rebutted by other evidence. This presumption may be considered along with any other evidence presented in deciding whether the defendant has been previously convicted of the offense of driving under the influence.

(13) If personnel of the circuit court or the sheriff do not immobilize vehicles, only immobilization agencies that meet the conditions of this subsection shall immobilize vehicles in that judicial circuit.

(a) The immobilization agency responsible for immobilizing vehicles in that judicial circuit shall be subject to strict compliance with all of the following conditions and restrictions:

1. Any immobilization agency engaged in the business of immobilizing vehicles shall provide to the clerk of the court a signed affidavit attesting that the agency:

a. Has verifiable experience in immobilizing vehicles;

b. Maintains accurate and complete records of all payments for the immobilization, copies of all documents pertaining to the court's order of impoundment or immobilization, and any other documents relevant to each immobilization. Such records must be maintained by the immobilization agency for at least 3 years; and

c. Employs and assigns persons to immobilize vehicles that meet the requirements established in subparagraph 2.

2. The person who immobilizes a vehicle must:

a. Not have been adjudicated incapacitated under s. 744.331, or a similar statute in another state, unless his or her capacity has been judicially restored; involuntarily placed in a treatment facility for the mentally ill under chapter 394, or a similar law in any other state, unless his or her competency has been judicially restored; or diagnosed as having an incapacitating mental illness unless a psychologist or psychiatrist licensed in this state certifies that he or she does not currently suffer from the mental illness.

b. Not be a chronic and habitual user of alcoholic beverages to the extent that his or her normal faculties are impaired; not have been committed under chapter 397, former chapter 396, or a similar law in any other state; not have been found to be a habitual offender under s. 856.011(3), or a similar law in any other state; or not have had any convictions under this section, or a similar law in any other state, within 2 years before the affidavit is submitted.

c. Not have been committed for controlled substance abuse or have been found guilty of a crime under chapter 893, or a similar law in any other state, relating to controlled substances in any other state.

d. Not have been found guilty of or entered a plea of guilty or nolo contendere to, regardless of adjudication, or been convicted of a felony, unless his or her civil rights have been restored.

e. Be a citizen or legal resident alien of the United States or have been granted authorization to seek employment in this country by the United States Bureau of Citizenship and Immigration Services.

(b) The immobilization agency shall conduct a state criminal history check through the Florida Department of Law Enforcement to ensure that the person hired to immobilize a vehicle meets the requirements in sub-subparagraph (a)2.d.

(c) A person who violates paragraph (a) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(14) As used in this chapter, the term:

(a) "Immobilization," "immobilizing," or "immobilize" means the act of installing a vehicle antitheft device on the steering wheel of a vehicle, the act of placing a tire lock or wheel clamp on a vehicle, or a governmental agency's act of taking physical possession of the license tag and

vehicle registration rendering a vehicle legally inoperable to prevent any person from operating the vehicle pursuant to an order of impoundment or immobilization under subsection (6).

(b) "Immobilization agency" or "immobilization agencies" means any person, firm, company, agency, organization, partnership, corporation, association, trust, or other business entity of any kind whatsoever that meets all of the conditions of subsection (13).

(c) "Impoundment," "impounding," or "impound" means the act of storing a vehicle at a storage facility pursuant to an order of impoundment or immobilization under subsection (6) where the person impounding the vehicle exercises control, supervision, and responsibility over the vehicle.

(d) "Person" means any individual, firm, company, agency, organization, partnership, corporation, association, trust, or other business entity of any kind whatsoever.

History

S. 1, ch. 71-135; s. 19, ch. 73-331; s. 1, ch. 74-384; s. 1, ch. 76-31; s. 1, ch. 79-408; s. 1, ch. 80-343; s. 2, ch. 82-155; s. 1, ch. 82-403; s. 2, ch. 83-187; s. 1, ch. 83-228; s. 1, ch. 84-359; s. 24, ch. 85-167; s. 2, ch. 85-337; s. 1, ch. 86-296; s. 2, ch. 88-5; s. 5, ch. 88-82; s. 8, ch. 88-196; s. 8, ch. 88-324; s. 60, ch. 88-381; s. 7, ch. 89-3; ss. 1, 18, ch. 91-255; s. 32, ch. 92-78; ss. 1, 11, ch. 93-124; s. 3, ch. 93-246; s. 1, ch. 94-324; s. 895, ch. 95-148; s. 1, ch. 95-186; s. 4, ch. 95-333; s. 12, ch. 95-408; s. 3, ch. 96-330; s. 2, ch. 96-413; s. 48, ch. 97-100; s. 97, ch. 97-264; s. 25, ch. 97-271; ss. 6, 13, ch. 98-324; s. 5, ch. 99-234; s. 139, ch. 99-248; s. 4, ch. 2000-313; s. 10, ch. 2000-320; s. 2, ch. 2002-78; s. 1, ch. 2002-263; s. 1, ch. 2004-379; s. 1, ch. 2005-119; s. 3, ch. 2007-211, eff. July 1, 2007; s. 29, ch. 2008-111, eff. July 1, 2008; s. 5, ch. 2008-176, eff. Oct. 1, 2008; s. 5, ch. 2009-138, eff. Oct. 1, 2009; s. 10, ch. 2009-206, eff. July 1, 2009; s. 5, ch. 2010-223, eff. Sept. 1, 2010; s. 3, ch. 2014-194, eff. Oct. 1, 2014; s. 8, ch. 2014-216, eff. July 1, 2014; s. 3, ch. 2015-34, eff. May 14, 2015; s. 12, ch. 2016-105, eff. July 1, 2016.

▼ Annotations

Notes

Editor's Notes

Former s. 316.028.

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§ 316.192. Reckless driving.

(1)

(a) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(b) Fleeing a law enforcement officer in a motor vehicle is reckless driving per se.

(2) Except as provided in subsection (3), any person convicted of reckless driving shall be punished:

(a) Upon a first conviction, by imprisonment for a period of not more than 90 days or by fine of not less than $25 nor more than $500, or by both such fine and imprisonment.

(b) On a second or subsequent conviction, by imprisonment for not more than 6 months or by a fine of not less than $50 nor more than $1,000, or by both such fine and imprisonment.

(3) Any person:

(a) Who is in violation of subsection (1);

(b) Who operates a vehicle; and

(c) Who, by reason of such operation, causes:

1. Damage to the property or person of another commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. Serious bodily injury to another commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The term "serious bodily injury" means an injury to another person, which consists of 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.

(4) Notwithstanding any other provision of this section, $5 shall be added to a fine imposed pursuant to this section. The clerk shall remit the $5 to the Department of Revenue for deposit in the Emergency Medical Services Trust Fund.

(5) In addition to any other penalty provided under this section, if the court has reasonable cause to believe that the use of alcohol, chemical substances set forth in s. 877.111, or substances controlled under chapter 893 contributed to a violation of this section, the court shall direct the person so convicted to complete a DUI program substance abuse education course and evaluation as provided in s. 316.193(5) within a reasonable period of time specified by the court. If the DUI program conducting such course and evaluation refers the person to an authorized substance abuse treatment provider for substance abuse evaluation and treatment, the directive of the court requiring completion of such course, evaluation, and treatment shall be enforced as provided in s. 322.245. The referral to treatment resulting from the DUI program evaluation may not be waived without a supporting independent psychosocial evaluation conducted by an authorized substance abuse treatment provider, appointed by the court, which shall have access to the DUI program psychosocial evaluation before the independent psychosocial evaluation is conducted. The court shall review the results and recommendations of both evaluations before determining the request for waiver. The offender shall bear the full cost of this procedure. If a person directed to a DUI program substance abuse education course and evaluation or referred to treatment under this subsection fails to report for or complete such course, evaluation, or treatment, the DUI program shall notify the court and the department of the failure. Upon receipt of such notice, the department shall cancel the person's driving privilege, notwithstanding the terms of the court order or any suspension or revocation of the driving privilege. The department may reinstate the driving privilege upon verification from the DUI program that the education, evaluation, and treatment are completed. The department may temporarily reinstate the driving privilege on a restricted basis upon verification that the offender is currently participating in treatment and has completed the DUI education course and evaluation requirement. If the DUI program notifies the department of the second failure to complete treatment, the department shall reinstate the driving privilege only after notice of successful completion of treatment from the DUI program.

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 3, 2018, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SCOTT L. ADKINS
SCOTT L. ADKINS
198 S CAROL MALONE BLVD
GRAYSON, KY 41143 - 1352

SCOTT L ADKINS
1263A DAMRON BARNETT
GRAYSON, KY 41143

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

JAIME M. VOGEL, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 3, 2018.

Erick Estrada
Court Specialist
State Bar Court