The Rap Sheet

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Message from State Attorney Norm Wolfinger

Every day you are out on the street putting your very life on the line for public safety. And every day you or one of your associates are faced with uncooperative arrested persons who offer various levels of resistance.

This edition of The Rap Sheet addresses some of the legal issues involved in making resisting arrest and related charges. I hope that you find it helpful in your daily work. Most importantly, keep yourself safe out there. You are doing a great job reducing crime and making the streets safer for all of us. Be safe.

Norm Wolfinger

Resisting w/o Violence & Giving False Name to Law Enforcement

by Assistant State Attorney Mary Ann Klein

This article and the sections that follow discuss Florida Statute 843.02, the offense of resisting an officer without violence and Florida Statute 901.36, giving a False Name to Law Enforcement, and the application of these statutes to the various situations you may face.

Generally

Section 843.02, F.S., reads in pertinent part as follows: "Whoever shall resist, obstruct, or oppose any [law enforcement] officer . . . , in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree . . ."

Jurors are told during jury instructions that the State must prove that:

1) the defendant resisted, obstructed or opposed the victim;

2) at the time, the victim was a law enforcement officer; and

3) the officer was engaged in the execution of legal process or the **lawful** execution of a **legal duty** at the time of such resisting, opposing or

obstruction. Additionally, there must be evidence that the defendant knew he was being detained.

In *Jones v. State*, 584 So.2d 190 (Fla. 5th DCA 1991), the court ruled that a charge cannot lie for Resisting without Violence (RWOV) for a person who resists without violence when the arrest is unlawful. This is so because the officer was not engaged in the **lawful** execution of a legal duty. In *Espiet v. State*, 797 So.2d 598 (5th DCA 2001), officers were called to the scene of a domestic disturbance. When they arrived, the defendant was in his house. During their attempt to interview him, one of the officers lunged at the defendant through a screened-in window and attempted to pull him out. The defendant was charged with Aggravated Assault on a Law Enforcement Officer and Resisting without Violence. The 5th DCA reversed the resisting charge ruling that, at the time law enforcement entered the defendant's residence, they only had probable cause to make an arrest for a misdemeanor. As a result, they should have obtained an arrest warrant. Since they made a warrantless entry, the court ruled that the officer in question was not engaged in the lawful performance of his duties.

A lawful arrest is not required however, if the charge is **resisting with violence**. Even if the underlying arrest was unlawful, a person is not allowed to resist with violence. See *State v. Davis*, 652 So.2d 942 (5th DCA 1995). In *Ruggles v. State*, 757 So.2d 632 (5th DCA May 19, 2000), the 5th DCA upheld the defendant's convictions for both battery on a law enforcement officer and resisting with violence when the defendant used violence, even though the victim officer was off duty and outside of her jurisdiction. The court reiterated that it doesn't matter if the arrest is lawful when the charge is with violence.

The term **lawful execution of a legal duty** essentially requires that the officer be engaged in a substantive responsibility, such as conducting a criminal investigation or making an arrest. Simply driving around on patrol and making contact with people and asking for their names to check for warrants on the person is insufficient. The officer must be executing an arrest based on probable cause or conducting a specific criminal investigation where he has reasonable suspicion to detain the defendant. See *Steele v. State*, 537 So.2d 711 (Fla. 5th DCA 1989).

The investigation of a crime by a police officer is an execution of a legal duty. See *V. L. a Child v. State*, 790 So.2d 1140 (5th DCA 2001), citing *Francis v State*, 736 So.2d 97, 99, n.1 (Fla. 4th DCA 1999). However, as the case of *V. L. v. State* points out, although the investigation of a crime is a legal duty by the police, the person being questioned about the crime may not have a legal duty to respond to the officer's questioning. This issue will be discussed further below.

Consensual Encounters

If a law enforcement officer engages a citizen on the street in a consensual encounter with no reasonable suspicion to detain nor probable cause for arrest, the citizen is asked to identify himself or herself, and the citizen refuses to give his name, the charge of RWOV cannot lie. A person may terminate a consensual encounter at any time since he or she is free to refuse the officer's questions and to walk away. *Popple v. State*, 626 So.2d 185 (Fla. 1993).

Nor does a RWOV charge stand if a law enforcement officer engages two people on the street in a consensual encounter, asks them to identify themselves, and one person refuses while instructing the other to do the same. Since neither must give their name, telling another to refuse to identify himself does not constitute resisting. *R. S. v. State*, 531 So.2d 1026 (Fla. 1st DCA 1988).

In addition to not answering, a defendant when questioned during a consensual encounter may run away from the officer without violating the RWOV statute. In *F. B. v. State*, 605 So.2d 578 (Fla. 3rd DCA 1992) the court stated, '"Where an officer has no basis to detain an individual, the individual's action in ignoring the officer's command to stop cannot constitute resisting arrest."

In *Slydell v. State*, 26 FLW D2096b (4th DCA August 29, 2001) police saw the defendant in an apartment complex where the complex owners had given police authority to issue trespass warnings to suspected trespassers. Since the officers did not recognize the defendant, they approached him to ask his name. The defendant refused to give the officers his name and they physically stopped him when he turned to walk away. The 4th DCA said there was no reasonable suspicion that the defendant was trespassing. The officers only had a hunch. The initial approach of the defendant was deemed a consensual encounter, and as such, the defendant was free to ignore the officers and go about his way. Since there was no legal basis to detain the defendant, the defendant did not have to cooperate, and thus, there was no valid resisting without violence charge.

In *F. P. v State*, 778 So.2d 1072, (5th DCA 03/02/01) the 5th DCA framed this issue as "whether section 843.02, Florida Statutes, which requires that one not "resist, obstruct, or oppose any officer. . . in the lawful execution of any legal duty", also requires one to cooperate with the officer by answering questions." In *F. P.*, the officer responded to the location in question to investigate a reported fight. The defendant was on the scene yelling and waiving her arms. The officer admitted that he had no reason to believe the defendant was or had been engaged in criminal conduct and the 5th DCA found that it was **not a Terry stop situation**. The 5th DCA ruled that no obstruction charge could be

sustained since a citizen may refuse to cooperate with police in a consensual encounter.

If the citizen in a consensual encounter does "cooperate", but gives the wrong name, he too cannot be charged with RWOV since he was under no obligation to respond and the officer was not engaged in a legal duty for purposes of the resisting statute. See *Steele v. State*, 537 So.2d 711 (Fla. 5th DCA 1989).

In *Burdess v. State*, 724 So.2d 604 (Fla. 5th DCA 1998), an officer was given a tip that a suspect in some recent thefts was staying at a certain motel. He spotted Burdess when he arrived at the motel. She generally matched the description of the suspect. Burdess ran when she saw him. The officer testified that he approached Burdess, but had no reason to detain her. He asked if he could have a minute of her time. She agreed, but was free to leave. When asked, she first gave her name as "Debbie Diane Thomas." When a passerby recognized her as Debbie Burdess, she admitted to that name and gave her correct date of birth. The officer testified that no more than three minutes elapsed between the time he first approached Burdess and the time he learned her correct name, but he arrested her for resisting an officer without violence. He searched her purse incident to arrest and found cocaine and drug paraphernalia. She was charged with drug violations. The Fifth District Court of Appeal reversed her conviction, stating:

There was no testimony that the officer was impeded in any way by the giving of the original false information. No reports were prepared based on it, nor was any action taken in reliance on it. The information was corrected before it did any harm**, and appellant was not being legally detained.**

Valid Terry Stops

If a law enforcement officer tries to detain a person on reasonable suspicion, and the person flees, the person may be charged with resisting. In *M. C. v. State*, 450 So.2d 336 (Fla. 5th DCA 1984), the court stated:

> When (1) a law enforcement officer encounters a person under circumstances that authorize the officer to temporarily detain that person under Florida's Stop and Frisk statute.., and (2) in the lawful execution of his legal duties, the police officer intends to detain that person for the purpose of ascertaining the person's identity and to learn the circumstances surrounding his presence, and (3) under the facts and circumstances of the particular case that person learns, knows, or understands that the officer desires to detain that person, then if that person flees or takes other intentional action that prevents lawful detention, he may be guilty of obstructing . . . .

See also *F. E. C. v. State*, 559 So.2d 413 (Fla. 2nd DCA 1990), which held that a person may be guilty of unlawfully obstructing a police officer if he flees while knowing of the officer's intent to detain him and the officer is justified in making a stop pursuant to §901.151, Florida Statute.

In *Illinois v. Wardlow*, 528 U.S. 119, 125, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000), the United States Supreme Court addressed the issue of the lawfulness of a Terry detention where the basis to stop the defendant was his unprovoked running away from the police after seeing the police when he was in a high crime area. The United States Supreme Court upheld the detention. Whether those facts standing alone, without a separate basis to lawfully detain, would support a charge of RWOV is another matter. First, to support the charge of RWOV, the defendant must have been aware that he was directed to stop by law enforcement. In addition, in footnote 7 of the *Slydell*[1] case, the 4th DCA indicated that it must follow *Illinois v. Warlow* for search and seizure but not in interpreting the obstruction statute.

The crime of RWOV cannot take place where the officer lacked sufficient basis to detain the defendant in a Terry Stop. See *H. H. v. State*, 775 So.2d 397 (4th DCA 12-20-00) and cases cited therein.

Recently, the United States Supreme Court in the case of *Hiibel v. Sixth Judicial District Court of Nevada*, 124 S.Ct. 2451, (June 21, 2004) upheld the conviction of a defendant based upon that defendant's refusal to identify himself to police in a valid Terry stop situation. A review and understanding of this case is essential. *Hiibel*, involved application of a Nevada statute referred to as its "stop and identify" statute. Hiibel was charged with violation of 199.280 (2003) Nevada Statute, involving "willfully resisting, delaying, or obstructing a public officer in discharging or attempting to discharge any legal duty of his office." The state's position was that the defendant had obstructed the officer's ability to carry out his or her duties under another Nevada Statute 171.123. This statute provides in pertinent part that:

> 1. Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime. . . .
>
> 3. The officer may detain the person pursuant to this section only to ascertain his identity and the suspicious circumstances surrounding his presence abroad. Any person so detained shall identify himself,

[1] Slydell v. State, 26 FLW D2096b (4th DCA August 29,2001)

> but may not be compelled to answer any other inquiry of any peace officer.

The Supreme Court ruled that although the 4th Amendment does not impose any duty upon a person to answer questions posed by the police, state statutes may impose such a requirement. They ruled that statutes which impose such a requirement do not violate the 4th amendment **if**: (1) the requirement to identify exists where there is reasonable suspicion to detain the subject individual for questioning in the first place; (2) the request for identity has an immediate relation to the purpose, rationale, and practical demands of the Terry stop and (3) the statutory obligation does not go beyond answering an officer's request to disclose a name.

This brings us to the question of whether a defendant in Florida may be charged with resisting without violence for failure to give his name. As previously indicated, the answer is no if the situation is a consensual encounter. In a Terry detention situation, we must consider the requirements of F.S. 901.151, Florida's Stop and Frisk Law[2]. This statute provides:

> (1) This section may be known and cited as the "Florida Stop and Frisk Law."
>
> (2) Whenever any law enforcement officer of this state encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state or the criminal ordinances of any municipality or county, the officer may temporarily detain such person for the purpose of ascertaining the identity of the person temporarily detained and the circumstances surrounding the person's presence abroad which led the officer to believe that the person had committed, was committing, or was about to commit a criminal offense.
>
> (3) No person shall be temporarily detained under the provisions of subsection (2) longer than is reasonably necessary to effect the purposes of that subsection. Such temporary detention shall not extend beyond the place where it was first effected or the immediate vicinity thereof.

[2] The Court in Hiibel cited to various state statutes that involve "stop and identify." With respect to Florida the court cited to F.S. 856.021, Florida's loitering and prowling statute.

> (4) If at any time after the onset of the temporary detention authorized by subsection (2), probable cause for arrest of person shall appear, the person shall be arrested. If, after an inquiry into the circumstances which prompted the temporary detention, no probable cause for the arrest of the person shall appear, the person shall be released.
>
> (5) Whenever any law enforcement officer authorized to detain temporarily any person under the provisions of subsection (2) has probable cause to believe that any person whom the officer has temporarily detained, or is about to detain temporarily, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person, the officer may search such person so temporarily detained only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon. If such a search discloses such a weapon or any evidence of a criminal offense it may be seized.
>
> (6) No evidence seized by a law enforcement officer in any search under this section shall be admissible against any person in any court of this state or political subdivision thereof unless the search which disclosed its existence was authorized by and conducted in compliance with the provisions of subsections (2)-(5).

Unlike the Nevada Statute which specifically required a Terry detainee to identify himself if asked, Florida's Stop and Frisk statute does not contain such a requirement. Florida cases rendered prior to *Hiibel* are somewhat conflicting.

In *Robinson v. State*, 550 So.2d 1186, 1187 (Fla. 5th DCA 1989), the defendant was detained by police on reasonable suspicion. He refused to identify himself or to answer other questions by the police. He was charged with resisting without violence. The Fifth District Court of Appeal stated, "the defendant's failure to cooperate—his refusal to answer questions—cannot itself be criminal consistent with fourth and Fifth Amendment protections." The *Robinson* Court appeared to require a lawful arrest as a prerequisite. The court stated that to do otherwise, "the state's argument would effectively render all uncooperative Terry-stop detainees criminals." In accord is *J. R. v. State*, 627 So.2d 126 (5th DCA 1993). See also *Burgess v. State*, 313 So.2d 479 (Fla. 2nd DCA 1975). These cases are binding upon us within the jurisdiction of the Fifth District Court of Appeal.

However, in *K. A. C. v. State*, 707 So.2d 1175 (Fla. 3rd DCA 1998), the Third District Court of Appeals found that a resisting without violence charge was proper where the police had reason to believe that the defendant was skipping school so stopped him to investigate pursuant to Chapter 39.421(1)(b). The court stated in its opinion that the defendant had a legal obligation to answer the officer's questions.

The previously cited cases from our controlling jurisdiction would prohibit a charge of resisting based upon a refusal to give information, such as identity, in a Terry stop. Although the court in *Hiibel* reached a different conclusion in similar circumstances, the Florida courts, even in light of *Hiibel,* may distinguish *Hiibel* based upon the differences in the state statutes; namely, the fact that the Supreme Court ruled that the 4th Amendment did not impose any duty upon a person to answer questions posed by police. Instead, the Supreme Court only evaluated whether the state statute at issue could impose such a requirement. Florida's stop and frisk statute does not contain a requirement that the defendant identify himself.

With regard to 5th Amendment concerns, *Hiibel* found no 5th amendment violation in the requirement to identify oneself where the failure to identify relates merely to the suspect being uncooperative. However, there is no Florida Constitutional provision requiring Florida to interpret the 5th Amendment as is done by the United States Supreme Court, as there exists for 4th Amendment issues. Florida courts are therefore free to expand the protections of the 5th Amendment beyond that afforded by the United States Supreme Court.

Fifth Amendment concerns were expressed in *Robinson v. State,* 550 So.2d 1186 (Fla. 5th DCA 1989), as discussed above, and that court found that a person's refusal to identify himself even in a valid Terry detention would not be consistent with Fifth Amendment protections, especially where the failure to identify oneself relates to the discovery of evidence against the person in question.

In light of these differences and existing case law and current statutory provisions, *Hiibel* cannot be read as authorizing an arrest for resisting when one refuses to identify himself in a Terry stop situation.

Regardless of the confusion in this area, it is clear that if the defendant did respond to the officer but gave the wrong name, a resisting charge may be valid provided the officer's investigation or arrest was impeded in a significant way. If a person gives the wrong name during a valid Terry stop or an arrest based upon probable cause then gives the right name within a few minutes, and the officer's investigation or arrest is not impeded, then a resisting charge will not be upheld. The standard is "no harm, no foul." This standard is designed to

encourage witnesses to correct their false statements, without fear of prosecution, before they have done any harm.

When a law enforcement officer lawfully detains a person and the person gives a wrong name, a charge of resisting without violence can only be maintained provided the false information impeded the officer's investigation in a significant fashion. A review of the cases in this area will be discussed below in the arrest section as the same rules apply.

Arrest Situations

If a law enforcement officer lawfully arrests a person, a resisting charge may be pursued for one who refuses to identify himself or herself. See *Burkes v. State*, 719 So.2d 29 (2nd DCA 1998). In *Burkes*, the defendant was charged with resisting without violence for his refusal to give his name to law enforcement after he had been arrested for drug offenses. The 2nd DCA ruled that after an individual has been lawfully arrested, he must provide his name or otherwise identify himself when asked by law enforcement officers and further, that section 843.02 Florida Statutes (1992) entitled "Resisting officer without violence to his or her person" is the proper statute with which to charge an individual with obstruction for failure to give their name or otherwise identify themself.

"An individual may properly refuse to give his name or otherwise identify himself to law enforcement when he has not been lawfully arrested, see *Burgess v. State*, 313 So.2d 479 (Fla. 2d DCA 1975), and prior to a lawful arrest. See *J. R. v. State*, 627 So.2d 126 (Fla. 5th DCA 1993). However, after a lawful arrest, an individual is compelled to provide his identity. In *Allred v. State*, 622 So.2d 984, 986 (Fla.1993), the Florida Supreme Court addressed this issue and stated: "We find however that routine booking questions do not require Miranda warnings because they are not designed to lead to an incriminating response; rather, they are designed to lead to essential biographical data." *Burkes* at 30.

However, there may be some instances where the refusal to give one's name even after a valid arrest would result in a violation of the 5th amendment. In *St. George v. State*, 564 So.2d 152 (Fla. 5th DCA 1990), the defendant told authorities, either during the booking procedure or during an early court appearance, that his name wasn't Gregory St. George, but he refused to reveal his real name. The State filed a motion to compel identification. Defense counsel informed the trial court that the defendant feared this information would furnish a link in the chain of evidence needed to prosecute charges against him in another county and, therefore, he was invoking his privilege against self-incrimination. The trial court ordered the defendant to identify himself. He refused. The court held him in direct criminal contempt, sentencing him to serve 179 days in the county jail. The defendant appealed to the Fifth District Court of Appeals. The appellate court said the defendant didn't have to identify himself, stating:

> The privilege extends to answers that in themselves would support conviction as well as any information sought which would furnish a link in the chain of evidence needed to prosecute. The privilege protects against any disclosure which an individual reasonably believes could be used in a criminal prosecution or could lead to other evidence which might be so used. Once an individual has invoked his privilege against self-incrimination, it becomes the duty of the trial court to determine whether there is a reasonable basis for the assertion of the privilege and whether the privilege has been invoked in good faith.

Thus, although a resisting charge may be valid from a 4th Amendment standpoint, there may be valid defense arguments based upon 5th amendment principles. This must be evaluated on a case-by-case basis.

In addition, when a person is arrested and is cooperative in answering the officer's questions about his name but gives the officer a false name, whether a charge for RWOV will lie will be determined by whether it impeded the arrest or investigation. The no harm no foul rule which applies in a Terry detention also applies in an arrest situation.

In *A. P. v. State*, 760 So.2d 1010 (3rd DCA June 14, 2000) a RWOV charge was upheld where the defendant, while being investigated as a possible runaway, gave a false name to the officer requiring further inquiry by the officer. Although she corrected this by giving her correct name, she did so after the officer had already discovered her true identity.

In *Rumph v. State*, 544 So.2d 1150 (Fla. 5th DCA 1989), the defendant gave law enforcement a false name which was then recorded on the police report. The court noted "the giving of a false name obstructs the officer in the preparation of the arrest reports he is required to complete."

Rumph cites to *Caines v. State*, 500 So.2d 728 (Fla. 2nd DCA 1987). In *Caines* the defendant gave a false name which was recorded on the arrest affidavit, after which he was booked into the jail and an information was filed under the false name resulting in a court appearance by the wrong person. This clearly constituted RWOV.

In *C. T. v. State*, 481 So.2d 9 (Fla. 1st DCA 1986) the defendant was stopped by police and given a ticket for riding a bicycle without a headlight. The false name he gave to the officer was "officially recorded" on the citation and the officer had the false name checked by dispatch for warrants. After the warrant check was done under the false name the defendant gave his true name. The First DCA ruled that although the false name was "officially recorded" in the

sense that it was written on the citation, since the defendant promptly and voluntarily recanted the false information and it did not interfere with the officer's performance of his duties other than causing an insignificant loss of time, there was no RWOV.[3]

A careful reading of these and other cases on this point indicates that more is required than giving a false name and having this recorded on the arrest report. In *Rumph* the defendant had already been arrested, the arrest report had been completed, and it seemed clear that the defendant had already been booked into the county jail. The defendant's true identity was not discovered until the day after the arrest!

In *Townsend v. State*, 585 So.2d 495 (Fla. 5th DCA 1991), Deputy Collins of the Orange County Sheriff's Office saw a car speed past on Pine Hill Road and turn into a parking lot. Deputy Collins entered the parking lot and saw two men standing by the car. He and Deputy Callahan questioned the two men, who gave contradictory statements. Townsend told Deputy Collins that he was "Sean Michael Downey" and gave a false address. While Deputy Collins was running a computer check, Townsend admitted he gave a false address. The computer check revealed the car was registered to David Townsend. Townsend admitted the car was his, but again claimed his name was Downey. He didn't reveal his true name until he was arrested and questioned further.

The Fifth District Court of Appeal said:

> We agree with *In Interest of J. H.*, 559 So.2d 702 (Fla. 4th DCA 1990), that the policy reason for excusing false testimony in order to induce witnesses to change their statement and tell the truth as enunciated in *P. P. v. State*, 466 So.2d 1140 (Fla. 3rd DCA 1985), is no longer applicable after an arrest has occurred. Townsend, by his constant lying, made the investigation of a simple misdemeanor driving without a license charge far more time consuming that it normally would be. His post-arrest admission of his identity, after it was discovered by the officer through other means, was mere confirmation after the investigation was, for all practical purposes, complete.

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[3] In Rushing v. State, 684 So.2d 856 (5th DCA 1996) review denied 694 So.2d 739, the defendant signed another persons name to a traffic citation. The defendant was charged with forgery and RWOV. The Court noted in footnote 4 of the opinion that the defendant's act of signing another persons name to a traffic citation would have constituted the crime of resisting without violence. The case does not discuss when the error was discovered. The defendant was convicted of the forgery, which resulted in the appeal.

In summary, for a person in a valid Terry detention or arrest to violate the RWOV statute when they give a false name, the circumstances need to show that the officer's investigation or arrest was impeded other than the inherent loss of a little time.

Violation of 901.36: Giving False Name to Law Enforcement

Florida Statute Section 901.36, F.S., enacted effective July 1, 1999, reads as follows:

> (1) It is unlawful for a person who has been arrested or lawfully detained by a law enforcement officer to give a false name, or otherwise falsely identify himself or herself in any way, to the law enforcement officer or any county jail. Except as provided in subsection (2), any person who violates this subsection commits a misdemeanor of the first degree. . . .
>
> (2) A person who violates subsection (1), if such violation results in another person being adversely affected by the unlawful use of his or her name or other identification, commits a felony of the third degree. . . .

This statute does not contain a requirement that there be an impediment to the investigation or arrest. Therefore, when a law enforcement officer detains a person on reasonable suspicion or lawfully arrests someone, and the person gives the wrong name, this statute can be used. If used, it will avoid the issues of impediment to the arrest/investigation.

Keep in mind, however, that the lawfulness of the arrest or Terry detention is an element of the offense, so this will remain an issue. Illustrative is *Belsky v. State*, 831 SO.2d 803 (4th DCA 2002). In *Belsky*, the officer on patrol saw two men conduct what appeared to be a "hand-to-hand" drug transaction in a high-crime area. The officer approached and questioned Belsky, and asked for his name. Computer checks determined that Belsky had provided the officer with a false name and he was arrested; a search incident to the arrest found the contraband. The court found that the officer did not have probable cause to arrest Belsky for giving a false name where the officer had unlawfully detained the man initially, based on a hunch that he was involved in a drug transaction The DCA said. "(T)o constitute a violation of section 901.36, Florida Statutes, the giving of a false name to a law enforcement officer must occur during an arrest or lawful detention. Because the officer in this case lacked reasonable suspicion to detain appellant and did not otherwise have probable cause to arrest him, he lacked probable cause to arrest appellant for giving a false name. Consequently, the arrest of appellant was unlawful and required suppression of the items seized during the search incident to the arrest." See also *J. P. v. State*, 855 So.2d 1262 (4th DCA 10-15-03).

Conclusion

In short, a person may resist an unlawful arrest as long as he or she does not use, or offer to use, violence. If a law enforcement officer tries to engage a person in a consensual encounter, the person may refuse to identify him or herself, instruct others to do the same, or run away from the officer.

Under controlling case law within the 5th District, rendered prior to *Hiibel*, an arrest may not be made in a Terry Detention simply because the Terry detainee has failed to identify himself. Whether *Hiibel* has changed this cannot be clearly supported under our existing Stop and Frisk statute. However, a statutory amendment requiring a person to identify himself in a valid Terry detention would appear to authorize a resisting charge under *Hiibel*. A resisting charge may be proper if the person refuses to identify him or herself after a valid arrest on other grounds. A resisting charge is proper if a person attempts to flee while being detained on reasonable suspicion or probable cause.

If a person gives a wrong name during a valid Terry stop or probable cause arrest then provides the correct information he or she may be charged with resisting **only** if this caused some impediment to the investigation or arrest other than the insignificant loss of time.

A person who has been lawfully arrested or lawfully detained, and who gives a false name, may be charged with violating Section 901.36, F.S., "Prohibition against giving false name or false identification by person arrested or lawfully detained" even when there is no impediment to the arrest or investigation, provided the detention/arrest is lawful.

Miscellaneous Issues

What follows is a summary of some of the cases which have an impact upon the number of resisting charges that the State Attorney can actually file against an offender.

In *Brown v. State*, 754 So.2d 124 (5th DCA March 17, 2000), the court ruled that a defendant cannot be charged with more than one count of resisting with/without violence for his actions in resisting a single officer when the actions of the defendant are a continuous resistance to the officer's ongoing attempt to effectuate an arrest. More than one count is a violation of double jeopardy.

A defendant cannot be charged with more than one resisting with/without violence when the resisting is a continuous resistance to the ongoing attempt to effectuate his arrest even where several officers are involved in the altercation. See *Davis v. State*, 774 So.2d 862 (3rd DCA 12-27-00) citing *Wallace v. State*, 724 So.2d 1176 (Fl. 1998).

However, where the resisting incidences arise from events separated by time or location showing a temporal break between the incidents, then more than one count of resisting will lie. See *Bright v. State*, 760 So.2d 287 (5th DCA 2000). See also *Drayton v. State*, 791 So.2d 522 (4th DCA 7-18-01) where the court found the acts had different intents thus two distinct resisting charges.