

# CITY OF TAMPA

Police Department

Bennie R. Holder  
Chief of Police

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March 28, 2001

Barbara Orban  
Tampa, Florida 33609

Dear Ms. Orban:

Reference is made to your most recent correspondence dated February 28, 2001, regarding issues germane to your at-fault traffic crash on March 27, 2000. Previously, you identified a concern about the conversation between yourself and the on-scene training officer immediately preceding the traffic crash. A peripheral matter dealt with the manner by which you were cited for Careless Driving (F.S.S. 316.1925) versus Following too Closely (F.S.S. 316.0895). Unfortunately, this may have had a negative impact upon your status regarding your insurance carrier.

Research has uncovered a minimum of three previous correspondences from you, received by the Tampa Police Department, requesting an investigation. These are dated September 22, 2000, December 23, 2000 and January 26, 2001. Your first solicitation was somewhat ambiguous and the parameters were narrowed in the subsequent petition accusing the Tampa Police Department of a "misguided mission" regarding ticket quota.

The Tampa Police Department has completely and unequivocally assisted you in every way possible by responding to your original concerns through a correspondent from the office of the Chief of Police on September 11, 2000. Your second correspondence purports that the Internal Affairs Bureau discouraged you from filing a complaint and the Tampa Police Department practices gender discrimination. The truth is that in September of 2000, Detective Murray told you that Officer Duncan violated no standard operation procedures or Polices of the Tampa Police Department regarding the issuance of citations, that "you had no complaint". This erroneous accusation of discrimination is anchored in the assumption that Officer Duncan issued you a citation because you are a woman and not that you carelessly struck another vehicle from the rear causing damage.



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Facts: Vehicle #1: On March 27, 2000, vehicle #1 was traveling southbound on South MacDill Avenue at approximately 5 to 10 miles an hour when the driver failed to observe vehicle #2 in time and struck vehicle #2 the rear. The driver of vehicle was Barbara Orban.

Vehicle #2: Vehicle #2 was stopped facing southbound on South MacDill Avenue when it was struck by vehicle # 1 in the rear

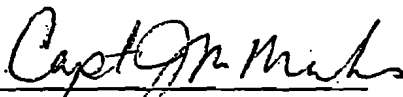
The facts reported in Tampa police report #00T-23137 meets and exceeds more than probable cause for Officer Duncan to charge you with careless driving (see attached Florida State Statue 316.1925). Also provided for your records is a copy of Florida State Statues 316.0895, which does not apply in this case because you must first be following a vehicle before you can be accused of following too close. Vehicle #2 was stopped was at a complete stop when it was struck. Officer Duncan was correct in issuing a citation for careless driving and the fact that you pled nolo contendere, which is an admission of guilt, lends credence to the facts of this case.

The Tampa Police Department is continually striving to improve its image and the professional demeanor exhibited by our members. Consequently, we make every effort to thoroughly investigate the merits of each complaint and take appropriate action whether it be disciplinary action, a training need, or if the complaint is not substantiated, identify, if possible, why a complaint was lodged.

Presently, the Internal Affairs Bureau, and other divisions within the Tampa Police Department, has answered all of your concerns. Consequently, this will be the last initiative made to you regarding this matter.

Sincerely,

BENNIE R. HOLDER  
Chief of Police

By:   
J. M. Marks, Captain  
Internal Affairs Bureau

cc: AG Attorney General  
City of Tampa Mayor

convicted to complete the substance abuse course provided in s. 316.193(5) within a reasonable period of time specified by the court. The agency conducting such course may refer the person to an authorized agency for substance abuse evaluation and treatment. The directive of the court requiring completion of such course shall be enforced as provided in s. 322.245. If a person referred to a substance abuse education course or treatment under this subsection fails to report for or complete such treatment or education, the agency conducting 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. The department shall reinstate the driving privilege when the person completes the substance abuse education course or reenters treatment required under this subsection.

(4) (Effective 1/1/2000. See other subsection (4) above.) 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. (Chgd. by L.1999 ch. 234(4), eff. 1/1/2000.)

**§316.1925. Careless driving.**

(1) Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.

(2) Any person who violates this section shall be cited for a moving violation, punishable as provided in chapter 318. (Chgd. by L.1996 ch. 350(24), eff. 10/1/96.)

**§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.

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**§316.089. Driving on roadways laned for traffic.**

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent herewith, shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, when in preparation for making a left turn, or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic control devices.

(3) Official traffic control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway; and drivers of vehicles shall obey the directions of every such device.

(4) Official traffic control devices may be installed prohibiting the changing of lanes on sections of roadway, and drivers of vehicles shall obey the directions of every such device.

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

(Chgd. by L.1999 ch. 248(113), eff. 6/8/99.)

**§316.0895. Following too closely.**

(1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon, and the condition of, the highway.

(2) It is unlawful for the driver of any motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer, when traveling upon a roadway outside of a business or residence district, to follow within 300 feet of another motor truck, motor truck drawing another vehicle, or vehicle towing another vehicle or trailer. The provisions of this subsection shall not be construed to prevent overtaking and passing nor shall the same apply upon any lane specially designated for use by motor trucks or other slow-moving vehicles.

(3) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade, whether or not towing other vehicles, shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

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

(Chgd. by L.1999 ch. 248(114), eff. 6/8/99.)

**§316.090. Driving on divided highways.**

(1) Whenever any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic control devices or police officers.

(2) No vehicle shall be driven over, across, or within any such dividing space, barrier, or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection as established, unless specifically authorized by public authority.

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

(Chgd. by L.1999 ch. 248(115), eff. 6/8/99.)

**§316.091. Limited access facilities; interstate highways; use restricted.**

(1) No person shall drive a vehicle onto or from any limited access roadway except at such entrances and exits as are established by public authority.

(2) Except as provided herein, no person shall operate upon a limited access facility any bicycle, motor-driven cycle, animal-drawn vehicle, or any other vehicle which by its design or condition is incompatible with the safe and expedient movement of traffic.

(3) No person shall ride any animal upon any portion of a limited access facility.

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