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LED's MDT

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Issue 2. December 2013¹

Surcharge for Civil Motor Vehicle Infractions (CMVI) to fund police training!

As of December 1, 2013, officers must add \$5 to every Chapter 89 and 90 offense listed on their citations. This surcharge was approved by the legislature as part of the FY2014 budget to increase funding for police training. Chapter 38, Acts of 2013.

Each officer must remember to add the \$5 fee to the scheduled assessment for each infraction. For example, the regular fine for a seat belt violation under G.L. c. 90, § 13A is \$25. Now, officers will write the fine for a seat belt violation as \$30 (\$25 assessment plus \$5 training surcharge).

As another example, the regular fine for going through a red light is \$100 under G.L. c. 89, § 9.² With the new surcharge in place, officers will list the fine as \$105 on the citation.

Unless officers remember to add the \$5 surcharge, the money will not be earmarked for police training! Naturally, warnings remain the same; do not add the surcharge.

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² A common misconception among some officers is that a red light violation is \$150. The statute allows \$150 as the maximum possible fine, but the registry and district court have the authority to approve a lower fine in their table of scheduled assessments. That is why the appropriate fine on the citation has always been \$100. Go to www.mass.gov and click on the district court website. Then review "Revised CMVI Assessment Schedule."

Misleading a police officer

G.L. c. 268, § 13B does not require that an officer rely on, or even believe, the suspect's misleading statement. *Comm. v. Lopez*, 2013 WL 5730398 (Appeals Court): Detective Manning had information that Jonathan Gonzalez illegally possessed a firearm. He observed several males, including Gonzalez and Juan Lopez, in a driveway. The men entered the house.

When Manning approached the front door, Lopez came out to meet him. Manning told Lopez he knew Gonzalez was inside the home and that he should tell Gonzalez to come out and surrender.

Lopez went back inside. Manning saw Gonzalez through the window. When Lopez returned, he told Manning that Gonzalez was gone. Manning told Lopez that he saw Gonzalez and would arrest Lopez for interfering with a police investigation if he did not cooperate. Lopez lied again. He was later convicted.

- **Mislead.** The SJC defined the term “mislead” in *Comm. v. Figueroa*, 464 Mass. 365 (2013) – a case where the defendant was convicted for lying to his parole officer about his whereabouts on Halloween. Mislead means:
 - (1) Knowingly making a false statement; or
 - (2) Intentionally leaving out information to create a false impression; or
 - (3) Deliberately recommending that authorities rely on a false written statement, photograph, or other item.
- **Authorities need not be deceived.** Here, Lopez lied to Manning about an investigation. The police did not have to rely on his statements, or even believe him. The fact that he made the false statement was enough.
- **Effective warning.** Notice how Detective Manning warned Lopez that he would be charged if he persisted in lying. This can be an effective approach at the outset of an interview with a witness or suspect who is being less than candid.

Disturbing the peace

Throwing snowballs at a house is Disturbing the Peace. *McCormack v. Town of Whitman*, 2013 WL 1187093 (United States District Court): After a night of drinking, four teenagers began throwing snowballs at nearby houses. When a resident, David Jones, confronted them, Jay Brazer threw a snowball at him. Jones approached the group, and Brazer pushed him to the ground. The boys fled, but later returned.

Jones called the police. He reported four teenagers throwing snowballs at his house and verbally threatening him. After an unsuccessful search for the boys, the officer told Jones to call again if another disturbance occurred.

The boys did return again, intending to fight Jones. When they heard police sirens, the boys ran off. The responding officer saw Jones chasing the boys down the street and pointing at Joseph McCormack. At this point, the officer had probable cause to arrest McCormack for Disturbing the Peace (G.L. c. 272, § 53).

Unfortunately, the officer overreacted. He was successfully sued for using excessive force when he knocked Joseph McCormack down with his cruiser.

His use of force was obviously unreasonable. The crime was not severe. McCormack's flight alone was not enough to justify force. "Heading off" a defendant with your police cruiser is extremely dangerous and should only be used as a last resort.

Hope this helps you on the street,

John Sofis Scheft