
LEGAL BULLETIN

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

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2nd District Court of Appeal

Motion to suppress - illegal arrest:

A law enforcement officer may not make a warrantless arrest for a misdemeanor, such as trespassing, unless every element of the crime is committed in his presence, the 2nd DCA said. Reginald Smith appealed his convictions for trespassing and drug possession. Two police officers watched Smith for 10 minutes outside a convenience store as he talked to patrons in the parking lot, at the gas pumps and pay phones. Smith went inside the store when he saw the officers approaching, and was arrested for trespassing. The officers subsequently discovered drugs in Smith's possession. Smith contended that the trial court should have suppressed the drugs on the ground that his arrest for trespass was illegal. The DCA agreed. "The evidence in this case shows that Smith did not commit a crime in the officers' presence. He had been invited on the 'quasi-public' property and had no notice that he was not permitted to remain. The arrest for trespassing was illegal and the drugs discovered in the search incident to that arrest must be suppressed as the fruits of the illegality," the DCA said.

Assistant Attorney General Erica M. Raffel represented the state on appeal.

[Smith vs. State, 12/29/00]

Motion to suppress - investigatory stop:

An investigatory stop conducted to look into suspected loitering and prowling and to get an individual to submit to a field interview is illegal, the 2nd DCA said. Timothy Rinehart appealed his conviction for possession of cocaine. Rinehart was observed by a deputy sheriff getting into a parked vehicle, which was located near a building that housed a business

and apartments. After observing two other people in the vicinity and being dissatisfied with their reasons for being in the area, the officer decided to conduct a five-minute field interview. When the officer asked Rinehart to step out of the car, Rinehart fell to his knees and began vomiting. When he arose, the officer noticed a plastic bag, later found to contain cocaine, on the ground next to where his hand had been. The officer arrested Rinehart. Rinehart asserted that the trial court should have granted his motion to suppress because he was illegally detained, and the DCA agreed. "(T)he investigatory stop of Mr. Rinehart failed to meet the requirements demanded by our law of search and seizure; and, absent the illegal stop, the deputy would not have discovered the cocaine," the DCA said. Writing a separate concurring opinion, Judge Altenbernd said, "Loitering statutes often face close constitutional challenges. They frequently are the source of civil lawsuits against police officers. Conduct that is suspicious of loitering is and should be a factor to consider in developing reasonable suspicion for some other crime, but our society, our police, and our courts would have fewer problems with the offense of loitering if officers were not permitted to engage in investigatory stops for this offense."

Assistant Attorney General Wendy Buffington represented the state on appeal.

[Rinehart vs. State, 12/29/00]

Motion to suppress:

The identity of a defendant can be suppressed as the fruit of an unlawful stop in a prosecution for driving with a suspended license, the 2nd DCA held. Robert Delafield appealed his conviction for driving with a suspended license. Delafield contended that the trial court erred in failing to suppress his identity following an unlawful stop

because it was bound to follow 2nd DCA case law that has subsequently been overruled. Delafield was stopped after an officer observed him pick up a suspected prostitute. Delafield gave the officer his name and date of birth, after informing him that his license was suspended. Delafield was arrested for driving with a suspended license and his vehicle was searched, turning up a marijuana cigarette. Delafield argued that the officer lacked probable cause for a stop, and so the marijuana and his identity should have been suppressed. The DCA agreed. Relying on the Florida Supreme Court case of *State vs. Perkins* and its own previous decision in *Turben vs. State*, the 2nd DCA concluded, "The gravamen of the holding in *Perkins* is that identity is no different from other evidence that must be suppressed following an unconstitutional stop. In a prosecution for driving with a suspended license, the essential evidence consists of the officer's discovery of the identity of the defendant as the driver at the time of the arrest. When the stop is tainted, so is the identification evidence."

Assistant Attorney General Katherine Coombs Cline represented the state on appeal.
[Delafield vs. State, 12/27/00]

3rd District Court of Appeals

***Miranda* rights:**

An individual who said he was a crime victim and voluntarily accompanied police to the station is not entitled to *Miranda* warnings prior to making statements that incriminate him in the crime, the 3rd DCA held. Larry Duggins appealed his convictions for third-degree murder and other offenses, contending that the trial court erred when it denied his motion to suppress his inculpatory statements. Duggins had told police he was the innocent victim of a shooting, but later implicated himself in other crimes the police were investigating. Officers then gave Duggins his *Miranda* warnings, and on appeal he argued that the statements made prior to the warning should have been suppressed. The DCA disagreed. "The trial court acted within its broad discretion when it

denied defendant's motion to suppress. The court properly found that defendant was not in police 'custody' when he gave those statements," the DCA said. "(Duggins) was not a suspect when he was voluntarily transported to the station; the police did not even know that he had been in possession of a weapon. He had not been 'seized' by police before he made his incriminating statement. The only reason why defendant was at the police station is that he himself had filed a police report claiming that he had been the innocent victim of a shooting."

Assistant Attorney General Steven R. Parrish represented the state on appeal.

[Duggins vs. State, 12/13/00]

Motion to suppress physical evidence:

The Fourth Amendment's prohibition against a warrantless entry into a person's home does not apply to situations in which officers reasonably believe the consenting party has authority over the premises, the 3rd DCA said. The state appealed an order granting Orlando Scott's motion to suppress physical evidence. Julie Richardson, Scott's girlfriend and shooting victim, told officers that she had been shot by Scott. Richardson said she had lived with Scott for five months and said she paid most of the bills and living expenses and had purchased furniture and appliances for the residence. Richardson agreed to use her key to let officers into the house to arrest Scott. Scott contended that the residence was his and Richardson only occasionally spent the night there, and said she did not have the right to waive his Fourth Amendment rights and consent to the search. The DCA disagreed. "In this case the officers had a reasonable belief when they entered the residence that Richardson had authority over the premises and authority to consent to the entry to search," the DCA said. "Although the police were factually wrong in their belief that Richardson lived at defendant's residence, at the time of the search they had no reason to think otherwise even though she was the victim of the crime being investigated."

Assistant Attorney General Steven R. Berger represented the state on appeal.

[State vs. Scott, 12/20/00]

4TH District Court of Appeals

Pretrial identification - "show-up:"

A "show-up" procedure is valid if the identification is based solely on a witness' independent recollection of the suspect and is not influenced by the way in which the procedure is conducted, the 4th DCA said. Kevin Walker appealed the trial court's final judgment, which found him guilty of two counts of armed robbery and sentenced him to life imprisonment as a prison releasee reoffender. Walker argued that the trial court erred in denying his motion to suppress the pre-trial identification. He contended that three witnesses should not have been allowed to testify regarding their pre-trial identification or to make an in-court identification of him. The DCA disagreed. "Although 'show-up' procedures are inherently suggestive because the witness is presented with only one suspect for identification, it can be valid if the identification is based solely upon the witness' independent recollection of the suspect without being influenced by the suggestiveness of the procedure," the DCA said.

Assistant Attorney General Jan E. Vair represented the state on appeal.

[*Walker vs. State*, 12/13/00]

Motion to suppress physical evidence:

A police officer does not have to "know" that a certain item is contraband or evidence in order to seize it, but rather he only has to have probable cause to associate the property with criminal activity, the 4th DCA held. The state appealed the trial court's ruling granting Harry Hafer's motion to suppress physical evidence and testimony in connection with his prosecution for various sex crimes. The state contended that the police officer had probable cause to search Hafer because he observed what he believed to be an open beer container and Hafer admitted it was beer. Therefore, the state said, photographs of underage, nude women confiscated by the officer should not have been suppressed. The DCA agreed. "Based on his

observation, the officer had reasonable suspicion to detain Appellee, much the same way an officer finding a clear bag containing white powder might under suspicious circumstances have reason to investigate and detain an individual. Whether the officer actually knew it was beer at the time he stopped Appellee is not determinative of the officer's right to do so," the DCA said. "Because the stop was valid and Appellee consented to a search of his vehicle, the seizure of the photographs in open view and those in the trunk, as well as all other evidence ensuing from the stop, was lawful," the DCA also said.

Assistant Attorneys General Sarah B. Mayer and Georgina Jimenez-Orosa represented the state on appeal.

[*State vs. Hafer*, 12/13/00]

Resisting officer - illegal stop:

The mere fact that an individual was riding his bicycle in the early morning hours a few blocks from the scene of a bicycle theft does not give police a well-founded suspicion that he was involved in criminal activity, the 4th DCA said. A juvenile identified as H.H. appealed his adjudication for resisting an officer without violence. H.H. contended that his initial stop by the police was unlawful, and so he could not be guilty of the crime of resisting an officer without violence. The DCA agreed. "Giving deference to the trial court's finding that (the officer) initially stopped appellant to investigate a bicycle theft, we hold that the stop was illegal. Consequently, appellant could not be adjudicated for resisting or obstructing the officer in the lawful execution of a legal duty," the DCA said.

Assistant Attorney General David M. Schultz represented the state on appeal.

[*H.H. vs. State*, 12/20/00]

Constitutionality of knife statute:

The Florida law making it unlawful to manufacture, sell, or possess self-propelled knives is not unconstitutionally vague, the 4th DCA held. The state appealed a trial court ruling that section 790.225, F.S., is unconstitutionally vague. In a case involving a

vendor of switchblade knives, the state contended that the trial court erred by concluding that it is unclear whether the statute sought to prohibit common, everyday switchblade knives or the so-called "KGB type knife" that shoots a blade. The state also contended that the trial court was wrong when it reasoned that the term "projectile" used in the statute has "the connotation that it (the blade) springs forth in some way" as if the blade left the casing altogether. The state also said the trial court erred when it reasoned that the Legislature did not intend to prohibit the sale or possession of switchblade knives and concluded that upholding the constitutionality of the statute would make the switchblade knife an illegal weapon in Florida. "When the statute is read as a whole, the statute imparts to a person of common intelligence and understanding that possessing a switchblade knife would be a crime. It is common knowledge that a switchblade operates on a coil spring or device that springs the blade out from the handle or casing. Reading the statutory language as a whole, it seems apparent the Legislature intended to distinguish switchblade knives from folding-type knives that require manual and deliberate removal of the knife blade from the handle or casing. Using such terms, then, it seems apparent the Legislature intended to make the possession of switchblade knives ... illegal while allowing possession of other types of knives or pocketknives," the DCA said. Assistant Attorney General Rajeev Saxena represented the state on appeal. [State vs. Darynani, 12/27/00]

5TH District Court of Appeal

Motion to suppress - unlawful search:

A deputy's generalized safety concern, which arose after he asked a suspect to accompany him to his vehicle so he could issue a trespass warning, does not meet the threshold for a protective pat-down search, the 5th DCA said. Allen Augustus was charged with possession of cannabis with intent to sell based on the contents of an envelope found in Augustus'

pocket during a pat-down. Augustus argued on appeal that the search was unlawful because Lake County Sheriff's Deputy Mark Womack did not have an articulable suspicion that Augustus was armed. Augustus also contended that it was unreasonable for Deputy Womack to believe that the "hard-edged object" in the envelope may have been a weapon. The DCA agreed, reversing and remanding with instructions to vacate Augustus' conviction. "Womack's generalized safety concerns arose because he elected to have Augustus accompany him to his vehicle to issue (a) trespass warning. This does not meet the threshold for a pat down search," the DCA concluded.

Assistant Attorney General Patrick W. Krechowski represented the state on appeal. [Augustus vs. State, 12/01/00]

Motion to suppress - fleeing and eluding:

The state does not have to prove that a suspect who attempted to elude police violated the law when he drove down the middle of the street when there was no other traffic, the 5th DCA said. The state appealed a trial court order granting Steven McCune's motion to suppress. McCune was arrested after an officer observed him driving down the middle of a two-lane residential street. The officer flashed his blue lights in an attempt to get McCune to pull over, but McCune instead sped up to 55 mph and raced home with the officer in pursuit. In his driveway, McCune was arrested for fleeing and eluding a police officer. Officers then found a metal cannabis pipe on McCune and an open container in the vehicle. McCune filed a motion to suppress, contending that the state failed to prove that driving down the middle of the street when there was no other traffic constituted a violation of the law and so there was no basis for the chase and subsequent arrest. The DCA reversed the motion to suppress. "The law of the District is that regardless of the legality of the initial stop (or attempted stop), the statutory offense of fleeing and eluding does not require the lawfulness of the police action as an element of the offense. McCune should have stopped when the officer put on his lights and sounded his siren," the DCA concluded.

Assistant Attorney General Pamela J. Koller
represented the state on appeal.
[*State vs. McCune*, 12/01/00]

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