
LEGAL BULLETIN

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

FRED O. DICKINSON, EXECUTIVE DIRECTOR

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Florida Supreme Court

Speedy trial violation - state's failure to act:

The State cannot get around the speedy trial rule simply by taking no action prior to the expiration of the speedy trial period and then filing an information, the Florida Supreme Court held. The Court ruled in favor of Latundra Williams, who was arrested on unspecified charges in October 1999. The State took no action on Williams' case until an information was filed 206 days after her arrest, after the expiration of the 175-day speedy trial period. The trial court moved forward with the case, but Williams reserved her right to challenge the speedy trial question. The main issue on appeal was whether Florida Rule of Criminal Procedure 3.191 should be construed to allow the State to effectively toll the running of the speedy trial period by allowing it to expire prior to filing formal charges. The Supreme Court, affirming a decision of the 2nd DCA, concluded that the state cannot take such action. "(T)he speedy trial time begins to run when an accused is taken into custody and continues to run even if the State does not act until after the expiration of that speedy trial period. The State may not file charges based on the same conduct after the speedy trial period has expired," Justice Harding wrote for the 5-2 court majority.

[*State v. Latundra Williams*, 7/13/01]

2nd District Court of Appeal

"Plain-feel" doctrine - detection of contraband:

If an officer must squeeze an object in a suspect's pocket during a patdown in order to identify it as drugs, the contraband is not "immediately apparent" and the search is not protected by the "plain-feel" doctrine, the 2nd DCA held. The court agreed that an officer's decision to conduct the patdown of Christopher Frazier was appropriate because Frazier "briskly" removed his hand from his pocket and reached underneath his shirt waistband when told to stop by officers responding to complaints about loitering and trespassing. Seeing Frazier's actions, Officer Smith suspected Frazier might be armed and patted him down. The officer felt three "soft spongy" items that he immediately determined to be marijuana, and also felt what he believed to be rock cocaine.

Frazier contended that the officer did not have a reasonable suspicion to conduct an investigatory stop, but the DCA disagreed, in part because of the way Frazier responded when the officer approached. The State also argued that the patdown and subsequent seizure were legal based on the "plain-feel" exception to the Fourth Amendment's warrant requirement, but the DCA disagreed. "We reject this argument because Smith found it necessary to squeeze the items through Frazier's pockets in order to identify them, indicating that it was not immediately apparent to him that the items were illegal narcotics," the DCA said.

[*Frazier v. State*, 7/6/01]

"Knock and announce" violation:

A police search is illegal where officers executing a valid search warrant knock and announce themselves, but don't wait a reasonable time before entering forcibly, the 2nd DCA said. Linda Randall appealed drug convictions, asserting that the Bradenton police officers who executed the search warrant violated the "knock-and-announce" rule by failing to give her sufficient time to respond to their knock. The officers had a warrant indicating the person with whom Randall was staying had drugs, but the warrant gave no indication the occupants posed a threat to officers' safety. The DCA noted that this is the second time in two months it has reversed a case based on the knock-and-announce procedure employed by Bradenton police. "Because the Bradenton police officers who executed the search warrant failed to comply with the 'knock-and-announce' rule in section 933.09, Florida Statutes (1999), by not affording Ms. Randall a reasonable amount of time to respond before forcibly entering her residence, we reverse," the DCA said.

[*Randall v. State*, 7/13/01]

3rd District Court of Appeal

Motion to suppress physical evidence:

A suspect, who tossed away a plastic bag of marijuana when a police officer instructed him to stop, can have the evidence used against him even though the stop itself might have been invalid, the 3rd DCA ruled. A juvenile identified only as A.M. was arrested for marijuana possession, but the trial court suppressed the drug evidence because the officer lacked probable

cause to seize the juvenile. The officer was responding to a domestic violence call when he saw the juvenile, who matched the description from the call and was standing on a corner with a known drug offender. The trial court concluded that the marijuana evidence was the result of an improper seizure, but the DCA disagreed. The DCA noted that a seizure under the Fourth Amendment requires either the application of physical force by the officer or the defendant's submission to the officer's show of authority. "We find the trial court erred in granting the motion because (A.M.) was not 'seized' prior to throwing the baggie," the DCA said. "(A.M.) discarded the drugs without having acquiesced to the officer's request to stop before the officer ever touched him. Accordingly, the drugs could not have been the fruit of an unlawful seizure and the motion to suppress should have been denied." [*State v. A.M.*, 7/5/01]

Anonymous tip as basis for stop:

Police did not have enough information to justify their stop of a car based merely on an anonymous tip that the men inside were on their way to commit a home invasion robbery, the 3rd DCA held. Citing the U.S. Supreme Court's ruling last year in *Florida v. J.L.*, the DCA said police only had a vague tip that could not be sufficiently corroborated. The only detail provided by the tipster was an address where he said three black males would be getting into a gray Acura. The tipster provided no predictive information such as the time and place the robbery would occur, which the DCA said would have allowed officers to test the tipster's knowledge and credibility. "Indeed, the only information that the police were able to corroborate in this case from the tip was that three black males got into an Acura Legend at a specified address. These innocent details, without more, are insufficient to justify a *Terry* stop of these individuals," the DCA said. "The innocent details provided in the tip in this case were in no way incriminating or indicative of criminal behavior that would justify police action." [*State v. Kelly, et al.*, 7/25/01]

4th District Court of Appeal

Coercive statements during interrogation:

Investigators' vow to subject a suspect to every possible charge if he did not tell the truth during questioning amounted to coercion that renders the subsequent confession inadmissible in court, the 4th DCA held. Velton Edwards was convicted of criminal mischief after setting fire to his girlfriend's apartment after an argument. Edwards denied knowing how the fire started even after investigators reminded him of the biblical phrase, "the truth shall set you free." He gave a full confession only after a fire marshal investigator

indicated he did not believe Edwards and threatened to "hit" him with every charge he could. The DCA said the biblical reference was not improper, but said it could not be certain the improper coercive statement did not play a role in the jury's guilty verdict. The court remanded the case for a new trial in which the coercive portion of the interrogation is left out. "Certainly, a threat to charge a suspect with more, and more serious crimes unless he or she confesses is coercive. Further, it is essentially a promise not to prosecute to the fullest extent allowed by law if that person confesses. Hence, the investigators' threats amounted to an exertion of improper and undue influence, rendering the affected portion of Edwards' statement involuntary," the DCA said.

[*Edwards v. State*, 7/25/01]

5th District Court of Appeal

Warrantless non-emergency arrest:

A warrantless non-emergency arrest of a juvenile in his own home is unlawful, even if his mother voluntarily opened the door and the juvenile was on community control, the 5th DCA said. A juvenile identified as V.L. appealed the trial court's order adjudicating him delinquent after he was found guilty of resisting, obstructing, or opposing an officer without violence. Officer Chris Rapp went to V.L.'s home intending to arrest him for a burglary that occurred earlier that day. The officer did not have a warrant to arrest V.L., although he believed he had probable cause to do so. Rapp knocked on the front door and V.L.'s mother answered. When Officer Rapp said he wanted to speak with V.L. because he was a suspect in a burglary, the juvenile tried to close the door and ran out a back door. He was apprehended several hours later. "An essential element of the offense of resisting a law enforcement officer without violence is that the arrest must be lawful. A warrantless non-emergency arrest of a suspect in his or her own home is presumptively unlawful," the DCA said. "No evidence was presented to show that Officer Rapp had any reasonable basis to detain V.L. Further, no exigent circumstances existed to effectuate a warrantless arrest of V.L. in his home. ... Officer Rapp knew where V.L. lived and had ample opportunity to secure an arrest warrant, but failed to do so. As a result, we conclude that the State failed to establish that V.L. obstructed, resisted or opposed Officer Rapp in the lawful execution of any legal duty," the DCA said.

[*V.L. v. State*, 7/6/01]

Agency's obligation to prove proper maintenance:

A state agency is not required to submit proof that its breath test machine was properly maintained in order

to use test results in support of a driver's license suspension for drunk driving, the 5th DCA held. Aligning itself with a 1997 decision by the 4th DCA, the court said the Department of Highway Safety and Motor Vehicles acted properly when it submitted a breath test result affidavit. The court rejected the driver's argument that the department should have been required to prove that the Intoxilyzer machine was properly maintained. "Since the burden is not on the Department, and in light of the fact that a license suspension proceeding is civil in nature, the burden fell upon (the driver) to come forward with evidence of noncompliance, much as the proponent of an affirmative defense must come forward with evidence in other types of civil proceedings. Placing the burden upon her does not offend notions of due process because of the civil nature of a license suspension proceeding and because the Department is only required to establish that the individual had an unlawful blood-alcohol level by a preponderance of the evidence," the DCA said.

[*Department of Highway Safety and Motor Vehicles vs. Mowry*, 7/20/01]

Attorney General's Opinions

Public records - statewide pawnbroker database:

In response to a request from the Commissioner of the Florida Department of Law Enforcement, the Attorney General issued an advisory opinion (2001-51, 7/18/01) stating in sum: "Records relating to pawnbroker transactions delivered to the appropriate law enforcement officials pursuant to section 539.001, Florida Statutes, retain their confidential and exempt status when such records are submitted to the Florida Department of Law Enforcement for inclusion in its statewide pawnbroker database to which only law enforcement officers will have approved access. The appropriation creating the statewide database makes no distinction in the treatment of records of transactions relating to firearms. Section 790.065, Florida Statutes, does not prohibit information contained in the pawnbroker transaction forms regarding the pawning of firearms from being placed in the statewide database system unless the individual pawning the firearm is a licensed importer, manufacturer, or dealer, nor does section 790.065 affect the collection of such information by law enforcement."

Alcoholic beverage regulation pre-empted by state:

In response to a request from the Atlantic Beach city attorney, the Attorney General issued an advisory opinion (2001-44, 6/28/01) stating in sum: "The City of Atlantic Beach may not enact an ordinance providing

for the revocation of the occupational license for an establishment found to be selling alcoholic beverages to underage persons without conflicting with the state's regulation of the sale of alcoholic beverages."

Release of autopsy photos for certain purposes:

In response to a series of questions from the Hillsborough County Attorney regarding Florida's new law on autopsy photographs, the Attorney General issued an advisory opinion (2001-47, 7/11/01) stating in sum: "1) and 2) Upon receipt of a written request from the agency, the medical examiner may show autopsy photographs as part of professional training for public agencies, provided that such training furthers the official duties of the agency. Unless otherwise required in the furtherance of the agency's duties, the identity of the deceased is shielded. Such photographs may not be shown to private entities unless a court order has been obtained in accordance with procedures set forth in Chapter 2001-01, section 1(2), Laws of Florida; 3) When showing autopsy photographs for professional training, the medical examiner should not disclose the name of the deceased and should take steps to shield the decedent's identity (e.g., placing a black strip over the eyes of the decedent); 4) The term 'autopsy photographs and recordings' does not include crime scene photographs. The term includes photographs and recordings made by the medical examiner as part of the autopsy process; 5) The exemption from disclosure provided by Chapter 2001-01, Laws of Florida, applies to autopsy photographs and recordings whether the next of kin of the decedent has been located or not. A petitioner seeking a court order to obtain access to an autopsy photograph or recording is responsible for providing such reasonable notification to next of kin as may be required by the court; 6) Chapter 2001-01, section 1(3)(c), Laws of Florida, excludes criminal and administrative proceedings from the terms of the exemption from disclosure. Civil proceedings are not excluded. Those seeking to have access to autopsy photographs and recordings for civil proceedings must obtain a court order unless they are a surviving family member entitled to obtain such record without a court order pursuant to section 1(2)(b) of the law."

Use of forfeiture funds for officer's eye surgery:

In response to a request from the legal advisor for the City of Hollywood Police Department, the Attorney General issued an advisory opinion (2001-48, 7/12/01) stating in sum: "The special law enforcement trust fund established under the Florida Contraband Forfeiture Act may not be used to pay for the LASIK eye surgery of a law enforcement officer since the benefit from

such expenses would be primarily personal rather than for a law enforcement function."

Local regulation of cell phones while driving:

In response to a request from the Pinecrest Village Attorney, the Attorney General issued an advisory opinion (2001-49, 7/16/01) stating in sum: "Since Chapter 316, Florida Statutes, does not regulate or otherwise address the operation of cellular telephones while driving, local governments may regulate the operation of such devices while driving without being in conflict with Chapter 316. In fact, a municipal ordinance requiring hands-free headsets for the operation of cellular telephones while driving a motor vehicle would appear to be consistent with the one reference to cellular telephones within the Florida Uniform Traffic Control Law."

Approved by: Enoch J. Whitney
General Counsel

Edited by: Keith Tomkiel
Hearing Officer

Judson Chapman
Assistant General Counsel

Mary Ellen Clark
Assistant General Counsel

Rosena Hitson Finklea
Assistant General Counsel

Laurie Beth Woodham
Assistant General Counsel

Judy L. Miller
Paralegal Specialist

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