
LEGAL BULLETIN

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

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U.S. SUPREME COURT

ADA - impairment's effect on life activities

To be covered by the Americans with Disabilities Act, a physical impairment must limit a person's essential daily life activities and not just job-related activities, the U.S. Supreme Court held. The unanimous Court rejected the appeal of a Kentucky automobile assembly line worker who said carpal tunnel syndrome she developed at work prevented her from performing her job. She asked her employer to move her to another position, but her request was denied and she sued under the ADA. The Court noted that the ADA covers individuals who have an impairment that "substantially limits one or more of the major life activities." To prevail on her ADA claim, the Court said, the worker had to show that her injuries affected not only her ability to do her job, but also important life activities. "When addressing the major life activity of performing manual tasks, the central inquiry must be whether the claimant is unable to perform the variety of tasks central to most people's daily lives, not whether the claimant is unable to perform the tasks associated with her specific job," Justice O'Connor wrote for the court. "[T]o be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives. The impairment's impact must also be permanent or long-term."

[Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 1/8/02]

EEOC actions for workers limited by arbitration

An agreement between an employer and an employee to arbitrate job disputes does not bar a federal agency from pursuing victim-specific judicial relief in an enforcement action under the Americans with Disabilities Act, the U.S. Supreme Court ruled. The Court, in a 6-3 decision, said the Equal Employment Opportunity Commission may pursue back pay, reinstatement and damages for a Waffle House cook who was fired after he suffered a

seizure at work. When he applied for the job, the cook had signed an agreement to use arbitration to resolve employment-related disputes. An appeals court ruled that the EEOC could seek injunctive relief to prevent future occurrences, but could not seek victim-specific relief because the policy in federal arbitration law favoring enforcement of private arbitration agreements outweighs the EEOC's right to proceed in federal court when it seeks primarily to vindicate private, rather than public, interests. The Supreme Court, noting that the Federal Arbitration Act does not mention enforcement by public agencies, said the law ensures the enforceability of private agreements to arbitrate, but otherwise doesn't restrict a nonparty's choice of a judicial forum. "The statute clearly makes the EEOC the master of its own case and confers on the agency the authority to evaluate the strength of the public interest at stake," Justice Stevens wrote for the Court. "[I]t is the public agency's province — not that of the court — to determine whether public resources should be committed to the recovery of victim-specific relief. And if the agency makes that determination, the statutory text unambiguously authorizes it to proceed in a judicial forum." Justice Thomas, a former head of the EEOC, wrote in dissent, "[T]he EEOC must take a victim of discrimination as it finds him. Absent explicit statutory authorization to the contrary, I cannot agree that the EEOC may do on behalf of an employee that which an employee has agreed not to do for himself."

[Equal Employment Opportunity Commission v. Waffle House, Inc., 1/15/02]

Constitutionality of permitting requirement

A content-neutral permit scheme regulating uses of a public forum — including free-speech uses — does not have to include rigorous procedural safeguards to protect it from violating the First Amendment, the U.S. Supreme Court said. The justices unanimously upheld a Chicago ordinance requiring individuals to get a permit before conducting large-scale events in public parks. The park ordinance was challenged by

a group seeking to hold a rally in favor of the legalization of marijuana. The Court said because the ordinance is content-neutral, it does not have to include safeguards similar to those established by the court in Freedman v. Maryland, a 1965 case involving an anti-obscenity law that required State approval before any film could be shown in movie theaters. "[T]he licensing scheme at issue here is not subject-matter censorship but content-neutral time, place, and manner regulation of the use of a public forum. The Park District's ordinance does not authorize a licenser to pass judgment on the content of speech: None of the grounds for denying a permit has anything to do with what a speaker might say. Indeed, the ordinance (unlike the classic censorship scheme) is not even directed to communicative activity as such, but rather to all activity conducted in a public park," Justice Scalia wrote for the Court. [Thomas v. Chicago Park District, 1/15/02]

Justification for police stops

A trained law enforcement officer may rely on the "totality of the circumstances" to develop a reasonable suspicion that illegal activity is taking place, even if each of the officer's reasons for making a stop could be innocent if considered alone, the U.S. Supreme Court held unanimously. The Court ruled that a border patrol agent in Arizona did not violate the Fourth Amendment when he stopped a minivan carrying more than 100 pounds of marijuana. The agent cited numerous reasons for his decision to stop the van, but a federal appeals court said he did not have sufficient grounds. The Supreme Court disagreed, saying it considered the totality of the circumstances and gave "due weight" to the factual inferences drawn by the agent. Among the factors in the stop were that the van was on a back road often used by smugglers at the time of a border patrol shift change; the vehicle was registered in a high-crime neighborhood; the driver looked nervous; and the knees of two children in the back seat of the van were unusually high, as if their feet were propped up on cargo. "Undoubtedly, each of these factors alone is susceptible to innocent explanation, and some factors are more probative than others. Taken together, we believe they sufficed to form a particularized and objective basis for (the agent's) stopping the vehicle, making the stop reasonable within the meaning of the Fourth Amendment," Chief Justice Rehnquist wrote for the Court.

[United States v. Arvizu, 1/15/02]

11th Circuit Court of Appeal

Qualified immunity - beating of prison inmate

Several Florida State Prison correctional officers are not entitled to qualified immunity protection from a civil rights lawsuit filed by an inmate who was severely beaten after he had stopped resisting the officers. David Skrtich, who was serving a life sentence for aggravated sexual battery, sued for injuries he suffered in a 1998 "cell extraction." Skrtich conceded he initially resisted correctional officers who wanted to remove him so they could search his cell, but said he stopped resisting after they used an electronic shield to shock him. After the shield was used, Skrtich alleges, he was beaten and suffered broken ribs and other injuries that forced him to spend nine days in a hospital. The officers sought summary judgment or dismissal based on qualified immunity, but the 11th Circuit rejected their requests. "The undisputed evidence in this record reflected that Skrtich had been electrically shocked to render him unable to resist, and then kicked, punched and beaten. In the absence of any evidence that any force, much less the force alleged here, was necessary to maintain order or restore discipline, it is clear that Skrtich's Eighth Amendment rights were violated," the 11th Circuit said. "Qualified immunity protects government officials acting within their discretionary functions from liability for civil damages as long as their conduct does not violate clearly established statutory or constitutional rights that a reasonable person would have known. ... The question for qualified immunity analysis is whether, at the time of the incident, it was clearly established that it is unlawful to inflict a beating upon a prisoner in custody when he is incapacitated and no longer able to pose a threat to the guards' ability to maintain order, resist the guards' directions, or engage in disruptive behavior. We answer that question in the affirmative."

[Skrtich v. Thornton, et al., 1/29/02]

Inadmissible evidence fails Brady materiality test

The State's failure to disclose that investigating officers in a murder case had committed criminal misconduct in unrelated matters did not meet the materiality test for disclosure under Brady, the 11th U.S. Circuit Court of Appeals held. McArthur Breedlove, appealing his capital murder conviction, claimed the State of Florida violated the Brady rule by suppressing evidence that could have been used to impeach the State's two law enforcement witnesses. The detectives were involved in criminal

activity and drug use at the time they investigated Breedlove's case. Ruling against Breedlove, the Florida Supreme Court found that the detectives' unrelated criminal misconduct did not result in conviction or indictment and questions about their alleged bias would have been inadmissible under Florida's evidentiary laws, and thus not material under Brady. A federal trial court denied Breedlove's request for a hearing on the issue, and the appeals court agreed. "Brady's materiality standard defines evidence as 'material' only if there is a reasonable probability that its disclosure would have affected the outcome of the proceedings," the 11th Circuit said. "Breedlove cannot demonstrate that the Florida Supreme Court was objectively unreasonable in holding that the evidence that the State allegedly suppressed was inadmissible, and thus immaterial, under Brady and its progeny. None of Breedlove's allegations, if proven, could change this fact."

[Breedlove v. Moore, 1/17/02]

Florida Supreme Court

State must prove defendant knowingly possessed contraband

The burden is on the State to prove that a drug defendant knowingly possessed an illicit drug because possession alone does not create a presumption of guilty knowledge, the Florida Supreme Court ruled. The Court refused to hold that the illegal possession of a controlled substance raises a rebuttable presumption that the defendant had knowledge of its illicit nature. Defendant Bobby Scott was charged with introduction or possession of contraband in a correctional facility after marijuana was found in his locker. Trial testimony raised a question of whether Scott had exclusive access to the locker, and Scott also asserted that it was the State's burden to prove he knew the drug was marijuana. Ruling 5-2, the Supreme Court agreed. "[W]e hold that the defendant's knowledge of the illicit nature of the controlled substance is an element of the offense of possession, and an instruction that the State must prove this element must be given as a part of the standard jury instructions," Justice Quince wrote for the Court.

[Scott v. State, 1/3/02]

1st District Court of Appeal

Worker's compensation - self-medication with alcohol

A worker who develops a disease from drinking too much alcohol after suffering an industrial accident is

not entitled to worker's compensation for the ailment, the 1st DCA said. The DCA reversed a judge of compensation claims, who found a woman's pancreatitis compensable because it was caused by alcohol she consumed to ease the pain of a job-related back injury. The DCA said the disease did not "naturally and unavoidably" result from the back injury, and the case can be distinguished from those involving drug addiction resulting from an industrial accident. "In the instant case, Claimant was self-medicating with alcohol, resulting in pancreatitis and other related conditions. There is no evidence that any doctor prescribed or in any way suggested Claimant's use of alcohol for relief of pain. This is not a basis for recovery because there is no evidence that Claimant's use of alcohol was prescribed, as were the drugs in other cases," the DCA said.

[Pic 'n Save v. Parker, 1/15/02]

Search and seizure - reasonable suspicion

An officer had reasonable suspicion to justify an investigatory stop of a juvenile who fled from a high crime area at night when he saw police, the 1st DCA said. A minor identified as F.E.A. appealed the denial of his motion to suppress evidence at his trial for drug and alcohol related offenses. F.E.A. alleged that a sheriff's deputy did not have reasonable suspicion to justify the nighttime stop of his car. The deputy was patrolling a ballpark that had a history of criminal activity when he noticed a parked car with its lights off. The deputy saw a male run from the field, jump in the car and speed away, and the deputy followed. After he stopped the car, the deputy smelled marijuana coming from the vehicle and arrested the defendant. Affirming the trial court's refusal to suppress the evidence, the DCA said, "[E]ven if Appellant's running was ambiguous as to whether he was in flight from seeing the police, he appeared to be fleeing from something or someone. This conduct combined with the time, place, and other circumstances justified the officer in stopping Appellant briefly to resolve this ambiguity."

[F.E.A. v. State, 1/8/02]

2nd District Court of Appeal

Probable cause for license suspension

Where a hearing officer's probable cause finding is supported by the facts and circumstances surrounding a DUI accident and the arresting officer's observations, an appellate court errs by making its own determination regarding probable cause, the 2nd DCA held. Donald Silva appealed a

hearing officer's final order suspending his driving privileges. Silva had been arrested for DUI following a single car accident after police found him lying in the grass next to his motorcycle with alcohol on his breath, bloodshot eyes and slurred speech. Silva failed a field sobriety test and was arrested. The appellate court found that the hearing officer lacked competent substantial evidence for probable cause to find Silva had been driving the vehicle when the accident happened, and ordered Silva's license reinstated. Reversing, the DCA said that while admissible evidence could not absolutely establish that Silva was the driver, a probable cause finding may result from conclusions drawn from "reasonable inferences." "In this case the facts and circumstances surrounding the incident would lead a reasonable man to believe that Silva was driving the motorcycle found lying on the road next to him," the DCA said.

[Department of Highway Safety and Motor Vehicles v. Silva, 1/9/02]

Sunshine Law - committee of agency staffers

A committee of public agency staff members stood in for public officials and therefore was subject to the requirements of the Sunshine Law when it improperly approved a local development project, the 2nd DCA held. The court said the meeting at which the Charlotte County Development Review Committee approved an application for an affordable housing project violated the Sunshine Law by rendering a decision on the application before allowing for public input from citizens who objected to the project. The County, by ordinance, granted final authority to approve project applications to the committee, which is made up of appointed staff members. A trial court found that the committee was not a governmental body subject to the Sunshine Law because committee members were merely functioning in their individual capacities as county staff members. The DCA disagreed. "[W]hen, as here, public officials delegate their fact-finding duties and decision-making authority to a committee of staff members, those individuals no longer function as staff members but 'stand in shoes of such public officials insofar as application of Government in Sunshine Law is concerned.' Because the authority of final project approval has been delegated to the DRC by Charlotte County ordinance, county staff members who serve on the DRC function as public officials. Hence, any DRC meeting at which quasi-judicial action will be taken is subject to Florida's Sunshine Law," the DCA said.

[Evergreen the Tree Treasurers of Charlotte County, Inc., et al., v. Charlotte County Board of County Commissioners, et al., 1/18/02]

Seizure exceeded scope of suspect's consent

Police cannot seize a set of keys found on a suspect where the incriminating nature of the keys is not immediately apparent, even if they turn out to belong to a stolen vehicle, the 2nd DCA said. M.E.S., a juvenile found delinquent for grand theft of an ice cream truck, challenged the denial of his suppression motion. Based on a BOLO advisory, a deputy approached M.E.S. after spotting him walking behind an ice cream truck that had been reported stolen 10 minutes earlier. The juvenile gave suspicious responses to the deputy's questions, and eventually another deputy conducted a pat-down search. M.E.S. voluntarily handed over a set of keys the deputy felt in his pocket, and the deputy placed the keys on a police cruiser and eventually gave them to another officer rather than returning them to M.E.S. The ice cream truck driver identified the keys and drove away using the keys. The DCA said the deputies were justified in temporarily detaining M.E.S. but not in how they dealt with the keys once they had determined the suspect's identity. "[T]he deputy's act of placing the keys on the trunk of the police car and giving them to another deputy exceeded the scope of M.E.S.'s consent in handing the keys to the deputy. The record reflects that M.E.S. neither authorized the deputy to place the keys on the trunk of the police car nor authorized him to hand them to another deputy," the DCA said. "We recognize that the seizure of contraband in plain view is authorized where the officers have a lawful right of access to the object seized, and the incriminating nature of the object is immediately apparent. However, under the circumstances of this case, we find that the incriminating character of the keys was not immediately apparent."

[M.E.S. v. State, 1/11/02]

Officer's hearsay statements inadmissible

A police officer was properly allowed to testify about a witness' identification of a suspect, but should not have been allowed to discuss the substance of the witness' accusations because she suffers from memory loss and no other evidence of the crime was produced, the 2nd DCA held. A juvenile identified only as A.E.B. challenged his delinquency adjudication on a trespass charge, arguing that the trial court erred in admitting hearsay testimony. A home was ransacked by a group of

teenagers, and a woman who lived next door identified A.E.B. to an officer. However the woman, Mrs. LaFleur, suffers memory loss from a stroke, and later did not remember talking to the officer and could not identify A.E.B. in court. The officer was allowed to testify regarding his conversation with the woman. The DCA said his testimony regarding the woman's identification of the juvenile was proper, but he should not have been allowed to testify about other hearsay matters. As a result, the DCA reversed the trespass conviction. "There was no error in admitting the prior identification. Mrs. LaFleur's out-of-court identification was admissible as a statement of identification," the DCA said. However, "Mrs. LaFleur's statements, admitted through Deputy McDermott, were offered solely for their truth and were the only evidence of A.E.B.'s guilt as to the trespass charge. Because Mrs. LaFleur did not testify consistently with her prior report to investigating officers and because the State produced no other evidence of the trespass, Deputy McDermott's testimony was not harmless." [A.E.B. v. State, 1/16/02]

Florida's "three strikes" law held unconstitutional

Florida's Three Strikes Violent Offender Act is unconstitutional because it violates the constitution's single-subject requirement, the 2nd DCA held. The DCA ruling arose from defendant Rebecca Taylor, who appealed her three-year sentence for drug trafficking under Chapter 99-188, the "three strikes" law. The statute sought to impose stiff sentences on three-time violent offenders, drug dealers and those who attack police or the elderly. The DCA held that of the statute's 13 sections, two failed to relate to the "three strikes" provisions, thus placing the statute in violation of the single-subject requirement. Because the 2001 Legislature did not reenact the 1999 statute under which Taylor was sentenced, the window period for a single-subject rule challenge was still open, the DCA said. The State quickly announced plans to appeal the decision to the Florida Supreme Court, and the Legislature is considering legislation to reinstate the law minus the infirmities cited by the 2nd DCA. The DCA also certified its decision to the Supreme Court. "This is exactly the type of 'log rolling' legislation that the single subject rule was intended to prevent," the DCA said. "We reverse Taylor's sentence and remand for resentencing in accordance with the valid laws in effect on the date of her offense."

[Taylor v. State, 1/23/02]

Search and seizure - constructive possession

A defendant's knowledge of contraband cannot be inferred from his proximity to marijuana found near him in a car he shared with two other boys, particularly where officers were unsure if contraband thrown from the car came from the defendant's window, the 2nd DCA said. C.M., a minor, challenged his delinquency adjudication for possession of marijuana, alleging that the State had produced insufficient evidence to establish constructive possession. An officer had stopped the car C.M. was riding in for failing to stop at a stop sign, but before the vehicle came to a stop the officer saw what was later identified as a marijuana-filled cigar fly from the car. The officer testified that he could not tell where in the car the object came from. When the vehicle stopped, the officer noticed marijuana smoke and found a baggie with marijuana under the floor mat near where C.M. had been sitting. C.M. denied knowing it was there. The DCA said the State did not have enough evidence to support C.M.'s conviction. "We maintain the position that in some cases a defendant's knowledge of contraband may be inferred from circumstantial evidence," the DCA said. The State maintains that C.M.'s knowledge of the contraband can be inferred from circumstantial evidence which established that (the officer) observed a marijuana cigar being thrown from a passenger window, that the car was filled with marijuana smoke, and that all three boys smelled of burnt marijuana when they stepped out of the car. We conclude that this circumstantial evidence was insufficient to establish that C.M. knew of the marijuana beneath the floor mat."

[C.M. v. State, 1/25/02]

Search and seizure - reasonable suspicion for school searches

A school resource officer asked by school administrators to investigate the discovery of drugs in a classroom needs only a reasonable suspicion, and not probable cause, to search a student, the 2nd DCA held. The DCA, acknowledging potential conflict with a 1993 ruling by the 1st DCA, said Deputy Mantzanas believed he had the student's consent to conduct the search and was acting at the request of the school's assistant principal. A classmate identified the defendant, a minor identified as N.G.B., as the possible source of a bag of marijuana found on a classroom floor. The deputy's search turned up additional marijuana in N.G.B.'s pocket. The trial court agreed that Deputy Mantzanas had reasonable suspicion to search

N.G.B. but said the deputy lacked probable cause, leading the court to suppress the evidence. The DCA reversed. "We conclude that a reasonable suspicion was the appropriate standard by which to assess the legality of the search by Deputy Mantzanas because the investigation was initiated by ... the assistant principal, and she enlisted Deputy Mantzanas' assistance," the DCA concluded. [State v. N.G.B., 1/23/02]

3rd District Court of Appeal

Forfeiture - procedural errors

A cash forfeiture should be reversed because the government conducting the forfeiture failed to properly notify the owner, but procedural errors alone do not mean the owner automatically wins back the money, the 3rd DCA said. Hollywood police officers seized almost \$400,000 in cash from Oscar Gonzalez, and the city initiated forfeiture proceedings. However, the city never found Gonzalez's correct address — even though it was contained in a police report — and therefore provided notice only through publication. The city won a default order of forfeiture, and Gonzalez appealed. The city conceded that it did not follow proper procedures, and Gonzalez argued the result should be the return of the funds to him. The DCA reversed the default award of the funds, but said Gonzalez must still prove that he is the lawful owner of the money and therefore entitled to it. "We do not think that procedural errors of this type mean that the defendant is automatically entitled to prevail. The guiding principle in the justice system is that disputes should be resolved, wherever possible, on the merits," the DCA said. "[I]n order to obtain return of the funds, the defendant must demonstrate that the funds are, in fact, his."

[Gonzalez v. City of Hollywood, 1/2/02]

Factors for Baker Act commitment

Calling on the Legislature to plug a hole in the Baker Act, the 3rd DCA said courts trying to determine whether a person poses a threat must consider more than just the words and deeds of the patient, the 3rd DCA said. The DCA said lower courts must look at the totality of the circumstances, including not only the patient's behavior but also the diagnoses and expert opinions of mental health professionals. The DCA affirmed the involuntary commitment of Rodney Craig, who was arrested for stalking a local television news reporter. It was undisputed that at the time Craig was mentally ill and incompetent to consent to treatment, and a special master found the

victim to be in fear for her safety. The special master concluded that the victim had suffered emotional injury, but Craig argued that is not enough because the statute refers to "serious bodily harm." The DCA agreed that the statute does not apply to emotional harm, but nevertheless concluded that the correct result had been reached based on testimony from health care professionals and other circumstances. In an unusual step, the DCA strongly encouraged the Legislature to reconsider recent amendments to the Baker Act that required the risk of "bodily harm" before a person could be committed. "It likely will come as a surprise to legislators, as it does to us, that the civil commitment system is unable to act in cases of stalking or harassment of a citizen unless there is a threat of serious physical injury. Certainly the Baker Act must strike a balance between the rights of the mentally ill and the rights of citizens. But it would seem that if a mentally ill person is acting on his or her delusions to the point of stalking or repeatedly harassing law-abiding citizens, then civil commitment should be an available option where no other remedy will do," the DCA said. "Stated differently, the present Baker Act allows a mentally ill person to inflict less-than-serious bodily harm on others, and an unlimited amount of emotional injury, without being a candidate for civil commitment. The civil commitment system is authorized to intervene under the present statute only if there is a threat, or the reality, of serious bodily harm. We suggest that consideration be given to readjusting the balance."

[Craig v. State, 1/9/02]

4TH District Court of Appeal

Sovereign immunity - suit against Indian tribe

Sovereign immunity bars a lawsuit against the Seminole Indian Tribe's police department stemming from a motor vehicle accident, but the facts of the case will determine whether the suit may proceed against the officer involved in the accident, the 4th DCA said. The Seminole Department of Law Enforcement and one of its officers, Robert Epstein, were sued by a couple injured when the car in which they were riding was struck by Epstein's vehicle during a chase. The DCA said Florida and U.S. Supreme Court cases make it clear that an Indian tribe may not be sued unless it expressly waives its tribal sovereign immunity. However, the DCA said, the claim against Epstein may proceed because it is unclear whether he was acting within the course and scope of his employment at the time of the accident. "There is a factual dispute whether the chase began

on or off of reservation property, as well as a legal question concerning Epstein's authority to engage in a chase in order to investigate an expired license tag," the DCA explained.
[Lewis v. Edwards, et al., 1/30/02]

Search and seizure - no probable cause for seized drugs

Squealing tires are not automatically a sign that a traffic infraction has taken place, and so an officer lacked probable cause for an early morning traffic stop that resulted in an arrest for drug possession, the 4th DCA said. A police officer observed Kristopher Donaldson pulling out of a hotel parking lot and onto an empty street, squealing his tires. The officer stopped Donaldson and gave him a written traffic warning for an improper start, even though the officer testified he had not seen Donaldson start his car. Donaldson consented to a search of his vehicle, and the officer found drugs. Donaldson moved to suppress the drugs, arguing that the stop was illegal because he did not commit a traffic infraction. The trial judge found that the officer had a reasonable, articulable suspicion for the traffic stop and denied Donaldson's motion to suppress, but the DCA reversed the ruling on the motion and Donaldson's conviction. "There is no indication that squealing tires alone constitutes a traffic infraction. We are at a loss to understand how squealing tires without more constitutes a danger to public safety. Therefore, the officer did not have probable cause to believe that Appellant committed a traffic infraction, rendering a stop on that basis illegal," the DCA said.
[Donaldson v. State, 1/2/02]

Restitution must relate to offense

Where criminal damage inflicted to a car causes the victim to lose his job, a restitution order pertaining to lost wages and job search expenses must be "significantly related" to the defendant's crimes, the 4th DCA said. Following his conviction for shooting a deadly missile and criminal mischief, a juvenile identified as L.H. was ordered to reimburse the victim and the insurance company for car repair costs. L.H. was also ordered to reimburse the victim for lost wages and job hunting expenses because the damage to the vehicle forced the victim to utilize less reliable transportation, and he eventually was fired for repeatedly being late for work. The DCA affirmed restitution related to damage to the car, but reversed the award for amounts related to the victim's job situation. "We recognize that restitution serves a broader purpose than mere compensation of

the victim; it also serves the rehabilitative, deterrent, and retributive goals of the criminal justice system. Nevertheless, a 'significant relationship' analysis is required," the DCA said. "For restitution to be deemed reasonable, it must bear a significant relationship to the convicted offense."
[L.H. v. State, 1/2/02]

Escape from constructive detention

For purposes of escape charges, a defendant is constructively seized or detained if an officer with probable cause to arrest pulls the defendant over and tells him he is being arrested but lets him go inside a house to inform a relative he is going to jail, the 4th DCA said. A sheriff's deputy pulled Deverious Thomas over, knowing Thomas was driving with a suspended license. Thomas pulled over into his aunt's driveway. After telling Thomas he was under arrest, the officer agreed to let Thomas go inside the house to tell his aunt he was going to jail, but warned Thomas that if he did not return he would be charged with escape. Thomas failed to return, but later turned himself in. Thomas was convicted of escape, but argued on appeal that the State had not proven that when he fled police, he had already been arrested and was in their custody. The DCA disagreed. "We recognize that for purposes of constructive detention, an officer's 'show of authority,' alone, is not enough to effect the seizure of a person. Here, Deputy Boorman never physically touched Thomas. However, the deputy did communicate his intent to effect an arrest and had the ability to do so. Further, Thomas understood this communication and effectively acknowledged he was under arrest," the DCA said.
[Thomas v. State, 1/23/02]

5th District Court of Appeal

Absolute privilege - letters pursuant to bargaining agreement

Comments contained in letters suspending an employee, even if they are defamatory, are absolutely privileged if the letters are sent pursuant to a collective bargaining agreement, the 5th DCA said. An airline pilot who was suspended for one month following an in-flight incident sued the airline, alleging that the letters notifying him of the suspension defamed him by falsely recounting the events that led to the suspension. The trial court granted summary judgment in favor of the airline, finding that the statements were absolutely privileged regardless of whether they were defamatory. The DCA agreed, primarily citing the

1st DCA's 1995 decision in Hope v. National Alliance of Postal and Federal Employees. "In order to be absolutely privileged, a statement need only be relevant to the labor grievance proceedings," the DCA said. "[I]t is undisputed that the letters of suspension were sent pursuant to, and in compliance with, the terms of the parties' collective bargaining agreement. Therefore, the alleged defamatory statements contained within those letters were 'relevant' to the grievance proceeding and thus entitled to absolute immunity."
[Brown v. Comair, Inc., 1/4/02]

Constitutionality of motor vehicle statute

A comprehensive Florida law primarily designed to the operation of motor vehicles is unconstitutional because it also includes a provision on an unrelated subject, thus violating the single-subject requirement, the 5th DCA held. The DCA affirmed a trial court's determination that Chapter 98-223, Laws of Florida, violates the single-subject rule of the Florida Constitution. The provisions of the law range from speeding fines and license plate expiration to mandatory revocation of driver licenses and reinstatement of driving privileges. However, one section relates to the use of private debt collectors to collect debts evidenced by bad checks. Despite a "valiant but unavailing" argument by the State to connect that provision to driver license suspension provisions, the DCA said the provision had no connection to the rest of the chapter and was a fatal flaw in the law. "[A] natural or logical connection exists between driver licenses, vehicle registrations and operation of motor vehicles. However, no such connection exists with use of private debt collectors to collect debts evidenced by bad checks," the DCA said. The trial court concluded that the law could not be severed to save the remaining portions of it, and that conclusion was not challenged on appeal.
[Department of Highway Safety and Motor Vehicles v. Critchfield, 1/4/02] The decision is on appeal to the Florida Supreme Court.

Use of emergency lights changes consensual encounter

The actions of a police officer who blocked a vehicle with his patrol car and turned on his emergency lights elevated a consensual encounter into an investigatory stop that could only be justified by reasonable suspicion of criminal activity, the 5th DCA held. Donnie Young challenged the trial court's denial of his motion to suppress cocaine,

arguing that it was seized during an illegal detention. During a routine patrol after midnight, an officer became suspicious because Young's car was parked in a government apartment building that was under construction. The officer testified that the car was not parked illegally. The officer said he turned on his emergency lights and parked behind the vehicle before approaching Young, who had exited the car. He said Young appeared nervous and gave "absurd" responses to questions. Young was arrested for driving without a license, and cocaine was subsequently discovered in his car. "In the instant case, the only basis for the stop was the fact that Young entered the unfinished apartment complex and parked his vehicle. Such activity does not establish the requisite reasonable suspicion for an investigatory stop. Moreover, the officer testified that he did not suspect Young of criminal activity, and the trial court found that the officer did not have the requisite suspicion to conduct an investigatory stop," the DCA concluded.
[Young v. State, 1/4/02]

Defendant not justified putting officer in headlock

Even if police conduct an illegal entry, pat down and detention, a suspect is not justified in using force by putting an officer in a headlock and police have probable cause to arrest him, the 5th DCA said. Ernest Tillman was convicted of aggravated battery on a law enforcement officer and resisting arrest with violence. Officers arrived at a home to investigate threats against an officer who came upon a rowdy party at the home. Officers recognized Tillman, a guest at the party, as having history of armed robbery charges and suspected that he was source of the threat. Entering the home, officers patted down Tillman and told him to sit down. A scuffle ensued and Tillman put an officer in a headlock, breaking the officer's ankle in the process. Tillman was arrested, but argued that the officer was not engaged in the lawful performance of a legal duty because police illegally entered the house. The DCA rejected the argument. "[The officer] was not attempting to arrest Tillman; he patted him down and then instructed him to sit down while other officers investigated the threat. Even if the pat down and detention were technically illegal, they were less of an intrusion than an arrest, so Tillman was not justified in using force to resist," the DCA said. "[W]hile the State must prove that the alleged victim was a law enforcement officer who was engaged in the lawful execution or performance of a legal duty,

the technical illegality of that action does not justify resisting arrest with violence or battering the officer."

[Tillman v. State, 1/18/02]

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ATTORNEY GENERAL OPINIONS

Authority to intercept telephone calls

In response to a request from the State Attorney for the First Judicial Circuit, the Attorney General issued an advisory opinion (2002-05, 1/11/02) stating in sum: "Unless the State Attorney's Office is intercepting and recording telephone calls to published emergency telephone numbers as provided in section 934.03(2)(g), Florida Statutes, or has obtained a court order pursuant to sections 934.07 and 934.09, Florida Statutes, on the basis that such interception may provide or has provided evidence of the commission of certain crimes, the State Attorney's Office is not authorized under the Security of Communications Law, Chapter 934, Florida Statutes, to record incoming telephone calls made to that office either with notice or without notice to the caller that his or her conversation is being recorded."

Municipal regulation of golf carts on roads

In response to a request from the Cedar Key city attorney, the Attorney General issued an advisory opinion (2002-11, 1/30/02) stating in sum: "While the City of Cedar Key may restrict the operation of golf carts on city streets where such operation is found to be incompatible with the normal and safe movement of traffic, the city may not impose more restrictive age requirements upon operators of golf carts than that allowed by State law, nor may the city require a golf cart operator to have a valid Florida driver's license."

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The materials presented are a compilation of cases from the Attorney General's Criminal Law Alert and Appellate Alert as well as summaries from the Office of General Counsel. They are being presented to alert the Division of Florida Highway Patrol and the Division of Driver Licenses of legal issues and analysis for informational purposes only. The purpose is to merely acquaint you with recent court decisions. Rulings may change with different factual situations. All questions should be directed to the local State attorney or the Office of General Counsel (850) 488-1606, SunCom 278-1606. If you care to review other Legal Bulletins, please note the web site address: DHSMV Homepage <http://www.hsmv.state.fl.us/> or FHP Homepage (www.fhp.state.fl.us)