
LEGAL BULLETIN

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

FRED O. DICKINSON, EXECUTIVE DIRECTOR

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11th U.S. Circuit Court of Appeals

Authority to enforce tow truck restrictions

Florida sheriffs do not have the authority to enforce restrictions on tow truck operators under state law unless the county commission has taken formal legislative action to enact a "wrecker operator system," the 11th U.S. Circuit Court of Appeals held. The court declined to rule on whether the state statute designed to prohibit "wreck chasing" by tow truck operators, section 323.002, F.S. (1999), is preempted by federal law. The state filed an amicus brief against the preemption position, but the 11th Circuit decided the case on other grounds. The Palm Beach County sheriff was sued by an operator who was threatened with arrest for allegedly using a police scanner to improperly solicit business from accident victims without being one of the sheriff's authorized wrecker operators. The 11th Circuit concluded that the sheriff was not authorized to enforce provisions based on such an authorization list because the county commission never formally approved an ordinance or resolution creating a wrecker operator system, as required by the state law. "Although § 323.002(2) *permits* a county to 'operate[] a wrecker operator system,' the county must still act to adopt the system in the usual legislative manner, that is, by formal resolution or ordinance. Once that step has been accomplished, then the sheriff would be the logical county officer to enforce the provisions. Absent authorization by the *governing body* of the county, the sheriff does not have the authority to institute a system that carries with it the possibility of criminal penalties. To put it simply: the sheriff cannot *legislate*," the court said. *Rebel Enterprises, Inc., v. Palm Beach Sheriff*, 7/31/02

Qualified immunity - improper arrest

A police officer does not lose his entitlement to qualified immunity under federal law by making an arrest that is conducted in violation of state law, the 11th U.S. Circuit Court of Appeals held. An illegal arrest may support a state tort claim, but it does not amount to a violation of any federal rights, the court said. Ruling on that basis and other grounds, the court granted the appeal of a Miami police officer who was sued by a man he arrested for threatening his ex-girlfriend. The officer made the arrest after talking to the woman, and the court concluded that the officer had probable cause for the arrest. The charges were **eventually dropped and the arrested man** filed a civil rights suit against the officer under 42 U.S.C. §

1983. The 11th Circuit held that even though the arrest was made without a warrant, the officer was entitled to qualified immunity for his actions. "Section 1983 does not create a remedy for every wrong committed under the color of state law, but only for those that deprive a plaintiff of a federal right. There is no federal right not to be arrested in violation of state law. While the violation of state law may (or may not) give rise to a state tort claim, it is not enough by itself to support a claim under section 1983," the court said.

Knight v. Jacobson, 8/6/02

Good faith exception to exclusionary rule

The 11th U.S. Circuit Court of Appeals upheld the admissibility of evidence seized pursuant to an invalid search warrant, holding that an officer acted reasonably in relying on facts known to him to conduct the search even though they were not contained in the supporting affidavit. Corey Martin appealed the denial of his motion to suppress firearms and drugs seized from his apartment. Atlanta police Detective Brett Zimbrick verified a tip from an informant that stolen weapons were being traded from Martin's apartment, and the next day a search warrant was issued based on Zimbrick's affidavit. Martin contended that no reasonable officer would have relied on a warrant that was so lacking in probable cause, but the 11th Circuit disagreed. "We agree with the majority of circuits that have examined this issue and find that a reviewing court may look outside the four corners of the affidavit in determining whether an officer acted in good faith when relying upon an invalid warrant," the court said. "(T)he purpose of the exclusionary rule is to deter unlawful police misconduct. In this case, Zimbrick did not intentionally omit facts that would have defeated a finding of probable cause. On the contrary, the facts that Zimbrick omitted in his affidavit (i.e., specific dates and times) would have only further supported the issuance of the warrant. The exclusionary rule is meant to guard against police officers who purposely leave critical facts out of search warrant affidavits because these facts would not support a finding of probable cause. This is not the case here."

U.S. v. Martin, 7/18/02

Florida Supreme Court

Challenge to validity of vehicle inspection fee

A class action lawsuit challenging a fee charged for motor vehicle inspections in six Florida counties cannot proceed

until the plaintiffs — estimated at more than 5 million motorists — first meet administrative requirements for seeking a refund, the Florida Supreme Court held. The justices sided with the 1st DCA, which had reversed part of a trial court order granting class certification in the suit over the \$10 fee charged for inspections in six counties cited for high ozone levels by the federal government. The plaintiffs alleged that the fee exceeded the actual costs of the inspection program and therefore was actually an illegal tax rather than a valid fee. The trial court granted class certification to the plaintiffs, but the Supreme Court agreed with the 1st DCA that the circuit court had improperly exercised jurisdiction over the case because the plaintiffs had failed to comply with the requirements of section 215.26, F.S. (1995), which requires the filing of an administrative claim before bringing an action in circuit court. The justices also agreed with the state's argument that the court's 1999 *Nemeth* decision, which allows a taxpayer to file directly in circuit court without filing an administrative claim, is inapplicable here because the plaintiffs' claim involved an as-applied challenge rather than a facial challenge to the constitutionality of the statute. "We conclude that a party seeking a refund based on the unconstitutionality of an agency rule must complete the administrative process through the executive branch before proceeding to court. If the party does not receive full relief through the administrative process, the individual may file suit in court," Justice Quince wrote for a unanimous court. "Although this Court made no distinction between facial and as-applied claims in *Nemeth*, that decision is based upon the futility of requiring a taxpayer to exhaust administrative remedies pursuant to section 215.26 where a refund claim is based on the facial unconstitutionality of a statute. ... However, the *Nemeth* decision in no way eliminated the administrative process outlined in section 215.26. Completion of the administrative process ensures that a reviewing court will have the record needed in order to provide the litigants with the appropriate relief," the court added.

Sarnoff v. Department of Highway Safety and Motor Vehicles, 8/22/02

1st District Court of Appeal Impact of out-of-state conviction - elements of offense

A defendant's Alabama conviction for driving with a revoked license does not qualify as a prior "conviction" for purposes of enhancing a Florida sentence because Alabama doesn't require the element of knowledge and therefore the offense is not sufficiently analogous, the 1st DCA said. Kenney Stutts pled guilty to DUI and driving while license suspended or revoked (DWLSR) and was sentenced to two consecutive five-year prison terms. Stutts challenged the summary denial of his claim of ineffective assistance of counsel, asserting that he would not have pled guilty to felony DWLSR if his attorney had told him his Alabama conviction could not be used to

enhance his Florida sentence. The DCA agreed and reversed. "For appellant's Alabama DWLSR convictions to serve as prior convictions for purposes of subsection 322.34(2), the elements of the Alabama provision must be substantially similar to the Florida statute. A comparison of subsection 322.34(2) and the relevant Alabama Code provision plainly reveals that the Florida DWLSR offense of which appellant was convicted contains an element not contained in the Alabama law," the DCA said. Assistant Attorney General Bryan Jordan represented the state on appeal.

Stutts v. State, 7/19/02

Prosecutions for travel reimbursement violations

Where there are allegations of false reimbursement claims on travel vouchers, public officials can only be charged under the law that addresses per diem and travel expenses and not under the general criminal theft laws, the 1st DCA held. The DCA therefore affirmed a lower court's dismissal of numerous felony charges against a suspended Leon County commissioner, who was charged with filing false reimbursement claims. Instead of facing the felony counts, the court concluded, the commissioner should only face misdemeanor counts under section 112.061(10), F.S. The DCA said section 112.061 clearly states the Legislature's intent that travel-related violations be governed exclusively by that section, so that the charges brought under the criminal theft statutes were improper. "The exclusive application of section 112.061(10) here is consistent with the principle of criminal law which ordinarily gives controlling effect to the particular and specific statutory proscriptions addressing acts which otherwise might also be circumscribed by more general criminal provisions. This also accords with the rule of lenity, which instructs that criminal statutes susceptible of differing constructions are to be interpreted in a manner most favorably to the accused. We therefore conclude that section 112.061(10) is the exclusive means of prosecution for the acts alleged here, and that the other charged offenses were properly dismissed," the DCA said.

State v. Maloy, 7/16/02

Search and seizure - motion to suppress

During a pat-down search, an officer had probable cause to examine the contents of a vial he recognized to be similar to containers commonly used to package contraband, the 1st DCA held. John Graham appealed his conviction on drug charges, claiming the search was illegal. Two officers approached Graham, who was suspected of selling cocaine to an undercover office. As the officers neared Graham, he quickly reached in his pant pocket despite the officers' instruction that he not do so. One of the officers grabbed and pulled Graham's hand out. In his hand, Graham was clutching a vial. The officer opened the vial and discovered cocaine inside. The officer testified that, based on his experience he recognized the vial as being consistent with containers often used to hold cocaine. "Given the close proximity of the officer to

appellant, appellant's furtive movement, the resemblance of the vial to containers known to contain cocaine, and the information that appellant had committed a felony, the trial court did not err in denying appellant's motion to suppress," the DCA concluded. Assistant Attorney General Anne C. Toolan represented the state on appeal. *Graham v. State*, 8/2/02

2nd District Court of Appeal Public records - private email on government computers

Citing the potentially broad impact on every state agency and Florida city, the 2nd DCA agreed to ask the Florida Supreme Court to resolve whether private email stored on government computers should be considered a public record. The court in May concluded that private email stored in government computers does not automatically become a public record by virtue of that storage. The court denied a newspaper's public records request for email involving two municipal employees who were suspected of using their public computers to operate a private business. The DCA granted a motion to intervene by the Attorney General's Office and agreed to certify the issue to the Supreme Court "because this ruling affects how every state agency and municipality maintain their records and the public's access to those records." The certified question asks whether all emails transmitted or received by public employees are public records by virtue of their placement on a government-owned computer system "if the agency has a written policy that informs the employees that the agency maintains a right to custody, control and inspection" of emails.

Times Publishing Company v. City of Clearwater, 7/3/02

Warrantless arrest- exigent circumstances

Cocaine and drug paraphernalia found on a defendant during a search incident to his arrest should have been suppressed because no exigent circumstances supported law enforcement's warrantless arrest of him in his home, the 2nd DCA held. Eddie Burt appealed the denial of his motion to suppress evidence police found on him when he was arrested at 4 a.m. in his boarding house room, several hours after a woman accused him of raping her in the room. When officers arrived at the boarding house, the front door and the door to Burt's room were open. Officers discovered Burt lying face down on the bed and had difficulty rousing him. Under these circumstances, a warrantless search was not necessary to prevent Burt from destroying evidence before a warrant could be obtained, the DCA concluded. "Officer Allister testified that he did not obtain an arrest warrant because he felt that it was of utmost importance that Burt's room be secured immediately in case word got back to him that the police were looking for him. Also, he was concerned that evidence could be destroyed or lost. ... The facts of this case do not show that Officer Allister's fears were

objectively reasonable. There is no evidence that anyone, including Burt, knew that law enforcement intended to arrest Burt," the DCA said. "(A) n officer could have been posted outside the motel room door while the officers secured a search warrant." Assistant Attorney General Erica M. Raffel represented the state.

Burt v. State, 7/19/02

Search and seizure - vehicle stop

An officer who stopped a car because he could not read the expiration date of an improperly displayed temporary tag was not justified in further detention or inquiry once he determined the tag was valid, the 2nd DCA held. William Borys appealed his convictions for driving while license suspended or revoked as a habitual offender and for obstructing or opposing an officer without violence. The officer pulled over Borys' car, but when he approached the vehicle he was able to read that the tag was valid. However, the officer continued his approach to the car, asked Borys for identification and conducted a license check. While the officer conducted the check, Borys attempted to flee on foot. Borys moved to suppress all evidence or information obtained after the officer discovered that Borys' car tag was valid, arguing that the stop became illegal at that point. The DCA agreed and reversed. "Because both the officer's determination that Borys' license was suspended and Borys' fleeing the scene occurred after the officer had discovered that the tag was valid, the trial court erred in denying the motion to dismiss," the DCA said. Assistant Attorney General Susan Dunlevy represented the state on appeal.

Borys v. State, 7/10/02

3rd District Court of Appeal Language for requesting administrative hearing

A citizen may seek a formal hearing into a state action without using the words "request" or "hearing" in a letter if the person's intention to seek review of the administrative action is clear, the 3rd DCA held. The court reinstated Aquaria Kelly's appeal of a Department of Children and Family Services order to recoup \$627 in Aid to Families with Dependent Children benefits. The department claimed Kelly was not entitled to the money because she had failed to report a change of address. The agency's notice to Kelly said she could ask for a hearing within 30 days, and one week later Kelly sent a letter explaining that she had been in and out of homeless shelters. She said she had notified the department of her change of address, and stated that "if necessary I can prove" where she had been staying. She did not specifically request a hearing, and a hearing officer determined that she failed to timely request an administrative hearing and dismissed the case. The DCA reversed, concluding that Kelly's letter was sufficient to notify the department that she wished to be heard. "As the only prescribed procedure for contesting a recoupment is by way of a request for hearing, the Department should have treated her letter of June 7, 2002

– in which Kelly clearly contests the recoupment and offers to disprove the charge – as a timely request for hearing," the DCA said.

Kelly v. Department of Children and Family Services, 7/17/02

Telephone testimony - right to confront witnesses

The state's social services agency should not have been allowed to present crucial witness testimony via telephone without the prior consent of a mother whose parental rights were subject to being terminated, the 3rd DCA held. Over the mother's objection, a trial judge allowed the Department of Children and Family Services to present the testimony of a treating psychiatrist and a former foster parent via telephone. Both witnesses' testimony damaged the mother's case, and the DCA said the telephone testimony of "these two vitally important witnesses" violated Florida Rule of Judicial Administration 2.071, which requires consent before the parent's right to confront witnesses may be waived. "Considering the gravamen of the witnesses' testimony and the nature of the order at issue, permitting the use of the telephone testimony without the mother's consent, violated the mother's due process rights," the DCA said.

A.B. v. Department of Children and Family Services 7/17/02

Revocation of license

The state Department of Banking and Finance acted properly when it revoked the license of a mortgage broker who used a customer's check for her own purposes and then lied to conceal what she had done, the 3rd DCA said. In a brief order, the DCA said revocation of the mortgage broker's license was within the department's authority. According to the department's final order in the case, Marta Comas altered a customer's check, deposited it into her own personal account and then wrote a letter on company letterhead assuring the customer that the money was in the hands of a title company. The DCA rejected Comas' appeal and affirmed the department's license revocation.

Comas v. Department of Banking and Finance, 7/17/02

Search and seizure - investigative stop

An officer's observations of a possible crime, only made after she asked a defendant to step out of his legally parked car, did not constitute a well-founded suspicion to justify the investigatory stop, particularly in light of the officer's inability to recall many details of the stop, the 3rd DCA held. The state appealed the trial court's suppression of statements and evidence stemming from an investigatory stop of Leonard Taylor. After observing Taylor's car legally parked on a swale in a neighborhood at 4:30 a.m., Officer Patricia Malone pulled over and questioned Taylor's reason for being there. Malone ran a check on Taylor, handcuffed him and placed him in her

patrol car. Only after backup officers arrived did Officer Malone become aware of signs of a possible burglary nearby. Due to inconsistencies in Officer Malone's testimony, the trial court did not believe her testimony that she suspected a burglary at the time of the arrest. The trial court suppressed statements and evidence stemming from the stop, and the DCA affirmed. "The state urges that the stop here was not infirm because Officer Malone had reasonable articulable suspicion that Taylor was involved in a robbery. However, this theory is not borne out by the record. The record unequivocally demonstrates that when Officer Malone asked the defendant to step out of his car she had only observed a legally parked car. Nothing more. This observation does not rise to the level of well-founded suspicion of criminal activity necessary to justify the stop," the DCA said. Assistant Attorney General Erin K. Zack represented the state on appeal.

State v. Taylor, 7/24/02

Search and seizure - credibility of police testimony

The fact that two police officers gave differing accounts of the same events, based on their different perspectives, doesn't mean their testimony was not credible and their warrantless search was illegal, the 3rd DCA held. The state appealed the trial court's order suppressing drug evidence seized from Zeuxis Fernandez's place of business pursuant to a signed consent to search form. Two officers conducting burglary surveillance approached Fernandez's business, suspecting a burglary in progress. One officer testified that he saw pry marks on the door and heard sounds inside, and opened the door before encountering Fernandez inside. The other officer, who had turned his attention elsewhere just before the door was opened, never mentioned pry marks and thought Fernandez had opened the door. The trial judge found the officers' testimony to be "so diametrically opposed" as to reject the officers' credibility, and found the initial entry unjustified. The DCA reversed. "It is clear that the testimony of either officer would support the legality of the initial entry into the business. The trial court, however, was troubled by what it believed to be two 'contradictory' versions. The problem with the trial judge's reasoning is that (1) there was no testimony offered by any witness to support a scenario that would have rendered the search illegal as viewed by the Fourth Amendment, and (2) the two so-called opposing versions offered by the police officers are not, in reality, contradictory at all," the DCA said. "Since both officers testified from different points of view physically and testified about facts observed at different points in time, the two versions are neither conflicting nor contradictory. Rather, either officer's description of what transpired supports the legality of the initial entry." Assistant Attorney General Roberta G. Mandel represented the state on appeal. *State v. Fernandez, 7/17/02*

4th District Court of Appeal

Police instructor's opinion evidence admissible

A trial court properly admitted a police instructor's opinion testimony that the defendant's aggressive conduct warranted the police tactics used to subdue her, the 4th DCA ruled. Lillier Ivory appealed her convictions for battery on a law enforcement officer and resisting arrest with violence. The charges stemmed from an incident in which Ivory attempted to stop an officer from writing her daughter a traffic ticket by grabbing the citation book out of his hand and throwing it down. The officer testified that Ivory's increasing aggressive behavior forced him to use an "arm bar take down" and a "brachial plexus stun" tactic in order to subdue Ivory, who resisted by pushing and biting the officer. Ivory claimed the officer's attack against her was unwarranted and she did nothing to instigate it. A police training instructor was called as a witness to describe and explain the officer's tactics. Ivory argued on appeal that the testimony was improperly prejudicial to her defense, but the DCA disagreed. "(Ivory) testified in substance that the officer's attempts to arrest her were unprovoked and were excessive. The opinion evidence of the instructor thus responded to issues raised by defendant herself and was therefore relevant. Although defendant also contends that the instructor's testimony unfairly bolstered the testimony of the arresting officer, we do not agree that the record supports this contention. Here, the instructor did not vouch for the credibility, either directly or indirectly, of the arresting officer but instead stated that if the events occurred as he had described, then the police tactics were proper responses according to officer training and instruction. Thus, the testimony did not constitute an improper bolstering by vouching for credibility," the DCA said. Assistant Attorney General Barbara A. Zappi represented the state on appeal.

Ivory v. State, 7/31/02

Sufficient notice of claim to "abandoned" property

A small newspaper notice claiming "abandoned" motorcycles was not enough to protect the rights of the owners when a sheriff's department had the names of the purported owners and their attorneys, the 4th DCA said. The DCA said the Broward County Sheriff's Office could easily have done more to inform the purported owners that it intended to declare the two motorcycles "lost or abandoned." Two men claimed they had the vehicles assembled from parts, but the sheriff's office contended they were built with stolen parts and therefore did not have to be returned to the purported owners. Despite sporadic correspondence with the men's attorneys over a period of time, the department published a general notice of its intent to keep the motorcycles unless a valid ownership claim was presented. Under the circumstances, the DCA said, this was insufficient to protect the due process rights of the purported owners. "Given that the sheriff's office had knowledge of the names of the

purported owners, and the names of their attorneys, who were authorized to accept service, the published notice in this case failed to comport with due process requirements," the DCA said. "The published notice failed to identify the motorcycles with any degree of specificity to put the purported owners on notice."

Kirchoff and Rivenbark v. Jenne, 6/26/02

5th District Court of Appeal

Concealment on application for state license

An applicant for a state professional license is guilty of concealment if he fails to tell an agency about several criminal convictions, even if he did not intend to deceive the agency, the 5th DCA held. Saying the case presented "a new twist on the issue of deception," the DCA affirmed a suspension where a real estate license applicant listed only one of seven criminal incidents on his application. The applicant acknowledged that he was fully aware of his criminal history, but left out several offenses because he was in a rush and believed the Department of Business and Professional Regulation would conduct its own investigation and learn of the other incidents. The DCA noted that concealment cases usually involve either a deliberate attempt to conceal or an applicant who simply forgot about one or more convictions. This case is unique, the DCA said, because the applicant acknowledged that he intentionally failed to list his previous convictions but did not intend to mislead the department. "Therefore, the issue before us is whether there must be an intent to deceive when it is admitted by the applicant that he intentionally withheld information requested by the Department. If one knows of a requirement to disclose information which he intentionally fails to disclose, and then swears in the application that his knowingly incomplete answer is true and is as complete as his knowledge will permit, it is difficult to conceive how it could be determined that the applicant did not intend to mislead. In any event, we agree with the Department that the intentional act of concealment is itself, whether or not the applicant actually intended to mislead the Department by such concealment, sufficient to warrant the penalty administered herein," the DCA said.

Threnhauser v. Department of Business and Professional Regulation, 7/26/02

Reasonable suspicion for Terry stop

Police had reasonable suspicion to justify a *Terry* stop when they encountered a man in a car parked in an improper area at 1:30 a.m., a handgun partially concealed next to him and a nearby restaurant still open for business, the 5th DCA held. Andrew Blice appealed the denial of his motion to suppress evidence following his guilty plea to armed robbery charges. Officers had observed Blice parked in a non-designated parking area next to a closed business, and as they approached his vehicle they saw what they believed to be the butt of a gun. The DCA said at this point the police-citizen encounter turned into a

Terry stop when the officers asked Blice to step out of the vehicle. When Blice could not give a good reason for his being there, the officers mentioned the apparent gun and obtained permission to search the vehicle. The search turned up a loaded semi-automatic handgun, a shotgun, a face mask, a knife, military clothing and paint thinner. Blice then confessed to committing an armed robbery at a video store the prior week. On appeal, Blice argued that the officers had no valid basis for the *Terry* stop, but the DCA disagreed. The circumstances of the stop created a reasonable suspicion that a crime had occurred or was about to occur, the court said. "Indeed, ignoring this situation would have been irresponsible and might have led to a tragedy at the nearby restaurant," the DCA added. Assistant Attorney General Belle Schumann represented the state on appeal.

Blice v. State, 7/26/02

ATTORNEY GENERAL'S OPINION

Public records - domestic violence identifying information

In response to a request from the Levy County Sheriff, the Attorney General issued an advisory opinion (2002-50, 7/22/02) stating in sum: "Information revealing the home or employment address or telephone number or personal assets of a person who has been the victim of domestic violence should be excised from the copy of the report of domestic violence forwarded by a law enforcement agency to the nearest domestic violence center under the provisions of section 741.29(2), Florida Statutes, if the victim has made a request that such information be treated as exempt pursuant to section 119.07(3)(s)1., Florida Statutes."

Opinion # 2002-50

Mutual aid agreements for traffic enforcement

In response to a request from the police chief for the City of Clearwater, the Attorney General issued an advisory opinion (2002-46, 7/8/02) stating in sum: "A municipality or several municipalities may enter into a mutual aid agreement with the county and each other to authorize municipal police officers to exercise traffic enforcement authority and to conduct accident investigations within the unincorporated areas of the county and within each other's jurisdictions, where the parties set forth in the agreement the agency or entity with ultimate supervision of such law enforcement activities." *Opinion # 2002-46*

Regulation of motorized scooters

In response to a request from state Senator Howard E. Futch and the Indian Harbour Beach police chief, the Attorney General issued an advisory opinion (2002-47, 7/8/02) stating in sum: "As of July 1, 2002, motorized scooters are excluded from the definition of 'motor vehicle' for purposes of Chapter 316, Florida Statutes, and therefore are not subject to the equipment and safe driving requirements of a motor vehicle contained in that chapter, nor are the provisions relating to mopeds or 'electric

personal assistive mobility devices' prescribed in Chapter 316, Florida Statutes, applicable to motorized scooters."

Opinion # 2002-47 [Note: The Opinion & the Department do not construe the amendment to modify the requirements of Ch.322, F.S.. Thus, the operator of a motorized scooter must be licensed. In addition, the operator would be subject to being cited for operating an unregistered & unregistrable motor vehicle, if operated on the public streets or roads. There is no authority in Ch. 320, F.S., for registering motorized scooters.]

Recording of calls to non-emergency police numbers

In response to a request from the Lynn Haven City Attorney, the Attorney General issued an advisory opinion (2002-56, 8/21/02) stating in sum: "1) A municipal police department may record an incoming call on a published, non-emergency telephone line if the call is received by a trained dispatcher in the course of accepting the call at a public safety answering point for emergency assistance; 2) There is no authority to record a call that is made to a non-emergency telephone number and subsequently transferred to an employee of the police department, unless the caller is asked whether the call may be recorded and the caller gives prior consent; 3) An outgoing call may be recorded only when it is made to the telephone number from which an emergency assistance request call was made in order to obtain information required to provide the emergency services being requested or when a called party gives permission for a call to be recorded."

Opinion # 2002-56

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