
LEGAL BULLETIN

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

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VOLUME MMII, ISSUE 6

U.S. SUPREME COURT

ADA - job that poses risk to worker's health

The Americans with Disabilities Act does not entitle disabled workers to jobs that could threaten their lives or health even if they are willing to take the positions, the U.S. Supreme Court held. The unanimous ruling was seen as a victory for employers who argued that a different outcome could force them to hire workers who would later sue them over workplace injuries. The Court ruled against a former refinery worker who wanted his job back, even though he had liver disease and chemical exposure could worsen his condition. The Supreme Court approved a rule of the Equal Employment Opportunity Commission that said the ADA does not require the employer to rehire the man, rejecting the worker's argument that language in the ADA that allows employers to take action where a worker's disability poses a threat to others implicitly protects the rights of those who pose a threat only to themselves. "[T]here is no apparent stopping point to the argument that by specifying a threat-to-others defense Congress intended a negative implication about those whose safety could be considered. When Congress specified threats to others in the workplace, for example, could it possibly have meant that an employer could not defend a refusal to hire when a worker's disability would threaten others outside the workplace? If Typhoid Mary had come under the ADA, would a meat packer have been defenseless if Mary had sued after being turned away?," Justice Souter wrote for the Court.

[Chevron U.S.A., Inc., v. Echazabal, 6/10/02]

Punitive damages in ADA suits against public entities

Public entities and private organizations that receive federal funds cannot be made to pay punitive damages for violations of the Americans with Disabilities Act or the Rehabilitation Act, the U.S. Supreme Court held. Continuing a series of rulings limiting the scope of the ADA, the justices unanimously ruled against a Missouri paraplegic man who was injured while being transported to jail

in a police van. The man claimed that the police department did not have proper policies for arresting and transporting people with spinal cord injuries, and a jury awarded him more than \$1 million in compensatory damages and \$1.2 million in punitive damages. An appeals court upheld the punitive award but the Supreme Court reversed, saying punitive damages may not be awarded in private suits brought under §202 of the ADA and §504 of the Rehabilitation Act. The Court said violations of the laws are enforceable through private causes of action that seek to require public entities, as well as private organizations that accept federal funding, to pay compensation and make changes in accommodations, such as installing wheelchair ramps. "We have acknowledged that compensatory damages alone might well exceed a recipient's level of federal funding; punitive damages on top of that could well be disastrous. Not only is it doubtful that funding recipients would have agreed to exposure to such unorthodox and indeterminate liability; it is doubtful whether they would even have accepted the funding if punitive damages liability was a required condition," Justice Scalia wrote for the Court. "[I]t must be concluded that Title VI funding recipients have not, merely by accepting funds, implicitly consented to liability for punitive damages."

[Barnes v. Gorman, 6/17/02]

Search and seizure - consent to search on bus

Ruling in a case from Tallahassee, the U.S. Supreme Court held that police officers looking for drugs or other evidence of crime do not have to announce to bus passengers that they are free to refuse to be searched. The justices held 6-3 that for constitutional purposes, passengers in the confined space of a bus are no more likely to feel coerced by law enforcement than citizens who are questioned on a sidewalk. On a sidewalk, the Court noted, a person being stopped can simply refuse to be searched and walk away, and officers cannot pursue the person unless they have reason to suspect criminal activity. During a scheduled stop on the bus route, Tallahassee police officers conducted a

routine drug and weapons interdiction program. Two men who were found to have drugs after consenting to a search argued on appeal that they did not feel free to refuse a search request, thus rendering the search non-consensual. The Court rejected this argument, concluding that the Fourth Amendment does not require police officers to advise bus passengers of their right not to cooperate and to refuse consent to searches. "There was no application of force, no intimidating movement, no overwhelming show of force, no brandishing of weapons, no blocking of exits, no threat, no command, not even an authoritative tone of voice. It is beyond question that had this encounter occurred on the street, it would be constitutional. The fact that an encounter takes place on a bus does not on its own transform standard police questioning of citizens into an illegal seizure," Justice Kennedy wrote for the Court. "In a society based on law, the concept of agreement and consent should be given a weight and dignity of its own. Police officers act in full accord with the law when they ask citizens for consent. It reinforces the rule of law for the citizen to advise the police of his or her wishes and for the police to act in reliance on that understanding. When this exchange takes place, it dispels inferences of coercion."

[U.S. v. Drayton and Brown, 6/17/02]

Search and seizure - warrantless search

A suspected drug dealer's Fourth Amendment rights were violated when police officers entered his home and searched him without a warrant and a court later failed to find that exigent circumstances justified the warrantless actions, the U.S. Supreme Court held. Louisiana police, operating on an anonymous citizen complaint, observed apparent drug transactions from Kennedy Kirk's apartment. Concerned that their actions would alert Kirk and enable him to destroy evidence, officers knocked on the door to the apartment, arrested Kirk and searched him, finding cocaine and money on his person. Officers obtained a warrant after the arrest and search had taken place. Kirk moved to suppress the evidence, but a state appeals court declined to decide whether exigent circumstances had been present because the evidence was found in Kirk's possession and not in the apartment. The appeals court concluded the officers had probable cause to arrest Kirk and therefore properly searched him. The Supreme Court disagreed in a unanimous, unsigned opinion. "[T]he police had neither an arrest warrant for petitioner, nor a search warrant for petitioner's

apartment, when they entered his home, arrested him, and searched him," the Court said. "[P]olice officers need either a warrant or probable cause plus exigent circumstances in order to make a lawful entry into a home. The Court of Appeal's ruling to the contrary, and consequent failure to assess whether exigent circumstances were present in this case, violated (Kirk's rights)."

[Kirk v. Louisiana, 6/24/02]

Statute of limitations - employment discrimination suits

Older improper incidents may be included in a complaint of long-term workplace discrimination as long as at least one of the acts occurred within the usual 180- to 300-day window for filing such complaints, the U.S. Supreme Court held. The justices, in a 5-4 ruling, said a Title VII plaintiff raising claims of discrete discriminatory or retaliatory acts must file his charge within the appropriate 180- or 300-day period. However, the Court said, a charge alleging a hostile work environment is not time-barred if all acts constituting the claim are part of the same unlawful practice and at least one act falls within the filing period. In either instance, the justices said, a court may apply equitable doctrines that may toll or limit the time period. The ruling was a victory for a black former Amtrak employee who claimed he was subject to discriminatory practices throughout his employment. A trial court granted summary judgment for Amtrak on many of the worker's complaints because the 300-day window had passed, but the Supreme Court said those complaints may still be considered. "It does not matter, for purposes of the statute, that some of the component acts of the hostile work environment fall outside the statutory time period. Provided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court for the purposes of determining liability," Justice Thomas wrote for the Court. "Given, therefore, that the incidents comprising a hostile work environment are part of one unlawful employment practice, the employer may be liable for all acts that are part of this single claim. In order for the charge to be timely, the employee need only file a charge within 180 or 300 days of any act that is part of the hostile work environment."

[National Railroad Passenger Corporation v. Morgan, 6/10/02]

FLORIDA SUPREME COURT

Restitution - driving with suspended license

A person who drives with a suspended license cannot be ordered to pay restitution for damages from an automobile accident they cause, the Florida Supreme Court held. The Court's 6-1 ruling said Laurie Schuette does not have to pay restitution for the injuries suffered by a victim of an accident caused by Schuette. Schuette was convicted of driving with a suspended license and leaving the scene of an accident involving an injury, but the trial court found that there was no nexus between the injuries and Schuette's criminal act of not having a valid driver's license. The State appealed, but the Supreme Court agreed with the trial court's decision. "What is missing in this case is a causal relationship between the act of driving without a license and the accident that resulted in damages. The suspension of the license was an existing circumstance, rather than a cause of the accident. Although it is undisputed that Schuette was driving illegally by driving with a suspended license, the State failed to present any evidence of a relationship — much less prove by a preponderance of the evidence — to establish that the accident and resulting damages were caused by, or related to, Schuette's act of driving without a license," Justice Pariente wrote for the Court. "[T]he mere occurrence of an accident while the defendant is engaged in the criminal offense of driving with a suspended license does not as a matter of law mandate the award of restitution for the damages arising out of the accident." [Schuette v. State, 6/20/02]

1st District Court of Appeal

Sovereign immunity - dangerous condition

In a brief one-page order, the 1st DCA reversed a lower court ruling that would have required the state to pay almost \$1 million to a former Florida A&M University student who was injured when he fell from a dormitory walkway. The student was injured in 1993 when he fell while attempting to climb from a first-story railing to a second-story walkway. In reversing the award for the student, the DCA cited a 1997 case in which it held that evidence of a dangerous condition that is readily apparent to the public will not generally support an exception to the doctrine of sovereign immunity. [Florida Board of Education v. Flewellyn, 5/31/02]

Agency relationship - sovereign immunity

A trial court should not have relied on sovereign immunity to dismiss a lawsuit by the mother of a

sheriff's deputy who was killed in a fiery crash on Interstate 10, the 1st DCA said in reviving the lawsuit. Madison County Sheriff's Deputy Stephen Michael Agner was killed when his patrol car was struck from behind by a pickup truck as it moved slowly behind a road construction crew. Agner's mother sued numerous defendants, including the general contractor and professional engineers under contract to the Department of Transportation to supervise the project. The mother alleged that the engineers' employer, AIM Engineering & Surveying, had the status of an independent contractor to DOT and was not an officer, employee or agent of the department. The trial court granted both companies' motion to dismiss the lawsuit, apparently on either sovereign immunity or workers' compensation immunity grounds. Court filings in the case did not clearly establish any agency relationship between the companies and DOT, and the DCA said the mother should have an opportunity to conduct discovery that might enable her to show the absence of an agency relationship entitling the companies to sovereign immunity. "Although the contract ... contains many indicators that DOT exercised extensive control over certain functions performed by AIM, the trial court should have had the benefit of the Construction Project Administration Manual, as well as any other pertinent evidence concerning DOT's actual interpretation of AIM's status," the DCA said. "Because the trial court disposed of this case at the motion to dismiss stage, appellant has had no opportunity whatsoever to engage in discovery." [Agner v. APAC-Florida, Inc., et al., 6/12/02]

2nd District Court of Appeal

Denial of opportunity to subpoena witnesses

The right to the compulsory attendance of witnesses in an unemployment compensation hearing cannot be conditioned on a prehearing determination that the testimony is likely to be relevant, the 2nd DCA said. The Court reversed the Unemployment Appeals Commission's affirmance of a referee's decision that a woman was ineligible for unemployment benefits. During prehearing proceedings, the appeals referee obtained a proffer from the woman regarding the anticipated testimony of several witnesses she planned to call. The referee determined that the testimony would be irrelevant and declined to issue the subpoenas, and eventually ruled against the woman's bid for benefits. "An employee in an unemployment compensation matter has a basic right to the compulsory attendance of witnesses. The denial of a request to issue subpoenas

for witnesses can be a denial of this right," the DCA said. "In reversing, we import no wrongful motive to the referee who is required to manage, as do our trial judges, a busy docket and who no doubt recognized an opportunity to avoid inconveniencing a large number of individuals. By his action, however, the referee usurped the role of a party, which is to object to the relevancy of testimony." [Ibarra v. Unemployment Appeals Commission, 6/14/02]

DUI - blood draw for medical purposes

A blood alcohol test result obtained by an officer from medical personnel without the defendant's consent is admissible because the same result was later obtained through a subpoena, the 2nd DCA held. Kelly Thomas was convicted of driving under the influence. She was taken to a hospital immediately after an accident, and her conviction was in part based on the result of tests on blood drawn for medical purposes. Thomas moved to suppress the test result, arguing it was obtained in violation of the implied consent statute, section 395.1933(1), F.S. The trial court denied the motion and the DCA affirmed, noting that an officer's failure to specifically request a blood draw does not make the results inadmissible. "On the facts of this case, we conclude that the officer would have been authorized to request a blood draw. Moreover, even if we concluded that the officer did not have probable cause to request a blood test, ... the officer's verbal request for the nurse to tell him the blood test results does not constitute the type of governmental misconduct that would warrant exclusion of the medical records," the DCA said.

[Thomas v. State, 5/29/02]

4th District Court of Appeal

Public records request instead of discovery

A trial court must fully consider a plaintiff's request to obtain a public agency defendant's records related to an accident through a public records request rather than through standard discovery, a motion the lower court initially rejected without explanation, the 4th DCA held. Plaintiff Dottie James sought documents relating to the condition of a road maintained by a water control district. James at first sought production of the documents through discovery, but then realized she would have greater access to them through the public records law. Because she couldn't identify specific documents she needed, James sought access to all records at the district's offices if they related to its liability involving the

condition of the road. The district said it would be disruptive to produce all the records at its office, but offered to produce them for inspection at an off-premises location. The trial court denied James' motion to compel production without giving any reasons. This was error, as the trial court should at least have conducted a hearing into the matter, the DCA concluded. ""[W]e grant mandamus and direct the trial court to hold such a hearing and determine if plaintiff's request to examine defendant's records at defendant's offices should be granted, and if so, under what conditions," the DCA said.

[James v. Loxahatchee Groves Water Control District, 6/5/02]

Exception to agency's home venue privilege

The 4th DCA denied a state agency's motion to reconsider an adverse ruling on the home venue privilege traditionally enjoyed by state agencies, and used the opportunity to emphasize its view that the privilege may be disregarded when appropriate to eliminate confusion. The court in February ruled against the Department of Insurance's request to transfer a Broward County case to Tallahassee, concluding that the privilege does not have to be applied when a state agency is added to certain cases as an impleaded defendant. The department then asked the DCA to rehear the case or certify it to the Florida Supreme Court. The DCA denied the motion without explanation, and issued a revised version of its original ruling to bolster its conclusion that the privilege can be ignored when appropriate. "Among the initial policy considerations for the home venue privilege were the maintenance of uniformity in the interpretation of rules and regulations by responsible state agencies as well as the prevention of conflicting judicial rulings which might occur while litigating these issues in different jurisdictions," the DCA said. "[I]n this case, the home venue privilege must give way to the well-recognized, statutorily-based precept that venue in supplementary proceedings remains where venue began in the underlying action."

[Department of Insurance v. Accelerated Benefits Corp. and Wolk, 6/12/02]

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]

Suppression of evidence - inaccurate police records

Drugs found following an arrest based on an invalid driver's license should have been suppressed because of an error in police records regarding the license, even though the error was originally caused by the defendant himself, the 4th DCA held. Curtis Carter pled guilty to drug charges but appealed the denial of his motion to suppress. An officer ran a check on Carter's name, using a false birth date Carter gave him during a previous arrest. The check showed no valid license, so the officer arrested Carter for driving without a valid license. A search uncovered drugs, but the officer later determined that Carter did in fact have a valid license with his correct birth date. The trial court refused to suppress the drug evidence because it was Carter's falsehood that led police to believe he did not have a valid license. However, the DCA reversed, saying police had ample opportunities to correct their records before Carter's vehicle was searched. "[T]he mistake in the records was originally caused by appellant giving the police an incorrect birth date. Those records, however, should have been corrected," the DCA said. "The order denying suppression in this case is therefore contrary to the policy ... that evidence seized under these circumstances must be suppressed in order to make law enforcement diligently maintain accurate and current records."

[Carter v. State, 5/29/02]

Search and seizure - expectation of privacy

A defendant had no reasonable expectation of privacy when he stored a brown paper bag in the wheel well of a parked vehicle and walked away, the 4th DCA held. During a police drug surveillance of a parking lot, an officer saw Billy Lampley reach under the exterior wheel well of a parked truck and remove a brown paper bag containing plastic baggies. After conducting what appeared to be a drug sale, Lampley returned the bag to the wheel well and went in the store. Police handcuffed Lampley and found rock cocaine in the paper bag. The trial judge granted Lampley's motion to suppress, finding no probable cause for the arrest. The State appealed, and the DCA reversed. "We conclude that Lampley had no reasonable expectation of privacy in the wheel well of the truck parked in the convenience store parking lot," the DCA said. "Lampley had no reasonable expectation of privacy in either the paper bag, or its contents, when he placed it in the wheel well of the truck and walked away."

[State v. Lampley, 5/29/02]

Probable cause for search - security guard's tip

A deputy had sufficient reason to conduct an investigatory stop based on a security guard's tip that she smelled marijuana coming from the vehicle when it passed her guard station, and that stop led to a proper arrest, the 4th DCA held. A vehicle driven by a minor passed through an apartment complex security station just ahead of the vehicle driven by Broward Sheriff's Deputy Santiago Vazquez. The security guard told the deputy that she smelled burning marijuana from the youth's vehicle, so the deputy parked behind the vehicle and began an investigatory stop. When the driver and passenger opened the car's doors, the deputy saw smoke billow out and smelled the odor of marijuana coming from the car. The deputy searched the youths and found marijuana, and also observed a baggie of marijuana near the front seat. The juvenile driver challenged the stop and search, and the trial court suppressed the evidence. The DCA reversed that order, saying the security guard acted as a citizen informant providing readily verifiable information that the deputy did not need to corroborate in order to conduct a stop. "This is a case of an investigatory stop that ripened into probable cause to support an arrest," the DCA said. "[T]he tip from the security guard, the smoke billowing out of the car, and the smell of burning marijuana gave Deputy Vazquez

ample probable cause to arrest the occupants and search both their persons and the vehicle. Moreover, after the stop of the occupants, the deputy's plain view observation of the baggie of marijuana wedged between the car seats provided additional probable cause to conduct the search."

[State v. K.V., 6/19/02]

ATTORNEY GENERAL OPINIONS

Traffic hearing officer's eligibility for jury duty

In response to a request from a civil traffic infraction hearing officer, the Attorney General issued an advisory opinion (2002-45, 6/26/02) stating in sum: "Civil traffic infraction hearing officers appointed pursuant to the provisions of sections 318.30-318.38, Florida Statutes, are not judges for purposes of section 40.013(2)(a), Florida Statutes, and thus are not disqualified from jury service."

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