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# LEGAL BULLETIN

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

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## *U.S. Supreme Court*

### **States' confidentiality - highway records**

State and local governments are not required to provide plaintiffs with information about dangerous road intersections if they collected the information as part of a federal program intended to improve highway safety, the U.S. Supreme Court held. The court unanimously ruled that Congress acted within its power to protect interstate commerce when it exempted from disclosure information compiled as part of the application process for grants under 23 U.S.C. §152, the Hazard Elimination Program. Congress exempted the information from disclosure because it recognized states' concerns that the absence of confidentiality would increase the liability risk for accidents that took place at hazardous locations before improvements could be made. The federal government also was concerned that states' reluctance to be forthcoming in their data collection efforts would undermine the program's effectiveness. The confidentiality provisions were challenged by a Washington man who sued after his wife was killed at a dangerous intersection while that state was seeking a grant under the program. The justices upheld the confidentiality provisions, saying §152 was not intended to give plaintiffs an "effort-free tool" for suing state and local governments. "Congress adopted §152 to assist state and local governments in reducing hazardous conditions in the Nation's channels of commerce. That effort was impeded, however, by the States' reluctance to comply fully with the requirements of §152, as such compliance would make state and local governments easier targets for negligence actions by providing would-be plaintiffs a centralized location from which they could obtain much of the evidence necessary for such actions. In view of these circumstances, Congress could reasonably believe that adopting a measure eliminating an unforeseen side effect of the information-gathering requirement of §152 would result in more diligent efforts to collect the relevant information, more candid discussions of hazardous locations, better informed

decision-making, and, ultimately, greater safety on our Nation's roads. Consequently, (the statute) can be viewed as legislation aimed at improving safety in the channels of commerce and increasing protection for the instrumentalities of interstate commerce. As such, they fall within Congress' Commerce Clause power," Justice Thomas wrote for the court.

[*Pierce County, Washington, v. Guillen*, 1/14/03]

### **Termination of criminal conspiracy**

Heading off a potential threat to valid law enforcement sting operations, the U.S. Supreme Court said a criminal conspiracy does not terminate simply because a police bust prevents it from achieving its goal.

The justices rejected a lower court's view that a conspiracy terminates when there is "affirmative evidence of ... defeat of the object of the conspiracy." The Supreme Court said the 9th Circuit's standard, established in 1997 in *U.S. v. Cruz*, is inconsistent with basic conspiracy law because the agreement to commit an unlawful act is a "distinct evil" that may exist and be punished regardless of whether the substantive crime actually takes place. The justices reversed an order favoring two men who were caught in a sting operation set up by police after they stopped a truck carrying illegal drugs. Applying its own *Cruz* standard, the San Francisco-based 9th Circuit concluded that the drug conspiracy terminated when the truck was stopped and therefore the defendants could not be charged with conspiracy. The Supreme Court disagreed in an 8-1 ruling.

"(T)he *Cruz* rule would reach well beyond arguable police misbehavior, potentially threatening the use of properly run law enforcement sting operations," Justice Breyer wrote for the court. "A conspiracy does not automatically terminate simply because the Government, unbeknownst to some of the conspirators, has 'defeat(ed)' the conspiracy's 'object.' ... The conspiracy poses a 'threat to the public' over and above the threat of the commission of the relevant substantive crime — both because the '(c)ombination in crime makes more likely the

commission of (other) crimes' and because it "decreases the probability that the individuals involved will depart from their path of criminality." Where police have frustrated a conspiracy's specific objective but conspirators (unaware of that fact) have neither abandoned the conspiracy nor withdrawn, these special conspiracy-related dangers remain. So too remains the essence of the conspiracy — the agreement to commit the crime. That being so, the Government's defeat of the conspiracy's objective will not necessarily and automatically terminate the conspiracy."

[*United States v. Recio*, 1/21/03]

### **11th U.S. Circuit Court of Appeal Qualified immunity from suit - police shooting**

Acting on remand from the U.S. Supreme Court, the 11th U.S. Circuit Court of Appeals reaffirmed its holding that a law enforcement officer may be entitled to qualified immunity if he reasonably believed he had sufficient probable cause to apply deadly force, even if a jury could reasonably disagree.

The case, which the 11th Circuit originally decided in 2001, arose from a Georgia sheriff's deputy firing three shots into an allegedly stolen pickup truck during a high-speed Interstate highway chase. The truck's passenger, Jerry Vaughan, was left paralyzed, and the court said a reasonable jury could find that the shooting violated Vaughan's constitutional rights. However, the 11th Circuit also concluded that Deputy Fred Lawrence Cox could reasonably have believed he had sufficient probable cause to apply deadly force, and therefore he was entitled to qualified immunity. The 11th Circuit was directed to reconsider its decision based on the U.S. Supreme Court's 2002 decision in *Hope v. Pelzer*. On remand the 11th Circuit again concluded that the deputy was entitled to qualified immunity, rejecting Vaughan's argument that the case is controlled by the so-called *Garner* standard, which allows deadly force only if the officer has probable cause, the use of deadly force is necessary to prevent escape and some warning has been given if feasible.

"The *Garner* rule does not always provide 'a clear answer as to whether a particular application' of deadly force will be deemed unjustified by the courts. Whether Deputy Cox had arguable probable cause, whether deadly force was necessary to prevent Vaughan's escape, and whether a warning was feasible in the instant case are all questions that the general *Garner* rule does not clearly answer. Because the *Garner* rule, standing alone, does not

apply with 'obvious clarity' such that Deputy Cox was given fair warning that his alleged conduct was unconstitutional, we must consider whether, in light of *Hope*, the cases applying the *Garner* rule provided fair warning to Deputy Cox that his conduct violated Vaughan's constitutional rights," the 11th Circuit said. "We conclude that prior decisions did not provide fair warning to Deputy Cox that his alleged conduct violated Vaughan's Fourth Amendment rights."

[*Vaughan v. Cox*, 1/3/03]

### **No probable cause to support forfeiture**

Citing the weakness of the prosecution's case and a complete lack of evidence directly connecting seized money to illegal drugs, the 11th U.S. Circuit Court of Appeals reversed a forfeiture order and allowed a Florida woman to keep almost a quarter-million dollars that had been seized by DEA agents.

At the end of a flight from New York to Miami, Deborah Stanford was stopped by airport security. When questioned, she told officers she was carrying almost \$243,000 in cash, which she said was for her Miami export business. Stanford provided only sketchy details of her trip to New York and how she received the cash, and the manner in which the money was bundled suggested some type of illegal transaction. When a narcotics dog alerted on the money, DEA agents seized it. A background check revealed that Stanford had no history of drug activity, and she was never charged with a crime relating to the seizure of the cash. The 11th Circuit concluded that the money must be returned to Stanford.

"The elements relied upon by the Government indicate a possible connection to crime, perhaps, even to drug crime. But, it is a weak indication, at best. This weak indication of crime falls short of showing a substantial connection between the funds at issue here and a narcotics transaction. More than suspicion is necessary. This record is not enough to justify separating Ms. Stanford from her property," the 11th Circuit said. "We are unaware of a case finding probable cause on a record this thin."

[*U.S. v. Stanford*, 1/22/03]

### **Florida Supreme Court**

#### **Collective bargaining rights of sheriff's deputies**

Florida sheriff's deputies are entitled to the same collective bargaining rights as all other employees, a divided Florida Supreme Court held.

The justices ruled 4-3 that deputies are not excluded from the collective bargaining rights granted to all employees by the Florida Constitution. The case

arose out of a union's effort to be certified as the bargaining agent for deputies in the Brevard County Sheriff's Office. After the Public Employees Relations Commission found in favor of the union, the sheriff was denied a writ of prohibition by the 5th DCA, which certified the question to the Supreme Court.

"(T)here is simply nothing ambiguous about the constitutional provision for the right of collective bargaining being extended to all employees, public and private. It would be hard to think of a broader, more inclusive phrase that could have been used than 'employees.' The only limitation in the provision is on the right to strike by public employees," the majority said in an unsigned opinion. "We must be ever vigilant in remembering that these are fundamental constitutional rights that are in question, and we must be careful before depriving an entire category of employees of those rights in the face of a provision giving those rights to all employees. ... To the extent that the sheriff has failed to demonstrate why a deputy sheriff does not come within the ambit of the definition of an employee, and to the extent that the State has equally failed to articulate a compelling interest, outside of merely maintaining some traditional status between a sheriff and her deputies, a deputy sheriff may not be deprived of the constitutional right to collectively bargain."

[*Coastal Florida Police Benevolent Association, Inc., v. Williams*, 1/30/03]

## 1st District Court of Appeal

### Venue - stolen car taken across county lines

Where a defendant stole a vehicle and drove it across county lines, venue for a car theft trial was improper in the county of arrest because the defendant did not "unlawfully enter" the vehicle in that county, the 1st DCA held, reversing its own earlier decision.

On rehearing, the court overruled its August 28 determination that Christopher Mosley was properly tried in Columbia County for a vehicle theft that occurred in Orange County 42 days before he was arrested by Columbia County sheriff's deputies. At issue was whether Mosley could be considered to have "remained in" the stolen vehicle for the entire period. Certifying the question to the Florida Supreme Court, the DCA concluded that the "remaining in" language only applies where a suspect lawfully enters a vehicle or place and then unlawfully refuses to leave. Since Mosley did not lawfully enter the car in Columbia County, he should not have been tried there for armed burglary

of a conveyance," the DCA said.

"Venue is an essential element of the crime charged, and if the defendant can show that the crime did not occur in the venue alleged in the charging document, or that the prosecution has not presented sufficient proof that the crime occurred in the county where the trial was held, the conviction cannot stand," the DCA concluded.

[*Mosley v. State*, 12/31/02]

## 2nd District Court of Appeal

### Fraud - woman's lawsuit against sheriff

A woman may proceed with her lawsuit against a sheriff's office for injuries she suffered when hit by a patrol car, even though the sheriff videotaped the woman performing tasks she swore under oath she cannot perform, the 2nd DCA said.

The trial court dismissed the woman's suit with prejudice, concluding that the woman's sworn deposition constituted fraud on the court. While a pedestrian, Wilma Jacob was struck in the arm by the side-view mirror of a Hillsborough County deputy's patrol car, causing a severe arm fracture and nerve damage. The sheriff arranged for surveillance video of Jacob, which showed her performing various tasks she denied being able to do. The DCA agreed that the videotape weakened Jacob's credibility, but said dismissal is a sanction that should be employed only in the most narrow circumstances and a jury should be allowed to evaluate Jacob's claim.

"Viewing the facts before this court, Mrs. Jacob either knowingly perpetrated a fraud, exaggerated her injuries, or unknowingly provided video evidence that her injuries are far less severe than she may believe. Only the first of these three possibilities would support the dismissal of all claims with prejudice," the DCA said. "This is not a case in which Mrs. Jacob suffered no injury. The question is the severity of her injuries. Certainly the video evidence that she is capable of performing tasks which she has denied the ability to perform lessens her credibility and the damages to which she may be entitled, but the jury should evaluate this evidence. The power to resolve disputes over the truth or falsity of claims belongs to a jury."

[*Jacob v. Henderson*, 1/24/03]

### Jimmy Ryce Act - offender no longer in custody

Sexually violent predators who are no longer in custody cannot be subjected to involuntary civil commitment under the Jimmy Ryce Act, the 2nd DCA held.

The DCA ruled that because Larry Gordon had been

released into the civilian population by the Department of Corrections, he cannot be deemed to have been in custody when he was arrested two days later pursuant to a 72-hour hold issued by the Department of Children and Families. The court said the Jimmy Ryce Act makes it clear that possible involuntary civil commitment applies only to convicted sexually violent offenders who are "currently in custody" or who have been sentenced to "total confinement in the future."

"There is no provision in the Act for commencing proceedings against a person under the Act where he or she is not in custody and is, in fact, living in society. ... (A) person against whom involuntary civil commitment proceedings are appropriately commenced will always be in custody immediately prior to the commencement of the proceedings. Accordingly, we hold that section 394.925 ... provides that involuntary civil commitment proceedings may be brought only against those persons in custody at the moment the proceedings are commenced; there is no provision in the Act for proceeding against those persons who are on supervision but no longer in custody," the DCA said. "(W)e conclude that the legislature intended that the time period is critical to the validity of the statutory scheme."

[*Gordon v. Regier*, 1/15/03]

#### **Consensual police-citizen encounter**

A trial judge incorrectly concluded that a police officer's actions in pulling up next to the defendant's parked car and engaging in conversation converted a consensual encounter into an improper stop where the defendant could have driven away, the 2nd DCA held.

Defendant Bo Christman pulled his car into a gas station, where an officer was parked on break. As Christman pumped gas into his car, the officer noticed an unfamiliar "transporter" tag on Christman's vehicle and pulled his patrol car alongside Christman's car. Smelling alcohol on Christman's breath, the officer asked for his driver's license and arrested Christman on a license restriction violation. A subsequent search of Christman's vehicle turned up narcotics. The trial court granted Christman's motion to suppress the drugs, finding that the officer was not justified in asking for Christman's license and therefore had conducted an improper stop. The DCA disagreed, noting that the deputy's vehicle was parked in a way that did not prevent Christman from driving away. "(T)he mere positioning of the deputy's car did not in any way prevent Christman from leaving the

scene. Accordingly, the trial court erred by finding that the positioning of the cruiser converted the consensual encounter into an improper stop or detention," the DCA said. "Furthermore, the trial court's conclusion that the deputy needed 'articulable suspicion that a crime had been committed' before he could request driver's license information is an inaccurate statement of law. ... (An) officer is entitled to request identification and a driver's license as part of a consensual citizen encounter." [*State v. Christman*, 1/24/03]

#### **Illegal detention - vehicle stop**

A driver who was forced to wait 20 minutes after a traffic ticket was written so a canine unit could arrive was detained illegally, and his motion to suppress drug evidence should have been granted, the 2nd DCA held.

Bradley Sparks was pulled over for driving with a defective headlight. During the stop the sheriff's deputy asked permission to search the vehicle. Sparks first gave permission, but then retracted it. The deputy stopped his search and called for canine backup, a delay of 20 minutes as determined by the trial court. The dog alerted to drugs and narcotics were found in the vehicle. The trial court concluded that the 20-minute wait was reasonable and denied Sparks' request to suppress the drugs, but the DCA disagreed, noting that a person may not be detained for a traffic violation for any longer than necessary to issue a citation.

"(O)nce the citation was completed, Sparks was detained for some period of time. Although the deputy was unclear as to the time that elapsed, he did acknowledge that he completed writing the citation for the headlight prior to the arrival of the canine unit and that he did not give Sparks the citation or otherwise indicate to him that he was free to leave. Accordingly, the time between the completion of the writing of the citation and the arrival of the canine unit was an illegal detention," the DCA said.

[*Sparks v. State*, 1/22/03]

#### **Search and seizure - pat-down of visitor**

Deputies improperly searched a man who came to visit a mobile home where a search warrant was being executed, because the deputies did not have an articulable suspicion that the visitor was armed, the 2nd DCA held.

Ricardo Sosa-Leon approached the front door of the mobile home, carrying a beer and a shopping bag. Police inside the home asked Sosa-Leon to come inside, where he was ordered to hand the bag to one deputy while another patted him down. Deputies

found a pistol in Sosa-Leon's waistband and smelled marijuana coming from the bag. Sosa-Leon was convicted of possession of cannabis and carrying a concealed weapon, but the DCA said his motion to suppress the evidence should have been granted. "The mere presence of a visitor in a residence being searched pursuant to a legal search warrant is insufficient to connect him with criminal conduct justifying a search of his person. Furthermore, an officer should not conduct a pat-down search unless he has an articulable suspicion that the suspect is armed," the DCA said. "(T)he trial court's conclusion that the detectives had reason to believe that Sosa-Leon was armed and were justified in performing the pat-down search is not supported by the testimony."

[*Sosa-Leon v. State*, 1/24/03]

#### **Traffic stop - illegal detention**

An officer's order that a passenger stay inside a car during a routine traffic stop, without reasonable suspicion that the passenger had engaged in any criminal conduct or posed a threat, constituted an illegal detention, the 2nd DCA held.

Jason Faulkner argued that cocaine and drug paraphernalia found on him during a police search should not have been admitted into evidence.

Faulkner was riding as a passenger in his own car when it was stopped for running a stop sign.

Faulkner attempted to get out, but an officer ordered him to remain in the car. The officer later testified that he told Faulkner to remain in the vehicle for general safety purposes and not because he suspected Faulkner of committing a crime or posing a threat. After questioning the driver, the officer had Faulkner go to rear of the patrol car, where Faulkner consented to a pat-down search that produced evidence of drug activity. Faulkner was convicted of drug-related charges, but the DCA reversed.

"When an innocent passenger is directed to exit a vehicle, he is detained only in a legal sense; his movement is restricted merely to the extent that there is a single place he may not go. But a passenger who is ordered to remain in the vehicle suffers a far greater intrusion upon his personal liberty because he is forbidden go anywhere other than that one place. In other words, he is fully detained in both law and fact," the DCA said. "We conclude that it is illegal to detain a passenger in this manner absent a reasonable suspicion that the passenger has committed a crime or is a threat."

[*Faulkner v. State*, 1/17/03]

#### **Miranda warnings - valid waiver**

An officer was not required to readvise a suspect of

his *Miranda* rights when, two hours after the initial warning, the suspect reinitiated contact with the same officer and made incriminating statements, the 2nd DCA held.

Joseph Ahedo was convicted of armed burglary of a dwelling, and argued on appeal that the trial court should not have admitted his incriminating statements to police. Ahedo invoked his right to remain silent, and officers processed paperwork in his case. About two hours later, Ahedo asked to talk "about what was going on" with the officer who gave the initial *Miranda* warning. The officer, Dale Osada, testified that he reminded Ahedo he had invoked his *Miranda* rights earlier, but did not read Ahedo his rights again. Ahedo argued on appeal that his subsequent stat should not have been admitted into evidence, but the DCA disagreed.

"Even though Corporal Osada did not readvise Ahedo of his *Miranda* rights or have him sign a waiver before taking his statement, this, in and of itself, does not mean that Ahedo's waiver was invalid. There is no indication that the initial *Miranda* warnings were incorrectly state or that Ahedo failed to understand them," the DCA said. [*Ahedo v. State*, 1/17/03]

### **3rd District Court of Appeal**

#### **Sovereign immunity - police sting operation**

A closely divided 3rd DCA allowed a negligence lawsuit to proceed against police involved in a sting operation, despite the dissent's suggestion that the ruling could hinder such operations in the future. The full DCA voted 6-4 against rehearing an earlier decision in favor of the plaintiff, who was injured when he lost his balance and fell when he came upon a prostitution sting and a police officer yelled "freeze" and pointed a gun at him. The DCA's decision hinged on whether the police actions were entitled to sovereign immunity under the landmark *1985 Trianon Park* decision. The DCA majority denied rehearing without comment, but the dissent issued an opinion concluding that the officer's actions are clearly protected by immunity.

"As best I understand the plaintiff's position, it is that conducting a prostitution sting in a hotel creates a known dangerous condition on the premises and that the police had to issue some sort of general warning before conducting the sting. ... The essence of a sting operation, of course, is that it be kept secret from the target of the sting. The determination how to conduct the sting is pivotal to its success. The idea that there should be warnings posted, flyers distributed, barricades erected, and the like would

defeat the police ability to conduct sting operations at all," Judge Cope wrote for the dissent. "(T)he undercover officers were engaged in trying to accomplish an undercover arrest. The officer who encountered the plaintiff was trying — albeit abruptly and rudely — to keep hotel guests out of the area where the undercover operation was taking place. These activities were part of the discretionary function leading up to the making of the undercover arrest, and qualify for exemption under the sovereign immunity doctrine."

[*Brown v. Miami-Dade County, et al.*, 1/28/03]

#### **Sexual Predators Act ruled unconstitutional**

The Florida Sexual Predators Act — the state's version of a so-called "Megan's Law" — is unconstitutional because it fails to give judges discretion in determining whether an offender poses an actual threat to the community, the 3rd DCA held.

Under the statute, the only determination to be made by the trial judge before designating a person a "sexual predator" is whether the defendant had the prerequisite criminal conviction. The law was challenged by Ferman Espindola, who pled guilty to sexual battery of a physically incapacitated victim by multiple perpetrators, and received a lenient sentence in exchange for his testimony against a co-defendant. Even though the victim said she does not fear Espindola and even considers him a friend, the trial court was required to designate Espindola as a "sexual predator" under the law, forcing him to comply with various registration, reporting and other requirements. Espindola argued on appeal that the automatic registration and notification requirements of the law violate his due process rights, and the DCA agreed.

"(Espindola) was provided no process as FSPA requires an automatic determination of 'sexual predator' if one of the enumerated crimes has been committed. Thus ... we find that this total failure to provide for a judicial hearing on the risk of the defendant's committing future offenses, makes it violative of procedural due process, and therefore unconstitutional," the DCA said. "(I)n the absence of a provision allowing for a hearing to determine whether the defendant presents a danger to the public sufficient to require registration and public notification, the Florida Sexual Predators Act violates procedural due process."

[*Espindola v. State*, 1/15/03]

#### **Admissibility of employee's disciplinary history**

Before a worker's disciplinary history may be introduced in a negligence lawsuit against a state

agency and its employee, the plaintiff must show a connection between the types of incidents that led to discipline and the facts that led to the lawsuit, the 3rd DCA held.

The court reversed a \$600,000 verdict against the Department of Highway Safety and Motor Vehicles and a state trooper, ordering a new trial over a woman's claim that the trooper violated her civil rights and falsely arrested her following a 1995 traffic accident. The DCA said the department is not subject to civil rights lawsuits, and said Trooper Jacqueline Gipson's disciplinary record should not have been admitted to support the plaintiff's argument that the department was negligent in retaining and supervising the trooper.

"The plaintiff's underlying claim in this case is that Trooper Gipson arrested her for DUI without probable cause. In order to have a viable claim against the Department for negligent retention and supervision, Trooper Gipson's employment history would need to contain incidents which would reasonably place the FHP on notice that Trooper Gipson was not competent to properly determine probable cause in a roadside stop. While there were numerous problems in Trooper Gipson's internal affairs history, her prior problems did not relate to the handling of roadside stops or the determination of probable cause to make an arrest," the DCA said. "(W)e fail to see that anything in this disciplinary record would have alerted FHP one way or the other regarding Trooper Gipson's ability to conduct a traffic stop or DUI investigation. ... The evidence was in effect an impermissible attack on character. There must be a new trial."

[*Dickinson and Gipson v. Gonzalez*, 1/2/03]

#### **Aggravated battery on officer -- insufficient impact**

There was insufficient evidence to prove battery on a law enforcement officer where the state failed to show the incident had sufficient impact on the officer to legally constitute a battery, the 3rd DCA held.

John Rosa, who was convicted of several offenses, appealed the denial of his motion for acquittal of battery on a law enforcement officer. Rosa robbed a couple at gun point and fled, attempting to elude police in a high-speed chase. Rosa's car came to a stop after hitting a guard rail and a patrol car. As the officer inside the patrol car unbuckled his safety belt, Rosa sped off, hitting the patrol car. The impact caused the door to strike the officer, injuring his arm and shin. The DCA, however, concluded this was insufficient to constitute aggravated battery, which

can arise from a defendant's ramming of another vehicle only when the state proves the occupants of the rammed vehicle were injured, jostled, moved about within the vehicle, or had to brace themselves for protection against the impending impact.

"We cannot infer from the record, including the testimony of police officers concerning the collision, that the impact from Rosa's vehicle was of such magnitude so as to cause (the officer) to move," the DCA said. "The evidence in this case ... is thus insufficient for a jury to conclude that there was a battery upon Officer Adlet."

[*Rosa v. State*, 1/15/03]

#### **4th District Court of Appeal**

##### **Agency flexibility to reject ALJ conclusions**

A government agency cannot reject an administrative law judge's conclusions of fact simply by relabeling them as conclusions of law, the 4th DCA said in reversing a school board's disciplinary action over an alleged hazing incident.

The Broward County School Board rejected the ALJ's determination that a high school baseball coach was not subject to discipline for the alleged incident during a team trip to Orlando. The ALJ's findings of fact included a determination that the coach knew either that the hazing incident was about to occur or that it had already occurred. The School Board rejected that finding, characterizing it as a conclusion of law, and then disciplined the coach because the incident occurred under his watch. The DCA reversed, saying the board's responsibility to determine if substantial evidence supports the ALJ's conclusions cannot be avoided simply by labeling the contrary findings as conclusions of law.

"An administrative agency may not reject a hearing officer's findings of fact, unless it first determines that they were not based on competent, substantial evidence, or that the proceedings before the hearing officer did not comply with the essential requirements of law," the DCA said. "The School Board was bound by the hearing officer's finding that the evidence did not establish that (the coach)'knew or had reason to know that hazing was about to occur or that hazing had occurred.' There was competent, substantial evidence to support the finding." [*McMillan v. Broward County School Board*, 1/2/03]

#### **5th District Court of Appeal**

##### **Defendant's willful ignorance in signing document**

A defendant who signs a statement verifying his ownership of certain property cannot avoid prosecution under the pawnbroker statute by claiming he did not read a statement before signing it, the 5th DCA said.

Darrell Hale was charged with false verification of ownership, as well as trafficking in stolen property and petit theft. The DCA vacated the petit theft conviction on double jeopardy grounds, but rejected Hale's argument that he cannot be convicted of giving false verification of ownership to a pawnbroker because he never read the statement verifying ownership, nor was he asked to read it by a pawn shop employee. The DCA noted that federal guidelines allow prosecutions under the "willful ignorance" or "willful blindness" doctrine, which holds that a person may not deliberately close his eyes to what would otherwise be obvious to him. "We conclude that Hale's signature on the document directly beneath the statement that he was signing under penalty of perjury and that the facts contained in the document were true is some evidence either of knowledge of the document's contents *or* that his ignorance of the document's contents was willful. Lack of proof that a defendant actually read the document will not insulate a defendant from prosecution," the DCA said.

[*Hale v. State*, 1/24/03]

##### **Warrantless search - plain view exception**

Jewelry found in plain view during a valid warrantless drug seizure cannot be admitted as evidence because investigators did not suspect it was stolen until exigent circumstance no longer existed, the 5th DCA held.

Police entered Jeffrey Davis' home without a search warrant after a caller reported that Davis' home appeared to have been burglarized. When no one responded to their knock on the front door, officers forced their way in. Once inside, the officers discovered that the home had been ransacked and saw white powder in plain view. An investigator also spotted jewelry with pawn tickets attached. Although the investigator considered the presence of the jewelry to be unusual, he did not immediately suspect it was stolen property and took it for "safekeeping." Only later did officers learn that the jewelry had been stolen from a pawn shop. Davis argued on appeal that the jewelry should have been suppressed, and the DCA agreed.

"(A)ll the investigator had was a suspicion that the items were connected with criminal activity. That is not sufficient for their warrantless seizure," the DCA said. "Once the exigency ended, i.e., once the house

was searched and no burglar or person in need of aid was located, and the cocaine was seized, there was no further excuse for the police to be in the residence and seize items they did not have probable cause to believe were involved with criminal activity."

[*Davis v. State*, 1/3/03]

**Search and seizure - inevitable discovery doctrine**

Because a vehicle stop was proper and the defendant received a valid traffic citation, drug and weapon evidence was correctly admitted because it would have been discovered inevitably even if the initial frisk was invalid, the 5th DCA held.

Quentin Hatcher was a passenger in a car stopped for making an illegal turn. The officer intended to cite Hatcher for failure to wear a seat belt, but ordered him out of the car and conducted a safety pat-down when Hatcher acted suspiciously. Officers found cocaine and a weapon on Hatcher. On appeal, Hatcher argued that the officer was not justified in conducting the stop and frisk and therefore the evidence was inadmissible, but the DCA disagreed. The officers eventually would have discovered the evidence, the DCA concluded, because a background check following the seat belt citation would have shown several outstanding arrest warrants for Hatcher, which in turn would have led to the same kind of pat-down in which the evidence was discovered.

"(R)egardless of whether the initial frisk of Hatcher was proper, the inevitable discovery doctrine clearly applies to the instant case because there was a reasonable probability that, independently of the search, the drugs and the weapon would have been discovered after the officer issued Hatcher the citation for the seat belt violation. Hence, the trial court correctly denied Hatcher's motion to suppress," the DCA said

[*Hatcher v. State*, 1/3/03]

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