
LEGAL BULLETIN

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

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VOLUME MMIII, ISSUE 11

U.S. Supreme Court

Time frame for "knock and announce" entry

Police officers did not violate a drug suspect's constitutional or statutory rights when they waited only 20 seconds after knocking and announcing their presence before breaking open the door to his apartment, the U.S. Supreme Court held.

The justices unanimously rejected LaShawn Banks' argument that drugs found in plain sight in his apartment should have been suppressed because he was not allowed a reasonable time to respond to the officers' knock at his door. Banks said he was showering and was not aware of the officers' presence until they broke down his door. Concluding that determinations must be made on a case-by-case basis, the court said that when officers have reasonable grounds to suspect that an exigency – such as evidence destruction – will arise upon their knocking, a delay of only 15 or 20 seconds is allowable.

"Though we agree ... that this call is a close one, we think that after 15 or 20 seconds without a response, police could fairly suspect that cocaine would be gone if they were reticent any longer," Justice Souter wrote for the court. "(W)hen circumstances are exigent because a pusher may be near the point of putting his drugs beyond reach, it is imminent disposal, not travel time to the entrance, that governs when the police may reasonably enter. . . . And 15 to 20 seconds does not seem an unrealistic guess about the time someone would need to get in a position to rid his quarters of cocaine."

[United States v. Banks, 12/2/03]

Search and seizure - probable cause

Police may arrest all passengers riding in a car that contains cocaine where everyone denied ownership, because any reasonable officer could conclude that the crime of possession had been committed either jointly or solely, the U.S. Supreme Court held. Joseph Pringle was a passenger in a car that was stopped for speeding and was searched by police. A large sum of cash and crack cocaine were discovered inside the vehicle. The officer threatened to arrest everyone in the car unless someone admitted to owning the contraband, but all three occupants refused to confess. Police released two of

the passengers after Pringle confessed at the police station. Pringle challenged his drug convictions on the basis that there was no probable cause to arrest him and therefore his confession should have been suppressed. The Maryland Court of Appeals agreed and reversed Pringle's conviction because the officer lacked reasonable suspicion to believe Pringle knew about the drugs or had dominion or control over the drugs. The Supreme Court disagreed.

Reversing and remanding, the court said, "We think it an entirely reasonable inference from these facts that any or all three of the occupants had knowledge of, and exercised dominion and control over, the cocaine. Thus, a reasonable officer could conclude that there was probable cause to believe (Pringle) committed the crime of possession of cocaine, either solely or jointly."

[Maryland v. Pringle, 12/15/03]

11th U.S. Circuit Court of Appeals

Search and seizure - consent

A physically abused wife had the authority to consent to a search of her house, which she had fled in fear of her husband, because she still retained joint ownership with the husband, the 11th U.S. Circuit Court of Appeals said.

Jeffrey Backus was convicted on firearms charges arising out of a domestic violence situation. On appeal, Backus challenged the denial of his motion to suppress evidence taken from his house. Backus' wife left her job, took her children and fled to another state when Backus became extremely violent. Later, police filed charges against Backus for threatening his wife's mother. During a return trip to Florida, the wife agreed to sign a consent form authorizing police to search the house, which she owned with Backus. Backus contended that his wife lacked the authority to consent to a search of the house because she had abandoned it six months earlier and had not made any mortgage payments. The 11th Circuit disagreed and denied Backus' motion to suppress. "To say that Mrs. Backus abandoned her home is like saying that Dolley Madison abandoned hers when she fled the White House the day before the British troops set it ablaze. There is a difference between voluntarily giving up your home and being forced to flee from it in fear for your life and the life

of your child," the court said. "A lawless man cannot use violence to drive his wife away and then reasonably expect the law to give him the benefit of her absence."

[*U.S. v. Backus*, 11/5/03]

Forfeiture - commingled funds

The forfeiture of commingled illicit and legitimate funds was proper because the funds had been commingled in order to conceal the source of the illicit funds as part of a money-laundering scheme, the 11th Circuit held.

Brothers Mauricio and Orlando Puche and their father Enrique Puche were convicted of conspiring to commit money laundering based on evidence gained from a DEA sting operation involving a money transmittal company owned by the Puches. The agents posed as narcotics traffickers and hired the transmittal company to wire drug money to overseas accounts. The company deposited "sting" cash in its own bank accounts and then wired the money to foreign accounts controlled by the DEA. The defendants were paid for each transaction. On appeal, the Puches argued that the district court's forfeiture order was improper and unconstitutionally excessive. The 11th Circuit disagreed, concluding that forfeiture of the commingled funds was proper. "(The company's) accounts were not a mere pooling of funds, but were an arrangement through which tainted funds could be transferred overseas," the 11th Circuit noted. "Faced with the evidence that the funds, both legitimate and illegitimate, were rapidly moved into bank accounts in order to conceal the nature and source of the narcotics proceeds, the jury could have inferred that the legitimate proceeds facilitated the illegal proceeds by acting as a 'cover' and hence reduced suspicion of the latter's source."

[*United States v. Puche*, 11/12/03]

Search and seizure - expectation of privacy

A person does not have a legitimate expectation of privacy in packages sent through Federal Express based on the carrier's explicit notice and warnings, and the carrier may consent to a search of the packages by IRS agents, the 11th U.S. Circuit Court of Appeals held.

Raymond Young was convicted of 18 counts of conspiring to impede and impair the Internal Revenue Service after he and co-defendants shipped proceeds from a tax fraud scheme via Federal Express. Without a search warrant, IRS agents contacted Federal Express, obtained the packages sent by Young and x-rayed them off-site. Based on the x-ray results, the government obtained search warrants to open the packages and to search Young's residence and business. Large sums of cash were found in the packages. The carrier's airbill explicitly stated that sending cash was illegal and

that Federal Express retained the right to inspect and open packages, warning on its envelopes, "DO NOT SEND CASH." Based on the notice and warning, a trial judge denied Young's motion to suppress the cash, and the 11th Circuit affirmed. Finding that Young's Fourth Amendment rights were not violated, the 11th Circuit reasoned, "Being fully aware that the carrier might conduct, or consent to, a search of packages containing expressly prohibited material, defendants nevertheless chose to ship large amounts of cash with Federal Express. Young assumed the risk that Federal Express might consent to a search. When Federal Express did consent, Young's Fourth Amendment rights were not offended."

[*U.S. v. Young*, 11/18/03]

Florida Supreme Court

Multiple DUI convictions from single accident

Multiple convictions for DUI manslaughter can arise from multiple fatalities caused by a single DUI crash, the Florida Supreme Court held.

David Bautisa killed two people while driving intoxicated but appealed his convictions on two counts of DUI manslaughter, arguing that the DUI statute does not allow for multiple convictions based on two deaths. The statute's language provided that the death of "any human being" constitutes DUI manslaughter, and the 4th DCA affirmed the convictions after concluding that the convictions did not violate double jeopardy principles.

"Applying a common-sense approach to the DUI manslaughter statute leads to one inexorable conclusion. Any reasonable consideration of the language of the statute, the history of its enactment, the uniform statutory treatment of manslaughter offenses, and the case law in existence makes it clear that the legislative intent is that each death caused in a DUI crash is to be charged and punished as a separate offense," Justice Bell wrote for the court.

Bureau Chief Celia Terenzio and Assistant Attorney General Daniel P. Hyndman represented the state on appeal.

[*Bautista v. State*, 12/04/03]

1st District Court of Appeal

Search and seizure - plain view

A warrantless search of a house was not justified under either the plain view or consent exceptions where police officers saw items that they did not immediately recognize as contraband dog fighting paraphernalia, the 1st DCA held.

In response to a call that an illegal dog fight was occurring in a backyard, police entered a house without permission and handcuffed Shomari Minter-Smith. Once inside, officers performed a protective sweep and saw a broomstick with bite marks and a razor knife with a taped handle. Officers testified that

they were not aware the items were dog fighting paraphernalia until they were told later by a non-police advisor. The state maintained that the owner consented to a search of the house after officers to her that "we need to treat the house as a crime scene and we need to look in the house for evidence." Minter-Smith moved to suppress the evidence, contending that the search and seizure were illegal. The DCA agreed and reversed. "This statement does not request consent. Rather it is a statement that police planned to 'look in the house for evidence,'" the DCA said. "Since the plain view exception fails, the State had no evidence to establish probable cause to obtain a search warrant. Since (officers) could not have obtained a warrant, no lawful search would have taken place." Assistant Attorney General Sherrie T. Rollison represented the state on appeal.

[*Minter-Smith v. State*, 12/31/03]

Search and seizure - unlawful detention after stop

Police officers who stopped a vehicle for a traffic violation improperly detained the motorist after a warning ticket had been issued in order to allow a canine unit to perform a sniff search of the vehicle, the 1st DCA held.

Fred Marshall appealed his convictions for cocaine trafficking and possession. Marshall was stopped for failing to maintain a single lane. As Marshall was handed his traffic citation another officer arrived with a drug sniffing dog. Marshall was asked some additional questions, and then a dog sniff search was conducted around the vehicle's exterior, leading to the discovery of cocaine. The trial court concluded that although police had no reason to suspect criminal activity, the detention was nevertheless proper because the sequence of events from the issuance of the citation to the dog's alert all occurred "at almost the same instant." Marshall appealed, contending that his continued detention after he had been issued a ticket was illegal. The DCA agreed and reversed.

"The trial court's finding in the present case that all relevant events occurred 'at almost the same instant' is not supported by competent, substantial evidence. The only direct testimony as to the amount of time required for the critical events to play out was (a deputy's) estimate that the events transpired over a period of approximately ten minutes, and no other evidence in the case suggests that they occurred in a substantially shorter period of time. Indeed, it would have been physically impossible for the events to have occurred 'at almost the same instant.' The continued detention of the appellant beyond the point at which the citation was delivered to him was therefore illegal," the DCA said.

Assistant Attorney General Charlie McCoy represented the state on appeal.

[*Marshall v. State*, 12/31/03]

2nd District Court of Appeal Search and seizure - vehicle search

A warrantless search of a vehicle was not a valid search incident to arrest where officers had no concerns about their safety or the preservation of evidence and there was no nexus connecting the arrest to the search, the 2nd DCA held.

Gertrudes Jaimes pled no contest to possession and trafficking of cocaine after the trial court denied his motion to suppress cocaine found in his vehicle and home. Responding to a tip that Jaimes was selling cocaine at a bar, police arrested him on outstanding warrants after observing Jaimes get in and out of parked vehicles. Police never witnessed Jaimes dealing drugs, but a search of his vehicle turned up cocaine. On appeal, Jaimes argued that the trial court erred in failing to find that the search was illegal and the seized cocaine should have been suppressed. The DCA agreed.

"(T)he State provided no evidence that officer safety was a concern. Moreover, evidence preservation was not a legitimate concern because the officers had control over Jaimes' vehicle from the moment they arrested him. Moreover, the officers' observations prior to executing the warrant did not establish probable cause," the DCA said. Assistant Attorney General Marni A. Bryson represented the state on appeal.

[*Jaimes v. State*, 12/10/03]

Investigatory stop at gunpoint

The fact that officers conducted an investigatory stop at gunpoint and believed they had probable cause to make an arrest did not convert the detention into an arrest, the 2nd DCA held.

The state appealed an order granting Paul Hendrex's motion to suppress illegal drugs found in his possession when he was arrested. At his suppression hearing Hendrex argued that a juvenile informant's tip did not give police probable cause to arrest him. The juvenile told police that Hendrex was his drug dealer and made a "controlled call" to Hendrex to arrange for a meeting. As Hendrex waited in his car for the juvenile, an officer drew his gun and ordered Hendrex out of the car and onto the ground. The trial court granted Hendrex's motion, stating that although officers had reasonable suspicion to justify an investigatory stop they did not have probable cause to arrest Hendrex. The court determined that Hendrex had been 'seized' when police ordered him out of his car at gunpoint. The DCA disagreed.

"The trial court's error in this case arose from its conclusion that the initial encounter between the

police and Hendrex constituted an arrest. The court apparently reasoned that such a seizure necessarily resulted in an arrest. But that is not the case," the DCA said. Assistant Attorney General Deborah F. Hogge represented the state on appeal.

[*State v. Hendrex*, 12/12/03]

Investigatory stop - anonymous tip

An anonymous tip was insufficient to justify an investigatory stop, absent something more than police verification of the innocent details describing the suspect, the 2nd DCA held.

Keith Kalnas pled no contest to burglary and grand theft charges after the trial judge denied his motion to suppress. Fort Lauderdale Police Officer Michael Moniz responded to a tip that described a white male who had been seen trying doorknobs in a neighborhood. The officer immediately saw Kalnas wearing clothing that fit the description contained in an advisory. Kalnas was stopped as he walked in at a normal pace with another man. Contraband was found on Kalnas during a pat-down, but on appeal Kalnas argued that the contraband should have been suppressed because the stop was unlawful. The DCA agreed and reversed.

"Here, Officer Moniz was required to uncover something more than just a verification of the innocent details of identification in order to establish the reliability of this anonymous tip," the DCA said. "Officer Moniz's failure to confirm the reliability of the tip makes Kalnas's detention and the subsequent discovery of contraband, illegal."

Assistant Attorney General Marni A. Bryson represented the state on appeal.

[*Kalnas v. State*, 12/10/03]

Vehicle search incident to impoundment

A trial court should have granted a defendant's motion to suppress because there was no indication that a police inventory search of his impounded car was conducted according to standardized criteria, the 2nd DCA held.

After arresting Jason Beezley on charges of obstructing the search for a fugitive, officers decided to impound his vehicle and conduct an inventory search that turned up marijuana. Officers testified that under departmental policy, the decision to impound a vehicle was within an individual officer's discretion but after the decision to impound is made, a complete inventory search must be performed. All of the evidence Beezley sought to suppress was found during the inventory search.

Reversing, the DCA concluded, "The State presented no evidence of such standardized criteria, and the trial court made no findings in that regard. Therefore, the trial court erred in denying Beezley's motion to suppress the physical evidence. Because the motion was dispositive, we reverse and remand

for Beezley's discharge on all three counts." Assistant Attorney General Jonathan P. Hurley represented the state on appeal.

[*Beezley v. State*, 12/19/03]

Takings - damage while executing search warrant

Damage done to the private property of an innocent owner when law enforcement officers execute a valid search warrant does not give rise to a cause of action under the takings clause of either the state or federal constitution, the 2nd DCA held in a case of first impression in Florida.

The DCA rejected the argument of a woman who rented a St. Petersburg home to tenants who allegedly were conducting illegal activity there. While executing a search warrant, officers threw "flash-bang" grenades, which are designed only to make a loud noise and brilliant flash of light. However, the grenades ignited insulation in the walls, resulting in a fire that destroyed the residence. The owner and her insurance company, Lloyd's, claimed that the city had conducted a taking, but the DCA disagreed.

"(The owner's) complaint springs from the destruction of a residence on her property that resulted from the City's admittedly legal actions on her property. This type of destruction has not historically constituted a compensable taking under article X, section 6(a), of the Florida Constitution, and we decline to extend the takings clause to apply to such destruction," the DCA said. "(The owner) has suffered the destruction of her property as a consequence of the lawful actions of the City's employees who were performing their lawful duties. Under both Florida and federal law, any damage resulting from these lawful activities does not constitute a taking. If Lloyd's can allege that the City's employees were negligent in performing their duties, the proper cause of action is under the Tort Claims Act. Otherwise, the damages are simply *damnum absque injuria* (loss without unlawful conduct)."

[*Certain Interested Underwriters at Lloyd's London v. City of St. Petersburg*, 12/31/03]

Evidence - admissibility of forged traffic citations

In a forgery case, the trial court was not prohibited by law from admitting into evidence the two traffic citations on which the defendant had allegedly forged his signature, the 2nd DCA held.

During a traffic stop, Robert Maddox identified himself using his brother's name and birth date, and was issued two citations. Maddox initially refused to sign the citations, but agreed to do so after the sheriff's deputy warned that he could get another citation for refusing to sign. A subsequent search of the vehicle turned up an identification card that

showed the driver was actually Robert Maddox. Maddox was then charged with forgery and giving false information to a police officer. At trial, the citations were used to show how Maddox signed the citations with his brother Nathaniel's name, and were also used by the defense to cross-examine the issuing deputy. Maddox was convicted but appealed, arguing that the trial court erred in admitting the traffic citations. The DCA disagreed, but certified conflict with a 1st DCA decision issued last year.

"Although section 316.650(9) does provide that traffic citations 'shall not be admissible evidence in any trial,' that statutory proscription does not apply to the facts of this case. Based on our reading of the statute, we conclude that the purpose of the statute is to protect the person to whom the citation is issued," the DCA said. "Here, the citation was issued to a person the deputy believed to be Nathaniel Maddox . . . Maddox was not on trial for either of the civil infractions, nor was Nathaniel Maddox. . . . Thus, the documents were not 'citations' as contemplated by the statute, but rather were documentary evidence of Maddox's criminal conduct. Thus, the statute does not apply." Assistant Attorney General Donna S. Koch represented the state on appeal.

[Maddox v. State, 11/14/03]

3rd District Court of Appeal

Withholding identity of confidential informant

Disclosure of a confidential informant's identity is not required where the informant only witnessed, but did not participate in, a drug buy even though the informant was used to lure the defendant to the spot where he sold cocaine to an undercover officer, the 3rd DCA said.

The trial court dismissed multiple cocaine-related charges against Eddie Simmons after the state was unable to produce the identity of a confidential informant. The informant was used to gain access to a home's porch and was present during the drug transaction. The next day police obtained a search warrant for the same residence and seized cocaine. The defense successfully moved for dismissal on the basis that the informant was an important witness. The state appealed, asserting that the dismissal was unwarranted because it was the officer, not the informant, who participated in the transaction. The DCA agreed and reversed the dismissal order. "(I)t was error to compel the disclosure of the informant's identity where the informant did not execute the search warrant affidavit against the appellee, was not present, and otherwise had no involvement in the search of the residence," the DCA said.

Assistant Attorney General Barbara A. Zappi represented the state on appeal.

[State v. Simmons, 11/12/03]

Law enforcement officer's testimony

Rules that prohibit a law enforcement officer from disclosing in testimony who received a ticket for a traffic accident cannot be extended to prohibit the officer from offering otherwise proper expert testimony in the case, the 3rd DCA said.

The court rejected an argument, posed by the estate of a deceased sheriff's deputy, that as a matter of law a law enforcement officer cannot be allowed to testify as an expert because the jury will give the officer's testimony undue weight. The case arose out of a traffic accident in which a Monroe County sheriff's deputy was killed when he pulled from a side street onto a busy highway and was struck broadside by a truck. The deputy's estate sued the owner and operator of the truck, and appealed an unfavorable verdict. The estate sought to exclude the testimony of a Florida Highway Patrol traffic homicide investigator who concluded that the deputy pulled out so close to the truck that the truck driver did not have time to avoid the collision. The DCA determined that the investigator was entitled to testify as an expert.

"When a law enforcement officer has been properly qualified as an expert, the officer may testify to matters that are within the officer's expertise," the DCA said. "If a litigant is concerned that jurors will give undue weight to the testimony of a law enforcement officer, that is a matter to be explored on voir dire, but is not a basis for exclusion of the witness or his testimony."

[Alexander v. Penske Logistics, Inc., 12/24/03]

Default judgments in administrative actions

Because administrative procedures rather than the rules of civil procedure control a state agency's disciplinary action against a licensed professional, courts have no authority to set aside a default judgment where the licensee failed to timely execute an election of rights, a reluctant 3rd DCA held.

The DCA made clear that it believes administrative actions should be decided on their merits rather than technicalities whenever possible, but said the current state of Florida law left it no choice but to affirm the state Board of Medicine's action against a doctor. The physician argued that the entry of a default against him was improper because his untimely election of rights did not miss the filing deadline by a long period and was filed before the board held its hearing on the Department of Health's motion for default. The doctor cited Florida Rule of Civil Procedure 1.500, which governs defaults in a civil proceeding, but the DCA noted that the matter is instead controlled by administrative procedures, which do not allow a default to be set aside for such a reason. The court joined the 2nd DCA, which reached a similar conclusion last year in *Cann v.*

Department of Children and Families.

"We, like the Second District before us, recognize that denying a late request for an administrative hearing could be, and perhaps should be, compared to entry of a default in a judicial proceeding, and that the administrative rules should encourage the setting aside of defaults to permit claims to be heard on their merits rather than decided on procedural technicalities. However the legislature or the relevant agencies are the decision-makers to which these policy arguments must be directed. In the context of administrative law, the courts cannot override a filing rule that does not violate due process," the DCA said.

[*Patz v. Florida Board of Medicine*, 12/24/03]

4th District Court of Appeal

Self-incrimination - non-testimonial evidence in civil case

A defendant in both a civil suit and a criminal case is not entitled to Fifth Amendment protection against self-incrimination in the civil case when he is compelled to produce an object that does not involve testimony or communications, the 4th DCA held. Gene William Boyle faced a wrongful death suit and criminal charges stemming from an accident in which his Porsche allegedly struck and killed a motorcyclist. The state had filed its criminal case without locating the car. The judge in the civil lawsuit subsequently ordered Boyle to produce the vehicle for inspection. Boyle asserted the Fifth Amendment right against self-incrimination, but the trial court denied his motion and the DCA affirmed that ruling. "The Fifth Amendment privilege does not shield every kind of incriminating evidence. Rather, it protects only testimonial or communicative evidence, not real or physical evidence which is not testimonial or communicative in nature," the DCA said. "The order requiring production of the Porsche does not require the production of testimonial or communicative evidence. Therefore, it is not a departure from the essential requirements of law."

[*Boyle v. Buck*, 11/5/03]

On-duty status of state employee

A jury, rather than a judge, should decide whether a state employee had returned to his official duties when he was involved in an accident after diverting to watch his son play soccer, the 4th DCA said. While taking a state vehicle to an assigned parking lot for the night, a Department of Transportation employee deviated from the scope of his employment to drive to a park for his son's soccer game. After the game, the worker allegedly struck a man, who then sued the department. The trial court granted summary judgment in favor of the department but the DCA reversed, concluding that a genuine issue of material fact exists regarding whether, at the time of the accident, the worker had

reentered the scope of his employment. "This question is one for the jury," the DCA concluded in reversing the summary judgment.

[*Ford v. Department of Transportation*, 10/1/03]

Miranda waiver

A defendant's waiver of his *Miranda* rights was valid and was not the product of intimidation, coercion or deception even though the defendant's native language was Creole, the 4th DCA held. Dieuold Louis, convicted of sexual battery and indecent assault upon a child, appealed his conviction by claiming that his confession was erroneously admitted due to a language barrier. Louis, age 18, was summoned from school and informed of the charges against him, and agreed to go with officers to the station for further questioning. Louis signed a *Miranda* waiver form and a detective explained his right to an attorney; when asked if he understood, Louis replied that he did. During pretrial proceedings, the trial court denied a motion to suppress Louis' confession, and Louis then unsuccessfully challenged the voluntariness of his statements.

"(T)here was competent substantial evidence that Louis had the requisite level of English comprehension to waive *Miranda*. The record showed that Louis was of average intelligence and suffered from no mental infirmity. He was an adult just shy of his 19th birthday. At the time of the interrogation, he had been in the United States for two years and was attending a public high school where he was taught classes in English as well as Creole. Louis was able to converse with (a detective) in English, and he did not need the questions repeated to him and answered the questions," the DCA said.

Assistant Attorney General Laurel R. Wiley and Certified Legal Intern Alison F. Smith represented the state on appeal.

[*Louis v. State*, 10/01/03]

Evidence of good moral character

A state agency correctly overruled an administrative law judge's position that judgments in previous cases were not evidence of lack of good moral character on the part of an applicant for a license from the agency, the 4th DCA held.

The applicant for a yacht broker's license, Ronald Palamara, had been convicted of resisting an officer without violence, had a judgment against him for dishonest conduct in a yacht transaction, and was found to have evaded service of process in another yacht transaction. Despite this history, the ALJ ruled that those judgments were not competent evidence of lack of good moral character. The Department of Business and Professional Regulation disagreed and denied Palamara's application. The DCA sided

with the department, but concluded that it must reverse the department's action because the ALJ must still decide the factual issue of whether Palamara was of good moral character. "(N)either the statutes nor the rules categorically exclude applicant from consideration. Accordingly, although these judgments are certainly strong evidence regarding appellant's moral character, it is for the ALJ to determine this factual issue," the DCA said.

[Palamara v. Department of Business and Professional Regulation, 10/8/03]

5th District Court of Appeal

Search and seizure - consensual encounter

After observing a rock-like substance in the defendant's mouth during a consensual encounter, police officers were justified in ordering the defendant to spit out the rock because they had probable cause to believe the object was cocaine, the 5th DCA held.

Tommy Lee Smalls was convicted of possession of cocaine stemming from an incident in which two officers approached and stopped him as he walked. At the officers' request, Smalls provided identification. One of the officers noticed Smalls moving his tongue to manipulate a "small, beige, rock-like substance" in his mouth. The officer grabbed Smalls by the chin and demanded that the spit out the object, which later proved to be cocaine. Smalls appealed the denial of his motion to suppress, contending that when the officers approached and asked him for identification, the encounter constituted an illegal seizure. The DCA disagreed, finding that the encounter was consensual.

"Here, the police exercised no restraint on Smalls by approaching him in a public place and asking to talk to him and to see his identification. They did not activate the lights on the patrol car or approach Smalls aggressively. Accordingly, we conclude that Smalls was not subjected to a Fourth Amendment seizure when the officers approached him, when the officers asked to speak with him, or when the officers asked to see his identification," the DCA said. Assistant Attorney General Lori N. Hagan represented the state on appeal.

[Smalls v. State, 11/14/03]

Disqualification from sensitive state employment

The Department of Children and Families may disqualify an applicant for employment in a sensitive position based on criminal convictions that occurred prior to the adoption of the statute that authorizes disqualification on those grounds, the 5th DCA held. Wayne Sledge was disqualified from employment as a home health aide due to a 1992 conviction for importing cocaine. Such a position requires a "level 1" background screening, which disqualifies

applicants with various prior convictions, including those related to drugs. Sledge argued that the law applied only to convictions that occurred after the statute's effective date in 1995. An administrative law judge sided with Sledge but DCF rejected that interpretation, concluding that the 1995 starting date applied only to offenses that the statute added to the pre-existing list of disqualifying offenses.

The enacting date language "applied to the newly-created offenses, not the 'pre-existing disqualifiers' related to employment screening. To conclude otherwise, (DCF) found, would lead to a 'dangerous and absurd result.' In effect, under the ALJ's interpretation, anyone with a disqualifying conviction occurring before October 1, 1995, could not be disqualified," the appeals court said.

[Sledge v. Department of Children and Families, 12/5/03]

Sovereign immunity - duty to provide safe access to school

Sovereign immunity protects a local government for liability for injuries suffered by a high school student when she was struck by a car while walking to her public high school, the 5th DCA held.

The court rejected the appeal of the girl's parents, who argued that Orange County had a duty of care to provide safe access to its public schools. The parents, whose 16-year-old daughter was severely injured in the accident, said the county failed its duty by not providing or extending sidewalks to the high school, or else by providing some other form of safe access. The DCA disagreed and affirmed a final summary judgment in favor of the county.

"Absent a hidden trap or known dangerous condition not readily apparent to a person who could be injured by the condition, a governmental entity does not owe a duty to a person injured by an obvious and open condition, such as in this case, a street where vehicular traffic is expected to travel," the DCA said.

[Gabino v. Orange County, 12/19/03]

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