
LEGAL BULLETIN

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

FRED O. DICKINSON, EXECUTIVE DIRECTOR

VOLUME MMIII, ISSUE 9

Florida Supreme Court

Public records - private email on government computers

Private or personal email messages sent or received by public employees on government-owned computers are not public records under the Sunshine Law or Florida Constitution, the Florida Supreme Court held in a unanimous ruling.

The justices affirmed a decision last year by the 2nd DCA, which concluded that private or personal emails fall outside the current definition of public records because they are neither "made nor received pursuant to law or ordinance" nor "created or received 'in connection with official business.'"

The St. Petersburg Times had sought access to private email messages sent or received by two City of Clearwater employees. The Times argued that the placement of emails on the city's computer system makes them public records regardless of their content or intended purpose, and the State of Florida asserted that the headers created by email messages when they are sent are akin to phone records or mail logs, which the state said are clearly public records. The justices rejected both arguments.

"Just as an agency cannot circumvent the Public Records Act by allowing a private entity to maintain physical custody of documents that fall within the definition of 'public records,' private documents cannot be deemed public records solely by virtue of their placement on an agency-owned computer. The determining factor is the nature of the record, not its physical location," Justice Pariente wrote for the court. "(W)e conclude that 'personal' e-mails are not 'made or received pursuant to law or ordinance or in connection with the transaction of official business' and, therefore, do not fall within the definition of public records in section 119.011(1) by virtue of their placement on a government-owned computer system."

[*State of Florida and Times Publishing Company v. City of Clearwater*, 9/11/03]

1st District Court of Appeal

Search and seizure

While executing a search warrant at a home, officers

had reasonable suspicion to search a woman's purse because she matched an informant's general description of a suspect and handguns were visibly present in the home, the 1st DCA held.

Law enforcement officers executed a search warrant based on a tip that "two skinny white females" were smoking methamphetamine inside a residence that contained at least two handguns. Officers arrived at the house and encountered numerous individuals outside the home, and ordered everyone to go inside for a safety pat-down. Amy Hendrix was standing in the front yard with her purse when officers arrived. Hendrix went into the house and sat next to her purse as an officer patted her down and searched her purse. Methamphetamine was discovered in Hendrix's purse. The trial court granted Hendrix's motion to suppress on the basis that the purse was not subject to a search, reasoning that Hendrix had a reasonable expectation of privacy in her purse and there was no evidence of criminal activity on Hendrix' part. The state appealed the suppression order, and the DCA and reversed.

"(T)he officers had authority to detain Appellee based on the search warrant and based on her presence on the premises," the DCA said.

"(A)lthough situated beside Appellee, Appellee's purse was within easy reach of any of the other occupants of the residence after Appellee and the others had been directed inside the residence by the officers. Given the handguns visibly present in the house, the officers had reasonable suspicion that the purse might contain a weapon."

Assistant Attorney General Bryan Jordan represented the state on appeal.

[*State v. Hendrix*, 9/10/03]

2nd District Court of Appeal

Validity of protective sweep

An officer's ability to view contraband did not justify a warrantless entry into the defendant's motel room where there were no exigent circumstances to justify a "protective sweep" of the room, even though such items could have provided probable cause to

arrest the defendant outside his room, the 2nd DCA held..

Convicted of robbery with a firearm, Luis Orlando Vasquez appealed the trial court's denial of his motion to suppress evidence, as well as his subsequent consent and confession. Based on a surveillance video of two Hispanic men who robbed a Subway restaurant, police searched the area and confronted Vasquez outside his motel room. Other than being Hispanic, nothing about Vasquez connected him to the crime. Vasquez agreed to show the room to the police and informed them that his companion was asleep inside. As they approached the room the door suddenly opened, providing police with a plain view of a full syringe, a pipe used for illegal drugs and a single bullet. While conducting a "protective sweep" of the room, the officer saw items related to the robbery. Following his arrest, Vasquez signed a consent form to re-enter the room, and also confessed. The DCA reversed.

"The fact that Mr. Vasquez and (his roommate) were two Hispanic men who lived across the street from a robbed Subway restaurant and had a single bullet did not provide articulable facts supporting a reasonable belief that unknown armed robbers were lurking in their rooms. To the contrary, all of the information provided to the officers suggested that only two men robbed the Subway and only two men resided in the rooms they searched. Under these circumstances, the protective sweep was an unlawful search," the DCA said. "Because the protective sweep was an illegal, the consents to search and confession obtained thereafter are presumed invalid. In order to overcome this presumption, the State must show by clear and convincing evidence that there was an unequivocal break in the chain of any illegality resulting from the protective sweep."

Assistant Attorney General Helene S. Parnes represented the state on appeal.

[*Vasquez v. State*, 9/12/03]

Constitutionality of felony littering law

Florida's felony littering statute as valid on its face, the 2nd DCA held, concluding that the statute is not unconstitutionally vague in all its applications.

Antonio Enriguez, the operator of an automobile repair shop, was found guilty of felony dumping. The charges resulted from Enriguez's habit of parking junk automobiles and parts in a citrus grove without the grove manager's permission. Enriguez failed to preserve his constitutional challenge at the trial level and therefore could not challenge the law as applied in his case. Instead, Enriguez contended that the statute is facially invalid because, if read literally, it could criminalize behavior that might not be criminal — for example, if a person "places" a car on private

property to park illegally for a few minutes when visiting in a residential neighborhood. The DCA disagreed and found that the law does not reach constitutionally protected conduct.

"We conclude that a person of common intelligence would not read a littering statute that proscribed dumping, throwing, discarding, placing, depositing, or disposing of garbage and trash, including motor vehicles and motor vehicle parts, as a statute that applied to parking violations. We further conclude that the statute does adequately warn people that placing garbage and trash, including junk cars, on their neighbor's property is illegal," the DCA said. Assistant Attorney General Chandra Waite Dasrat represented the state on appeal.

[*Enriquez v. State*, 9/17/03]

3rd District Court of Appeal

Qualified immunity - evidence in dispute

The 3rd DCA rejected an appeal for qualified immunity from three police officers, concluding that conflicting evidence about the officers' actions makes a qualified immunity ruling inappropriate. The three officers were members of a special Miami-Dade County police team that assisted in the execution of search warrants. Upon entering a home, the officers shot and killed the family's dog. The family sued the department and the officers individually, alleging excessive force and other claims. The DCA said there is no dispute the officers were executing a valid search warrant, but said the evidence is in dispute as to whether they knocked and announced their presence before entering the home.

"Qualified immunity cases are no different from other civil cases in which there are genuine issues of material fact. The officers, therefore, are not entitled to the protection of qualified immunity against personal liability," the DCA said.

[*Acevedo, et al., v. del Toro*, 9/3/03]

4th District Court of Appeal

Probable cause - loitering and prowling

Where the defendant's actions did not point to an imminent breach of the peace or threat to public safety, police officers were not justified in arresting him for loitering and prowling, the 4th DCA held. Charles Grant appealed his conviction and sentence for possession of cocaine and drug paraphernalia. Grant challenged the denial of his motion to suppress the contraband, which was found following his arrest for loitering and prowling. Officers spotted Grant and two companions walking at 3:47 a.m. in

the area of a farmer's market that had been previously burglarized. Officers separated the men for questioning and Grant explained that he was looking for a place to park his truck. The other two men said they were looking for gas. An officer testified that truckers frequented the area at all times, day and night. Grant argued that police lacked probable cause to arrest him, and the DCA agreed and reversed.

"The evidence presented in this case does not show the presence of either element of the crime of loitering and prowling. ... The fact that the restaurant in the vicinity had been previously burglarized does not alter this conclusion," the DCA said. "(T)he fact that the men gave the officers inconsistent explanations for their presence at the Farmer's Market is irrelevant because the men's actions were not alarming, thus there was no need for the men to dispel alarm."

Assistant Attorney General David M. Schultz represented the state on appeal.

[\[Grant v. State, 9/3/03\]](#)

5th District Court of Appeal

Notice of appeal deadline never received

Case law and due process concerns require that a fired worker be allowed to appeal an unfavorable unemployment benefits decision after she claimed she never received notice of administrative proceedings from a state agency, the 5th DCA held. (See above: 3rd DCA, *Guerrero v. Unemployment Appeals Commission*)

Sharon Leichering was fired by the City of Orlando for firing a weapon on the job. She was denied unemployment benefits and claimed she never received the notice of the unfavorable decision, which also advised her of the 20-day window for appealing. She argued before the DCA that she should still be allowed to appeal the decision because she never received the notice. The DCA agreed, citing its own 1993 *Carrigan* decision in remanding the case to allow Leichering's appeal to go forward on the merits.

[\[Leichering v. Unemployment Appeals Commission, 9/26/03\]](#)

Approved by: Enoch J. Whitney
General Counsel

Edited by: Michael J. Alderman
Assistant General Counsel

Judson Chapman
Assistant General Counsel

Heather Rose Cramer
Assistant General Counsel

Kathy Jimenez
Assistant General Counsel

Bryan Pugh
Assistant General Counsel

Jason Helfant
Assistant General Counsel

Carlos Raurel
Assistant General Counsel

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