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# LEGAL BULLETIN

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

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FRED O. DICKINSON, EXECUTIVE DIRECTOR

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## U.S. Supreme Court Constitutionality of information-gathering roadblocks

State and local authorities may set up highway checkpoints to obtain information from motorists about a specific crime without running afoul of a recent ruling that forbids police from setting up roadblocks for general crime control purposes without individualized suspicion, the U.S. Supreme Court held.

The divided court rejected the appeal of an Illinois man who was convicted of drunk driving. Robert Lidster was arrested at a checkpoint at which local police officers briefly asked motorists if they knew anything about a fatal hit-and-run accident at that location one week earlier. Lidster argued on appeal that the court's 2000 ruling in *Indianapolis v. Edmond*, which prohibits general crime control roadblocks, also rendered invalid the checkpoint at which he was arrested. The justices disagreed because the constitutionality of an information-seeking stop was not before them in *Edmond* and the law ordinarily permits police to seek the voluntary cooperation of members of the public when investigating a crime.

"(T)he context here (seeking information from the public) is one in which, by definition, the concept of individualized suspicion has little role to play. Like certain other forms of police activity, say, crowd control or public safety, an information-seeking stop is not the kind of event that involves suspicion, or lack of suspicion, of the relevant individual," Justice Breyer wrote for the court. "(T)he resulting voluntary questioning of a motorist is as likely to prove important for police investigation as is the questioning of a pedestrian. Given these considerations, it would seem anomalous were the law (1) ordinarily to allow police freely to seek the voluntary cooperation of pedestrians but (2) ordinarily to forbid police to seek similar voluntary cooperation from motorists."

[*Illinois v. Lidster*, 1/13/04]

## Sixth Amendment - right to counsel for questioning

Statements made by an indicted defendant after he waived his *Miranda* rights should have been

suppressed because the questions asked by police were derived from statements he made earlier without having received a *Miranda* warning, the U.S. Supreme Court held.

Police went to John Fellers' home and told him he was under arrest for conspiring to distribute methamphetamine. Fellers then told the officers he became involved with drugs because of his divorce and business problems. Later at the jail, Fellers waived his rights and made a second incriminating statement. Fellers argued on appeal that police officers tricked him into making the first statements without being advised of his right to counsel and therefore his jailhouse statements should be thrown out. The 8th U.S. Circuit Court of Appeals ruled that the second statements could be used against Fellers because he had waived his *Miranda* warnings, but the Supreme Court unanimously disagreed.

"The Court of Appeals erred in holding that the absence of an 'interrogation' foreclosed petitioner's claim that the jailhouse statements should have been suppressed as fruits of the statements taken from petitioner at his home," Justice O'Connor wrote for the court. "Because the ensuing discussion took place after petitioner had been indicted, outside the presence of counsel, and in the absence of any waiver of petitioner's Sixth Amendment rights, the Court of Appeals erred in holding that the officers' actions did not violate the Sixth Amendment."

[*Fellers v. United States*, 1/ 26/04]

## Officer's liability for faulty search warrant

A law enforcement officer who prepares and executes an invalid search warrant may be held personally liable through a lawsuit, the U.S. Supreme Court held.

The court, in a 5-4 decision, said a mistake on a search warrant that failed to particularize the items that were the object of the search was sufficient to render the warrant invalid. The defect in the warrant should have been obvious to the officer, the court said, and therefore he was not entitled to qualified immunity.

"Given that the particularity requirement is set forth in the text of the Constitution, no reasonable officer could believe that a warrant that plainly did not

comply with that requirement was valid. Moreover, because petitioner himself prepared the invalid warrant, he may not argue that he reasonably relied on the Magistrate's assurance that the warrant contained an adequate description of the things to be seized and was therefore valid," Justice Stevens wrote for the court. "And even a cursory reading of the warrant in this case – perhaps just a simple glance – would have revealed a glaring deficiency that any reasonable police officer would have known was constitutionally fatal."

[*Groh v. Ramirez*, 2/24/04]

## 11th U.S. Circuit Court of Appeal Possession of cocaine - aggregated charges

A defendant's possession of caches of cocaine kept at different locations on the same date amounted to a single possession offense and thus could be aggregated, the 11th U.S. Circuit Court of Appeals held.

Craig Clay was convicted of possession with intent to distribute cocaine and possession of a firearm by a felon. Officers first searched a business owned by Clay and seized 19 grams of cocaine. Later the same day, officers drove to Clay's motel room and seized additional cocaine. The aggregate weight of the cocaine was 52.5 grams, sufficient to carry a mandatory minimum 240-month sentence. Clay argued that the trial court erred by charging him with a single possession count in order to aggregate the weight of the two caches in order to achieve the 50-gram total required for the mandatory minimum. The 11th Circuit disagreed.

"To require the government to charge these two possessions on the same day in two different counts would subject the government to a 'duplicious' argument by defendants in these cases," the court said.

[*U.S. v. Clay*, 1/7/04]

## Immunity from suit - state prosecutors

A state prosecutor is entitled to absolute immunity from suits for money damages under federal law where he shares an unsworn, erroneous opinion about the identity of a suspect with a judge during a court proceeding, the 11th U.S. Circuit Court of Appeals held.

The case involved confusion over three men named Francisco Rivera and the State of Florida's attempt to determine which one of them committed grand theft auto in 1993. Authorities sought Rivera #1, who actually committed the crime, but instead arrested the second man. In investigating the claim of Rivera #2 that he wasn't the offender, an assistant state attorney mistakenly reviewed the driver's license records of a third man with the same name. The

state released Rivera #2 and arrested Rivera #3. The third Rivera eventually was freed and subsequently sued the prosecutor for money damages, contending that his arrest was a result of the prosecutor functioning as both an investigator and a complaining witness, which would remove the prosecutor's immunity protections. The 11th Circuit disagreed with Rivera #3's contention and affirmed a lower court's dismissal, noting that the prosecutor's actions involving Rivera #3 came as he attempted to verify the claim of innocence by Rivera #2.

"(I)t is squarely in the public interest for prosecutors to be absolutely immune with respect to their efforts to clear innocent persons wrongly arrested. A hallmark of effective judicial process is the care taken to ensure that nobody is erroneously charged, arrested, or incarcerated. When the system fails, even temporarily, and a prosecutor has knowledge of that failure, as did Leal, the prosecutor is expected to do what he can to correct the error. Qualifying prosecutorial immunity here would undercut the broader public interest by potentially constraining 'the vigorous and fearless performance of the prosecutor's duty' upon which the system relies. Just as a prosecutor is absolutely immune for his actions relating to the initiation and pursuit of a criminal prosecution, so too must he be absolutely immune when his actions are directed at clearing the name of an innocent person," the 11th Circuit said. "If the impact of our holding is that prosecutors seeking the release of an innocent person are permitted to 'investigate' slightly more than they otherwise can and still be absolutely immune, so be it. The alternative – creating an environment where a prosecutor in (this) situation might fear exposure to vexatious litigation – would be far worse," the court added. "Granted, some of his information was inaccurate and he was careless to share it without checking further, but that does not change the fact that absolute immunity shields his actions as an advocate."

[*Rivera v. Leal*, 2/11/04]

## Florida Supreme Court DUI - basis for traffic stop - probable cause

A circuit court applied the correct legal test in determining the validity of a traffic stop by considering whether the officer had an "objectively reasonable basis" for making the stop, the Florida Supreme Court held.

Martin Dobrin was pulled over and ticketed for failing to maintain a single lane. The officer noticed Dobrin's bloodshot eyes and the smell of alcohol. Dobrin failed a field sobriety test and was arrested for DUI. The arrest report failed to state the reason for the initial stop. Dobrin appealed the

administrative suspension of his license, arguing that the facts and arrest report failed to establish probable cause for the stop. The circuit court agreed and quashed the suspension order. The state appealed and the DCA reinstated the order, holding that the lower court applied the wrong law in determining the validity of the stop. The Supreme Court disagreed and reversed.

"(T)he validity of a traffic stop is determined by considering whether the officer who stopped the vehicle had probable cause to do so, not whether it would be standard police practice to stop the vehicle," Justice Wells wrote for the court. "By considering whether a reasonable officer under similar circumstances would have pulled Dobrin over, the Fifth District in this case applied a principle of law that is no longer applicable."

*[Dobrin v. Department of Highway Safety and Motor Vehicles, 2/19/03]*

### 1<sup>st</sup> District Court of Appeal **Whistle-blower's Act - timeliness of complaint**

No provision of Florida's Whistle-blower's Act gives rule-making authority to the Florida Commission on Human Relations and therefore the commission lacked the authority to file a petition seeking the reinstatement of a state employee who alleged his firing was retaliatory, the 1st DCA held.

A fired Department of Transportation worker, Clinton Curtis, filed a Whistle-blower's complaint alleging that he was fired in retaliation for reporting that DOT had been overcharged by an independent contractor for whom Curtis was previously employed. The commission ordered Curtis temporarily reinstated, but the DCA concluded that the matter should never have proceeded as far as circuit court because Curtis' complaint to the commission was untimely. The complaint was filed 100 days after the alleged retaliatory act, well beyond the 60-day limit contained in the law.

"Thus, because Curtis did not timely file his complaint, (the commission) lacked jurisdiction over Curtis' complaint and lacked the authority to file the petition seeking reinstatement of Curtis," the DCA said.

*[Department of Transportation v. Florida Commission on Human Relations and Curtis, 2/19/04]*

### 2nd District Court of Appeal **Search and seizure - consensual pat-down**

A defendant revoked his consent to a pat-down search through his nonverbal conduct in attempting to leave, and therefore police were not justified in continuing the search, the 2nd DCA held.

Officers went to investigate a complaint that several armed juveniles were selling drugs in a park. An officer approached and stopped a juvenile identified only as E.B. because the youth was the first to walk away. E.B. consented to a pat-down by the officer, who felt a tube-like container. Although the officer knew the object was not a weapon, he manipulated it in a way that caused a rattling sound. At that moment, E.B. tried to leave but the officer grabbed his arm and handcuffed E.B. The tube was found to contain crack cocaine, and E.B. was arrested. E.B. appealed the denial of his motion to suppress the drug evidence.

"At the moment E.B. withdrew his consent by his nonverbal conduct, the officer did not have information sufficient to meet the probable cause requirement to further detain E. B. Additionally, the officer had no other basis to detain E.B.," the DCA said. "(O)nce the officer felt and recognized the small, cylindrical container in E.B.'s pocket, there was no reasonable belief that it contained a weapon. By shaking it, removing it from the pocket, and opening it, the officer exceeded the limits of the consensual intrusion into E.B.'s privacy to do a patdown for weapons."

Assistant Attorney General John M. Klawikofsky represented the state on appeal.

*[E.B. v. State, 2/25/04]*

### 3rd District Court of Appeal **Civil rights suit over arrest of jaywalker**

A jaywalker's refusal to accept and sign a citation gives a law enforcement officer probable cause to arrest him, and therefore the officer and his employing agency are entitled to a favorable judgment in a civil rights lawsuit filed by the jaywalker, the 3rd DCA held.

A Miami police officer almost hit James Robinson with his police vehicle when Robinson crossed a street improperly. After Robinson refused to sign a jaywalking citation, the officer arrested him. Robinson filed suit alleging that his civil rights were violated, but the trial court ruled in favor of the officer and city despite Robinson's argument that the citation was improper and therefore he could lawfully resist his arrest without violence.

"Robinson's refusal to accept and sign the citation gave the officer probable cause to arrest him," the DCA concluded.

*[Robinson v. City of Miami, et al., 1/28/04]*

### **DUI - breath test results**

Evidence of a defendant's failure to remove an orthodontic plate from her mouth before being administered a breathalyzer test does not render the

test results inadmissible, but rather goes to the weight to be accorded the test result, the 3rd DCA said.

Nancy Schofield was charged with DUI and challenged the admissibility of the breath tests results obtained when she was arrested. Schofield argued that the test results did not comply with administrative rules because the arresting officer failed to ask if she was wearing a dental device and did not request that she remove it before taking the breath test. In her appeal, Schofield argued that the circuit court departed from the essential requirements of law by reversing a county court order suppressing the alcohol test results. The DCA disagreed, affirming the admissibility of the test results.

"(T)he officer that performed the alcohol tests on Schofield complied with the governing statutory law and administrative rules in his administration of the alcohol tests. Florida law does not require the removal of dental devices nor does the law impose an obligation on the officer to inquire about the use of dentures prior to or during the administration of alcohol tests," the DCA said.

Assistant Attorney General John D. Barker represented the state on appeal.

*[Schofield v. State, 2/4/04]*

### **Search and seizure - basis for investigative stop**

A police officer had reasonable suspicion of criminal activity to justify an investigative detention based on the cumulative impact of circumstances perceived by the officer, the 3rd DCA held.

David Eugene Mike was charged with burglary of an unoccupied conveyance and grand theft after an officer driving past a park saw Mike and two other men moving items from one vehicle to another. The officer drove into the park for unrelated reasons, but encountered Mike and a woman as they exited a vehicle. The woman explained that they were doing lawn maintenance at the park and had just cut down a limb. The officer became suspicious because there was no ladder in sight and the two were not wearing appropriate clothing for performing landscaping work. The officer detained the pair and discovered stolen property in the truck. The trial court granted Mike's motion to suppress on the basis that the officer was not justified in detaining Mike, but the DCA disagreed and reversed a suppression order. "The state correctly argues that transferring items from the van to the pickup truck, although seemingly innocent, may be considered in determining whether there was reasonable suspicion that criminal activity was afoot," the DCA said. "(T)he woman's inconsistent story to explain their presence in the park supported the officer's common sense determination that they may have been involved in criminal activity. Although any factor may be

susceptible to an innocent explanation, the factors considered together provided the officer with reasonable suspicion justifying further investigation." Assistant Attorney General John D. Barker represented the state on appeal.

*[State v. Mike, 2/18/04]*

### **4TH District Court of Appeal Defendant entrapped by attractive officer**

An extremely good-looking undercover officer's allure of sex, used to entrap the defendant into committing a drug crime, violated the man's due process rights, the 4th DCA held in dismissing the charges.

As part of a drug sting operation, a male undercover officer entered a gay bar and approached Julio Blanco, who was sitting at the bar alone. Blanco three times refused the officer's request to find him some drugs. The undercover officer persisted, and in hopes that the drugs might lead to sex with the very handsome officer, Blanco found someone selling methamphetamine in the bathroom and bought it with money provided by the officer. Blanco had no prior criminal or drug history. The trial court dismissed the case, finding that the officer's style, manner and talk were staged to entrap the defendant. The DCA agreed.

"There is no suggestion by anyone that the defendant was interested in committing any crime – and certainly not any drug crime – until the State instigated and promoted such a violation. The defendant rejected the State's entreaties three separate times and even attempted to leave the bar before the undercover detective persuaded him to remain and ultimately commit the offense," the DCA said.

Assistant Attorney General Andrea D. England represented the state on appeal.

*[State v. Blanco, 1/21/04]*

### **Search and seizure - motion to suppress**

Where law enforcement officers created exigent circumstances by making their presence known before obtaining a search warrant, a warrantless search of a suspect's apartment was not justified, the 4th DCA held.

Following a possible drug transaction, officers arrested Adalberto Morciglio, who volunteered that there were more drugs in a friend's apartment and led officers there. When officers knocked on the door, Steven Garcia answered and told them he was having a party. After smelling marijuana and observing cocaine on a table, officers entered the apartment and seized contraband. The trial court granted Garcia's motion to suppress on the basis that no valid consent was obtained and no exigent

circumstances existed to justify the warrantless entry. The DCA agreed and affirmed the suppression order.

"Although (the officers) had probable cause, they did not seek a warrant. Instead, they enlisted Morciglio as their agent to gain entry into the apartment. In doing so, they created the exigent circumstance (the possible destruction of evidence) by making their presence known before they obtained a warrant," the DCA said.

Assistant Attorney General Linda Harrison represented the state on appeal.

[*State v. Garcia*, 2/11/04]

### **Sovereign immunity - actions of employees**

A jury, rather than the trial court weighing a motion for summary judgment, should decide whether a public employer should be held liable for potential civil rights violations committed by three of its employees, the 4th DCA held.

The DCA reversed an order of summary judgment based on sovereign immunity in favor of the Broward County School Board, which was sued by parents alleging that their son was the victim of battery committed by three school security officers. The trial court concluded that the school board was entitled to sovereign immunity, but the DCA said under the Florida Supreme Court's 1996 decision in *McGhee v. Volusia County*, that determination is dependent on whether the security officers' actions were conducted by virtue of office or merely by color of office.

"(A)n employing agency is immune as a matter of law only if the acts were so extreme as to constitute a clearly unlawful usurpation of authority that the deputy did not rightfully possess or if there was not even a pretense of lawful right in the performance of the acts," the DCA said. "In the instant case, there is evidence that the employees, as security officers, had the authority to escort (the student) from the classroom and restrain him if he became violent. Therefore the employees were acting within the scope of their authority. Under *McGhee*, the question should be put to the fact-finder whether the employees' actions fall within the language of section 768.28(9)(a), making the School Board immune from liability."

[*Carestio v. School Board of Broward County, et al.*, 2/18/04]

### **Search and seizure - reasonable suspicion**

During an initial encounter, an officer's request that a defendant remove his hands from his pocket constituted an investigatory stop requiring reasonable suspicion, the 4th DCA held. Damon Lee was convicted of possession of cocaine

and appealed the denial of his motion to suppress. An officer responded to an anonymous tip that some black males were selling narcotics at a street corner in an area known for drug activity. The group dispersed when the officer arrived, and as Lee walked quickly toward the officer he was asked to remove his hand from his pocket. As Lee complied, crack cocaine fell to the ground. At trial there was no evidence that Lee appeared nervous or that he was attempting to flee. In denying Lee's motion to suppress, the trial court found that the officer had sufficient suspicion to justify the stop, but the DCA disagreed.

"(T)he anonymous tip failed to contain the requisite specificity. Equally lacking was any independent police corroboration of significant aspects of the informant's complaint that Lee was engaged in any suspicious criminal activity. Therefore, the anonymous tip was insufficient to establish reasonable suspicion," the DCA said. "Under the totality of the circumstances there was no reasonable suspicion to conduct an investigatory stop. Therefore, requesting Lee to remove his hand from his pocket was unlawful and the evidence of crack cocaine is suppressed."

Assistant Attorney General Claudine M. LaFrance represented the state on appeal.

[*Lee v. State*, 2/18/04]

### **Search and seizure - motion to suppress**

In a case where an individual was seen lurking in the dark in a residential area that was not near his home, police were justified in stopping him for loitering and prowling in a place, time and manner not usual for law-abiding persons, the 4th DCA held. Donald Battle was arrested for possession of cocaine. An officer on patrol spotted and recognized Battle as he hid between two houses at 2:15 a.m. After seeing Battle conceal something on his person, the officer called out and grabbed Battle as he walked away. During the encounter a cocaine pipe dropped from Battle. Appealing the denial of his motion to suppress the cocaine found in the encounter, Battle contended that police lacked a founded suspicion to stop him for loitering and prowling at the time of the stop. The DCA disagreed. "Based upon his observations the officer had reasonable suspicion that appellant was loitering and prowling. Here, the officer sought to dispel the alarm caused by finding appellant concealing something, in the early morning hours in the hedges between two residences. The officer had a reasonable suspicion to support an investigatory stop for this purpose," the DCA said.

Assistant Attorney General Daniel P. Hyndman represented the state on appeal.

[*Battle v. State*, 2/25/04]

## 5th District Court of Appeal **Government liability for officer's inaction**

A city police officer's failure to have a conversation with a man who later shot his ex-wife does not make the city liable for her injuries where threats made by the man were not issued within the city's jurisdiction and the officer's inaction was not the direct cause of the shooting, the 5th DCA held.

The court ruled in favor of the City of Ocala, whose officer told Belinda Graham that he or another officer would talk with Nathaniel Sweet after Sweet threatened to kill Graham, her boyfriend and her son. The officer also advised Graham to contact the Marion County Sheriff's Office because the calls were made and received in the county rather than the city. Two days later, Sweet called Graham three times, and she was aware that no officer had actually spoken with Sweet to defuse the threatening situation. Sweet later showed up at Graham's home, but no violence occurred until Graham's adult son got into a fistfight with Sweet, leading to the shooting in which Graham was injured. Graham sued the city alleging that the officer's inaction led directly to her injuries, but the DCA disagreed.

"(W)e must determine whether the trial court properly submitted to the jury the question: 'Whether but for Officer Smith's failure to talk with Sweet, Graham would not have been harmed.' A reasonable person could not answer that question affirmatively unless sheer speculation was enlisted when one reviews the facts of this case cast in a light most favorable to Graham," the DCA said. "Whether a discussion between Sweet and a police officer would have caused the dissipation of Sweet's predisposition to carry out the threat is an unanswerable question."

[*City of Ocala v. Graham*, 1/2/04]

## **"Knock and talk" practice unlawful**

When police used "knock and talk" tactics to obtain a defendant's permission to search her home and surrender drugs without a warrant, the encounter amounted to an unlawful seizure because the woman's actions amounted to an acquiescence to police authority and not voluntary consent, the 5th DCA held.

In response to an anonymous tip that narcotics activity was occurring at Lynn Miller's residence, three law enforcement agents approached Miller in her front yard as she was leaving to run errands. The officers were wearing gun belts and black smocks with "Orange County Sheriff" displayed. One officer told Miller that while no search warrant had been issued, "he needed to talk to her about drugs and that it would not take long." Although Miller said she was leaving, the officer insisted and Miller escorted the officer back into the house. When

asked to retrieve the drugs, Miller handed over a small amount of marijuana, crack cocaine and a pipe. The lower court determined that Miller's acts were voluntary and denied her motion to suppress, but the DCA reversed.

"We think that these words and acts by the police, together with the other circumstances of the encounter, would clearly lead a reasonable person to believe that compliance with the 'requests' of the officers was required," the DCA said. Assistant Attorney General Angela D. McCravy represented the state on appeal.

[*Miller v. State*, 1/9/04]

## **Search and seizure - traffic stop**

An officer who conducted a routine traffic stop had reasonable suspicion to detain the driver while he frisked the passenger after the passenger's furtive evasive movements suggested he might be armed, the 5th DCA held.

Markilo Brown appealed the denial of his motion to suppress following his convictions for possession of a firearm by a convicted felon and possession of a controlled substance. Brown was pulled over for a moving violation, and during the stop Brown's passenger fidgeted nervously, scrambling to hide something. The officer stopped writing the citation and frisked the passenger for a weapon. The passenger fled but was arrested after police saw him toss a bag containing marijuana and cocaine. During the chase Brown was detained by another officer. Police found cannabis on the passenger's side of the vehicle and a firearm in the trunk. Brown appealed the denial of his motion to suppress, arguing that his detention during the chase and the vehicle search were illegal. The DCA disagreed.

"Once the officers discovered the cannabis in the front of the vehicle, they had probable cause to conduct a search of the entire vehicle, including the trunk," the DCA said.

Assistant Attorney General Carmen F. Corrente represented the state on appeal.

[*Brown v State*, 1/16/04]

## **Motion to suppress - traffic stop**

An officer who observes a vehicle being operated in an unusual manner may have justification for an investigatory stop even if there has been no traffic violation or citation issued, the 5th DCA held.

Mamodou Ndow appealed his conviction and sentence for trafficking in cannabis, challenging the denial of his motion to suppress evidence. An officer noticed Ndow and a passenger in a car that was stopped at a traffic light even though the light was green. The driver sat through the light's entire cycle, then proceeded when the light turned green a second time. The car slowed down, staying behind the patrol car, and pulled off the road so the occupants could trade places. Suspecting that the

driver was impaired, the officer approached and smelled marijuana coming from the window. Ndow contended that the trial court should have suppressed the drugs on the basis that the stop was illegal. The DCA disagreed.

"In determining whether such an investigatory stop was justified, courts must look to the totality of the circumstances. Considering the totality of the circumstances detailed above, (the officer's) suspicion that Ndow may be driving while impaired was reasonable and warranted the investigatory stop," the DCA said.

Assistant Attorney General Rebecca Roark Wall represented the state on appeal.

*[Ndow v. State, 1/30/04]*

### **Sex offender - failure to re-register**

A convicted sex offender was required to re-register his status as a sex offender with the Department of Highway Safety Motor Vehicles when he changed his residence even though his driver's license was not up for renewal, the 5th DCA held.

The state appealed an order that dismissed charges against Redford Eugene Mounce for failing to register with the department as a sex offender. The trial court concluded that when Mounce changed his residence he did not have to register again with HSMV because his driver's license was not up for renewal at that time. The DCA disagreed.

Reversing the trial judge, the court found that a "change of residence alone is sufficient to trigger the registration requirement of the statute."

Assistant Attorney General Allison Havens represented the state on appeal.

*[State v. Mounce, 2/13/04]*

### **Search and seizure**

Because a hotel was within its rights to invite police officers and a canine unit to walk in the hallway outside a defendant's room, the defendant had no expectation of privacy and his Fourth Amendment rights were not violated, the 5th DCA held.

Earl Nelson was convicted of trafficking in cocaine. A hotel clerk called police after suspecting Nelson was dealing in drugs. With the hotel management's permission, officers took a drug-sniffing canine unit and walked the hallway outside Nelson's room. The dog alerted at Nelson's door and no others, and based on this information officers obtained a warrant to search Nelson's room. Inside the room, officers found baggies of cocaine. Nelson appealed the denial of his motion to suppress the evidence, contending that the hotel management had no right to waive his Fourth Amendment right to privacy by allowing police to search the hallways. The 5th DCA disagreed.

"(T)he hallway was on the premises controlled by the hotel management and was a common walkway for the use of hotel guests, visitors, employees and

probably by the general public. The hotel management was within its rights to invite the police to walk the hallway and no violation of Nelson's Fourth Amendment rights took place. In fact, the Fourth Amendment was not even applicable to any action that took place in the hallway where the police had the right to be," the DCA said.

Assistant Attorney General Timothy D. Wilson represented the state on appeal.

*[Nelson v. State, 2/27/04]*

### **ATTORNEY GENERAL'S OPINION**

Number: AGO 2004-04

Date: February 13, 2004

Subject: Law Enforcement Officer, trespass on private property

An on-duty law enforcement officer has the authority to enforce a private landowner's written authorization to communicate on behalf of the landowner an order to an alleged trespasser to leave the private property in the case of a threat to public safety or welfare.

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