
LEGAL BULLETIN

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

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U. S. SUPREME COURT Use of drug-sniffing dog - probable cause

Drug-sniffing dogs may be used by law enforcement officers to check out vehicles during valid traffic stops even if the officers have no reason to suspect the vehicle may carry illegal drugs, the U.S. Supreme Court held.

In a 6-2 decision, the court said the Fourth Amendment is not violated by a dog sniff conducted during a lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess. The court ruled against Illinois resident Roy Caballes, who was pulled over for driving six miles over the legal speed limit and arrested for drug possession after a search that was prompted by a drug-sniffing dog. Caballes asserted that the officers had no reason to utilize the drug-sniffing dog and the Illinois Supreme Court ruled in his favor, finding that because there were no specific and articulable facts to suggest drug activity, use of the dog unjustifiably enlarged a routine traffic stop into a drug investigation. The Supreme Court reversed.

“(T)he use of a well-trained narcotics-detection dog – one that does not expose noncontraband items that otherwise would remain hidden from public view – during a lawful traffic stop, generally does not implicate legitimate privacy interests. In this case, the dog sniff was performed on the exterior of respondent’s car while he was lawfully seized for a traffic violation. Any intrusion on respondent’s privacy expectations does not rise to the level of a constitutionally cognizable infringement,” Justice Stevens wrote for the court.

[Illinois v. Caballes, 1/24/05]

1ST DISTRICT COURT OF APPEAL State employee’s appeal three years after termination

The state Public Employees Relations Commission erred when it ruled that equitable

tolling principles allowed a former Department of Corrections employee to appeal his termination three years after he was fired, the 1st DCA held.

Benny Chesnut worked 14 years for the department in various correctional officer positions. In 1999, Chesnut was notified that disciplinary charges were being brought against him because of sexual harassment allegations lodged by five women. That same year, Chesnut’s position was reclassified by the Legislature from career service to selected exempt. On June 11, 1999, he was appointed to the selected exempt position of assistant warden at Washington County Correctional Institution, but three weeks later he received a letter notifying him that the department was terminating his employment. The letter provided no reason for the termination and told Chesnut that as a selected exempt employee he had no right of appeal to PERC. He did not file an appeal at that time. However, in September 2002 the 1st DCA ruled in *Dickens v. Department of Juvenile Justice* that an employee had the right to appeal a suspension to PERC for conduct that arose while he was a career service employee, even though the suspension occurred after he was reclassified as selected exempt. Based on that ruling, Chesnut filed an appeal with PERC in October 2002 to challenge his 1999 termination after the department cited the sexual harassment allegations as playing a role in his termination. PERC held that equitable tolling applied because the department mistakenly told Chesnut that he could not appeal its decision to dismiss him. On appeal, the department argued that the termination letter was not misleading, and therefore PERC was wrong to conclude that the letter provided a basis for finding equitable tolling. The DCA agreed.

“The Department’s termination letter informing Chesnut that he had no right to appeal to the Commission because of his selected exempt status was an accurate reflection of the law at the time; it was not misleading. There is no evidence that the Department letter actually caused Chesnut not to file a timely appeal with the Commission. Chesnut did not file an appeal

from his termination until October 2002, after he learned of this court's decision in Dickens. Thus, the Department did not mislead or lull Chesnut into inaction, and there was no basis for an application of equitable tolling," the DCA said. [*Department of Corrections v. Chesnut, 1/7/05*]

Justification for agency to break lease

The 1st DCA, rehearing a case involving a rat-infested building leased by a state agency, withdrew an earlier ruling that sided with the agency and ordered further proceedings to determine whether the agency proved the building was unusable. The DCA held in August that because a rat infestation rendered the Jackson County building "untenantable," a lower court had no choice but to conclude that the Department of Corrections could properly break its lease. The landlord moved for rehearing, asserting that the rat infestation had been cured by the date the department terminated the lease and therefore the building was no longer untenable. The DCA conceded that its earlier ruling did not directly address that argument, and said the trial court must reconsider the case to determine whether the department proved that the premises it occupied were "wholly untenable" at the end of the 20-day cure period provided by section 83.201, F.S. [*Department of Corrections v. Brooks, 1/11/05*]

Search incident to arrest - civil warrant

A search incident to arrest on a civil warrant is justified by the same principles as a search associated with an arrest based on a criminal warrant, the 1st DCA said.

Marquand Gilbert was driving with a passenger in the front seat when his vehicle was pulled over for a broken tail light. The officers discovered that the passenger had an outstanding civil warrant and arrested him. When an officer asked Gilbert whether he had any weapons in the car, Gilbert replied that he had a gun under his seat. Gilbert was handcuffed and placed in the patrol car while officers searched the car. The gun was found under the seat and Gilbert was arrested for having a concealed weapon. Gilbert argued that he was not read his *Miranda* rights before being asked about weapons in the car and therefore the weapon was illegally seized. The DCA said the gun would have been found because the officers were within their authority to conduct a search incident to the arrest of the passenger because a

civil warrant must be treated the same as a criminal warrant.

"A person who is taken into custody on a civil writ of attachment is deprived of his physical freedom of movement in exactly the same way as a suspect taken into custody on a criminal warrant. From the officer's point of view, the procedure for serving a writ of attachment is no different from any other kind of arrest, and, from the arrestee's point of view, the consequences are also the same," the DCA said. [*State v. Gilbert, 2/2/05*]

Defendant's question re: need for counsel

Because a defendant was not in custody at the time he spoke with law enforcement officers, the officers were not required to answer his question regarding whether he needed to have a lawyer present, the 1st DCA said.

Gregory Evans was approached by officers at his home. The officers asked if they could talk to Evans about a crime committed at his prior residence. Evans agreed to talk and allowed the officers inside his apartment. Evans asked if he needed a lawyer present during the questioning, but none of the officers answered. Evans confessed to possessing child pornography after officers showed him an email containing child pornography, which was traced to an account on his computer. Evans argued on appeal that the officers should have answered his question regarding the need for an attorney and that he was misled into confessing by one officer's statement that he was not there to arrest Evans.

"A statement that a defendant will not be arrested might invalidate a subsequent confession, if the statement is made as a promise in return for the confession. In the present case, however, (the officer) merely stated that he was not there to arrest the defendant. He did not say or even suggest that the defendant would not be arrested if he made a confession. There was no *quid pro quo* for the alleged promise," the DCA said. [*Evans v. State, 2/22/05*]

2ND DISTRICT COURT OF APPEAL Invalid search and seizure

A drug defendant's consent to search was invalid because it followed illegal police activity with no interruption that would have made the consent valid, the 2nd DCA held.

Melinda Kutzorik pled guilty to possession of cannabis with the intent to sell. She argued on appeal that police officers did not have a right to be in her home but she did not feel free to ask them to leave. She also contended that her consent to search was not voluntary. The officers involved in the search said they received a tip that drugs were being sold out of Kutzorik's home, and said she consented to the search after being asked numerous times. The state also noted that Kutzorik willingly opened and closed the cabinet doors in her kitchen to show the officers she did not have drugs. The DCA reversed the conviction, finding that the totality of the circumstances around the incident would not lead a reasonable person to believe she could ask the officers to leave.

"When a consent to search follows illegal police activity, the State bears the burden of showing by clear and convincing proof that there was an unequivocal break in the chain of illegality sufficient to dissipate the taint of the law enforcement's prior illegal activity," the DCA said. "None of the evidence about what happened at Kutzorik's home could prove such a break in the chain. The search of Kutzorik's home was illegal and the contraband was illegally seized."

[*Kutzorik v. State*, 1/28/05]

Eligibility for driver license

The Second District Court of Appeal ruled that a driver with a prior DUI manslaughter conviction and two DUI convictions did not meet eligibility requirements to seek full reinstatement of his driving privilege. The Court held: "Thus, if Gaskins were to file a petition for reinstatement, the Department would be precluded from considering a reinstatement based on [section 322.271\(4\), Florida Statutes \(2004\)](#), because Gaskins has a DUI manslaughter conviction and two DUI convictions." "The fact that he applied for and was granted a business purpose only license under the 1995 version of the statute does not control his current request to seek full reinstatement of his driving privilege."

"Therefore, we reverse the trial court's final summary judgment which requires the Department to consider Gaskins' request to have his driving privilege reinstated."

[*DHSMV v. Gaskins*, 1/28/05]

Fellow officer rule - misdemeanors

A law enforcement officer may delegate the authority to arrest to a fellow officer even if the second officer did not personally witness the

misdemeanor offense, the 2nd DCA held.

Victor Boatman and a passenger were found on the side of a road by an off-duty officer. Boatman was passed out in the driver's seat with the keys in the ignition. The off-duty officer determined that Boatman's license was suspended. Two on-duty officers arrived at the scene, and at the off-duty officer's direction they arrested Boatman.

During a search incident to the arrest, the officers found drugs in the car. The trial court granted Boatman's motion to suppress the drugs, finding that the arrest was illegal because it was performed by a fellow officer who did not personally witness the misdemeanor offense.

The DCA disagreed, concluding that the fellow officer rule – which allows an officer to act on information from another office even though he did not personally witness the offense – applies to misdemeanors. The DCA reversed the trial court's decision to grant the motion to suppress and remanded the case for further proceedings.

Assistant Attorney General Amanda Lea Colon represented the state on appeal.

[*State v. Boatman*, 2/2/05]

Liability for false arrest - probable cause

Because a police officer failed to conduct any sort of investigation to verify a pharmacist's suspicions, no probable cause existed for an arrest and therefore the public agency that employed the officer was properly held liable for false arrest, the 2nd DCA held.

St. Petersburg resident Donald Austrino had been treated at an emergency room and received a prescription for a pain killer. Because Austrino was about to leave town on vacation, the emergency room physician took the uncommon – but not unheard of – step of prescribing a refill. A local pharmacy filled the prescription, but later in the evening a night shift pharmacist reviewed that day's prescriptions and noticed that Austrino's prescription indicated that an ER physician had authorized a refill. The pharmacist spoke with an ER nurse and was told that the patient's chart did not indicate a refill, but the pharmacist did not speak to the doctor. Based on the information she had, the pharmacist concluded that the prescription had been altered illegally and called the police, who arrested Austrino without conducting any further investigation. Austrino subsequently filed a lawsuit for false arrest and was awarded \$45,000,

for which the City of St. Petersburg was found 90 percent liable. The city appealed, asserting that there should be no civil liability because its officer had probable cause to arrest Austrino even though the arrest ultimately proved to be in error. The DCA rejected the probable cause argument, concluding that the officer should have conducted a more thorough investigation before arresting Austrino.

“Although Officer Douglas's suspicions may have been properly aroused by the pharmacist's report, a reasonably prudent police officer would have conducted further investigation before determining that he had cause to arrest. . . . It was the officer's role to investigate and establish probable cause to conclude that the prescription had been altered from the original and then to identify the person who inserted the number for the refill,” the DCA said. “Because of the hearsay nature of the information provided by the pharmacist, it was incumbent upon the police officer to further investigate whether there was probable cause to believe a crime had been committed. The primary problem here is that the officer undertook no investigation of his own; instead, he apparently relied solely upon that undertaken by the pharmacist. In essence, he abrogated his responsibility to investigate the circumstances of a crime to the pharmacist who was, at best, remote from what had occurred and untrained in proper investigative techniques. . . . Had the officer known what he could have easily learned from common prudence, a simple phone call to the doctor, and appropriate investigation, he would not have arrested Mr. Austrino.”

[*City of St. Petersburg v. Austrino*, 2/9/05]

Validity of vehicle stop - cracked windshield

A police officer may properly stop a vehicle to inspect a cracked windshield and may act on anything he then finds in plain view, the 2nd DCA held.

Tristan Hilton was pulled over by officers because of a crack in his windshield. Officers then saw a gun in plain view and conducted a search of the vehicle, which produced more than 40 pounds of marijuana. Hilton argued that the evidence should have been suppressed because the initial stop was illegal. The DCA disagreed, concluding that under the law a cracked windshield is a valid reason to stop a vehicle and conduct a quick inspection to ensure the safety of the passengers.

“This statute was intended to create a

noncriminal safety stop to permit police to perform a quick vehicle-specific safety inspection that is cheaper and less intrusive, and arguably more effective, than methods of mandatory, annual vehicle inspection,” the DCA said. “It was reasonable for the legislature to require all automobiles to have certain equipment and for that equipment to be in proper repair. Owners and operators of cars are expected to know these legal requirements and should not expect their sense of personal privacy to prevent the police from briefly stopping a car that reasonably appears to have an equipment violation.”

[*Hilton v. State*, 2/16/05]

Aggravated assault - officer not in imminent fear

An officer cannot be considered to be in imminent fear when both a police vehicle and an armed fellow officer stand between him and a knife-wielding assailant, the 2nd DCA held.

After a days-long crack cocaine binge, John Joseph Sullivan called sheriff's deputies to his residence as part of what the DCA called an “ill-conceived scheme to commit suicide-by-cop.” Two deputies arrived, and Sullivan told one of them that he planned to get an officer to kill him before they left. As one officer, Deputy Lockett, attempted to escort Sullivan's wife out of the home, Sullivan made a sudden movement toward her. Deputy Lockett positioned himself behind a patrol vehicle, with fellow Deputy Wilder standing between the car and the home. Sullivan came out of the home with a knife and ran toward the officers, but after being ordered to stop Sullivan dropped the knife and was taken into custody. He was charged with two counts of aggravated assault on a law enforcement officer. The count regarding Deputy Wilder was dropped, but Sullivan was convicted of the second count involving Deputy Lockett. On appeal, the DCA found that the facts surrounding the incident were not legally sufficient to establish that Deputy Lockett was in imminent fear – a condition necessary to support the aggravated battery charge – because he was protected by both his fellow officer and the vehicle. “Deputy Lockett had assumed his defensive position behind the cruiser before Sullivan emerged from the mobile home brandishing the knife. At that point, violence was unquestionably imminent as to Deputy Wilder. However, it was too remote from Deputy Lockett for the charge of aggravated assault to survive a motion for a judgment of acquittal,” the DCA said.

[*Sullivan v. State*, 2/16/05]

Probable cause - informant's tip

Hearsay information from an informant, by itself, does not give officers probable cause to search a vehicle or to arrest a person, the 2nd DCA held.

An officer received information from an informant that Henry Whittle had drugs on his person and would be pulling into a parking lot at a certain time. The informant briefly described the vehicle Whittle would be driving and what he looked like. The informant also said his information was obtained in an overheard conversation. The officer went to the parking lot and other officers soon arrived. When Whittle pulled in and got out of his van, the officers searched him for drugs but found none. They then conducted a full search of his van and found drugs in an eyeglass case in the center console. The DCA reversed Whittle's conviction, finding that the information provided by the informant was sufficient to start a criminal investigation but did not create the probable cause necessary to conduct a vehicle search.

"(The informant's tip) may have warranted an attempt at a consensual encounter in the parking lot that could have evolved into a valid investigatory stop. It did not, however, provide the detailed information sufficient to establish probable cause for an immediate arrest of Mr. Whittle or for a search of his vehicle without a warrant. There is simply no indication that the conversation overheard by the informant was more than 'mere rumor,' which is insufficient to establish probable cause. Hearsay information that would not establish probable cause if received directly by a police officer does not achieve greater status if received indirectly through a reliable informant," the DCA said.

[*Whittle v. State*, 2/16/05]

Scope of consent to search

A law enforcement officer went outside the scope of his authority to conduct a search when he picked up a tackle box to examine it closer, because it was apparent that none of the items he was searching for could have been in the box, the 2nd DCA said.

A deputy sheriff received a tip that Anderson Jones had a stolen boat motor and had killed a deer in a state park. The deputy went to Jones' trailer to investigate. The officer said Jones was cooperative and showed the deputy his two boats, and the deputy then received Jones' consent to search his trailer for a boat motor and a 12-gauge shotgun. During the search the

deputy lifted the mattress in Jones' bedroom and found a tackle box; when he lifted the tackle box, he found drugs and drug paraphernalia. Jones was arrested and convicted on two counts of possession. The DCA, questioning whether the deputy met the "immediately apparent" criteria for the plain-view doctrine to apply, held that because the box could not contain either the boat motor or the shotgun, the deputy should never have picked up the tackle box.

"Picking up the tackle box and examining its contents extended the search beyond the scope permitted by Jones's consent," the DCA said. "When the deputy saw the tackle box underneath the mattress and did not immediately identify the criminal nature of its contents, he should have returned the mattress to its place or asked for consent to examine the tackle box further. Instead, without either consent or probable cause, the deputy improperly picked up the tackle box and peered inside."

[*Jones v. State*, 3/4/05]

3RD DISTRICT COURT OF APPEAL

Resisting an officer

A juvenile was properly found to have resisted an officer without violence because the officers who charged him were conducting a valid investigatory stop even though they did not have probable cause to arrest him at the time of the stop, the 3rd DCA held.

Several officers on bike patrol heard what sounding like a female yelling from a high school parking lot. The officers soon saw a juvenile, identified in court only as N.H., running from the parking lot. After a brief pursuit the officers stopped N.H., but the youth refused to cooperate and a brief struggle ensued. N.H. was charged with resisting an officer and received a judicial warning when the trial court chose to withhold adjudication of delinquency. The DCA concluded that the officers acted properly in furtherance of a legal duty.

"We are satisfied here that the totality of N.H.'s conduct toward the police in this case – refusing to identify himself, refusing to sit and thus comport himself so that the officers could investigate and finally physically threatening them, all as found by the trial court – is sufficient to support the finding of the trial court below," the DCA said. "The fact that the police did not have probable cause to arrest N.H. at the time he was initially stopped is of no consequence under the circumstances because the police were

engaged in 'the lawful exercise of [a] legal duty' when N.H. resisted."

[N.H. v. State, 1/5/05]

Valid consent outside of territorial jurisdiction

A consent to search obtained by a detective was valid even though the detective was out of his territorial jurisdiction because he was working in cooperation with the DEA, which was within its jurisdiction, the 3rd DCA held.

The Fort Lauderdale Police Department and the federal Drug Enforcement Administration were working together in a joint narcotics investigation when authorities received a tip that Matthew Sanguine had illegal drugs in a warehouse in northern Miami-Dade County. The location was outside the police department's jurisdiction. When Sanguine was detained by DEA agents outside the warehouse, a Fort Lauderdale detective and a DEA agent arrived to question him. The detective asked Sanguine to consent to a search and had him sign a DEA consent-to-search form. Sanguine argued on appeal that because the detective was out of his territorial jurisdiction, the consent to search was invalid. The DCA disagreed.

"The DEA agents were the ones who had detained the defendant. Although the Fort Lauderdale officer was outside of his territorial jurisdiction, he was in the presence of, and cooperating with, (a) DEA Agent," the court said. "The DEA agents were within their territorial jurisdiction and were present and active."

[Sanguine v. State, 2/23/05]

4TH DISTRICT COURT OF APPEAL Eligibility for driver's license reinstatement

A state agency properly refused to reinstate a driver's license because the law in effect at the time the driver applied for reinstatement, rather than at the time of an earlier infraction, made him ineligible to have his license restored, the 4th DCA held.

Albert Hill's license was permanently revoked as a result of a DUI manslaughter conviction. Hill subsequently sought reinstatement, but the Department of Highway Safety and Motor Vehicles found that he was statutorily ineligible for reinstatement because, in addition to the DUI manslaughter conviction, Hill had previously been convicted of driving under the influence in

1987. The DCA affirmed a lower court decision in favor of the department, noting that the decision is controlled by the applicable law in effect at the time the application for reinstatement is made.

[Hill v. Department of Highway Safety and Motor Vehicles, 2/2/05]

At-will employee's challenge of agency action

An at-will government employee has no standing to challenge an agency action demoting and transferring him, and therefore a water district official's request for an administrative hearing challenging the action against him was properly dismissed, the 4th DCA held.

The court rejected the appeal of Louis Toth, who was chief environmental scientist of a division within the South Florida Water Management District until he was given a written reprimand, demoted and transferred to a different geographical region. Toth sought to challenge the agency action, but the trial court dismissed because he was an at-will employee. The DCA noted that in order to obtain review of the action of an administrative agency, a person's "substantial interests" must have been determined, and Toth had no such interest. The DCA cited cases from other districts to support the view that without specific contractual protections, at-will employees lack standing for such challenges.

"Because Toth was an at-will employee, and there is no statute or rule which would give him the required substantial interest, he was not entitled to an administrative hearing. We accordingly affirm the dismissal of his petition," the DCA said.

[Toth v. South Florida Water Management District, 2/9/05]

"Invited defamation" defense re: state worker's firing

In a case stemming from a state agency's firing of an employee, the 4th DCA said a worker's request that his employer explain the reasons why he was fired constitutes a complete defense to a defamation action based on the employer's explanation.

Garvey Charles sued the Department of Children and Families and one of its human resources workers after he was terminated. At a formal dismissal meeting with a supervisor and the human resources employee, Charles repeatedly asked why he was being dismissed. The human

resources worker responded that Charles was being terminated because of his "criminal lifestyle." Charles alleged that the statement was defamatory and untrue, and that the worker knew it was untrue but said it with express malice or improper purpose. The DCA concluded that Charles' request for the reason for his termination applied the invited defamation defense, and affirmed an order granting summary judgment in favor of the department.

"The facts demonstrate that this was a case of 'invited defamation,' which is a complete defense to an action for defamation. . . . Here, at the dismissal meeting, Charles's request that the Department explain his termination invited (the) response within the meaning of the invited defamation defense," the DCA said. "Applying the invited defamation defense in an employment setting such as this encourages employers to be forthright in stating their reasons for a negative employment decision." [*Charles v. Department of Children & Families, et al.*, 2/9/05]

Entrapment argument

A trial court incorrectly dismissed charges against a defendant because the issue of entrapment was not resolved due to a factual dispute between the state and the defendant, the 4th DCA concluded.

Julio Blanco was charged with a drug offense. After authorities received tips about drugs being sold at a bar, an undercover officer entered the bar and approached Blanco, who was by himself. After a brief conversation, the officer gave Blanco money to get drugs for the officer. When Blanco returned with the drugs, the officer took Blanco's phone number and left. Blanco was arrested two weeks later. The trial court granted Blanco's motion to dismiss the charges based on entrapment, but the state appealed and the DCA reversed.

"The trial court failed to limit its consideration to the conduct of law enforcement. Rather, it focused its attention on the effect of the officer's conduct on the defendant, the defendant's subjective perception of the situation, and his apparent lack of predisposition to commit the offense. Respectfully, those factors are irrelevant to a ruling when it is objectively analyzed on due process grounds," the DCA said.

[*State v. Blanco*, 3/2/05]

5TH DISTRICT COURT OF APPEAL

Search and seizure - invalid detention

A police encounter with a motorist ceased to be consensual when one of the officers asked the driver to stay with him while a fellow officer searched the vehicle, and therefore the subsequent discovery of drugs in the man's pocket was invalid, the 5th DCA held.

William Woods III was stopped by a deputy because he was driving at night with no lights on. A second deputy was called to the scene for backup. After being told he was only going to receive a warning, Woods acted unusually nervous and repeatedly put his hands in his pockets even after being told not to, according to the deputies. Woods was handed back his identification and was heading toward his car when one of the deputies asked if he had any weapons or drugs in the car. Woods consented to a search of the vehicle and offered to help look, but the second deputy asked him to stay with him away from the car. While the car was being searched, the second deputy noticed Woods putting his hands in his pockets again, asked if Woods had any weapons or drugs on him, and eventually asked Woods to empty his pockets. Woods pulled a crack pipe from his pocket and was arrested, and a search incident to the arrest turned up a piece of crack cocaine in Woods' pocket. The DCA held that once the deputy issued Woods a warning citation, the purpose of the stop was satisfied and the deputies no longer had grounds to detain him. The court found that Woods' actions in putting his hands in his pockets and acting nervous did not justify the detention, and therefore the search was invalid.

"(N)o reasonable person, who is stopped nearly at midnight by two deputies, would feel free to ignore a deputy who asks the person to stay away from the other deputy during or at the conclusion of a traffic stop," the DCA said. "Such a detention must be supported by a well-founded, articulable suspicion of criminal activity. However, the fact that Woods had been nervous and had repeatedly put his hands in his pockets was not a legal justification for the detention. Thus, when Woods emptied his pockets, he was being detained unlawfully." [*Woods v. State*, 1/14/05]

Breath-alcohol included within Administrative Suspension law

The 5th DCA has ruled that the provisions of section 322.2615, Florida Statutes, include

breath-alcohol readings. The Court stated: Given the obvious inadvertent failure to include suspensions based on breath-alcohol results in the formal review proceedings, we have little hesitancy in reading the statute to include the omitted language, as we believe the legislature clearly intended. Thus, we read paragraph 322.2615(7)(a) to include formal review for suspensions based on breath-alcohol, as well as blood-alcohol level violations of section 316.193. As we have concluded that the trial court did not apply the correct law, certiorari relief is appropriate. [*Department of Highway Safety and Motor Vehicles v. Patrick*, 2/4/05]

Felony traffic stop - officer safety

Placing an individual in handcuffs and conducting a pat down during a felony traffic stop is reasonable to ensure officer safety, the 5th DCA said.

Charles Prestley was a passenger in a vehicle that was stopped when its license plate came up as stolen. Once the car was stopped all the occupants were ordered out and then were handcuffed and patted down. During the pat down of Prestley, a revolver was found in his pants pocket and he was placed under arrest for carrying a concealed weapon. Prestley contended on appeal that being ordered out of the car, handcuffed and then patted down turned the investigative stop into an arrest. The DCA, however, held that the officers' conduct was within the regulations of a felony traffic stop.

"The fact that officers ordered Prestley out of the vehicle did not transform the investigatory stop into an arrest," the DCA said. "The officers were also entitled to place Prestley in handcuffs to the extent reasonably necessary for officer safety, without converting the investigatory stop into an arrest."

[*Prestley v. State*, 2/25/05]

Admissibility of statements made to news reporter

Voluntary statements made by a defendant individuals not acting as police agents, prior to the defendant receiving any *Miranda* warnings, can be admitted at trial, the 5th DCA ruled.

Abdelhafid Rahmani, a citizen of Morocco, was convicted of two counts of murder and one count of burglary of a dwelling with an assault or battery with a firearm. After Rahmani was detained he asked an investigator for a French

interpreter so he could tell his story to a newspaper reporter. The investigator allowed Rahmani to speak with the reporter and another individual, with both conversations tape recorded. The investigator testified that he did not speak to either person before Rahmani did, and said neither individual was acting on behalf of the police. Rahmani argued that the statements should be suppressed because he was not given *Miranda* warnings before he spoke to the individuals, but the DCA disagreed.

"The trial judge correctly found that (the reporter and interpreter) were not acting under the authority of law enforcement and neither attained the status of a police agent.

Accordingly, the statements were voluntary on Rahmani's part and no *Miranda* warnings had to have been given to make them admissible in court," the DCA said.

[*Rahmani v. State*, 3/4/05]

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