
LEGAL BULLETIN

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

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U. S. SUPREME COURT

Review of Florida law re: felon voting rights

The U.S. Supreme Court refused to review the constitutionality of the Florida law that bans all convicted felons from voting even after they have served their sentences, effectively upholding the validity of the Florida statute.

Without comment, the justices declined to hear a challenge to the Florida law on behalf of some 600,000 felons who had completed their prison sentences and any probation or parole conditions. Under the Florida system, felons who wish to have their voting rights restore must petition the Governor and Cabinet. The court's decision not to review the Florida case leaves intact a ruling by the 11th U.S. Circuit Court of Appeals that Section 2 of the federal Voting Rights Act does not apply to states' felon disenfranchisement laws.

[*Johnson v. Bush*, 11/14/05]

Florida DNA, sex offender registry statutes upheld

The U.S. Supreme Court, without comment, rejected a challenge to the Florida laws that require convicted sex offenders to register with the state – a process that allows their information to be posted on the internet – and to submit DNA samples for comparison to evidence gathered in future cases.

The court refused to review a decision of the 11th U.S. Circuit Court of Appeals, which upheld the statutes in a unanimous 27-page order in June. A group of 10 anonymous sex offenders, identifying themselves only as “John Does,” argued that the statutes violate their equal protection, privacy and travel rights, among others. The justices’ refusal to hear the case effectively ends the challenge to the laws.

[*Doe v. Moore*, 11/8/05]

FLORIDA SUPREME COURT

Internal police documents not available to cop killer

A convicted cop killer was not entitled to internal police department documents in an attempt to show that the officer he killed had a history of using excessive force and therefore may have precipitated the actions that led to his death, the Florida Supreme Court held.

Albert Holland was convicted of the 1990 murder of Pompano Beach Officer Scott Winters as the officer attempted to arrest Holland as a suspect in an attack on a woman. Holland argued that the shooting was an act of self-defense and sought internal police documents to cast Officer Winters’ actions into doubt. The court rejected Holland’s assertion that he was entitled to the records and that his attorney was ineffective for failing to successfully pursue the documents.

“These internal police records were not admissible; therefore, appellate counsel cannot be deemed deficient for failing to raise this issue,” the unanimous court said. “(B)efore a defendant may introduce evidence of the victim’s character, he must first show that there was an ‘overt act by the [victim] at or about the time of the [incident] that reasonably indicated a need for [self-defense].’ Holland failed to establish this prerequisite. The trial record does not support his claim that Officer Winters committed an overt act that would have caused Holland to act in self-defense. In fact, the record evidence of undisputed eyewitness testimony is that Officer Winters did not commit an overt act.”

[*Holland v. State*, 11/10/05]

Social security number - workers’ comp

A Florida statute requiring applicants for workers’ compensation to provide their social security number violates the federal Privacy Act of 1974 and therefore is invalid, the Florida Supreme Court held.

Agreeing with the reasoning of the 1st DCA, the justices unanimously rejected a judge of compensation claims’ order striking Ricardo

Cagnoli's petition for workers' comp benefits because the injured worker failed to include his social security number, as required by section 440.192, F.S. On appeal, Cagnoli pointed out that the Privacy Act prohibits federal, state or local governments from denying benefits strictly because the claimant refuses to disclose his social security number to verify his identity. The DCA, and subsequently the Supreme Court, agreed with Cagnoli and rejected the JCC's decision.

The justices ordered further proceedings on Cagnoli's application for benefits.
[*Division of Workers' Compensation v. Cagnoli*,
11/3/05]

FIRST DISTRICT COURT OF APPEAL

Jury instructions - justifiable use of force
Where a defendant wishes to claim self-defense, he must clearly show that his life was in imminent danger in order for the jury to be instructed on the theory, the 1st DCA said.

Kwamin Thomas received two life sentences for the fatal shootings of Troy Johnson and Randy Mack outside a Gainesville club in 2002. Johnson and Mack apparently had started a fight with Thomas for no clear reason. Thomas obtained a gun and shot Johnson and Mack, both of whom were unarmed. Thomas made statements that he was not aware of the victims carrying any weapons and that he was not acting to defend himself. However, Thomas argued on appeal that the jury was improperly instructed when it was told that justifiable use of force could not be found if the defendant was committing a murder. The DCA found that the jury instruction was not given in error.

"A reasonably prudent person would have realized that no justification remained for the use of deadly force under the undisputed circumstances of this case," the DCA said.
"Accordingly, appellant Thomas was not entitled to an instruction on self-defense."
[*Thomas v. State*, 11/15/05]

SECOND DISTRICT COURT OF APPEAL

Felony DWLSR conviction upheld for operation of an electric scooter powered by two twelve volt batteries

Toby Inman appealed his conviction for Driving While License Suspended or Revoked-Third or Subsequent, in violation of section 322.34(2)(c), Florida Statutes (2004). Inman was driving a seated, two-wheeled, battery-powered electric vehicle on a public street when he was ticketed for driving with a suspended or revoked license. He moved to dismiss the charge, arguing that the vehicle was not a motor vehicle as defined in section 322.01(26) and, therefore, he was not required to have a driver's license. The trial court denied the motion, and Inman entered a plea of nolo contendere, reserving his right to appeal the denial of the motion to dismiss. The 2nd DCA affirmed his felony conviction for DWLSR.

The vehicle Inman was operating was a SunL E-21 Electric Scooter. The user's manual describes the vehicle as being 1080 millimeters (roughly 3.5 feet) long, 440 millimeters (roughly 1.4 feet) wide, and 960 millimeters (roughly 3 feet) high and weighing 28 kilograms (roughly 62 pounds). Each of the two tires was twelve inches in diameter. The vehicle was powered by two twelve-volt rechargeable batteries; there was no additional or alternate source of power, such as bicycle-like pedals allowing for user-generated propulsion. There was a seat, apparently adjustable for height. The vehicle's maximum speed was listed as eighteen kilometers per hour (about eleven miles per hour). Its range per battery charge was ten kilometers (a little over six miles). The 2nd DCA held: "However, to be excluded from the definition of 'motor vehicle,' Inman's vehicle would have to be explicitly included in the list of excluded vehicles.....[b]ecause it is not, the vehicle falls within the definition of 'motor vehicle' found in section 322.01(26) [Florida Statutes]."

[*Inman v. State*, 12/14/2005]

THIRD DISTRICT COURT OF APPEAL

Right to remain silent - statements suppressed
Because police officers continued to question a defendant after he had expressed his wish to remain silent, the statements should have been suppressed, the 3rd DCA held.

Benjamin Smith was convicted of several charges relating to an armed carjacking. Smith told officers he wished to assert his right to remain silent, but the officers kept questioning

him. Smith moved to have the court suppress any statement he made after invoking his right to remain silent, but the trial court denied the request. On appeal, the DCA reversed, finding that the officers should have stopped asking questions after Smith expressed his desire for questioning to stop.

“The record shows that defendant’s incriminating statements were made in response to police questioning which improperly . . . followed an unequivocal expression of his wish to remain silent,” the DCA said. “Because we cannot find this error harmless beyond a reasonable doubt, a new trial is required on the charges to which the statements were pertinent.”
[*Smith v. State*, 11/16/05]

Illegal stop by off-duty officer

An off-duty officer may not lawfully conduct a traffic stop outside of his jurisdiction, even if the vehicle ultimately comes to a stop within the city limits that define the officer’s jurisdiction, the 3rd DCA held.

An off-duty Coral Gables Police Officer observed Richard Pipkin driving erratically and used his siren and overhead lights to pull Pipkin over. When the officer saw Pipkin, the vehicle was on a road just west of the Coral Gables city limit, but Pipkin eventually pulled over and stopped approximately 70 feet inside the city limit. Because he was off duty, the officer called for another officer to handle the stop. Pipkin refused to submit to a breath-alcohol test, and his driver’s license was suspended for one year. However, the trial court ruled that the first officer did not have the authority to pull Pipkin over, and therefore the ensuing field sobriety test and Pipkin’s refusal to submit to a breath-alcohol test could not be used as evidence. The state appealed, but the DCA affirmed the lower court’s decision.

“Because the record is devoid of evidence of conduct within the City of Coral Gables on which the stop in this case can be justified, the stop was illegal. Since the stop was illegal, Pipkin’s subsequent arrest was illegal,” the DCA said.
[*State v. Pipkin*, 11/9/05]

Illegal search and seizure

The arrest and search of a defendant was illegal because law enforcement officers could not prove the man was ever in actual possession of drugs the officers were tracking, the 3rd DCA held.

Jaime Edwards Dominguez-Reyes was seen

entering a warehouse where U.S. Customs officers were monitoring a shipment of illegal drugs that had been flown into the country. When Dominguez-Reyes left the warehouse separately from the individual who had brought the drugs to the warehouse, he was stopped at gunpoint, ordered out of his car and searched. The search found heroin from the monitored shipment, and Dominguez-Reyes was arrested and convicted on drug charges. On appeal Dominguez-Reyes argued that because officers did not see what transpired within the warehouse, they had no probable cause to search him or his vehicle and had no reason to arrest him in connection with the drugs. The DCA agreed and reversed.

“The search of Dominguez-Reyes and his vehicle was conducted in the unfettered discretion of the Customs agents, who did not have a warrant, probable cause, or consent to do so,” the DCA said. “The trial court erred by denying Dominguez-Reyes’ motion to suppress both the physical and testimonial evidence.”
[*Dominguez-Reyes v. State*, 11/2/05]

FIFTH DISTRICT COURT OF APPEAL

Admissibility of blood alcohol test results
A trial court correctly excluded medical records indicating a driver’s blood alcohol level because a police officer did not act in good faith to obtain the records for trial, the 5th DCA held.
Matthew Kutik was involved in a fatal traffic accident. During Kutik’s treatment, hospital personnel tested his blood and determined his blood alcohol level. A police officer obtained Kutik’s blood alcohol level from his medical records, but did not get his permission to review the medical records and did not request that blood be drawn and tested pursuant to section 316.1933(1), F.S. Kutik’s counsel moved to have the records excluded, and the trial court granted the motion. The DCA affirmed, concluding that the officer failed to act in good faith to obtain the test results.

“Although (the officer) may not have known the statutory requirements . . ., that ignorance does not establish good faith,” the DCA said. “Here, the exclusionary rule applies because the State failed to establish that (the officer) made a good faith effort to comply with the statute.”
[*State v. Kutik*, 11/4/05]

ATTORNEY GENERAL'S OPINIONS

Number: Informal Opinion

Date: November 15, 2005

Subject: Motor vehicle records—release of personal information.

In an informal opinion, the Attorney General noted that it appears that section 119.0712(2), Florida Statutes, prohibits the Department of Highway Safety and Motor Vehicles from releasing personal information from motor vehicle records for use in mass commercial solicitation of clients for litigation against motor vehicle dealers, but does not necessarily restrict the release of this information for use in litigation against motor vehicle manufacturers, importers, or distributors. The Opinion further states: "I would note that this informal opinion is limited to the factual situation you have presented, i.e., the records have been requested by an attorney who currently represents a client for use in connection with litigation." "This opinion does not address and should not be understood to comment on a situation in which these records are requested by an attorney who is seeking release of these records for purposes of a bulk solicitation of clients but is not currently representing a client in such a matter." "Further, the Legislature may wish to revisit this provision of section 119.0712(2), Florida Statutes, to more clearly express its intent regarding the issues raised by your request."

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