

LEGAL BULLETIN

PROVIDING HIGHWAY SAFETY AND SECURITY THROUGH EXCELLENCE IN SERVICE, EDUCATION, AND ENFORCEMENT

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VOLUME MMVIII, ISSUE 11

Florida Supreme Court

No error in denial of motion to suppress defendant's statements made to law enforcement officers prior to being read *Miranda* rights where defendant failed to demonstrate that he was in custody prior to being read *Miranda* rights or that he had sought to terminate interview.

Hunter testified that after his arrival at the sheriff's office he was told he was free to leave and that he was not under arrest. At no time did Hunter say he wanted to leave, and he admitted that he was told he could have a ride home

The trial court further found that the investigators advised Hunter of his rights when they concluded he was a suspect and that their conduct made sense, was reasonable, and seemed to be careful and deliberative.

Miranda warnings are required only when

an individual is undergoing custodial interrogation. The Florida Supreme Court in *Ramirez v. State*, 739 So.2d 568 (Fla. 1999), explained,

A person is in custody if a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest. "The proper inquiry is not the unarticulated plan of the police, but rather how a reasonable person in the suspect's position would have perceived the situation."

The *Ramirez's* court set out four factors for a trial court to consider in determining if a suspect is in custody:

- (1) *the manner in which the police summon the suspect for questioning;*
- (2) *the purpose, place, and manner of the interrogation;*
- (3) *the extent to which the suspect is confronted with evidence of his or her guilt; and*
- (4) *whether the suspect is informed that he or she is free to leave the place of questioning.*

The district court agreed with the trial court's finding that Hunter failed to show that he was in custody prior to being read his *Miranda* rights or had sought to conclude the interview.

[Hunter v. State, 9/25/08]

2nd District Court of Appeals

Trial court did not err in dismissing the concealed firearm charge; unloaded firearm and ammunition were not “readily accessible for immediate use.”

The State appealed an order dismissing count I of an information charging Weyant with carrying a concealed firearm (count I), possession of cannabis (count II), and reckless driving (count III). The trial court concluded, “the unloaded gun was not readily accessible for immediate use.”

The record revealed that Weyant had an unloaded firearm in his vehicle wedged between the two front seats and the magazine for the firearm, containing six live rounds, was located in the closed center console. In his dismissal motion, Weyant argued that “because the firearm was unloaded and the ammunition was securely encased, [he] was not carrying the firearm in such a manner that it could have been retrieved and used as easily and quickly as if carried on his person.” The State argued, “the proximity of the unloaded firearm and ammunition made it readily accessible and easy to quickly obtain and place into the firearm.” That “the firearm could be loaded and fired ‘pretty quickly’ or ‘in a fairly quick manner.’”

The 2nd DCA concluded that in order for

Weyant to use the firearm, he would have had to pull the unloaded firearm out from between the two front seats, “open the center console, retrieve the magazine and load the firearm before using it.” Thus, the 2nd DCA held that “under the applicable law, including the liberal construction that must be applied pursuant to section 790.25(5), the trial court correctly determined that the firearm was not readily accessible for immediate use” and affirmed the trial court’s dismissal of the concealed firearm charge.

[*State v. Weyant*, 09/19/08]



Opinion: 2D07-3609Weyant.pdf

4th District Court of Appeals

Advising a DUI arrestee of consequences of refusing to submit to a breath test is not a prerequisite to the admissibility of the breath test results into evidence

The Circuit court did not depart from essential requirements of law by affirming suspension of driver's license of licensee whose breath test results were over legal limit, despite contention by licensee, a New Jersey resident, that her consent to breath test was coerced by officer's misstatement of New Jersey law concerning consequences of refusal.

Advising a DUI arrestee of the consequences of refusing to submit to a breath test is not a prerequisite to the

admissibility of the breath test results into evidence. The implied consent requirements of section 316.1932(1)(a) are not limitations on the admissibility of competent evidence.

There is no basis for adopting a more stringent evidentiary requirement in an administrative hearing.

[Kirpalani v. Department Of Highway Safety & Motor Vehicles, 10/08/08]



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