

# LEGAL BULLETIN

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

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VOLUME MMX, ISSUE 1

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## 11th Circuit Court of Appeals

**The Department of Highway Safety & Motor Vehicles can use a private vendor to send out renewal notices and accompanying advertisements without violating the Driver's Privacy Protection Act.**

The Florida Department of Highway Safety & Motor Vehicles contracted with Imagitas to send renewal notices to Florida drivers. Imagitas additionally arranged for advertising brochures to be included in the mail-outs. Some Florida drivers who received the notices sued claiming that the State and Imagitas had violated the Driver's Privacy Protection Act. The district court granted summary judgment in favor of the Defendants holding that the Driver's Privacy Protection Act had not been violated.

The Eleventh Circuit affirmed stating, "There is nothing in the federal statute that prevents states from including advertisements in such renewal notices and

the same statute specifically allows states to operate through private contractors."

[*Rine v. Imagitas*, 12/21/09]



11circvRine.pdf

## 1st District Court of Appeal

**Knowledge of contents of trashcan obtained illegally; evidence never presented that "absent the knowledge gained . . . the officers would have legally searched the garbage" once placed curbside.**

The State appealed "an order suppressing physical evidence and inculpatory statements made by Appellee, Deon A. Edward, which were obtained after officers executed a search warrant of Edward's residence and a subsequent arrest warrant."

The evidence at issue were bloodied items

(shoes and article of clothing) seen inside a trashcan. Detectives went to Edward's home to interview him, as he was a person of interest in a homicide investigation. No one was home and the detectives were "uncertain if the home was occupied," so one detective lifted the lid of the trashcan to see if there was any trash. They saw the bloodied items but did not seize them. After the trashcan was taken to the curb "the bloodied items and a black carry-on-bag were seized from the trash." The record revealed that "the evidence which was retrieved was cited in the applications for the search warrant and arrest warrant which were subsequently issued." The State conceded the initial search was illegal, however, the State argued that once "the trashcan was placed on the street for collection, the contents therein were abandoned and Edward had no reasonable expectation of privacy in the trash."

The 1st DCA concluded the State's argument "ignores the fact that the police acquired knowledge of the contents of the trash illegally, and the State never introduced evidence that, without this knowledge, officers would have nonetheless searched the trashcan."

The exclusionary rule provides that evidence obtained directly or indirectly from a violation of the fourth amendment is not admissible against an accused at trial. Wong Sun v. United States, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963). The harsh consequences of the "fruit of the poisonous tree" doctrine are ameliorated by three crucial exceptions. A court may admit such evidence if the state can show that (1) an independent source existed for the discovery of the evidence, Silverthorne Lumber Co. v. United States, 251 U.S. 385,

40 S. Ct. 182, 64 L. Ed. 319 (1920); (2) the evidence would have inevitably been discovered in the course of a legitimate investigation, Nix v. Williams, 467 U.S. 431, 104 S. Ct. 2501, 81 L. Ed. 2d 77 (1984); or (3) sufficient attenuation existed between the challenged evidence and the illegal conduct, Wong Sun.

State v. Griffith, 500 So. 2d 240, 243 (Fla. 3d DCA 1986) (emphasis added). The 1st DCA affirmed finding that "the State failed to present sufficient evidence that any of these exceptions apply."

[*State v. Edward*, 12/22/09]



1D08-5032Edward.pdf

**Trial court erred denying motion for judgment of acquittal; state failed to make prima facie case for fleeing or attempting to elude a police officer. NOTE: "marked patrol car" is not enough – need to establish "with agency insignia and other jurisdictional markings prominently displayed on the vehicle."**

Slack, convicted for fleeing or attempting to elude a law enforcement officer, appealed his conviction arguing "the trial court erred by denying his motion for judgment of

acquittal, premised upon the state's failure to show that the vehicle driven by the law enforcement officer from whom Mr. Slack fled contained agency insignia prominently displayed."

Section 326.1935(2), Florida Statutes (2006), provides:

Any person who willfully flees or attempts to elude a law enforcement officer in an authorized law enforcement patrol vehicle, with agency insignia and other jurisdictional markings prominently displayed on the vehicle, with siren and lights activated commits a felony of the third degree . . .

(Emphasis added.)

The record revealed that Deputy Stone testified that after he had passed a two-door Mercury vehicle, whose taillights were not working, "he turned around and decided to initiate a traffic stop." The deputy testified "he was driving a 'marked patrol car, lights on top' and he was wearing a uniform . . ." He further testified "in order to stop the Mercury, he engaged his exterior lights and activated his siren." Defense moved for a judgment of acquittal arguing "I don't believe there was any testimony about the insignia on the vehicle. I have a case that says they must establish this was a law enforcement vehicle that has a law enforcement insignia." Defense counsel relied on Gorsuch v. State, 797 So. 2d 649 (Fla. 3d DCA 2001). The motion was denied as the trial judge reasoned: "He did refer it was a marked patrol vehicle, and he did identify himself as a member of the sheriff's department . . ." It was noted in the opinion that the jury was "correctly instructed it had to find that '[t]he law enforcement officer was in an authorized law enforcement patrol vehicle with agency

insignia and other jurisdictional markings prominently displayed on the vehicle and with siren and lights activated."

The 1st DCA determined that "while Deputy Stone testified he was driving a 'marked patrol car' with 'lights on top' and that he activated his lights and siren, there was no evidence there was 'agency insignia and other jurisdictional markings prominently displayed on the vehicle.'" § 326.1935(2), Fla. Stat. (2006). The 1st DCA concluded "that not all markings on law enforcement vehicles constitute agency insignia was made clear in Gorsuch."

The 1st DCA concluded that "[b]y neglecting to bring forth any evidence that Deputy Stone's vehicle contained agency insignia or other jurisdictional markings, the state failed to make out a prima facie case of fleeing or attempting to elude a law enforcement officer in violation of section 326.1935(2)." The 1st DCA reversed, holding that the trial court erred by denying Slack's motion for judgment of acquittal.

[*Slack v. State*, 01/12/10]



1D07-6305Slack.pdf

## Carrying a concealed firearm.

Evans was convicted of carrying a concealed a firearm, where defendant was inside her vehicle with a concealed firearm at the time law a enforcement officer initiated a traffic stop. The deputy approached the vehicle, ordered Evans out of the vehicle, and a firearm was found in the front passenger seat under some papers immediately after defendant had exited vehicle.

The deputy received information that a 911 caller provided the name of the appellant as the driver of the white pick-up, and the caller stated that the appellant possessed a firearm, had been drinking, and had threatened to kill her boyfriend. Deputy Goodwin initiated a traffic stop and asked the appellant to get out of the vehicle; at that time the deputy asked whether she had a firearm, and the appellant told him she had a firearm in the car. The deputy testified that the appellant had bloodshot eyes, slurred speech, smelled of alcohol, and failed the field sobriety tests. He also testified that prior to placing the appellant under arrest for driving under the influence, she became combative. Deputy Goodwin handcuffed the appellant, placed her in his car, and found the firearm in the front passenger seat under some papers.

The court opined in upholding the conviction:

As argued by the appellee, it is contrary to reason to require a law enforcement officer to approach a vehicle containing an armed, angry, and intoxicated suspect in order to fulfill the statutory requirements of section 790.01(2), Florida Statutes.

[*Evans v. Florida*, 12/31/09]



EVANS.doc

## 2nd District Court of Appeal

**Plaintiff should have been allowed to amend**

**complaint to determine whether probable cause ceased to exist after her initial arrest.**

Plaintiff, who was suing for false arrest sought to amend her complaint to include a count for false imprisonment. The trial court denied her motion to amend based on the fact that the officers had probable cause to make the arrest.

The Second District reversed saying, "Although probable cause existed at the time Ms. Mathis was arrested at the scene, she may be able to demonstrate that probable cause evaporated at some point after she was transported to CBT and jailed."... Ms. Mathis should have been given leave to amend her complaint to pursue claims as to whether she was unlawfully detained after, and if, probable cause ceased to exist to justify her continued detention."



2dcacvMathis.pdf

## 3rd District Court of Appeal

**Valid consent to search vehicle did not authorize law enforcement officers to order occupants out of the vehicle and place them in handcuffs for a lengthy**

## period of time in the back of a police vehicle.

After a legitimate traffic stop, Officer Maharaj was concerned for his safety when two of the car's occupants were speaking Spanish. Officer Maharaj while asking Hidelgo questions noticed that her voice had changed, she slurred, and became nervous. The officer then asked the driver, Canteras, and Hidelgo "Do you have a problem if we look into the vehicle?" Both said no.

A second officer asked Hidelgo to get out of the car, patted her down and handcuffed her. Hidelgo was taken to Office Fernandez's patrol car and closed the door. Carteras was placed in Officer Maharaj's patrol car. The twelve-year-old daughter was permitted to stay in the back seat of the Carteras' car.

In addition to Officers Maharaja and Fernandez, another four officers were at the scene. No contraband was found and they were permitted to leave. The search took about 15 to 25 minutes. After they left, Officer Fernandez discover a bag of cocaine in the back seat of his patrol car. They drove after the car and arrested Hidelgo.

The court in its analysis reviewed several cases and ultimately opined that the valid consent to search a vehicle does not authorize law enforcement officers to order the occupants out of a vehicle, place them in handcuffs and hold them in the back of a police vehicle for a lengthy period of time.

The court, in citing the Florida Supreme Court in Reynolds v. State, 592 So.2d 1082 (Fla 1992), stated:

We do not suggest that police may routinely handcuff suspects in order to conduct an investigative stop. Whether such action is appropriate depends on whether it is a reasonable response to the demands of the situation. When such restraint is used in the course of an investigative detention, it must be temporary and last no longer than necessary to effectuate the purpose of the stop. The methods employed must be the least intrusive means reasonably available to verify or dispel in a short period of time the officers' suspicions that the suspect may be armed and dangerous. United States v. Glenna, 878 F.2d at 972. *Absent other threatening circumstances, once the pat-down reveals the absence of weapons the handcuffs should be removed. (emphasis added).*

[Hidelgo v. State, 12/23/09]



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## 4th District Court of Appeal

**Trial court did not err in summarily denying motion to suppress evidence; police encounter was consensual.**

Woods, adjudicated guilty of possession of a firearm by a convicted felon, possession of ecstasy, possession of cocaine, and

possession of less than twenty grams of marijuana, appealed the denial of his motion to suppress the evidence arguing his encounter with the police was not consensual. Woods asserted that “when the officers asked the individuals to step outside the apartment, the encounter evolved into an investigative stop.”

The record reveals that police officers received an anonymous tip regarding a homicide in the apartment building that Woods resided in. Three officers knocked on Wood’s apartment door and when all the individuals appeared at the door, the police informed them “they were investigating a homicide and asked the individuals to step outside to talk.” Everyone complied without resistance, however, after Woods exited the apartment without a shirt on, he asked if he could go back inside to get a shirt. “Officer Nubin replied that he could, but that she would have to accompany him for officer safety reasons.” Officer Harris asked, “Are you sure it’s all right if we follow you back to your room?” and Woods said “Yes.” When the officers accompanied Woods back to his room, they “saw in plain sight a bag of marijuana and a bag of what appeared to be crack cocaine.” A search warrant was executed and “marijuana, cocaine and firearms were recovered.” Woods was free to leave up to the point when the officers saw the marijuana in his room. The trial court found the officers’ account of what transpired more credible than the witnesses and found the encounter consensual.

The 4th DCA cited to State v. Triana, 979 So. 2d 1039 (Fla. 3d DCA 2008), because of its similarity to the instant case and because it “properly considers the factors considered in *Mendenhall*,” which was the “totality of the circumstances” approach. United States v. Mendenhall, 446 U.S. 544 (1980). Based on the totality of the circumstances, the 4th DCA concluded

there was no Fourth Amendment violation in the instant case and affirmed the denial of the suppression motion. “The officers never acted in a threatening manner, never drew their weapons, and never raised their voices or ordered the residents to do anything against their will.”

[*Woods v. State*, 01/13/10]



4D08-4556Woods.op.pdf

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