
LEGAL BULLETIN

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

FRED O. DICKINSON, EXECUTIVE DIRECTOR

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U.S. Supreme Court

Illegal arrest taints murder confession

A murder confession must be suppressed where police arrested the defendant without probable cause and the state failed to allege "any meaningful intervening event" breaking the connection between the illegal arrest and the confession, the U.S. Supreme Court held.

The court unanimously reversed a Texas Court of Appeals decision that found police had not arrested the 17-year-old defendant until after he confessed. Richard Kaupp was awakened at 3 a.m., handcuffed, put in a patrol car and taken to a police station, where he was Mirandized and then confessed. Detectives had previously made an unsuccessful attempt to obtain a warrant to question Kaupp. After the murder victim's half-brother admitted to killing his sister and implicated Kaupp in the crime, three police officers and two undercover agents went to Kaupp's home and told him, "We need to go and talk." The state did not claim to have probable cause for the arrest but contended the teenager consented to go with the officers. The Supreme Court concluded that a Fourth Amendment seizure had occurred and remanded the case for further proceedings. "Kaupp's 'Okay' in response to Pinkins's statement is no showing of consent under the circumstances. Pinkins offered Kaupp no choice, and a group of police officers rousing an adolescent out of bed in the middle of the night with the words 'we need to go and talk' presents no option but 'to go,'" the court said in an unsigned opinion. "Unless, on remand, the state can point to testimony undisclosed on the record before us, and weighty enough to carry the state's burden despite the clear force of the evidence shown here, the confession must be suppressed."

[*Kaupp v. Texas*, 5/5/03]

Miranda - incriminating statements in non-criminal cases

Police questioning of a seriously wounded suspect at a hospital without reading him his *Miranda* rights did not violate the constitutional privilege against self-incrimination, where the suspect was never charged and no statements were used against him at trial, the U.S. Supreme Court held.

Oliverio Martinez filed a civil rights lawsuit against law enforcement authorities, maintaining that his Fifth Amendment privilege against self-incrimination and substantive due process rights had been violated when officers insisted on interviewing him at a hospital where he was being treated for gunshot wounds. Martinez was severely injured during an altercation with police, leaving him permanently blinded and paralyzed. Between medical treatments at the hospital officers continued questioning Martinez even after he asked them to stop. Officers never read Martinez his *Miranda* warnings. The trial court and an appeals court agreed that the officers had coerced a confession from Martinez, thus violating his constitutional rights, but the Supreme Court disagreed.

Writing in part for the majority, Justice Thomas rejected Martinez's civil rights claim, finding that police questioning did not violate the Fifth Amendment privilege and the officers were entitled to qualified immunity. Writing for the Court as to another part of the opinion, Justice Souter remanded Martinez's substantive due process claim on the issue of liability.

[*Chavez v. Martinez*, 5/27/03]

11th U.S. Circuit Court of Appeals

Warrantless search - automobile exception

Under the automobile exception to the Fourth Amendment, a warrantless search was justified where a suspect's vehicle was operational and a canine unit alerted police to drugs located in the car, the 11th U.S. Circuit Court of Appeals held in a Florida case.

As part of a surveillance investigation into Steven Watts' suspected drug trafficking activities, federal agents obtained a search warrant for Watts' residence but not for his parked car. After a drug-detection canine alerted on Watts' car, officers searched the vehicle and found cocaine. The trial court granted Watts' motion to suppress, in part on the basis that there were no exigent circumstances to justify the search under the automobile exception. Reversing, the 11th Circuit said the trial court erred in concluding that the automobile exception required a separate showing of exigent circumstances.

"It is clear from the above case law that there are only two questions that must be answered in the affirmative before authorities may conduct a warrantless search of an automobile. The first is whether the automobile is readily mobile. The second prong of the test, probable cause, is determined under the facts of each case," the 11th Circuit said.

[*U.S. v. Watts*, 5/8/03]

Florida Supreme Court

Sentencing discretion for DUI cases

Statutory mitigators may be used to support a downward departure sentence for felony DUI, the Florida Supreme Court held, resolving a conflict between the 2nd and 4th DCAs.

The state appealed a downward departure sentence given to Paul VanBebber after he pled nolo contendere to drunk driving stemming from an accident in which a man was killed. The 2nd DCA affirmed the sentence based on the specific statutory mitigator that the offense was committed in an unsophisticated manner and was an isolated incident for which VanBebber showed remorse. The Supreme Court agreed, concluding that the mitigator is available for DUI convictions.

Disapproving a contrary holding from the 4th DCA, the Supreme Court reasoned, "We find that no conflict is created by holding section 921.0026(2)(j) applicable to felony DUI convictions. Under subsection (3), intoxication at the time of the offense cannot be used as a mitigating factor to support a downward departure from a sentence under the sentencing guidelines. There is no prohibition, however, against using the mitigators listed in section 921.00226(2) in cases where the *offense* is intoxication."

Assistant Attorneys General Robert J. Krauss, Senior Attorney General, and Ronald Napolitano represented the state on appeal.

[*State v. VanBebber*, 5/8/03]

Search and seizure - unlawful detention of driver

Once an officer is satisfied that a driver's temporary tag is valid, continued detention of the motorist is illegal, the Florida Supreme Court held.

A vehicle driven by Johnny Diaz was stopped because the officer could not read the expiration date of the temporary tag. As the officer approached the car, he was able to clearly read the tag information and found nothing improper.

Nevertheless, the officer asked Diaz for information that ultimately led to the discovery that Diaz was driving with a suspended license. The trial court granted Diaz's motion to suppress the information and the 2nd DCA agreed. The state appealed, but the Supreme Court affirmed the DCA while

disapproving contrary holdings from the 4th and 5th DCAs.

"Because the sheriff's deputy had no justification for further detention, anything more than an explanation of the stop was a violation of Mr. Diaz's Fourth Amendment rights," the Supreme Court said.

[*State v. Diaz*, 5/15/03]

State employee's suit under FMLA

State employees may recover money damages in federal court if their state fails to comply with family care provisions of the Family and Medical Leave Act of 1993, the U.S. Supreme Court held.

The court said Congress may abrogate states' Eleventh Amendment immunity from suit in federal court if it makes its intention to do so unmistakably clear in the language of the statute. The 6-3 ruling came despite the court's recent trend in favor of states in a series of federalism decisions. The decision was a victory for Nevada welfare worker William Hibbs, who was fired after taking leave to care for his wife, who was seriously injured in a car accident. Hibbs sued in federal court claiming the state did not allow him the full 12 weeks of family leave required by the federal law. A trial court said Nevada was immune from the lawsuit, but an appeals court reversed and the Supreme Court agreed. Writing for the majority, Chief Justice Rehnquist noted that the court recognized a history of discrimination when it approved the abrogation of state sovereignty contained within Title VII of the Civil Rights Act of 1964, and said the same reasoning applies where states have relied on invalid gender stereotypes in the employment context.

"By creating an across-the-board, routine employment benefit for all eligible employees, Congress sought to ensure that family-care leave would no longer be stigmatized as an inordinate drain on the workplace caused by female employees, and that employers could not evade leave obligations simply by hiring men. By setting a minimum standard of family leave for *all* eligible employees, irrespective of gender, the FMLA attacks the formerly state-sanctioned stereotype that only women are responsible for family caregiving, thereby reducing employers' incentives to engage in discrimination by basing hiring and promotion decisions on stereotypes," the Chief Justice wrote.

[*Nevada Department of Human Resources v. Hibbs*, 5/27/03]

1st District Court of Appeal

Search and seizure - induced vomiting of cocaine

Exigent circumstances — a life-threatening emergency coupled with imminent destruction of

evidence — justified the use of a common medical procedure to extract a plastic bag containing cocaine from a suspect's stomach, the 1st DCA held. Abraham Hendrix challenged the denial of his motion to suppress cocaine removed from his stomach. Police rushed Hendrix to a hospital after he swallowed a baggie of cocaine as he sat in the back seat of a patrol car. At the hospital Hendrix refused treatment. Hendrix vomited the cocaine baggie after emergency room physicians used a treatment protocol for ingested toxins. The doctors testified that Hendrix could have died from the cocaine and plastic freezer bag. Hendrix argued that the nonconsensual removal was an unconstitutional, unreasonable search and seizure. The DCA disagreed.

"(I)t is apparent from the evidence that the procedure entailed virtually no threat to appellant's safety or health. The procedure was a common treatment protocol, performed in a hospital emergency room by physicians. It was minimally intrusive, and generally involved no more than some 'abdominal discomfort,'" the DCA noted.

[*Hendrix v. State*, 5/01/03]

Agency discretion in granting formal hearing

Administrative agencies are not required to grant a formal hearing just because a party requests one, if the material facts are not in dispute even though disagreements remain over other facts, the 1st DCA said.

The court affirmed an order of a licensing board of the Department of Business and Professional Regulation imposing a \$3,000 fine on an electrical contractor who failed to comply with a work-related judgment against him. The agency's order erroneously said the contractor had admitted the facts and requested an informal hearing, but the DCA said this misstatement is harmless because the essential fact that the contractor failed to pay the judgment was not in dispute.

"When material facts are not in dispute, an agency need not refer a matter to the Department of Administrative Hearings for a formal hearing, even if such a hearing is requested by a party. It may, instead, proceed informally," the DCA said. "No additional facts were necessary to establish the violation with which appellant was charged. Accordingly, the Board was free to proceed informally, and to enter the challenged order."

[*Schafer v. Department of Business and Professional Regulation*, 5/9/03]

Improper state actions stemming from agency merger

The 1st DCA, concluding that a state agency erred in a ruling against a police union, gave the state and the union 60 days to resolve their dispute or deal

with the disruptive impact of returning to work schedules abandoned two years ago.

The case arose from the creation of the Florida Fish and Wildlife Conservation Commission and the merger of law enforcement units from two combined agencies. After some limited negotiations, the state Department of Management Services unilaterally changed the work schedules of unionized law enforcement officers, prompting the union to file an unfair labor charge against the state. A hearing officer agreed with the union and recommended a return to the *status quo ante*, or work schedules in place before the change. The Public Employees Relations Commission entered a final order that did not order a return to the prior schedules, and the union appealed. On appeal, PERC argued that a change to the prior schedules would be disruptive. The 1st DCA sided with the union, but ordered the union and DMS to negotiate in hopes of avoiding the disruption that would be caused by a return to two-year-old work schedules. If a negotiated settlement cannot be reached within the 60-day period, work schedules must be returned to their status as of May 2001, the DCA said.

"(W)e cannot condone (DMS') position in this appeal that, in essence, asks for an affirmance because of the very consequences attendant to its unfair labor practice. Not to require a return to the status quo ante would be akin to rewarding (DMS) for an unlawful act and would leave (the union) impotent under PERC's rather bland final order. Simply put, PERC abused its discretion by not following the ALJ's recommendation that the parties be returned to the status quo ante on the facts presented in this appeal," the court said. "(DMS') concern for disruption could have best been handled by following recognized collective bargaining principles. The detrimental effect caused by unlawful action cannot be used as a shield to avoid imposition of the appropriate remedy."

[*International Union of Police Associations v. Department of Management Services*, 5/20/03]

2nd District Court of Appeal

Motion to suppress confession denied

For purposes of *Miranda* warnings, a suspect was not subjected to a custodial interrogation where he went voluntarily to the sheriff's office, the questioning took place in a noncoercive atmosphere, detectives informed him of the victim's allegations and he was told he was not under arrest and could leave at any time, the 2nd DCA held.

Frank Cillo appealed his conviction for committing a lewd, lascivious or indecent act on a child less than 16 years of age. Cillo claimed his confession violated his *Miranda* rights and should have been

suppressed. Cillo agreed to go with detectives to the sheriff's office and talk with them, and before questioning Cillo was read his *Miranda* rights. Cillo replied, "I have a lawyer, but I don't know if I can get ahold of him right now." On appeal, Cillo argued that he had made an unequivocal request for an attorney and therefore the custodial interrogation should have ended. The DCA disagreed, concluding that Cillo was not in custody during the interview and had not made an unequivocal request for counsel.

"Based on the totality of the circumstances, in light of the discretion vested in trial judges to weigh all facts in such interviews, we conclude that the State carried its burden in establishing that the interview was not transformed into a custodial interrogation," the DCA said.

[*Cillo v. State*, 5/7/03]

Search and seizure - abandoned contraband

Even if an initial police stop was not justified, the suspect's dropping of cocaine as he ran from officers terminated any seizure and rendered the contraband admissible, the 2nd DCA held.

The state appealed an order suppressing a baggie of cocaine found on the ground where Shannon Smith dropped it as he ran from police. When officers exited their unmarked cars in raid gear in a high drug area, Smith began to walk away. An officer called out to Smith, and Smith pulled an item out of his pocket, threw it to the ground and began running. Another officer found the container at the spot where Smith made the dropping motion. The trial court suppressed the drug evidence, but the DCA reversed.

The court held that the initial stop of Smith was justified, but continued, "However, even if the stop was not justified, once Smith began to run, the seizure was terminated, so that whatever he dropped was considered abandoned and therefore admissible. The officer here testified that as he told Smith to stop, Smith simultaneously began to run, dropping something as he went. Smith's act of running thus terminated the seizure, rendering the dropped baggie admissible."

[*State v. Smith*, 5/30/03]

Illegal investigative stop - reasonable suspicion

Where an officer temporarily detained two men and singled out one to come forward, the police-citizen encounter was transformed into an investigative stop requiring reasonable suspicion of criminal activity, the 2nd DCA held.

Terry Walker appealed the denial of his motion to suppress evidence on grounds that the consensual search was illegal. An officer patrolling a high drug area saw what he believed to be a "hand-to-hand" drug transaction between Walker and another man, but admitted he did not see if it was drugs or money

that was exchanged. The officer, who knew the names of the two men, requested that Walker come to him and asked for permission to perform a pat-down. Walker consented, and crack cocaine was found on him. The trial court admitted the evidence, but the DCA reversed.

"(T)he officer did not state that (the other man) was a known drug user or drug dealer. The officer merely had been patrolling the area that evening when he observed Walker and (the other man). He did not testify that the location had been under surveillance or that there been other arrests in that area. The totality of the circumstances does not support a finding of reasonable suspicion," the DCA said.

[*Walker v. State*, 5/30/03]

3rd District Court of Appeal

Information improperly placed on agency web site

A former offender cannot sue the Florida Department of Law Enforcement for invasion of privacy for improperly placing portions of his criminal history on its web site, but he may be able to sue to recover economic losses, the 3rd DCA held.

A court order in the 1970s had directed FDLE to seal and expunge David Fess Walker's records, but due to an error the records were subsequently included among the criminal histories posted on the agency's web site. In early 2001, a television reporter broadcast a story about Walker, relying in part on information from the FDLE web site. Walker sued FDLE for invasion of privacy, but the DCA said the trial court correctly held that he could not state a cause of action for that claim because the information about him constituted a matter of legitimate public interest or concern.

"FDLE's failure to have properly and completely complied with the court order of expungement did not give rise to an independent cause of action. ... (A)ppellant's remedy is the right to return to the trial court which ordered the records expunged to seek compensatory damages for economic losses which the defendant is able to establish as a result of FDLE's non-compliance. Such damages would be in the nature of civil compensation for violation of an injunction," the DCA said.

[*Walker v. Florida Department of Law Enforcement*, 5/21/03]

4th District Court of Appeal

Liability of government volunteers

Even though the Legislature intended to help volunteers by passing the Florida Volunteer Protection Act, individuals who help the government

must still meet a "reasonably prudent person" standard to avoid personal liability for negligent acts, the 4th DCA said.

The court ruled against Reuben Berger, who caused a traffic accident while on duty as a volunteer with a sheriff's Citizen Observer Patrol. Berger was sued for negligence by the woman whose car he rear-ended, who claimed he failed to meet a "reasonably prudent person" standard in the statute. Berger died while the lawsuit was pending, but his estate alleged he was immune from liability pursuant to the Florida Volunteer Protection Act. The trial court granted summary judgment for the estate, finding the reasonable person standard inapplicable given the apparent legislative intent to provide immunity to volunteers for their negligent acts. The woman appealed, and the DCA reversed the lower court. The DCA concluded that Berger must meet the "reasonably prudent person" standard and, because there were questions in this regard, summary judgment was inappropriate.

"Although Berger's estate urges us to read the title of the statute as grounds for greater protection, the specific language of the statute provides a limited scheme of protection that is consistent with the goal of protecting volunteers enunciated in the title," the DCA said.

[*Campbell v. Kessler*, 5/7/03]

DCA review of agency's discretionary action

A former teacher, whose license was revoked for sending sexually explicit material over the Internet to her adolescent students, showed no inconsistencies in the punishment to warrant reversal of a state agency's decision, the 4th DCA said.

The court said the severity of the punishment was completely within the discretion of the Education Practices Commission, and said Judith Wax was unable to show inconsistency because none of the previous cases she cited were similar to hers. Wax's teaching certificate was permanently revoked after the commission found that she had solicited email addresses from some of her seventh-grade students and then sent messages and audio files to 16 students containing sexually suggestive jokes, profanity and sexual material not suitable for students. On appeal, Wax argued permanent revocation is inconsistent with prior commission actions in which less severe punishment was given for more egregious conduct, but the DCA said revocation was a penalty authorized by the relevant statute.

"(A)ppellant cannot ask this court to substitute its judgment for that of the Commission in the discretionary matter of punishment. ... Whether Wax's conduct warrants the statutorily permissible penalty of permanent revocation is a matter for the Education Practices Commission to decide," the

DCA said. "In our analysis, appellant is simply asking this court to substitute its judgment for that of the Commission on an issue of discretion."

[*Wax v. Horne*, 5/14/03]

Agency's ability to appeal inconsistent verdict

A state agency's claim that a jury verdict was inconsistent cannot be pursued because the agency failed to raise the argument before the jury was discharged, the 4th DCA said.

The Department of Transportation lost a jury verdict in a case arising from an accident and appealed, arguing that the jury returned an inconsistent verdict on damages when it found that the victim did not sustain permanent injuries but still awarded damages for future medical expenses and lost income. DOT argued that a 2001 case allows an inconsistent verdict to be raised for the first time in a motion for new trial after the jury has been discharged. The appeals court, however, noted that it has repeatedly held that a party's failure to object or otherwise inform the court of an inconsistent verdict before the jury is dismissed waives the inconsistency as a point on appeal.

"To preserve the issue of an inconsistent verdict, the party claiming inconsistency must raise the issue before the jury is discharged. If the trial court agrees, the trial court may reinstruct the jury and send it back for further deliberations. This procedure allows the jury an opportunity to "correct" the inconsistency," the DCA said. "(W)here the thrust of DOT's objection to the verdict was based on the inconsistency between an award for future economic damages and no finding of permanent injury, the DOT waived any error by not raising this issue before the jury was discharged."

[*Department of Transportation v. Stewart*, 5/14/03]

Vehicle stop - reasonable detention

A defendant's detention was not unreasonable where an officer was still in the process of investigating and writing a speeding ticket when a canine officer arrived five to ten minutes after the stop, the 4th DCA held.

Rafael Sanchez was convicted of possession and trafficking of cocaine and carrying a firearm as a convicted felon. In his motion to suppress, Sanchez argued that the officer unlawfully detained him longer than was necessary to issue a traffic citation. Miami police had been conducting a drug trafficking surveillance of Sanchez's home when Sanchez failed to take his usual route to work. Police asked state troopers for assistance in tracking a vehicle that might be transporting drugs. A canine unit was called and Sanchez was stopped for speeding. Initially, the trooper intended only to give Sanchez a warning but was persuaded by another trooper to issue the citation. Both troopers testified that the

ticket was being written when the canine unit arrived no more than ten minutes later. During the interval between stopping the defendant and writing the ticket, the trooper had run a check on Sanchez's driver's license and registration and questioned him regarding his destination. The search of the vehicle turned up cocaine and a firearm.

Affirming the order denying the motion to suppress, the DCA observed, "Sanchez spends much of his brief arguing that the traffic stop was simply a pretext and that what the police were really intending to do was stop him because they believed that he was carrying drugs. (In another case,) the Supreme Court decided this issue adversely to Sanchez, holding that the officer's subjective reasons for a stop are not significant and that the question that must be resolved is simply whether there was a reasonable suspicion as to the traffic offense."

[*Sanchez v. State*, 5/21/03]

Search and seizure - weapons pat-down

An officer lacked probable cause to support a pat-down following a traffic stop based only on the suspect's reluctance to remove his hands from his pockets, where there was nothing linking the suspect to drugs, a weapon or any other criminal activity, the 4th DCA held.

David Ray pled no contest to possession of cocaine and appealed the trial court's denial of his motion to suppress crack cocaine seized from his clothing. Ray was stopped for riding his bicycle at night without a light. During the stop Ray refused the officer's repeated requests to remove his hands from his pockets, but eventually consented to a pat-down. The officer testified that based on his training and experience, once he felt the plastic baggie in Ray's pocket he believed it contained narcotics. The DCA reversed the order to suppress and remanded the case.

"(I)t cannot be said that Ray's 'consent' was anything other than acquiescence to a show of police authority," the DCA said. "(E)ven had the pat-down been proper, the testimony in the instant record was woefully inadequate to allow the officer to be able to legally retrieve the item from Ray's pocket based on the 'plain feel' doctrine."

[*Ray v. State*, 5/28/03]

5th District Court of Appeal

DUI arrest not required to administer breath test

The 5th DCA held that, although a breath test must be administered incidental to a lawful arrest, the arrest does not necessarily have to be for DUI.

When an officer observed Whitley driving erratically, the officer activated the emergency lights to signal Whitley to pull over, but Whitley continued to drive. When the officer activated his siren, Whitley looked

in his side-view mirror, but continued to drive, weaving from lane to lane. When Whitley eventually stopped, the officer detected an odor of alcohol on his breath and observed that his eyes were glassy and that his speech was slurred. When asked by the officer why he had not stopped, Whitley replied that he had had too much to drink. Whitley consented to a breath test that revealed he was well in excess of the legal limit. Whitley argued that the officer did not have probable cause to arrest him for DUI before he performed the breath test. The 5th DCA held that, regardless of whether probable cause for a DUI arrest existed, the officer had probable cause to arrest Whitley for the offense of fleeing and attempting to elude in which he was under the influence of alcohol. And since the statute does not specifically say that the arrest must be for DUI, the test was properly administered incidental to a lawful arrest.

[*Dept of Hwy Safety and Motor Vehicles v. Whitley*, 5/2/03]

Motion for relief must be filed with proper court

The 5th DCA held that a motion for relief from a driver's license revocation filed with a criminal court is improper since it must be filed with the agency. Weber, a man convicted of felony DUI and acting pro-se, filed a "Complaint for Summary Judgment" within his criminal circuit court case requesting relief from the revocation of his license. The trial court denied the 'complaint' noting that the revocation of the license was not a part of Weber's criminal sentence but, rather, an action that was to be performed by the DHSMV. The court further noted that unless and until the DHSMV took action, there was no matter in controversy.

On appeal to the 5th DCA, Weber claimed in his motion seeking relief that, in fact, the DHSMV had revoked his license. However, the DCA held that regardless of whether a revocation had already taken place, Weber's motion for relief filed within his criminal court case was properly denied because his only remedy is properly with the agency that allegedly revoked his license, the DHSMV.

[*Dept of Hwy Safety and Motor Vehicles v. Weber*, 5/16/03]

Circuit court failed to apply the correct law

The 5th DCA quashed a circuit court's decision because it failed to apply the correct law. In a formal review, a hearing officer reviewed a probable cause affidavit prepared by a city of Maitland police officer, alleging that the accused, Swegheimer, committed the offense of DUI at "W/B SR 400/ SR 414 in Maitland." Swegheimer argued that the affidavit failed to establish that the offense was committed within the city limits of Maitland. In support of his argument, he presented a map of the city of

Maitland, which was admitted into evidence. However, the hearing officer concluded by a preponderance of evidence that the officer had probable cause to arrest Swegheimer for DUI. On certiorari review, the circuit court held that the officer failed to demonstrate he was within his jurisdiction when he developed probable cause.

On appeal, the 5th DCA found that the circuit court misapplied the law by concluding that the officer failed to establish jurisdiction when the affidavit clearly alleged jurisdiction. The DCA further held that Florida law allows the hearing officer to conduct a formal review "upon a review of the reports of a law enforcement officer." Therefore, the circuit court misapplied the law when it concluded that the officer failed to establish jurisdiction while ignoring the probable cause affidavit, which constituted competent substantial evidence of jurisdiction.

[Dept of Hwy Safety and Motor Vehicles v. Swegheimer, 5/9/03]

Circuit court acting in appellate capacity

A circuit court, sitting in its appellate capacity, misapplied the law by improperly re-weighting and re-evaluating testimony and evidence presented at a suppression hearing, the 5th DCA held.

Daniel Sunby sought certiorari review of the circuit court's decision overturning an order granting Sunby's motion to suppress a police videotape in his DUI case. At the suppression hearing, the county court found that no traffic infraction had occurred based on a videotape introduced by the state. In disregarding the officer's testimony that he saw Sunby driving more erratically than was shown on the tape, the trial court found Sunby's driving was not sufficiently erratic to constitute a reasonable suspicion of impaired driving. The state appealed, and the circuit court gave greater weight to the officer's credibility and overturned the county court's suppression order. The DCA, however, overruled the circuit court.

"(T)he county court as the 'fact-finder' in this proceeding is free to ignore or place less emphasis on certain testimony, based on credibility determinations. It need not give equal weight to all the evidence presented at the suppression hearing," the DCA said.

Assistant Attorney General Patrick W. Krechowski represented the state on appeal.

[*Sunby v. State*, 5/23/03]

Attorney General's Opinion

Federal task force travel reimbursement

In response to a request from the Pinellas County Sheriff, the Attorney General issued an advisory opinion (2003-22, 5/13/03) stating: "(I)t is my opinion that sheriff's department officers and employees are subject to the reimbursement limits provided by section 112.061(6), Florida Statutes, as county officers and employees when acting pursuant to the agreement between the Pinellas County Sheriff's Office and the federal Organized Crime Drug Enforcement Task Force."

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