

LEGAL BULLETIN

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

ELECTRA THEODORIDES-BUSTLE, EXECUTIVE DIRECTOR

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United States Supreme Court

Statement obtained in violation of *the Sixth Amendment* may be used to impeach a defendant whose testimony at trial is inconsistent with statement.

At issue: Whether a criminal defendant's voluntary statements made to a jailhouse informant—an inmate recruited by the police to surreptitiously obtain incriminating information—can be used at trial for purposes of impeachment, despite a conceded violation of his Sixth Amendment right to counsel.

Before trial, Ventris, who was charged with Rhonda Theel for murder and other crimes, admitted to shooting and robbing the victim. An informant, who was planted in his cell, heard the statement. At trial, Ventris testified that Theel committed the crimes. Over the objection of defense, the State was allowed to call the informant to testify to Ventris's contradictory statement. Ventris was acquitted of felony murder and misdemeanor theft but was convicted of aggravated burglary and aggravated robbery. However, the Kansas Supreme

Court reversed holding that “[o]nce a criminal prosecution has commenced, the defendant’s statements made to an undercover informant surreptitiously acting as an agent for the State are not admissible at trial for any reason, including the impeachment of the defendant’s testimony.”

The U. S. Supreme Court held that “Ventris’s statement to the informant, concededly elicited in violation of the Sixth Amendment, was admissible to impeach his inconsistent testimony at trial.” Reversed and remanded for further proceedings.

[Kansas v. Ventris, 04/29/2009]



USSC07-1356KansasvVentris.pdf

1st District Court of Appeals

The Deputy lacked founded suspicion of criminal activity to justify investigatory stop and detention.

Panter, pled nolo contendere to charges of possession of a controlled substance and possession of drug paraphernalia, and

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reserved his right to appeal the “denial of his dispositive motion to suppress physical evidence and his admissions as the products of an illegal search.”

It was revealed at the suppression hearing that Deputy Wiggins, while parked in his vehicle on a “routine neighborhood watch,” observed a white van with two unknown males pull into a driveway. He witnessed an unknown male exit the house, approach the driver’s side of the van, “reach inside the vehicle, and engage in ‘a hand-to-hand transaction’ of an unknown nature.” The deputy testified he did not see cash or drugs pass hands, however, based on his training and experience, “the transaction was suspicious because the man had come out of one of three “Habitat’ houses in that block that have a history of narcotics sales.” The deputy then followed the van to a convenience store. When the driver (Panter) exited the van, the deputy exited his vehicle and made contact with Panter. Both Panter and the passenger (Mr. Meyers) provided their identification cards and gave consent to a search of their person. A warrant check came back clean on both individuals. When the deputy was denied permission to search the van, the deputy informed Panter and Meyers he would have to call the K-9 unit. When the K-9 unit arrived, the dog “alerted” on the van, the van was searched and a black nylon pouch containing syringes and cocaine, were found. Panter and Meyers were taken into custody, given their Miranda rights, and Panter admitted the nylon pouch was his. The trial judge denied the motion to suppress concluding that the deputy “had a reasonable suspicion that the hand-to-hand transaction involved criminal activity, that he had a lawful basis to perform a brief investigatory stop, and that Panter and Meyers were free to leave the site even after the deputy informed them that he had to call the K-9 unit.” On appeal, Panter

argued the deputy “lacked a founded suspicion of criminal activity to justify an investigatory stop and detention” and that “once the identification and warrants checks came back clear and Meyers refused the request to search the van, the police no longer had any lawful basis to detain the men.” Panter further contended that once the K-9 unit was called, the men were seized in violation of their Fourth-Amendment rights. Panter argued the “prolonged detention, including the search of the van, was illegal, so that the fruits of the improper detention and search should have been suppressed.” See Dames v. State, 566 So. 2d 51 (Fla. 1st DCA 1990).

The 1st DCA held that the deputy “did not have a reasonable, well-founded, particularized suspicion of criminal activity to justify an investigatory stop.” See Terry v. Ohio, 392 U.S. at 30-31(1968). As such, the trial court erred in denying the dispositive motion to suppress. The 1st DCA reversed and remanded “WITH DIRECTIONS to the trial court to grant the motion to suppress and to discharge Panter for these offenses.”

[*Panter v. State*, 05/07/09]



1D08-1809Panter.pdf

2nd District Court of Appeals

Once suspect indicates desire to remain silent; interrogation must cease. Once suspect invokes *Miranda* rights; officers are

prohibited from engaging in words or actions that elicit an incriminating response.

Youngblood, pled *nolo contendere* to trafficking in methamphetamine, and reserved his right to appeal the denial of his motion to suppress statements made during a videotaped interrogation by the officers.

The 2nd DCA held the trial court erred in failing to grant the motion to suppress the statements. "Because law enforcement officers did not cease communications with Mr. Youngblood after he invoked his right to counsel, but instead continued on a course designed to convince him to reconsider his invocation of his constitutional right in order to protect his girlfriend, we conclude that his subsequent decision to waive his right to counsel was involuntary."

[*Youngblood v. State*, 04/22/09]



2D08-372Youngblood.pdf

3rd District Court of Appeals

Officer had reasonable suspicion for investigative stop; evidence was improperly suppressed.

State sought review of the order granting Arango's "motion to dismiss and the court's earlier order granting defendant's motion to

suppress."

Detective Vila, "trained in the identification of narcotics and dangerous drugs," received an "anonymous tip advising him that marijuana was being cultivated at a particular residence." He and another officer went to the residence, detected the odor of marijuana coming from the residence, and "returned to his car to prepare a search warrant for the residence." While in the police vehicle, Arango drove onto the residence's driveway, opened the garage door, entered the garage, spotted the detective, closed the garage door, went back to his vehicle and drove away. The detective testified that while the garage door was open, "he noticed an R-Max board and approximately two to five filled black garbage bags." The officers followed and stopped Arango. As he approached the vehicle, the detective smelled the odor of marijuana coming from Arango's vehicle, and observed "in the passenger seat, rolls of tape, one of which had marijuana residue and black trash bags on the floor of the passenger side." The detective arrested Arango and Arango "invoked his Miranda rights." Miranda v. Arizona, 384 U.S. 436 (1966). The officers returned to the residence, obtained a search warrant for the residence, and found a hydroponics lab. They seized 88.4 pounds of marijuana, including a bag found in the refrigerator, along with several other items (beer bottles, cigarette butts, and fingerprints). The trial court granted Arango's suppression motion as to: "1) the investigative stop and any evidence obtained pursuant to the stop, 2) statements made by the defendant after he was arrested and invoked his Miranda rights, 3) beer bottles and any further evidence obtained from the beer bottles, 4) cigarette butts, 5) fingerprints obtained from walls or other items not authorized by the warrant, and 6) anything recovered from

the refrigerator.” Arango then filed a motion to dismiss “stating, in part, that the evidence against the defendant had been significantly diminished as a result of the motion to suppress,” the trial court granted the motion, and the State appealed.

Section 901.151(2), Fla. Stat. (2005), “merely requires that Vila had encountered the defendant ‘under circumstances which reasonably indicate[d] that such person has committed, is committing, or is about to commit a violation of criminal laws of this state’” The 3rd DCA concluded “the circumstances under which Vila encountered the defendant were sufficient to satisfy this requirement.” “Given the cumulative facts to which Vila testified, Vila had reasonable suspicion to conduct an investigative stop of the defendant.” The 3rd DCA held that the evidence obtained from the result of that stop was improperly suppressed.

The 3rd DCA found the evidence obtained from the residence (beer bottles, cigarette butts, and fingerprints), “but not specifically set forth in the search warrant” were properly seized and cited to several cases in support of its findings. The officers “could reasonably believe that these items would be ‘useful as evidence of a crime’ and assist in ascertaining the identities of the individuals growing marijuana at the residence.” Further, “[o]nce the officers searched the refrigerator and discovered marijuana, they were authorized by the warrant to seize the contraband.”

Regarding the trial court’s suppression of Arango’s statements made after he invoked his Miranda rights, the 3rd DCA concluded “it was unclear whether the court did so because it deemed the investigative stop illegal or whether the court found that the officers initiated conversation with the defendant.” The 3rd DCA reversed the

suppression of the post-Miranda statements and remanded so “the court may consider witness testimony from officer(s) and/or defendant and rule on this issue in light of our finding that the investigative stop was proper.”

Finally, the 3rd DCA reversed the trial court’s order of dismissal.

[*State v. Arango*, 04/22/09]



3D07-2250Arango.pdf

Probable cause supported traffic stop; length of time for seizure was reasonable.

D.A., a juvenile, appealed the order “adjudicating him guilty of possession of cannabis following a traffic stop predicated on an expired tag displayed on the vehicle he was driving.” D.A., argued “the officer who executed the stop was constitutionally obligated to release him immediately upon deciding not to issue him a citation for the expired tag, and that, in any event, it was constitutionally improper to interrogate him about matters unrelated to the reason for the stop.”

The record reveals D.A was stopped for a traffic infraction (expired tag). Because there were six individuals in the car, Officer Nunez called for backup and when the other officer arrived, all individuals were ordered out of the vehicle. Officer Nunez obtained D.A.’s license and registration. After the officer saw the tag was expired for only ten days, “he decided not to issue D.A. a citation.” Officer Nunez then asked D.A., “[I]s there anything on you or in this vehicle

that I need to know about. Illegal, that I need to know about.” To which D.A. responded, “[Y]eah, there’s a baggy of marijuana which is in the center console.” The officer seized the marijuana and arrested D.A.

The officer had probable cause to stop the vehicle because of the expired tag, which is in “violation of the traffic code. § 320.07(1), Fla. Stat. (2006).” After stopping a vehicle for a traffic violation, an “officer is then justified in detaining the driver ‘only for the time reasonably necessary to issue a citation or warning’” “Time reasonably necessary” provides for the customary license, tag, insurance, registration and warrant checks. Sanchez v. State, 847 So. 2d 1043, 1046 (Fla. 4th DCA 2003). The officer testified that even though he decided not to issue a citation for the expired tag, he “still wanted to investigate whether or not any of these juveniles had a warrant, and whether [D.A.’s] license was valid or not.”

The 3rd DCA held that probable cause supported the stop and that “D.A., did not have the right to be immediately released.” “Officer Nunez at all times acted with probable cause of a traffic violation, and had not yet completed the usual and customary investigation etched in the law of this state as constitutionally permissible in the course of a valid traffic stop. That law includes the ability to ask unrelated questions, subject, of course, to the right of the detainee to refuse to answer.” The extra time to complete the investigation, including “the time it took to ask the unrelated question inquiring of other illegal activity was short—not nearly enough to make the length of seizure in this case ‘unreasonable.’”

[D.A., a juvenile v. State, 04/29/09]



3D06-3122DAJuvenile.pdf

Attorney General Opinions

The City of Howey-in-the-Hills may expend fees received pursuant to section 318.21(9), Florida Statutes, on equipment to access the computer aid dispatch system.

Monthly expenses, purchase, repair and maintenance costs, and contractual or licensing obligations for devices such as mobile data terminals used to access the computer aid dispatch system or portable devices such as a Blackberry or PDA device used when the mobile data terminals are not readily accessible may be paid from the fees received by the city pursuant to section 318.21(9), Florida Statutes.

[AGO 2009-21, 05/06/09]



AGO- Fines.doc

The 60 day waiting period on obtaining crash reports applies to the Escambia

County Board of Commissioners.

The Attorney General opined that Escambia County is not entitled to receive information contained in crash reports from law enforcement agencies prepared pursuant to section 316.066, Florida Statutes, based on authority contained in the County's Motor Vehicle Accident Cost Recovery Fee Ordinance.

Escambia County is not authorized by section 316.008(1)(k), Florida Statutes, to adopt an ordinance requiring that the county be given access to the information contained in crash reports prepared pursuant to section 316.066, Florida Statutes, prior to the expiration of the 60-day confidentiality period.

[AGO 2009-22, 05/14/09]



AGO- Crash Report.doc

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The materials presented are a compilation of cases from the Attorney General's Criminal Law Alert and Appellate Alert as well as summaries from the Office of General Counsel. They are being presented to alert the Division of Florida Highway Patrol and the Division of Driver Licenses of legal issues and analysis for informational purposes only. The purpose is to merely acquaint you with recent court decisions. Rulings may change with different factual situations. All questions should be directed to the local State Attorney or the Office of General Counsel (850) 617-3101. If you care to review other Legal Bulletins, please note the website address: DHSMV Homepage <http://www.hsmv.state.fl.us/Bulletins>) or FHP Homepage (www.fhp.state.fl.us).