

# LEGAL BULLETIN

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## United States Supreme Court



### **Non-citizen client must be advised that guilty plea carries risk of deportation.**

The Court held that counsel provides constitutionally deficient representation under the first prong of *Strickland v. Washington*, 466 U.S. 668 (1984), if she fails to advise her non-citizen client whether a plea of guilty carries the risk of deportation. More precisely, where deportation is the clear consequence of pleading guilty, counsel has a duty to advise the defendant of that fact; where the deportation consequences of a plea are unclear, counsel must advise the defendant that pleading guilty may carry adverse immigration consequences. The Court did not extend its holding to other collateral consequences of pleading guilty, finding that deportation has unique consequences and is intimately related to the criminal process. And the Court did not address whether petitioner is entitled to relief, which depends on whether he can show prejudice, an issue the lower courts can address on remand.

*[Padilla v. Kentucky, 03/31/10]*

## 11th Circuit Court of Appeals

### **The County was not liable when it demoted a captain in the Fire Department for getting intimately involved with a subordinate firefighter.**

A captain at the Fire Department was demoted after he had an extramarital affair with a subordinate (eventually marrying the co-worker). He filed an action, arguing that the County had violated his First Amendment right to an intimate association. The Defendant filed and was granted a motion for summary judgment.

On appeal, the Eleventh Circuit concluded, “[The County] did not violate the Constitution because the County’s interest in discouraging extramarital association between supervisors is so critical to the effective functioning of the Fire Department that it outweighs the firefighter’s interest in

extramarital association with a subordinate...”

*[Starling v. Board of County Commissioners, Palm Beach County  
4/6/10]*



## 1st District Court of Appeal

**By finding defendant guilty of violating section 316.1935(2), “the jury made a finding on every element of the lesser-included offense under subsection (1).”**

On motion for rehearing and/or clarification, the 1<sup>st</sup> DCA withdrew its prior opinion dated January 12, 2010, where it 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 316.1935(2).” In that prior decision, the 1<sup>st</sup> DCA reversed holding that “the trial court erred by denying Slack’s motion for judgment of acquittal.”

Following a motion for rehearing and/or clarification, 1<sup>st</sup> DCA still “agrees that the trial court erred in denying the motion for judgment of acquittal and reverses for this

reason,” however, the 1<sup>st</sup> DCA remanded “for entry of a judgment of conviction for violation of section 316.1935(1), Florida Statutes (2006), on the authority of section 924.34, Florida Statutes (2009).” “By finding Mr. Slack guilty of violating section 316.1935(2), the jury made a finding on every element of the lesser-included offense under subsection (1),” which, the 1<sup>st</sup> DCA noted “was punishable in the same fashion.”

*[Slack v. State, 03/25/10]*



**Circuit court departed from essential requirements of law; no evidence presented that defendant was the driver of the vehicle.**

Skinner sought a writ of certiorari to review a decision of the circuit court, sitting in its appellate capacity that “affirmed petitioner’s county court judgment of guilt for driving under the influence (DUI).”

The record reveals that Skinner, in county court, “moved to suppress critical evidence on the grounds the initial detention and arrest were unlawful, so that any evidence obtained during and after the detention and arrest—including any testimony that petitioner had operated a motor vehicle involved in the two-vehicle crash under investigation—should be suppressed.” Following a suppression hearing, the county court granted the motion to suppress after concluding “from the record that no competent substantial evidence

demonstrated petitioner was driving or in actual physical control of the vehicle.” The State moved for a rehearing “alleging the prosecution had presented evidence the trooper interviewed ‘the Defendant’s passenger,’ who purportedly witnessed the accident and ‘identified the Defendant as the driver of the vehicle.” At the rehearing, “the prosecutor mistakenly recalled and stated that in the earlier proceeding, the unobjectionable testimony of Brooker established he had interviewed Charles—the purported passenger and the only other eyewitness who remained at the crash site—whose ‘statement’ identified petitioner as the driver.” Charles never testified at the suppression hearing. The county court accepted “the State’s recollection” and rejected defense counsel’s argument. The judge granted the rehearing, reversed his prior ruling, and denied the suppression motion. Skinner pled no contest to DUI and reserved his right to appeal. The circuit court affirmed, also relying on “Brooker’s recall of petitioner (and Charles) standing beside one of the vehicles, and the purported statement of ‘a person involved in the crash’ that petitioner was the driver.”

The record supported the county court’s initial grant to the suppression motion because no evidence was presented prove Skinner had been the driver. The record establishes the “prosecutor correctly stated the trooper testified he interviewed Charles” and that “the prosecutor indeed asked Brooker whether he had identified petitioner as the driver.” However, the record also establishes that Trooper Brooker “never answered the question whether Charles had identified petitioner as the driver.” Thus, there was no evidence to support Skinner was the driver. The county court erred in reversing its ruling when it relied “on the mistaken belief Brooker has presented admissible testimony to show that Charles identified the petitioner as the

driver.” “This misapprehension . . . persisted in the appeal to the circuit court.”

Upon appellate review, the circuit court failed to comply with the venerable legal requirement that competent substantial evidence support each of the trial court’s findings of fact—here, the finding petitioner was the driver—and thus departed from the essential requirements of law by affirming the judgment against petitioner. See Weiss v. State, 965 So. 2d 842, 843 (Fla. 4th DCA 2007) (stating the standard of review of the circuit court sitting in its appellate capacity is whether competent substantial evidence supports the county court’s ruling); Sunby v. State, 845 So. 2d 1006 (Fla. 5th DCA 2003).

The 1<sup>st</sup> DCA granted the petition, quashed the circuit court’s decision and directed “that petitioner be discharged.”

[*Skinner v. State*, 04/07/10]



## 5th District Court of Appeal

**Motion to suppress the evidence should have been granted; traffic stop was “unreasonably**

## prolonged” and dog sniff occurred after citation was written.

Whitfield pled nolo contendere to the charge of trafficking cocaine and reserved his right to appeal the denial of his motion to suppress the cocaine evidence found during the search of his vehicle. Whitfield asserts “the charges against him stemmed from an unreasonably prolonged traffic stop.”

The entire stop, approximately thirty minutes, was recorded and admitted into evidence at the suppression hearing. Whitfield was initially stopped for “unlawful speed on the turnpike” and told by the trooper he would receive a written warning for excessive speed. He was driving a rental car where he was listed as “an authorized driver.” Within the first fifteen minutes of the traffic stop, the trooper had completed his driver’s license and warrants checks; received confirmation the rental car was not stolen; and saw that the rental agreement listed Whitfield as an authorized driver of the rental vehicle. Shortly thereafter, the trooper called for a K-9 unit because Whitfield declined the request for permission to search the vehicle. Almost twenty-five minutes into the stop, the trooper asks dispatch to get verification from Avis that Whitfield is listed as an authorized driver. Whitfield receives his “completed written warning at 27:26.” However, he was not free to leave because verification from Avis had not come back. “At 28:36, dispatch informed Trooper Barley that Whitfield was an authorized driver.” The K-9 unit arrives at “28:57 to begin the sniff search.” The dog alerts and drugs were found following a search of the car. The trial court denied the suppression motion “because the K-9 unit arrived within

a minute of the verification that Whitfield was an authorized driver.” The court “found the delay in conducting the canine search was not unreasonable.”

Following a detailed analysis, the 5<sup>th</sup> DCA concluded the trooper “had completed all routine investigation within twelve minutes of the traffic stop and, but for the extended interrogation of Whitfield, there is no apparent reason why the citation should not have been issued within a short time thereafter.” “Coincidence or not” is how the 5<sup>th</sup> DCA noted the timing between the arrival of the K-9 unit and the confirmation from Avis. “Even assuming” the trooper had the right to further detain Whitfield, “the motion to suppress still should have been granted because the search did not begin until after the citation was issued and the purpose of the traffic stop completed.” The 5<sup>th</sup> DCA determined “these facts fall short of establishing reasonable suspicion of criminal activity sufficient to detain Whitfield past the time reasonably necessary to issue him a citation for speeding.” The 5<sup>th</sup> DCA reversed and remanded.

. . . this traffic stop should have been concluded by the issuance of the written warning long before it was. It was indisputably over when Whitfield finally got his warning for speeding – almost thirty minutes after being stopped. The fact that the dog sniff began a short period of time – a *de minimis* amount of time – after the traffic stop was concluded, does not save the search.

[*Whitfield v. State*, 04/23/10]



## **Mandamus was the proper vehicle for an action to compel a public agency to comply with public records law.**

Port Orange negotiated with a holding company to purchase a large parcel of property. After the parties finished negotiating, Poole, the plaintiff, requested copies of the property appraisal report. When then City failed to provide the report, Poole brought a mandamus action. The trial court dismissed his complaint with prejudice.

Although the complaint was not well crafted, the Fifth District found that the Plaintiff had adequately pled all the elements of an action for mandamus and that mandamus was a proper vehicle to compel a public agency to comply with the Florida public records law.

*[Poole v. City of Port Orange, 04/01/10]*



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