

LEGAL BULLETIN

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1st DISTRICT COURT OF APPEAL

Officer had no reasonable suspicion defendant was driving impaired; therefore, search of vehicle was unlawful.

Beahan appealed the order “withholding adjudication of guilt and placing the defendant on probation for possession of a controlled substance and possession of drug paraphernalia.”

The record reveals that Beahan was stopped for making an “illegal U-turn.” While no citation was issued, Sergeant Haines testified he was on patrol in a residential area where known drug transactions took place. Beahan was observed driving slowly down the street; stopping in front of some housing units and driving again; and then taking an illegal U-turn, up over some grass, and back onto the street. While a computer check was being processed on Beahan’s license, another K-9 officer and his drug sniffing dog were called in for assistance. The dog alerted on the car and the officers found in the vehicle “a smoking pipe and a baggie with a crushed up white substance in it.” Beahan was arrested and moved to suppress the evidence. At the suppression

hearing, Sergeant Haines testified he stopped Beahan after watching him make the illegal U-turn because he “feared that the defendant was driving under the influence of alcohol or drugs.” He also stated that Beahan appeared nervous “but he did not smell of alcohol and that he did not appear to be under the influence of drugs or alcohol.” The trial court “concluded that the improper turn could give rise to a suspicion that the defendant was impaired” and denied the suppression motion. Beahan entered a plea of nolo contendere and reserved his right to appeal the dispositive order denying the motion.

The 1st DCA determined that “Sergeant Haines did not have a reasonable suspicion that the defendant was impaired at the time of the stop.” Beahan was driving slowly down a residential street which is not unusual. “He was not driving erratically and the fact that he stopped a few times along the side of the street is more likely to indicate that he was looking for an address or speaking with friends than it does to suggest that he was impaired.” Beahan was observed making an improper U-turn, with no oncoming traffic or pedestrians in the way. The 1st DCA concluded that there “was no reasonable suspicion to believe that the defendant was driving his car while impaired.” The 1st DCA reversed finding “the search was unlawful and the evidence seized from the vehicle should have been suppressed.”

NOTE: J. Wolf in his dissenting opinion

AUGUST 2010

LEGAL BULLETIN

stated that “[t]he majority suggests that because there was an alternative innocent explanation for appellant’s behavior, reasonable suspicion did not exist. I do not believe this accurately reflects the law, nor should public policy support such a conclusion when we are dealing with a potential DUI.”

[*Beahan v. State*, 08/05/10]



2nd DISTRICT COURT OF APPEAL

The state does not have to independently prove the identity of the driver to establish that DUI with serious bodily injury had occurred before permitting the defendant’s post crash admissions.

Walton and two companions, all of whom had been drinking for several hours and exhibited signs of impairment, ran a red light and struck a minivan causing serious body injury to a passenger of the minivan.

The 2nd DCA disagreed with the circuit court’s *corpus delicti* analysis. The 2nd cited the Florida Supreme Court in *State v. Allen*, 335 So.2d 823 (Fla. 1976), that the corpus delicti rule:

obviously does not require the state to prove a defendant’s guilt beyond a reasonable doubt before

his or her confession may be admitted. Indeed, as this Court has stated before, it is preferable that the occurrence of a crime be established before any evidence is admitted to show the identity of the guilty party, even though it is often difficult to segregate the two.

In citing other Florida Supreme Court cases, the 2nd DCA opined that the identity of the defendant as the guilty party is not a predicate for the admission of the confession.

[*State v. Walton*, 08/20/10]



State v. Walton.DOC

5th DISTRICT COURT OF APPEAL

The Confrontation Clause rights were not violated by permitting a witness to testify by satellite from China.

The arresting officer and a material witness to the crimes charged testified by satellite feed from China. The court cited the United States Supreme court in saying that the Confrontation Clause “is not absolute in terms of a requirement for physical confrontation and is subject to exceptions where “considerations for public policy and the necessities of the case require it.” *Maryland v. Craig*, 497 U.S. 836 (1990).

The 5th DCA in reviewing the reliability of case law concerning the testimony followed three part test as articulated by the Florida Supreme Court in *Harrell v. State*, 709 So.2d 1364 (Fla.) which provides:

- (1) to impress matter and to protect against a lie by the possible imposition of penalties associated with perjury;
- (2) to allow the witness to be subject to cross examination; and
- (3) to allow the jury to have the opportunity to observe the demeanor of the witness as a aide to assessing creditability.

Additionally, the court permitted the testimony when it is justified by a case by case fact specific finding that it is based on important state interest, public policies or necessities of the case. The court agreed with the trial court when the lower court specifically found that the State interest and necessities of the case warranted the use of the satellite procedure. Additionally, the court will allow the testimony by satellite transmission when both the audio and video testimony are simultaneously transmitted.

The court further provided that “the three purposes of the confrontation- oath, cross examination and observation of witness demeanor- are satisfied by use of the satellite procedure.

The issue of the oath element was resolved by the 5th DCA when the trial judge found that the witness is a United States citizen who intended to return to live in the United States. If the State decided to charge him

with perjury there would be consequences upon his return.

[*Rogers v. State*, 7/23/10]



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