LEGAL EAGLE

A Newsletter for the Criminal Justice Community December 2011

Traffic Court Rules — A Moving Target

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As a law enforcement officer have you ever felt that in traffic court the cards are stacked against you ? You put your life on the line in each and every traffic stop and have to deal with citizens berating you and making complaints when they violate the law. Then you go to traffic court only to have your tickets tossed because of a technicality or because you are going up against an attorney that knows the ins and outs of the traffic court rules.

The first disadvantage that you have in traffic court is that there is no prosecutor handling the case. No one told you in the police academy that you would have to be prepared to play the role of enforcer and prosecuting attorney while going up against experienced defense attorney and challenging magistrates on evidence and procedure.

Practical Tips for Success in Traffic Court:

For you to be successful in traffic court it is important to know the technical aspects of the law. Be prepared and have the applicable statute and case law with you to support your position.

Statute of Limitations

Once you write a non-criminal traffic citation the prosecution of it must be commenced within one (1) year after it is committed. (Fla. Stat. §775.15 (2)(d)) Within 180 days of you serving the defendant with a uniform traffic citation the defendant shall be brought to trial on the charge. Florida Rules of Traffic Court 6.325

Amendments to Citations

Are there any mistakes or corrections that need to be made on the traffic infraction? If so, then pursuant to Florida Rules of Traffic Court 6.455, the issuing officer may amend the traffic ticket with proper corrections before the start of the scheduled hearing, with the judge's approval. The official shall grant a continuance if the amendment requires one in the interests of justice. This rule states that "No case shall be dismissed by reason of any informality or irregularity in the charging document." (In these types of cases, your citation is considered a charging document). This rule makes it clear that the court should not grant a defense motion to dismiss due to vagueness and/or due process violation (i.e. that the charg-

ing document is so vague that it does not put the defendant on notice of which conduct forms the basis of the charge). The remedy, if any prejudice can be shown, is an amendment to the charging document (i.e. the citation).

Defects in the Citation

Did you make a mistake and put the wrong statute number? Is the description of the violation correct? *Pembroke Pines v. Estrella*, 11 Fla. L. Weekly Supp. 844a (Fla. 17th Cir. 2004). Where first citation stated "Failure to Use Due Care, to wit: Following Too Closely," and second citation stated "Fail to Use Due Care, Fail to Maintain Control of Vehicle Causing Rear-End Crash," there was no prejudice to defendant when officers wrote down incorrect statute number. The court reasoned that the State's failure in a criminal case to "precisely specify a charged statute in an indictment or information is not necessarily fatal to the charge. As long as the charging document does not 'totally omit an essential element of the crime or [as long as it] is [not] so vague, indistinct or indefinite that he is misled or exposed to double jeopardy,' the case will not be subject to dismissal." *McMillan v. State*, 832 So.2d 946, 948 (Fla. 5th DCA 2002); see also *C.S. v. State*, 869 So.2d 637, 639 (Fla. 5th DCA 2004). A ticket, which is also a charging document, should be no different.

Discovery

If the citation that you issued was for speeding then you should bring the proper documentation with you in order to prove a violation of the statute. Do you have your course attendance certificate, logs, proper certifications? If there is any relevant supporting documentation regarding the electronic or mechanical speed measuring device used by the citing officer is in said officer's possession at the time of trial, the defendant or defendant's attorney shall be entitled to review said documentation immediately before that trial. Florida Rules of Traffic Court 6.445.

Every Traffic Magistrate is different and they may require more or less proof in a hearing. The rules of evidence are applicable in a traffic infraction hearing the same as any civil or criminal case. See Florida Traffic Court Rule 6.460(a) which provides that "the rules of evidence applicable in all hearings for traffic infractions shall be the same as in civil cases . . . and shall be liberally construed by the official hearing the case.")

In a recent traffic hearing a Traffic Magistrate excluded testimony from an officer about the status of an individual's Florida driver's license because he testified that the information came for "DAVID" and the Magistrate found it to be considered hearsay. So, as a law enforcement officer how can you get around this exception?

The first thing to realize is that the burden of proof in a traffic infraction hearing is the same as is required in a criminal case. The standard of proof is proof beyond a reasonable doubt. Fla. Stat. § 318.14(6)

In a criminal case the Prosecutor would have to physically move a copy of the Driving Record into evidence. It is self- authenticating so no witness is needed it just has to be made relevant to the case. This would be accomplished by eliciting testimony that the person that you came into contact with had the same name, address and DOB as that contained in the driving record.

An officer could obtain a copy of the Driving Record in the clerk's office and then move it into evidence. The better suggestion would be to ask the Magistrate to take *judicial notice* of the Court file which should have a copy of the Driving Record in it. Then it becomes evidence in the case.

Section 322.201, Florida Statutes, specifically states:

"A copy, computer copy, or transcript of all abstracts of crash reports and all abstracts of court records of convictions received by the department and the complete driving record of any individual duly certified by machine imprint of the department or by machine imprint of the clerk of a court shall be received as evidence in all courts of this state without further authentication, provided the same is otherwise admissible in evidence."

Elements to Prove:

Civil Infractions have elements in the same manner as criminal charges. Always verify that all elements can be proven beyond a reasonable doubt.

Driving

All civil infractions under Chapter 316 require that the Defendant be "driving" or in "actual physical control" of the vehicle. Many times,

there may not be an actual witness to the driving. Therefore it may be necessary to prove "driving" by circumstantial evidence.

- What statements were made by the defendant?

Perez v. State, 630 So. 2d 1231 (Fla. 2d DCA 1994); *Sullivan v. DHSMV*, 10 Fla. L. Weekly Supp. 148 (Duval Circuit Court, January 28, 2003). Defendant's spontaneous incriminating statements to the officer at the scene are not protected by the accident report privilege. *Cato v. DHSMV*, 8 Fla. L. Weekly Supp. 267 (Duval Circuit Court, February 22, 2001). A person who claims "presence" at the scene of an accident but denies "involvement" in the crash cannot claim the protection of the privilege. *State v. May*, 10 Fla. L. Weekly Supp. 124 (Palm Beach County Court, December 16, 2002). LEO was not in process of conducting a crash investigation when he asked the defendant if he was OK, therefore the defendant's response is not protected by the accident report privilege.

- What statements were made by the witnesses?

One of the most common forms of evidence to place the defendant behind the wheel comes from the driver and passengers of the other car involved in the crash. It is extremely important to document all the other people that may be at the crash scene to determine whether they saw the incident or heard the defendant make any statements. It is not uncommon for people to stop to help in a crash prior to EMS and LEO arrival. Although it may appear that their testimony would be unnecessary, it may become vital if the defendant's admissions become inadmissible.

- What physical evidence do you have to prove the defendant was driving?

Circumstantial evidence is very powerful when combined with eyewitness testimony. In some cases the defendant may be placed behind the wheel with no wheel witness at all if the time and effort is spent collecting, recording and analyzing the circumstantial evidence. Due to the inadmissible nature of some defendant statements, the LEO should take care to obtain circumstantial evidence even when the defendant has confessed that he was driving the car. Sometimes the circumstantial evidence will not be sufficient to prove that the defendant is the driver, but is sufficient to prove that the passengers were not. If the investigation can show that all people in the car have been accounted for, the LEO can use circumstantial evidence to prove that the passengers could NOT have been the driver, thus leaving only the conclusion that defendant was the driver.

Examples:

The following are some examples of types of circumstantial evidence that can place the defendant behind the wheel. This list is neither complete nor will all of the items be found at all scenes. It is entirely possible that none would apply; it all depends on the circumstances of the particular crash.

☑ Clothing fibers on airbag, dashboard, or seatbelt

☑ Hair or blood on broken windows or interior of car

☑ Blood spatter or smears on interior of car

☑ Tooth marks on steering wheel or dashboard

☑ Fingerprints on ignition key, steering wheel, gear shift, headlight knob, rear-view mirror,etc.

☑ Forensics found related to defendant's head wound, pieces of glass etc.

☑ Gas receipts or other receipts found in car indicating recent driver or owner of car

☑ Location of personal belongings in car

☑ Location of defendant upon arrival, e.g. leaning against driver's side of car, sitting on or standing near car, etc.

☑ Location of any other possible drivers/passengers

☑ Location of car keys (ignition, D's pocket) and identification of owner of keys or key chain

Inability of passenger to operate manual transmission

☑ Vehicle registration and insurance information

☑ Injury to defendant's head in relation to striking head liner, windshield or steering wheel

Case Authority:

Torresi v. DHSMV, 5 Fla. L. Weekly Supp. 640 (Orange Circuit Court, June I, 1998). Officer is entitled to rely on information provided to him by witnesses to an accident as well as on his own observations in order to determine who was driving the motor vehicle. *State v. Johnson*, 695 So.2d

771 (Fla. 5th DCA 1997). Officer was told by another officer and by witnesses that the defendant was the driver. The officer also observed the defendant standing next to the car when she arrived and there was no one else in it or near it. The defendant admitted he was the driver, but that he did not know what happened. This was sufficient PC to believe defendant was the driver.

Affidavits:

A defendant in a civil infraction case may offer evidence of other witnesses through use of one or more affidavits. The affidavits shall be considered by the court only as to the facts therein that are based on the personal knowledge and observation of the affiant as to relevant material facts. However, the affidavits shall not be admissible for the purpose of establishing character or reputation.

Conclusion:

For law enforcement the job does not end after you give the citizen their driver's license, registration and copy of their citation. You must also be prepared and armed with a good working knowledge of the Rules of Traffic Court and the applicable law in order to level the playing field. Once you gain a reputation for being knowledgeable, prepared and fearless about the process you will be able to put a stop to the absurd cases and outcomes that seem to occur all too often in Traffic Court.

Editor's Note: This article authored by Elizabeth Parker, former Chief Assistant State Attorney, Palm Beach County. She can be reached at: Elizabeth@ParkerJustice.com

Professionalism

We all know that whether the officer's actions are justifiable or not depends on the totality of the circumstances know to the officer at the time of the incident. Recently, an Alabama officer was fired over a TASERing incident that happened in local jail.

Just having the newspaper article and a piece of video footage isn't enough to make a decision on whether the use-of-force in any incident is justifiable or not.

We all know that whether the officer's actions are justifiable or not depends on the totality of the circumstances know to the officer at the time of the incident.

The real importance of this recent news article is not whether the officer's actions are justifiable or not but rather a concept that Dr. George Thompson of the Verbal Judo Institute developed shortly before his death referred to as "Complete Public Transparency."

This concept refers to the fact that everything that an officer does will eventually come out to and be reviewed in the full light of day. There are no longer any dark alleys or dark cells, for that matter, for the officer's actions to be hidden within.

Although the change had already begun more than twenty years ago, after the global media frenzy of the Rodney King video, it has now exploded into an era of Complete Public Transparency. I posted a video showing the Rodney King video for our new officers who weren't around for this incident that for once and all changed how law enforcement use-of-force is viewed. This incident and others like it created a reasonable doubt in the eyes of our citizens that the officer(s) may have used too much force.

At no time in history has police business been more public. Police response, both appropriate and improper, is no longer just caught on the front page of a newspaper or on television. Police business is now being posted on YouTube where 100,000s, even millions of people, watch it over and over again.

Our actions are now immortal and capable of being viewed forever on the Internet. This is one of the major differences in police work from a decade ago. Never before has the need for professional police conduct been more important.

As Dr. Thompson loved to say, "You need to look good and sound good or no good." We, the police, need to act, talk, and be more professional than ever before.

Our personal and professional survival demands it.

Editor's Note: This article was authored by Gary T. Klugiewicz, for PoliceOne.com, "Klugie's Correctional Corner," November 9, 2011.

OFFICE OF GENERAL COUNSEL

FLORIDA CASE LAW UPDATE 11-07

Case: **Hamilton v. State, 36 FLW D2242a (Fla. 4th DCA)**

Date: **October 12, 2011**

Subject: **Committing a robbery with a toy gun will generally not support a conviction for the enhanced offense of "Robbery with a Weapon," even though the victim did not know the gun was not real**

FACTS: Hamilton committed a robbery using a toy gun, and was subsequently convicted for Robbery with a Weapon in violation of Section 812.13(2)(b), Florida Statutes, which enhances the offense to a first degree felony. Hamilton appealed, arguing that since he used a toy gun instead of a real firearm, and therefore did not actually endanger the victim, his conviction for the first degree felony was improper.

RULING: The Fourth District Court of Appeal agreed with the appellant, and held that evidence that a perpetrator used a toy gun in the commission of a robbery, by itself, is insufficient to support a conviction for armed robbery with a "weapon." Accordingly, the court held that Hamilton should be convicted only of Robbery under 812.13(2)(c), Florida Statutes, a second degree felony.

DISCUSSION: The enhanced statute under which Hamilton was originally convicted provides that "(i)f in the course of committing the robbery the offender carried a weapon, then the robbery is a felony of the first degree." The Standard Jury Instruction (15.1) defines a "weapon" to be "any object that could be used to cause death or inflict serious bodily harm." In this case, the prosecution was unable to introduce any evidence to show that the toy gun could be used to cause death or inflict serious bodily harm. The court acknowledged that the victim did not know that the gun was not real, and was therefore understandably placed in fear. However, "Florida courts apply an objective test and look to the nature and actual use of the instrument and not to the subjective fear of the victim or intent of the perpetrator." (Citing *Williams v. State*, 651 So.2d 1242 (Fla. 2d DCA 1995).)

COMMENTS: The Hamilton court was careful to distinguish its decision in this case from the holding in *Gomez v. State*, 496 So.2d 982 (Fla. 2d DCA 1986,) where a conviction for Robbery with a Weapon was upheld when the perpetrator used a toy gun to strike the victim several times during the robbery. In that case, the toy gun could have inflicted serious bodily harm by the way it was actually used, even though it could not fire a projectile. In this case, however, there was no evidence that the toy gun was used in a similar manner.

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Recent Case Law

Probable Cause Does Not Require Certainty

A Broward S.O. detective was working a selective enforcement detail targeting drugs and prostitution. He drove to a hotel where he had made previous narcotics arrests. In the parking lot, the detective observed Brian Blaylock in a parked vehicle with the window down. He observed Blaylock lift the open part of a soda can horizontally to his mouth, while holding a lighter to the closed end of the soda can. Blaylock inhaled and exhaled a white powdery smoke from what the detective described as a "makeshift crack pipe." During the motion to suppress hearing, the detective conceded that defendant could have been smoking something legal such as tobacco, but that with the "white powdery smoke," it resembled the smoke of "crack cocaine."

The detective approached the vehicle and asked defendant for identification. Blaylock appeared startled and dropped the soda can on the floorboard of the vehicle. The detective asked him to exit the vehicle. The detective retrieved the can and field tested the can, which came back positive for cocaine. Defendant was arrested and charged with possession of cocaine.

The trial court granted the suppression motion finding that the detective did not have a "well founded suspicion before having Mr. Blaylock exit the vehicle." The 4th D.C.A. disagreed and found sufficient probable cause for an arrest.

Issue:

Were the detective's observations sufficient to justify a stop and arrest of the defendant? **Yes.**

Probable Cause Is Not Certainty:

Once again the 4th D.C.A. referred to the Florida Supreme Court's pronouncement in *Popple v. State* (Fla. 1993), to decide the issues raised by this appeal. Probable cause is, of course, one of the three levels of police-citizen encounters as outlined by the Court in *Popple*. The first level is a consensual encounter, the second level involves an investigatory stop based on reasonable suspicion, and the third level is an arrest based on probable cause.

The trial court's difficulty arose from the detective's acknowledgement that the defendant "could have" been smoking something legal, rather than a controlled substance. But absolute certainty is not required. *A police officer does not have to "know" that a certain item is contraband. He must only have probable cause to associate the property with criminal activity*. As the U.S. Supreme Court said in *Texas v. Brown*, (S.Ct. 1983):

"[Probable cause] merely requires that the facts available to the officer would 'warrant a man of reasonable caution in the belief' that certain items may be contraband ... or useful as evidence of a crime; it does not demand any showing that such belief be correct or more likely true than false. A 'practical, nontechnical' probability that incriminating evidence is involved is all that is required.... *The process does not deal with hard certainties, but with probabilities*.... Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." That is to say, based upon the totality of the circumstances.

Court's Ruling:

Not only did the 4th D.C.A. find that the detective's observations warranted an investigative stop, but the court also found sufficient facts to support probable cause for an arrest. "Although the trial court found that the detective did not have a well-founded suspicion of criminal activity, we disagree and find that the detective, in fact, had probable cause to believe that a crime had been or was being committed."

"In the present case, we find that there was sufficient evidence to constitute probable cause. 'Probable cause to arrest or search exists when the totality of the facts and circumstances within an officer's knowledge sufficiently warrant a reasonable person to believe that, *more likely than not* a crime has been

committed.' Even though the detective in this case acknowledged that the substance, although appearing to emit crack cocaine smoke, could theoretically have been tobacco, this is not dispositive as to whether the detective had probable cause to believe a crime was being committed. 'A police officer does not have to 'know' that a certain item is contraband' in order to establish probable cause. Thus, '*a finding of probable cause does not require absolute certitude*.' We find that probable cause existed for the detective to believe that *more likely than not*, a crime was being committed in his presence."

"The trial court recognized, despite its decision to suppress, that the 'crushed cola can . . . was more likely to probably contain a narcotic, than it was to have some type of pipe tobacco.' We agree that the detective personally observed a 'crushed cola can' being used as a 'makeshift crack pipe,' and thus, personally observed, 'more likely than not,' a crime being committed."

"In conclusion, we find the detective properly seized the soda can containing cocaine, based up on probable cause that defendant had committed or was committing a crime. We, therefore, reverse [the trial court's suppression order].

Lessons Learned:

As was noted in this case, it is not necessary for the officer to be able to testify with absolute certainty that the substance or actions observed that form the basis of his decision to arrest is in fact contraband or criminal. It merely requires that the officer substantiate that belief with a factual basis bolstered by his prior experience, knowledge, and training.

Once again, this requires effective report writing and meaningful testimony at a deposition, motion hearing, and trial, to win the day.

State v. Blaylock
4th D.C.A. (November 16, 2011)

Public Safety

Shortly after 1:00 a.m. two New York City police officers responded to a radio call that an individual had a gun at a residential address. When they arrived the officers met the complainant, Jamar Vaz, who explained that Robert Simmons, his roommate, had displayed a silver handgun during a dispute they had earlier. Vaz requested that the officers accompany him into the apartment to retrieve his belongings.

After entering the apartment, the officers conducted a protective sweep. When they reached Simmons' bedroom, the officers found the bedroom door open, the room dimly lit, and Simmons lying in his bed. An Officer testified that he saw a shiny object, which he thought might be the gun Vaz had described, on a table next to the bed. When Simmons got up from his bed and approached the bedroom doorway, the officers instructed him to show them his hands. The officers then asked Simmons about the dispute with Vaz, the presence and location of the gun, and whether he had a license for it. Simmons responded that the gun was in his bedroom, at which point an Officer entered the bedroom to locate and retrieve the gun. The search revealed a nine-millimeter handgun and a magazine containing ten rounds of ammunition.

The defendant was arrested and charged with possession of a firearm by a convicted felon. Prior to trial he filed a motion to suppress both his statement to the officers and the firearm. He argued he was not read *Miranda* warnings prior to making the inculpatory statements and he had not consented to a search of his bedroom. The trial court denied the motions on exigency grounds. The U.S. Court of Appeals disagreed.

Issue:

Did the exigencies of the situation excuse the officers from reading *Miranda* warnings? **Yes.**

Did the exigencies of the situation excuse the officers from obtaining a search warrant prior to the search of the bedroom for the firearm? **No**.

Miranda and Officer/ Public Safety:

It is well settled that statements obtained during a police interrogation that are not preceded by *Miranda* warnings cannot typically be used by the prosecution in its case in chief. However, consistent with *New York v. Quarles* (U.S. 1984), courts have recognized that "Miranda warnings need not precede questions reasonably prompted by a concern for the public safety or for the safety of the arresting officers for a suspect's answers to be admitted as evidence of his guilt."

In *Quarles* the officer responded to "man with a gun" in a supermarket. After subduing him and not find-

ing the gun on his person the officer asked where it was and Quarles told him where he hid it. That statement was used to convict him of a firearm offense. The U.S. Supreme Court said, "The doctrinal underpinnings of *Miranda* do not require that it be applied in all its rigor to a situation in which police officers ask questions reasonably prompted by a concern for the public safety. In this case, so long as the gun was concealed somewhere in the supermarket, it posed more than one danger to the public safety: an accomplice might make use of it, or a customer or employee might later come upon it."

In the instant case the U.S. Court of Appeals ruled, "Applying these principles, we affirm the district court's ruling that, under the public safety exception, Simmons' statements regarding the presence and location of the gun were admissible at trial."

"At the time the officers entered the apartment, based on the police radio call and their discussion with Vaz, they had a reasonable basis for believing that Simmons was home and that he might have a gun, which they understood he had recently brandished. Under these potentially volatile circumstances, the officers had objectively reasonable safety concerns when they entered the apartment and were justified in questioning Simmons in order to assuage those concerns and defuse the perceived threat of violence between Vaz and Simmons. Moreover, their questions mainly concerned the presence and location of the gun. It is also true, as Simmons points out, that they asked about the dispute between the roommates and whether Simmons had a license for the gun. The questions about the dispute had the potential to shed light on the volatility of the situation and the extent to which Simmons harbored potentially violent resentment toward Vaz. We are not persuaded that this limited questioning was prohibitively 'investigatory in nature' or a subterfuge for collecting testimonial evidence." Accordingly, the Court of Appeals found the statement properly admitted at trial.

Warrantless Bedroom Search:

The Court of Appeals did not agree that the bedroom search was lawful. "It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable."

"An exception to the warrant requirement applies when 'the exigencies of a situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable. The common theme through these cases is the existence of a true emergency. In determining whether exigent circumstances exist, the core question is whether the facts, as they appeared at the moment of entry, would lead a reasonable, experienced officer, to believe that there was an urgent need to render aid or take action."

The Court of Appeals found the facts did not support a true emergency in that the officers were equipped to seal the bedroom and seek a search warrant. "We find that the circumstances facing the officers at the time they searched the bedroom were not sufficiently exigent to fall within this narrow exception." The defendant had been removed from his bedroom, he was being cooperative, made no move to retreat back into the bedroom, and the apartment "was full of cops."

"Thus, before conducting the search, the officers had effectively allayed the safety concerns that justified their initial questioning of Simmons and had, by exercising control over a compliant occupant and the surrounding premises, *neutralized any threat that Simmons or the gun may have initially posed*. In doing so, the officers also eliminated the possibility of the destruction of evidence. Under these circumstances, there simply was no 'urgent need' to further search the home for the gun without a warrant. Of course, absent such an urgency, *the gun alone did not justify the officers' search* of the bedroom."

The Court of Appeals, relying on *Payton v. New York* (S.Ct. 1980), concluded, "Absent exigent circumstances, a warrantless entry to search for weapons or contraband is unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within." The Court of Appeals suppressed the firearm and the magazine as the proceeds of an unlawful search.

Lessons Learned:

After the volatile, exigent, circum-

stance has been defused, and the scene is under control, it is important to focus on the legal issues at hand. As a general rule, once the exigency has dissipated the need for a search warrant to remain on the premises, especially inside a dwelling, is required.

In this case, the exigency that excused the need for *Miranda* warnings to locate the firearm did not extend to the need for a search warrant to search the bedroom. The officers had secured the scene, the suspect was isolated outside the bedroom that contained the gun, there was therefore no exigency remaining to excuse the need for a warrant.

U.S. v. Simmons
U.S. Court of Appeals, 2nd Cir.
October 26, 2011

Warrants Check

Two police officers were on patrol in response to complaints of narcotics and other criminal conduct in the Fort Lauderdale area at 1:00 a.m. While the officers were conducting a check on a twenty-four hour market, the officers observed Eric Page standing on the side of the business. No one else was around the area at that time. The officer parked his patrol car across the street and approached Page on foot. The officer did not activate the overhead lights of his patrol car, draw his weapon, nor order Page to stop and/or approach him. At the motion to suppress the officer testified that Page was free to go whenever or wherever he wanted.

The officer asked Page for his name and date of birth, and he provided the information. At that point defendant's information was run over a teletype to check for active warrants. After discovering that there was an active warrant, the officers placed Page under arrest and read him his *Miranda* rights. A subsequent search revealed 15 grams of marijuana in thirteen baggies in the defendant's pocket.

The defendant argued at the motion to suppress that the officer lacked founded suspicion to justify his seizure. The State argued the police-citizen contact was a consensual encounter.

Issue:

Does a law enforcement officer's request for an individual's name and date of birth for a warrants check convert a consensual encounter into an investigative stop requiring reasonable suspicion? **No**.

Police-Citizen Contact:

The Florida Supreme Court in *Popple v. State* set out the three possible police-citizen contacts. They are: the consensual encounter, investigative stop, and an arrest. As to the consensual encounter, the U.S. Supreme Court has stated that not every police -citizen encounter implicates the Fourth Amendment. "The initial contact between the officers and respondent, where they simply asked if he would step aside and talk with them, was clearly the sort of consensual encounter that implicates no Fourth Amendment interest." *Florida v. Rodriguez*, (S.Ct. 1984).

"Law enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen. Even when law enforcement officers have no basis for suspecting a particular individual, they may pose questions, *ask for identification*, and request consent to search luggage—provided they do not induce cooperation by coercive means. If a reasonable person would feel free to terminate the encounter, then he or she has not been seized." *U.S. v. Drayton*, (S.Ct. 2002).

Court's Ruling:

The trial court found after the motion to suppress that the warrants check was a seizure because no reasonable person would feel free to leave the officer's presence until the warrants check was concluded. The trial court granted the motion to suppress, finding that the officers needed reasonable suspicion in order to run a warrants check on defendant. The 4th D.C.A. disagreed.

The U.S. Supreme Court has consistently stated that a single act by an officer cannot in-and-of- itself violate an individual's constitutional rights. Rather, the trial court must look at the "totality of the circumstances" surrounding the encounter/ stop.

"*Florida v. Bostick,* (S.Ct. 1991) first made it clear that for the most part *per se* rules are inappropriate in the Fourth Amendment context. The proper inquiry necessitates a consideration of 'all the circumstances sur-

rounding the encounter.'" *U.S. v. Drayton*, (S.Ct. 2002).

The 4th D.C.A. went on to find that the trial court misapplied the Florida Supreme Court's ruling in *Golphin v. State*. "However, the *Golphin* decision was not guided by the fact that Golphin admitted there was a warrant. Rather, the Florida Supreme Court concluded that 'Fourth Amendment constitutional safeguards were not implicated when Officer Doemer utilized the identification that Golphin voluntarily provided to check for outstanding warrants.' The court reiterated that a 'noncompulsory request for an individual's identification has been *unlikely to implicate the Fourth Amendment in isolation*.' The court further found that since Golphin was not the driver of a vehicle, [this was a street stop] 'theoretically, retention of Golphin's identification would not have constrained his ability to either request the return of the identification or simply end the encounter by walking into the apartment in which he was staying.'"

"In conclusion, the trial court misinterpreted *Golphin* and erred in finding that the warrants check constituted an encounter requiring reasonable suspicion. As such, we reverse and remand for the trial court to make factual findings, after an additional hearing if necessary, regarding whether the encounter was consensual or an illegal stop."

Lessons Learned:

There is not a clear line separating a consensual encounter from an investigatory stop. However, "a significant identifying characteristic of a consensual encounter is that the officer cannot hinder or restrict the person's freedom to leave or freedom to refuse to answer inquiries, and the person may not be detained without a well-founded and articulable suspicion of criminal activity."

It doesn't take much to escalate a consensual encounter into an investigatory stop. There are numerous cases where the court ruled that merely ordering a person to exit his vehicle, or simply activating a police vehicle's emergency and/or takedown lights raises the contact into a seizure because "a reasonable person would expect to be stopped, at a minimum, for a traffic infraction and perhaps for the crime of fleeing and eluding if he or she drove away."

On the other-hand the Florida Supreme Court has (of necessity) adopted the position of the U.S. Supreme Court that no single act, such as reading *Miranda* rights during a consensual encounter, or turning on blue lights prior to an encounter, will in-and-of-itself convert a consensual encounter into an investigatory stop. There is no absolute rule. Rather, the reviewing court must look to the entirety of the surrounding circumstances to determine if a reasonable person in the defendant's position would feel free to leave. In true Supreme Court style the Court noted, "The reasonable person test…is objective and 'presupposes *an innocent* person.' "

State v. Page
4th D.C.A. (November 2, 2011)