Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney

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Florida courts are taking a strict view of the limits imposed upon law enforcement officers implementing search warrants.

"Plain view" and "good faith" exceptions are still valid, but the courts are applying narrower standards in deciding whether or not officers' actions are reasonable or justified in search and seizure cases.

Investigative Procedures

By Wayne Durden

Search warrant requirements tightened by Florida courts

CAUTION!

Exceeding the limits of a search warrant may result in the suppression of all evidence seized

In September, 1992, the Second District Court of Appeals in Lakeland rendered its decision in State v. Johnson, 607 So. 2d 545 (Fla. 2nd DCA 1992).

This case is controlling precedent in our area.

The court found that "the law enforcement officers executing the search warrant evidenced such a flagrant disregard for the terms of the warrant that the otherwise valid search warrant was converted into an invalid general warrant."

The officers seized much more as potential evidence than was described and authorized by the warrant itself.

After receiving information that the defendant was producing and selling pornographic video tapes out of his home, law enforcement sought and obtained a search warrant for certain particularly described videos.

Upon the execution of the warrant the officers seized the videos described in the warrant and all other videos the officers felt were obscene, in their opinions, together with virtually all of the defendant's office equipment, which they hauled away in a van.

The additional videos and office equipment were not described in the search warrant nor did the warrant authorize the seizure of these additional items.

The Court of Appeals suppressed not only the items not listed but even suppressed the items properly seized pursuant to the search warrant because the

officers so exceeded the scope of the warrant.

In other words, the warrant itself was valid, the officers' conduct, however, invalidated the entire search and seizure.

In so doing, the Court rejected the State's arguments based on the "plain view" doctrine and the "good faith" exception.

The "plain view" doctrine states that if an officer is performing a legal duty in a place where the officer has a right to be and observes contraband, the offier is justified in seizing it without a warrant.

The "good faith" exception states that a search and seizure will be upheld if officers executing a warrant act in an objectively reasonable fashion even if the search warrant itself is later found defective.

In this case, the court held that the officers' actions were not reasonable or justified under either exception.

This case does not mean that the "plain view" doctrine and the "good faith" exception are invalidated, but should serve as a warning that exceeding the scope of a search warrant may have dire consequences on a criminal case.

Any questions pertaining to search warrants can be directed to Mike Cusick, Director of Intake, or myself.

(Wayne Durden, Felony Division Director, may be reached at 534-4824. Mike Cusick's number at SAO is 534-4888).

FROM THE COURTS

Edited by Chip Thullbery

Circumstances justified police failure to knock and announce

The defendant was charged with trafficking in cocaine and filed a motion to suppress.

The evidence on the motion showed that a confidential informant made two controlled buys of one gram each at a particular house.

In each case, the informant entered the house by himself and remained seated in the living room while the seller disappeared into the back of the house and returned with the cocaine.

Based on this information, officers obtained a search warrant for the house.

When they executed the warrant they entered without knocking or announcing their presence.

In the house, they found cocaine, straws with cocaine residue, and a loaded pistol.

The trial court granted the motion to suppress, but on appeal, the Third District reversed, holding that because the defendants were selling cocaine from their residence in small amounts the police were justified in entering the residence without knocking or announcing their presence based on a reasonable fear that the evidence might be destroyed if they did.

State v. Delasierra, 18 FLW D459 (Fla. 3rd DCA Feb. 9, 1993).

Threat of force not sufficiently connected to taking of property to constitute robbery

The defendant was charged with

(See "robbery" next page)

"robbery"

robbery.

The evidence at his trial showed that a security guard observed him attempt to throw a duffle bag filled with merchandise over the fence in the patio area of a K-Mart Store.

When approached by the guard, the defendant abandoned the bag and ran out of the store and through the parking lot.

In a nearby parking lot the defendant slowed down and pointed a gun at the pursuing security guard.

The defendant was convicted of robbery but on appeal, the Second District reversed and reduced the conviction to grand theft, holding that the defendant was not guilty of armed robbery since he did not place the security guard in fear during a continuous series of acts or events in connection with the taking of the property.

Garcia v. State, 18 FLW D489 (Fla. 2nd DCA Feb. 10, 1993).

Strip search exceeded consent given by defendant

The defendants were charged with trafficking in cocaine and filed a motion to suppress.

The evidence on the motion showed that officers stopped their car for an inoperative tag light.

The officers asked for consent to search the car and each of them. According to the officers each gave his permission.

During a patdown search the officers felt a hard object in the crotch area of each defendant.

As a result the officers required the defendants to pull down their pants by the side of the road and discovered cocaine in their underwear.

The trial court denied the

(See "consent" next page)

"consent"

motion to suppress, and the defendants were convicted as charged.

On appeal, the Fourth District reversed, holding that the strip searches of the defendants next to a roadway exceeded the consent which a reasonable person would have understood he was giving.

Johnson v. State, 18 FLW D422 (Fla. 4th DCSA Feb. 3, 1993).

Officer's conversation with defendant did not amount to a detention

In this Polk County case, the defendant was charged with possession of cocaine and filed a motion to suppress.

The evidence on the motion showed that while patrolling one evening an officer noticed the defendant and another man conversing under a tree.

As the officer turned the corner, he thought he saw something in the defendant's hand.

When the defendant noticed the officer he quickly put his hand behind his back. The officer stopped his car and asked the defendant how he was doing.

The defendant did not answer, and so the officer asked him what he had in his hand behind his back. The defendant said he had nothing in his hand.

However, a few seconds later the officer saw or heard something fall behind the defendant onto the asphalt.

The officer shined his flashlight in that direction and saw a bottle and several pieces of white substance lying around it.

As the officer did this, the defendant ran away. The officer retrieved the white substance and found that it was cocaine.

The trial court granted the

(See "conversation" next page)

"consent"

motion to suppress, finding that the officer's question to the defendant as to what he had in his hand amounted to an illegal seizure.

On appeal, however, the Second District reversed, holding that there was no illegal seizure but rather an abandonment of drugs during a consensual encounter.

State v. Boone, 18 FLW D450 (Fla. 2nd DCA Feb. 3, 1993).

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