

# STATE ATTORNEY'S OFFICE

EIGHTH JUDICIAL CIRCUIT

WILLIAM P. CERVONE, STATE ATTORNEY

Legal Bulletin 2008-01  
Editor: Rose Mary Treadway

January 2008

## A MESSAGE FROM

BILL CERVONE  
State Attorney

Welcome to 2008. I hope that each of you had a wonderful Christmas season and that the New Year brings you only the best of things.

This year promises to challenge all of us in different ways. Financially, state and local governments are as strapped for money as I can recall seeing them. As always, services will suffer, perhaps even including public safety.

As you may know, Florida's 20 State Attorney's Offices are largely state funded and most of our budget is salary money.

We are faced with the reality of no growth in staff and in some areas the need to downsize. My goal is to maintain the same level of service we've been able to provide in all six of our counties, but to do that we have already been forced to

consolidate some positions and leave others unfilled.

The good news is that this will eventually pass, as those of you who have been around a few years know.

Although this might not be the best time to launch a new program or initiative, I am going forward with one change that, while it should not directly affect other law enforcement agencies, might eventually have some impact system wide. Beginning on January 1, 2008, all new Alachua County Juvenile files will be maintained electronically. In other words, the SAO is beginning the process of going paperless. We are starting this in Juvenile because that division is fairly small and self-contained, but my ultimate goal is to convert all of our day to day case files from paper to electronic format. We intend to spend the coming year working out the inevitable bugs and then start including other divisions in this program. Eventually, the file cabinets will be emptied in favor of crowded laptops.

The long term goal, of course, is not just to control the growing mountains of paper that bury all of us, but to be more efficient in the way we manage and communicate information. I am convinced that this is the way we will have to do business in the future and, for that reason alone, plan to be in the forefront of whatever happens.

Your thoughts or comments are welcome.

\*\*\*\*\*

### SAO PERSONNEL CHANGES

ASA **ANDREA MUIRHEAD** returned from her sabbatical on January 7<sup>th</sup> and has returned to her Levy County Felony position.

Levy County ASA **SAM BENNETT** transferred to the Gainesville Misdemeanor Division in January.

ASA **BYRON FLAGG** has been moved to a Gainesville Division I Felony position.

ASA **JAMES COLAW** is now the Lead Attorney in Gainesville Felony Division III, concurrent with his 10-20-Life position. James replaces **BRIAN KRAMER** in that position. Brian left the office in December for private practice.

**CHRIS LONG** has been hired as a new ASA in Alachua County Misdemeanor. Previously, Chris was an intern in the Gainesville office.

**MIKE STAUDT's** investigative position has been assumed by **LOUIS HINDERY**, formerly of ASO. Mike retired in December. **PAUL CLENDENIN**, formerly of UPD, filled another investigator position in January.

**KEN KEITH** has been hired as an ASA in Alachua County Court. Ken is an Oklahoma native and graduated from the University of Tulsa Law School.

\*\*\*\*\*

### CONGRATULATIONS!

Lt. **LOUIS ACEVEDO** of GPD retired in November after 30 years with the agency.

GPD Officer **DON SORLI** retired in October after more than 20 years with the agency.

Union County Sheriff Jerry Whitehead announced the following promotions: **GARRY SEAY**, promoted to Major; **H.M. TOMLINSON**, promoted to Captain; **J.D. YORK**, promoted

to Lieutenant; and **D.F. "LYNN" WILLIAMS**, promoted to Lieutenant.

**STEVE SINGER**, Warden at the Columbia Correctional Institution in Lake City, (and husband of SAO Chief Assistant Jeanne Singer), was presented with the 2007 Florida Prevention Leadership Award and named to the Who's Who in Drug Prevention for 2007 for his support of drug treatment efforts within the prison system. This award was presented by the Florida Office of Drug Control Policy.

Baker County Narcotics Investigator **DAVID BRYANT** has been promoted to Lieutenant. **JAMES MARKER**, also of BCSO, has been promoted to Corporal.

ASA **SEAN BREWER** and his wife, Laura, are the parents of a new baby boy, Blake David, born in October.

In October, ASO Deputy **RICARDO VEGA** received the Peaceful Paths Law Enforcement Officer of the Year award for his work in assisting with domestic violence cases.

\*\*\*\*\*

## FLORIDA CASES

### VEHICLE STOP BASED ON INSURANCE SUSPENSION

John Simpson was driving his wife's vehicle when he was stopped by a police officer. The officer had seen the car being driven, ran the tag and discovered an "FCIC warning that indicated that the registered owner, Sherrie Simpson, had a suspended license for a Financial Responsibility for failure to maintain insurance on the vehicle." The Defendant's wife, Sherrie Simpson, was riding as a passenger.

Although the officer testified that he knew Sherrie was the registered owner, he approached the driver, John, to confirm whether or not there was insurance on the vehicle, because of the FCIC hit. The officer said he was aware that the vehicle was registered to a female and that the driver was a man. The officer determined that John was driving with a revoked license and arrested him for Habitual Driving While License Suspended.

John Simpson appealed his conviction for Habitual Driving while License Suspended, maintaining that the officer had no reasonable

suspicion that a crime was being committed because he had no reason to suspect that John was driving illegally or without personal insurance coverage.

The Second DCA in Simpson v State agreed, holding that even though the officer had reason to suspect that Sherrie Simpson did not have insurance coverage for the vehicle, the officer had no reason to suspect that the driver himself did not have the necessary insurance to operate the vehicle.

Once the officer was able to determine before approaching the vehicle that the driver was not female, the purpose of the stop—i.e., to ascertain whether the owner was driving the vehicle without insurance—had been satisfied. At that point, the officer had no objective basis to suspect that the driver was operating the car without insurance in violation of the financial responsibility law.

**CONSENT AND THE PLAIN  
FEEL DOCTRINE**

Crawford was a passenger in a car stopped for traffic violations. After the car was stopped, Crawford exited and turned his body away from the approaching Officer Bush while fumbling at his waistband.

Bush asked Crawford not to turn away from him, but Crawford continued the behavior. Based on Crawford's fidgety manner, baggy clothing and a bulge in Crawford's pocket, Officer Bush asked Crawford to allow a pat down for officer safety. Crawford agreed.

Upon patting the object, Officer Bush felt a cylindrical tube and immediately recognized it as a cylindrical M&M candy container. The container rattled when Bush patted it. He testified that he knew from the sound that the tube contained cocaine but admitted that "hearing the rattle is not based on any training at all. It's really just based on being able to hear." Bush removed the tube from Crawford's pocket, opened it, and found ten pieces of crack cocaine.

Bush testified that he had been a police officer for ten years, and had made over 100 arrests where crack was found inside cylindrical candy containers. Bush said that he had never seen M&Ms in any of the containers confiscated, only crack.

To validate the warrantless search of Crawford and seizure of the container, the State must prove it either falls into one of the recognized exceptions to the warrant requirement or that the police had probable cause to arrest Crawford. The Second DCA in Crawford v State examined the consent and the "Plain Feel"

doctrine to evaluate whether probable cause to arrest existed to justify the officer's search of Crawford beyond his consent.

The court found that Crawford consented to the pat down for officer safety. "The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence." Thus, once the officer identified that the bulge in Crawford's pocket was a candy container and not a weapon, any further search was beyond the scope of Crawford's consent. Thus Bush's search should have ended when he identified the object as a candy container. Although the officer's experience with narcotics might have led him to believe that the opaque candy container held crack, he was only permitted to pat down Crawford for safety.

The court then examined whether the "Plain Feel" doctrine was an exception allowing the seizure and determined that it was not. "Officer Bush clearly identified the object as a plastic M&M candy container and not a weapon by its contour and mass. And because the officer used his tactile sense to identify the plastic container (as opposed to the contraband itself), the officer was unable to determine that the container possessed an incriminating character or was contraband merely by its contour, size, and shape." Only the sound within the container provided

the officer with suspicion that the container held crack and sound alone does not meet the "Plain Feel" doctrine requirements.

The court opined that things might have been different if the stop was in the context of something more than a routine traffic stop, such as taking place during the middle of a narcotics transaction or in sight of drug paraphernalia in the car, or an odor indicative of contraband use coming from the car or from clothing. None of those circumstances existed.

### CONSENT AND JOINT ACCESS

Meghan Greene and her boyfriend, Donald Clavette, lived together in a home they shared with their infant child. Following a disagreement, Ms. Greene went to stay with friends, taking the child with her. Clavette, highly intoxicated, then forced his way into the friends' home and struck Greene, then fled. Deputies responded and asked Greene for consent to search the Greene/Clavette residence in an effort to locate Clavette. Green consented.

Deputies arrived at the Clavette/Greene house around 5 am and attempted to contact

anyone in the home by phone and by illuminating the home with a spotlight. These attempts being unsuccessful, the deputies used their public address system in an effort to raise anyone inside but got no response. Finally, deputies knocked on the front door and Clavette's sister opened the door. Initially she told deputies that Clavette was not there, but later said she was not certain. The deputies then entered the residence and conducted a protective sweep, finding Clavette behind the closed door of his bedroom, lying in bed.

Clavette lunged toward one deputy, grabbing his rifle and a fight ensued. Clavette was subdued, arrested and charged with attempting to take a firearm from a law enforcement officer, resisting an officer with violence, battery on a law enforcement officer and misdemeanor domestic violence battery.

Clavette filed a motion to suppress, claiming that the deputies entered his residence illegally to make a warrantless arrest for a misdemeanor. The trial court granted the motion. The State appealed.

The Fifth DCA in State v Clavette held that Clavette's lack of **express** refusal to the police entry was insufficient to overcome the consent given by Ms. Greene. Clavette was either hiding, resting or sleeping in his bedroom and did not hear or chose not to respond to the police prior to

their entry into his home. "If a potential defendant with self-interest in objecting is in fact at the door and objects, the co-tenant's permission does not suffice for a reasonable search, whereas the potential objector, nearby but not invited to take part in the threshold colloquy, loses out." Clavette's express refusal to respond to law enforcement was not the equivalent to an express refusal to consent.

In any event, even if the police had illegally entered the home, Clavette would not have been entitled to suppress the observations and testimony of the deputies regarding the events that occurred thereafter. A person is not entitled to use force to resist even an illegal arrest.

**"NO LOITERING"/"NO TRESPASSING SIGNS" NOT PROBABLE CAUSE FOR ARREST**

Tampa PD decided to conduct a trespass investigation at a basketball court in a public housing project at 11 pm. Officer Wilson testified that the court was closed at that time of night, but the court is not fenced and there are no signs indicating the operating

hours of the court.

Instead, the operating hours are in a lease agreement signed by the residents. The only signs in the area are "No Loitering" signs. The park is known for marijuana sales after dark. Officers testified that their reason for going to this court was to conduct trespass investigations which, in their experience, would inevitably lead to drug arrests.

Officers arrived at the court in a marked unit, hid between buildings and watched as a group of teenage boys and young adult men congregated on the court. Officer Graham gave chase to J.D.H., yelling for him to stop, but J.D.H. continued running and only stopped when a police taser was pointed at him. J.D.H. was immediately arrested for opposing or resisting without violence for not obeying the order of the officer to stop. A search incident to arrest revealed cocaine.

The trial court found that the officers had reasonable suspicion to stop J.D.H. due to his flight in a high crime area but that standing alone would not provide probable cause for an arrest. However, the trial court denied the defendant's motion to suppress.

The Second DCA in J.D.H. v State reversed the conviction, holding that the simple act of fleeing from the officer, without more, does not constitute the offense of

resisting without violence.

Instead, the court held, a person is guilty of resisting by flight only if he flees while knowing of the officer's intent to detain him and if the officer is justified in detaining the person before he flees. "In this case, it appears the J.D.H. did flee while knowing of the officers' intent to detain him." However, neither officer testified to any facts that would support a legal basis to detain J.D.H. before he fled.

The court rejected the argument that the defendant was trespassing before he fled because there was no evidence that the defendant was given notice against trespassing either by actual communication or by posting or fencing. The ball court was not posted or fenced. Also rejected was the State's argument that residential leases contained notice of the hours of operation. No evidence was presented that the defendant was a resident of the housing project. Further, the defendant was 16 years old and thus was not a party to any lease agreement.

The court also rejected the argument that the defendant was loitering, opining that the crime of "loitering" is not committed simply by standing under a "no loitering" sign. The court rejected the argument that the existence of a "no trespassing" sign coupled with the property owner's agreement that the police could stop and investigate persons on their

property was sufficient to support an investigatory detention. The officers never testified that the defendant engaged in drug activity or any activity that would raise a concern for public safety.

Finally, the court rejected the "flight in a high crime area" argument, holding that the flight might have given the officers reason to stop the defendant, but not to arrest him; but only to conduct a TERRY stop to allow the officers to investigate further. If the officer did not learn facts rising to the level of probable cause, the defendant should have been allowed to go on his way.

**RESISTING AN UNLAWFUL  
PERFORMANCE OF LEGAL DUTY**

Mrs. Rodriguez, convicted of resisting an officer with violence (attacking the officer while he was attempting to detain her husband) and battery on a law enforcement officer (hitting the officer after her husband died), appealed her convictions.

Mrs. Rodriguez's husband was asked by the store manager, to leave the convenience store parking lot after another customer complained that Mr.

Rodriguez bumped his grocery cart into their vehicle. Mr. and Mrs. Rodriguez left as requested and drove home. A sheriff's deputy, who was across the street on another matter, was told by a bystander that Mr. Rodriguez had been involved in a motor vehicle accident and was leaving the scene of the accident.

The deputy followed the couple to their house and saw Mr. Rodriguez drive through the gate of their fenced-in yard and watched as Mrs. Rodriguez began to close the gate. He approached the gate and attempted to question Mr. Rodriguez about the hit and run accident. Mr. Rodriguez told the deputy to leave him alone and walked away. As Mrs. Rodriguez was attempting to lock the gate with a chain, the deputy took the chain and "pushed through the gate," took hold of and struggled with Mr. Rodriguez. Mrs. Rodriguez began striking the deputy. Mr. Rodriguez escaped into the house and the deputy used pepper spray on Mrs. Rodriguez.

The deputy, in pursuit of Mr. Rodriguez, entered the house and Mr. Rodriguez began attacking the deputy with an axe. The deputy shot and killed Mr. Rodriguez. Mrs. Rodriguez ran into the house and began hitting the deputy. When back up officers arrived, they arrested Mrs. Rodriguez.

An element for both crimes, Resisting with violence and Battery on a law enforcement officer, is that the officer



must be "lawfully executing a legal duty." The Second DCA, in Rodriguez v State, reiterated that the Florida Supreme Court in Tillman v State rejected the proposition that Ch 776.051(1) (no right to resist an illegal or legal arrest with violence) extended beyond an arrest situation to other types of police-citizen encounters. Noting the legislative intent when placing the element of "lawful execution of a legal duty" in statutes 784.07(2) and 843.01, the court explained that "in prosecutions under either statute for crimes committed outside an arrest situation, the State must prove that the officer was acting lawfully."

The court determined that the defendant's acts against the officer were prior to her arrest and were not in "connection with the arrest." When Mr. Rodriguez walked away from the deputy, he was not a fleeing felon and he was not obstructing an investigation, therefore, the deputy did not meet the "exigent circumstances" required for a warrantless search and/or seizure. The deputy was engaged in a "consensual encounter" and did not communicate any intention to detain Mr. Rodriguez. His only crime would have been a misdemeanor for refusing to cooperate with the officer's investigation; therefore, the deputy could not legally enter his home and arrest him for that crime.

The Second DCA determined that the deputy was "unlawfully

inside the Rodriguez's fenced yard and residence" when he had his altercation with Mrs. Rodriguez.

Because the State's evidence actually proved that the deputy was not engaged in the lawful performance of a legal duty when he arrested Mrs. Rodriguez, the DCA reversed her convictions. The trial court was directed to reduce her BLEO conviction to a simple battery and acquit her of the Resisting with violence charge.

**(More) RESISTING UNLAWFUL  
DUTY—THE STRIP SEARCH**

The Fourth DCA in Perry v State has addressed the issue of whether a strip search performed by an intake booking deputy at the county jail is a part of the arrest process, such that the prohibition in Ch 776.051(1) against the use of force to resist the strip search applies.

Perry, who was convicted of resisting an officer with violence during an attempted strip search, argued that he was justified in using force to resist the strip search because it was not being lawfully performed. The DCA agreed.

Booking Deputy Enrique was working at the main jail in Broward County. His job entailed screening new inmates and introducing them into the system. As part of the booking process, the deputy was required to search inmates for weapons and contraband and to fingerprint and photograph them. The type of search conducted, whether a pat down or a strip search, depended upon the crime for which the inmate was arrested. An inmate who was arrested for a violent felony involving weapons or a narcotics offense was subject to a strip search. A strip search required the inmate to squat and pull his buttocks apart for inspection.

Perry had been arrested for a narcotics offense by a Hallandale Police officer and placed in the custody of the Broward County Sheriff's Office, and turned over to Deputy Enrique for the booking process. Pursuant to the Broward Sheriff's general policy requiring a strip search for inmates charged with a felony drug offense, the deputy took Perry into the strip search room and ordered him to disrobe for a strip search. The Sheriff was not present at the time and, according to Deputy Enrique, he did not need the authorization of anyone at the jail to perform the strip search on Perry.

Once inside the strip search room, Perry complied with the Deputy's orders to disrobe; but he refused to be searched. Perry became very loud and verbally abusive, declaring

that he would not allow his anal area to be inspected. When Deputy Anton responded to Deputy Enrique's call for assistance, he saw Perry flailing his arms and yelling in a combative manner. Deputy Enrique grabbed Perry's arm and Perry fell to the ground. Perry became violent and started kicking his feet and throwing his hands up at the officers. He punched Enrique in the face and kicked Anton in both legs. Eventually, the officers were able to restrain Perry and place shackles on him.

At trial, Perry was convicted of Resisting an officer with violence. The information had charged that Perry resisted a lawful duty, to wit: the detention of Perry, by fighting and striking the officers. Perry appealed and the Fourth DCA upheld the conviction. Perry then appealed to the Florida Supreme Court who then returned the case back to the DCA to reconsider, in light of **Tillman v State**, cited above.

The Fourth DCA now holds that the prohibition against the use of force to resist an arrest under 776.051(1) does not apply to post-arrest intake procedures such as the strip search in this case. Here, it was undisputed that Perry was arrested by city police officers, then transported to the county jail and turned over to the custody of the Sheriff's Office for processing. The arresting officers did not remain on the scene, and some period of time

passed between the time the officers deposited Perry at the jail and the deputies' initiation of the booking process and attempt to strip search. Under these facts, the process of arrest had clearly ended and Perry's detention had begun.

Thus, to convict Perry for Resisting With Violence, the State had to prove that the Deputies were acting "in the lawful execution of a legal duty" when they attempted to strip search Perry. Because Perry's violent resistance to the Deputies occurred during their attempt to strip search him at the Broward main jail, the court had to evaluate the sufficiency of the evidence on the lawful execution element of the resisting charge by applying Florida law governing strip searches.

Section 901.211 governs strip searches and "codifies minimum acceptable standards of conduct for law enforcement officers conducting strip searches in Florida." "A strip search conducted in violation of 901.211, in essence, establishes police misconduct and constitutes a Fourth Amendment violation."

Here, the State failed to establish that the strip search was performed in compliance with Florida statutory and decisional law. The State failed to introduce any evidence that the on-duty supervising officer gave written authorization for the detention deputies to perform a strip search upon Perry. Deputy Enrique testified that

the only authority he had to conduct the strip search was a written general jail policy on such searches adopted by the Broward Sheriff. A policy or procedure adopted by the Sheriff does not control over state law.

Because the State failed to prove that the deputies complied with Section 901.211(5), it failed to prove that they were acting "in the lawful execution of any legal duty" when they attempted to strip search Perry.

**FALSE NAME TO LEO NOT  
ILLEGAL UNLESS LAWFULLY  
DETAINED**

Mrs. Vargas, her son (Son), and Defendant, David Brevick, were in her apartment one evening when they received a call from Mrs. Vargas' ex-husband, Juan Carvajal. Carvajal later came to the apartment demanding to see Son. When Mr. Carvajal attempted to grab Son and put him in his truck, the boy ran away. Mrs. Vargas and Defendant got into Mrs. Vargas' car and drove around the neighborhood, looking for Son.

Shedrick, an off duty Cocoa Police Officer, lived in the same apartment complex as Mrs. Vargas. As he was returning home, Carvajal ran up to Shedrick's car, upset and yelling in a mix of Spanish and English. Carvajal indicated to Officer Shedrick

that he thought Defendant had harmed or scared away his son.

About that time, Defendant and Mrs. Vargas drove up and remained in their car. Defendant rolled down his window to hear what was going on.

Officer Shedrick called the Melbourne Police Department to respond. Meanwhile Defendant and Carvajal began arguing. Then, in sight of Officer Shedrick, Carvajal ran over to Defendant's car and punched Defendant in the face through the open car window. Defendant did not fight back.

When Melbourne Police Officer Smoak arrived, Defendant told Smoak that he did not want to press charges against Carvajal. Officer Smoak then asked Defendant his name. According to Smoak, Defendant gave her his middle and last name, "Glen Brevick." Officer Shedrick ran a computer check on the name that Defendant had provided, but could not retrieve any information on that name. Defendant then admitted that he had not given his full name because he was on probation and had been instructed to have no contact with police.

Officer Smoak testified at the hearing that, at the time Defendant gave her the false information, it appeared that Defendant was the victim. Smoak testified that Defendant was not free to leave because she had not completed her investigation, but there was no indication in the record that either of the officers communicated to the Defendant

that he was not free to leave. There was no indication that the officers stopped Defendant at the scene, that they asked him to remain, or that they asked him to exit his vehicle prior to his arrest.

Section 901.36(1) provides that *"It is unlawful for a person who has been arrested or lawfully detained by a law enforcement officer to give a false name, or otherwise falsely identify himself or herself in any way, to the law enforcement officer or any county jail personnel..."*

Accordingly, "the plain language of section 901.36(1) requires that, in order to be in violation of the statute, the giving of a false name or identification must occur following arrest or lawful detention." The issue here is whether Brevick was lawfully detained. The Fifth DCA in **Brevick v State** held that there was no lawful detention, therefore, the Defendant had not violated Section 901.36(1).

The court stated that a detention does not occur simply because an officer approaches and asks questions, or requests to examine identification. A detention is lawful when the officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime. Nothing in the record suggests any basis to conclude that Defendant would have had reason to know he had been detained; i.e., that he was not free to leave. He had just been battered, the victim of an unprovoked attack, while sitting in his

vehicle. His statement that he did not want to press charges reflects his state of mind as a victim, not a suspect. Even Officer Smoak, in coaxing him to give his correct name, told him only that she had to have it to "document" her report.

And finally, the concurring opinion stated that even if Defendant had been lawfully detained, Defendant promptly recanted and provided complete and correct information immediately upon being taxed by law enforcement with the accuracy of the identity information he had given. He explained he had not expected anyone to try to verify his identity, merely record it in a report. Because he acted promptly to give correct information, the wasted time and effort on the part of law enforcement was minimal and thus, did not establish an offense under Section 901.36.

### **TAG NOT VISIBLE**

In December, the Fifth DCA held in State v Tullis that where an officer stopped a car because he could not read the tag under a tinted cover, the stop and contact with the driver was still valid even though the officer could see that the tag was valid upon approach.

Tullis was driving a car with a temporary tag beneath a tinted license plate cover. The officer testified that he

was approximately 30 feet behind Tullis' vehicle and that the tag was "indistinguishable" because of the tinted cover. Upon stopping Tullis' car and approaching, the officer still could not read the tag clearly.

The officer smelled cannabis at the driver's side window and cocaine, cannabis and drug paraphernalia were subsequently found on Tullis.

Tullis moved to suppress the search, contending that section 320.131(4) does not require a temporary tag to be legible, only that it be "clearly visible." Thus, Tullis argued, the arresting officer had no basis to detain him because the tag was clearly visible to the officer prior to the stop.

The trial court agreed with Tullis. The Fifth DCA did not.

"We find that where the preprinted identification numbers and letters on a temporary tag are illegible from five feet away, because of a tinted license plate cover, the tag is not "clearly visible." Because the officer had probable cause to believe that Tullis had violated section 320.131(4), the officer was authorized to stop Tullis' vehicle. The Court distinguished the Florida Supreme Court case, State v Diaz, that had reversed a conviction on the grounds that once that officer determined that the expiration date on a

temporary tag was determined to be, in fact, valid; it was improper for the officer to request additional information from the driver (his license, that was ultimately determined to be suspended). The Florida Supreme Court held that it was unlawful for the officer to continue to detain the defendant once the officer had confirmed the validity of the tag.

Here, it was Tullis' use of a tinted license plate cover which rendered the entire tag, not just the expiration date, illegible. Tullis should not be heard to complain where it was his own actions that prevented the officer from being able to confirm the validity of the temporary tag without having to first detain Tullis.

Finally, the DCA noted that even if the officer had been able to read the preprinted identification numbers and letters on Tullis' tag after initially stopping him, the search of Tullis would still have been lawful. As in Diaz, the court stated that the officer could lawfully have made personal contact with Diaz to inform him of the reason for the stop. If the officer here had approached Tullis solely for the purpose of informing Tullis of the reason for the stop, the officer still would have detected the odor of cannabis emanating from the car, thus providing probable cause for the search.

### FOR COPIES OF CASES...

For a copy of the complete text of any of the cases mentioned in this or an earlier issue of the Legal Bulletin, please call ASA Rose Mary Treadway at the SAO at 352-374-3672.

### REMINDER: LEGAL BULLETIN NOW ON-LINE

The Legal Bulletin is now available on-line, including old issues beginning with calendar year 2000. To access the Legal Bulletin go to the SAO website at [sao8.org](http://sao8.org) and click on the "legal bulletin"

\*\*\*\*\*

### REMINDER

Law Enforcement Officers are reminded to check in with the receptionist at the Gainesville SAO before entering the locked glass doors to see an attorney. The receptionist will then telephone the attorney so that the officers can be met and escorted to their destinations.

Also, officers are reminded to either bring their subpoenas or know the name of the attorney they are there to see.

\*\*\*\*\*

