

LAW ENFORCEMENT NEWSLETTER

March 2011

A MESSAGE FROM BILL CERVONE STATE ATTORNEY

With this issue of the newsletter we are again undergoing changes in format. As you will see elsewhere, **Assistant State Attorney Rose Mary Treadway** has retired, as a result of which editorial responsibilities for this issue have been re-assigned to **Assistant State Attorney Geoff Fleck**. Geoff's approach is aimed at

providing shorter, bullet point summaries of new case law developments in order to be able to include more information. As in the past, we can always provide the full text of any case that might be of particular interest to you.

Otherwise, we continue

down an uncertain economic path that does not bode well for most of our agencies. By our next issue, which is planned for early summer, the legislature will have done whatever is going to be done. You have my pledge that the State Attorney's Office will do its utmost to make sure that whatever cuts we might suffer will not impact what we do with you.

Unfortunately, Geoff has also elected to retire in April, leaving us in flux for our next issue.



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SAO PERSONNEL CHANGES

In December, the SAO created a dedicated unit that will focus on firearm prosecutions in Alachua County. **ASA Adam Urra** and **Investigator Darry Lloyd** have been assigned to this unit and will be working cases involving 10-20-Life eligi-

ble defendants in order to strengthen our response to those crimes.

Also in December, **ASA Phil Pena** returned to the SAO after a year in private practice in south Florida. Phil

has taken **Adam Urra's** previous position in the Alachua County sex crimes prosecution unit.

Any changes in agency email addresses should be reported to our office at fleckg@sao8.org.

For a copy of the complete text of any of the cases mentioned in this or an earlier issue of the LegalBulletin, please call Chief Investigator Spencer Mann at 352-374-3670.

CONGRATULATIONS!!!

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Www.sao8.org**

Assistant State Attorney Rose Mary Treadway formally retires at the end of March and will be on leave for most of the month, meaning that she effectively leaves the office at the end of February. This is after a 35+ year career that spanned the tenures of four State Attorneys. Rose Mary was first assigned to the Statewide Grand Jury under State Attorney Gene Whitworth, after which she ran the Juvenile Division for many years. More recently, she has been a part of the Intake Division in Gainesville. There is no replacing Rose Mary and her steady and persistent approach to her work, no matter the assignment, and her wealth of legal, historical and anecdotal knowledge about our local criminal justice system.

On April 1st, **Assistant State Attorney Geoff Fleck** retires after nearly 14 years with the office.

During that time Geoff has handled some of the most difficult homicide and other cases that have been tried, with great success, and has served in a variety of other roles includes training and on Statewide Committees. Geoff is also impossible to replace.

Also having retired in February is Williston Police **Chief Dan Davis**. **Chief Davis** served in that position for about 12 years. As a fitting summary to his many years of service he was awarded the **David W. Moss** Humanitarian Award at a ceremony on February 25th. This award recognizes an individual who has made significant contributions to the improvement of the quality of life of the citizens of Williston.

The State Attorney's Office wishes all of these long time friends and colleagues the best in

their retirement.

The Williston Police Department also presented several other awards on February 25th, including to **Corporal Mike Bracaglia** as Officer of the Year, **Tim Riddle** as Dispatcher of the Year, **Rev. Charles Caldwell** as Auxiliary of the Year, **Gail Brown** as citizen of the Year. School Crossing Guard **Jackson Williams** received the agency's Life Saving Award for his actions in saving a child from harm.

Two other long time members of our law enforcement community have also retired, **Lt. Pete Backhaus** of the Gainesville Police Department on February 24th and **Capt. Don Tyson** from the Alachua County Sheriff's Office on March 30th.



FROM THE UNITED STATES SUPREMEM COURT

Confessions [Invocation of Rights]

Effective Miranda invocation must be unequivocal

Officers advised defendant of his Miranda rights and began questioning him. After remaining silent for three hours, he then made an incriminating statement. In a 5-4 decision, the U.S. Supreme Court holds that this statement was properly admitted against him. The defendant did not unambiguously invoke his right to counsel. A waiver of his rights could be implied by his silence. *Berghuis v. Thompkins*, Case 08-1470, June 1, 2010, U. S. Supreme Court.



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Arrest [Jurisdiction] Following a suspect out of jurisdiction can risk case

City police officers made a traffic stop. The driver fled and was apprehended. Meanwhile the passengers drove the car into another jurisdiction which was the residence of the vehicle's registered owner. Officers went into that jurisdiction where defendant was seen standing around the car. He was ultimately arrested. Evidence obtained should have been suppressed, as the officers were acting outside their jurisdiction. *T.T.N. v. State*, 35 FLW D1653a, 2d DCA.

Confessions [Voluntariness] [Juvenile] - Totality of circum- stances, not access to mom, is important

Juvenile confessed to a murder without being given the opportunity to talk to his mother. Court views all the circumstances surrounding the confession and holds that it is admissible. The fact that his mother was not present does not change this outcome, especially since the defendant did not seek to have her present during the interview. *McIntosh v. State*, 35 FLW D1237b, 3d DCA.

Confessions [Miranda] Right to counsel ad- vice doesn't have to be repeated

Once a suspect is properly advised of his right to the presence of counsel before and during the interrogation, there is no requirement that the suspect again be additionally advised that he has the right to have counsel appointed during questioning." *Miller*

Confessions [Voluntariness] Without request for lawyer, confession is admissible

Defendant was being held in New York. An attorney had been appointed to represent him at his extradition hearing. Officers from Florida went to New York and, after advising defendant of his Miranda warnings, defendant made incriminating statements. These were properly introduced at his trial. Although defendant had a right to counsel, he did not invoke his right prior to the questioning. His appointed attorney was solely for the purposes of extradition, which is not a criminal offense. *Williams v. State*, 35 FLW D1206a, 5th DCA.

Confessions Interrogation] If not

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interrogation, confession is admissible

While in jail, defendant told a detention deputy that "it was an accident." When the deputy made further inquiry, defendant gave a detailed statement concerning his mother's death. This statement was properly admitted. Defendant initiated the conversation and the deputy was not interrogating him when he replied to the defendant's initial statement. *Elliott v. State*, 35 FLW D2434a, 1st DCA.

Confessions [Need for Warnings] [Private Safety] No Miranda needed for cocaine eater

Police officers saw defendant spitting out what appeared to be cocaine. When questioned, he told the officers that he did not have "any more crack cocaine in him." This statement was properly admitted, even though Miranda warnings had not been given. The officer's questions were based on their concern with the defendant's health, and thus gave rise to a "private safety" exception. *Smith v. State*, 35 FLW D2053a, 1st DCA.

Confessions [Invocation of Rights] Question about counsel is not request for counsel

Some time after being read his Miranda warnings, defendant

stated "I mean if I am being held and I'm being charged with something, I need to be on the phone calling my lawyer." Detective responded that she had not yet made a charging decision. Defendant agreed to continue with the interview and ultimately confessed. The confession was admissible. His statement was a "prefatory question" about his right to counsel which was properly replied to by the detective. *Spivey v. State*, 35 FLW D2004a, 1st DCA.

Confessions [Voluntariness] Idiots deserve to be convicted

After being advised of his Miranda rights the defendant stated "I just don't want to incriminate myself, man." He then kept making statements about the offense. Court holds that his initial statements were equivocal, and that his subsequent statements were properly admitted. *Womack v. State*, 35 FLW D1873a, 4th DCA.

Confessions [Need for Warnings] Questioning after stop = custodial interrogation

Officers followed defendant's car after viewing what appeared to be a drug transaction. They stopped him for a traffic infraction. Officer took defendant's license. He then explained that he was a drug investigator and,

after telling defendant about what he had observed, began to ask questions. Defendant's admission should have been suppressed. A reasonable person would have believed that this was a custodial interrogation, which required Miranda warnings. *Noto v. State*, 35 FLW D1487a, 4th DCA

Confessions [Invocation of Rights] Idiots deserve to be convicted #2

Defendant had invoked his Miranda rights. He then overheard officers talking about his case. He interjected comments into their conversation. He also made statements to a co-defendant that were recorded. Both of these statements were properly admitted. *Noto v. State*, 35 FLW D1487a, 4th DCA.

Confessions [Invocation of Rights] An invocation is an invocation

Defendant indicated that he did not want to talk to officers without an attorney. He was then brought back into the interview room because his brother wanted to talk to him. Miranda was read to him again. Two days later the officers reinitiated conversation. Statements the defendant made should have been suppressed. *Wilder v. State*, 35 FLW D1523a, 1st DCA.

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Confessions [Need for Warnings] No reasonable suspicion + Miranda may casual encounter

Defendant, during a consensual encounter, was advised of his Miranda rights. He subsequently made inculpatory statements. Florida Supreme Court rejects his claim that reading Miranda, per se, turned the encounter into an investigatory stop, for which the officers admittedly lacked reasonable suspicion. While reading Miranda "may increase the coercive atmosphere of a police-citizen encounter", it is just one factor to be considered in a case-by case manner in determining whether a person would feel free to end that encounter. *Caldwell v. State*, 35 FLW S425b, Fla. Sup. Ct.

Confessions [Miranda] Always Mirandize in Creole

Defendant was advised of his rights in both English and Creole. The Creole interpreter told him that he had the right to talk to a lawyer "before and after they ask you questions." Court holds that this warning was sufficient. *State v. Joseph*, 35 FLW D2663b, 5th DCA.

Disorderly Conduct Resisting Arrest [Evidence] Words alone do not usually disorderly conduct or resisting

Defendant was with a group of other juveniles who were in the street after a dance. She was using shouting and using foul language. She refused to leave the area and was arrested for disorderly conduct. Conviction was reversed. There was no evidence that she was instigating fights in the area, as the officer had feared when he made the arrest. *C.N. v. State*, 35 FLW D2699c, 2d DCA.

Drugs [Intent to Sell] Lots of separate baggies does not intent to sell

Defendant was found with 18 Ziploc bags of marijuana and a \$20 bill. There was no evidence that he was involved in selling drugs. He testified that he had purchased it for his individual use. Officer's opinions regarding the evidence were insufficient to overcome defendant's reasonable hypothesis of innocence. His conviction for possession with intent to sell was reduced to simple possession. *Alleyne v. State*, 35 FLW D1971a, 4th DCA.

Drugs [Evidence] - general practice" testimony about drug dealers reversal

During defendant's trafficking trial, law enforcement officer was allowed to testify that it was a general practice for drug traffickers to conduct their offenses while using vehicles rented by third parties. Prosecutor mentioned this in closing as well. This evidence was inadmissible, and defendant was entitled to a new trial. *Austin v. State*, 35 FLW D2205a, 1st DCA.

Identification [Show-up] Show-ups are risky & inherently suggestive

Victim of a robbery identified the defendant after he was brought back to the scene of the offense. Court notes that this procedure is inherently suggestive. However, because the identification was made shortly after the offense, the area was well-lit, the defendant and victim were close together at the time of the offense, and that the identification was made without hesitation, it was admissible. *Adderly v. State*, 35 FLW D1905a, 4th DCA.

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**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 <www.co.alachua.fl.us> and click on the "Legal Bulletin" box.



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 Chief Investigator Spencer Mann at 352-374-3670

**Loitering and Prowling
Kiddies at dumpster
at 1 a.m. probable
cause**

Juvenile defendants were observed around a dumpster in a Medical Center Parking lot around 1 A.M. They told the officer that they were looking for a drink of water. Officer had sufficient probable cause to arrest them for loitering and prowling. *S.J. v. State*, 35 FLW D2826b, 4th DCA.

**Possession
[Constructive]
Proof of control neces-
sary for possession**

Defendant ran into a house while being chased by police. He admitted that he had stayed there at times. Officers found drugs in the house. A man's shirt and a letter addressed to the defendant were found in the same box where some of the drugs were located. This was insufficient evidence to prove defendant possessed the drugs. There was no evidence that he had control over the residence, and there is a reasonable hypothesis that he threw his personal belongings on top of the box without knowing its contents. *Bennett v. State*, 35 FLW D2461b, 2d DCA.

**Search and Seizure
[Dwelling]
[Warrantless] Right to
arrest does not right
to enter dwelling w/o
warrant**

Officers had a pick-up order for the defendant. While this gave them the right to arrest him without a warrant, it did not give them the authority to make entry into a dwelling. *Bennett v. State*, 35 FLW D2461b, 2d DCA.

**Search and Seizure
[Vehicles][Incident to
Arrest] Search of con-
tainer that could con-
tain relevant evidence
OK**

Defendant, while driving her car, was arrested on a warrant for mortgage fraud. Officers noted a partially-opened briefcase in the car. They were within their rights to seize this item, as it was reasonable to assume that it may contain evidence of the crime. *Grant v. State*, 35 FLW D1980a, 5th DCA.

**Search and Seizure
[Vehicles] [Incident to
Arrest] -Inventory
search after arrest OK**

Officer stopped car for a window tint violation. He smelled marijuana as he

approached the vehicle, and saw a marijuana cigarette in plain view. He placed the defendant under arrest and conducted an inventory search that yielded a fire-arm. This evidence was properly seized. Court distinguishes the ruling in *Gant* in this situation. *State v. Williams*, 35 FLW D1935a, 3d DCA.

**Search and Seizure
[Persons][Probable
Cause] Name, proximi-
ty, & description of car
PC**

Witness saw defendant's vehicle parked in the vicinity of where a shooting took place. He then saw it speed away. Other witnesses provided the defendant's name as a possible suspect due to his prior association with the victim. Officers were told he drove a car similar to the one described by the first witness. Officers had sufficient probable cause to stop the car and arrest the defendant. *State v. Cuomo*, 35 FLW D1949a, 1st DCA.

**Search and Seizure
[Persons] [Reasonable
Suspicion] Victim de-
scription PC**

Crime victim, who identified herself to the police, gave a

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detailed description of the person who had committed the offense against her. Defendant matched the description. Officer had reasonable suspicion to detain him. *Hadley v. State*, 35 FLW D1884a, 3d DCA.

Search and Seizure

[Consent] [Voluntariness]

Acting guilty does not consent to search

Fourteen year-old defendant was a passenger in a car that was stopped for DUI. She saw the driver getting arrested. When she was asked to get out of the car, she placed her hands on top of the car and spread her legs. This could not be considered as consent to search. She was merely following what she had seen the driver do. Court also reiterates that a generalized fear that arises from a stop does not give a police officer the right to frisk a passenger. *E.J. v. State*, 35 FLW D1728a, 4th DCA.

Search and Seizure

[Traffic Stop] [Reasonable Suspicion] Sloppy U-turn does not justify traffic stop

Officer observed defendant driving slowly through a neighborhood in which there had been a number of drug arrests. The driver then went up over the curb when he made a u-turn. Officer conducted a traffic stop and, after a drug dog alert, discovered contraband. This evidence was suppressed. Officer did not have reasonable suspicion that the driver was operating in an unsafe manner. One Judge dis-

sented. *Beahan v. State*, 35 FLW D1760b, 1st DCA

Search and Seizure

[Persons][Probable Cause] Anonymous tip and carrying a safe reasonable suspicion

Officers received an anonymous tip at 3 A.M. regarding two men who were trying to enter parked cars in a residential neighborhood. They stopped the defendant after they saw him carrying a personal safe down the street. Officer had reasonable suspicion that the defendant was involved in criminal activity, and thus the stop was valid. *State v. Quinn*, 35 FLW D1773b, 5th DCA.

Search and Seizure

Traffic Stop [Reasonable Suspicion] Seeing what could be a drug transaction does not reasonable suspicion

Officers observed a person come up to defendant's car and engage in what appeared to be a hand-to-hand drug transaction. Officers did not know the identity of the other person, and the location of the offense was not considered a high drug area. Officer did not have reasonable suspicion to justify stopping defendant's vehicle. *Ray v. State*, 35 FLW D1552a, 4th DCA.

Search and Seizure

[Persons] [Probable Cause] Description of defendant and vehicle by identifiable source

reasonable suspicion

Officers received information from a person who identified himself and who provided a description of a person and of a motor vehicle used in the commission of the alleged offense. They stopped a person who matched the description of the assailant given during the call to the police. Officers had a valid reason to conduct the stop. *State v. DeLuca*, 35 FLWD1581c, 1st DCA.

Search and Seizure

[Traffic Stop]

[Reasonable Suspicion]

Tip + observation + admission articulable suspicion

Officers had received a tip about a drug transaction. They observed defendant participating in what appeared to be such a transaction, and they instituted a legitimate traffic stop. Defendant admitted to picking up cocaine. There was a sufficient articulable suspicion of criminal activity to support a search of the vehicle. *Noto v. State*, 35 FLW D1487a, 4th DCA.

Search and Seizure

[Persons] [Probable Cause]

Search and Seizure

[Vehicles] [Incident to Arrest]

Defendant was arrested for violation of a restricted license. His

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car was obstructing a right of way. Officers conducted an inventory search and discovered drugs prior to the car being impounded. This search was lawful. Even though the officer testified that it was a search incident to arrest, which may trigger the principles of the Gant decision, in fact it was a legitimate inventory search. *State v. Townsend*, 35 FLW D1589a, m2d DCA.

Search and Seizure [Persons] [Reasonable Suspicion]

Officers stopped the defendant based solely on an anonymous tip that a person matching his description was involved in a drug transaction. Other officers were called, one of whom shined his spotlight on the defendant while stopping his patrol car directly in front of him. This was an investigatory stop that required reasonable suspicion, which was lacking in this case. Any consent was due to acquiescence to authority. Defendant's motion to suppress should have been granted. *Hill v. State*, 35 FLW D1455c, 3d DCA.

Search and Seizure [Warrants] [Staleness]

Law enforcement officers received an anonymous tip that defendants were growing marijuana and selling cocaine. The warrant was issued over three months later. There was no corroboration of the tip. The affidavit was insufficient to support the issuance of a warrant. The good

faith exception was not applicable in this situation. *Gonzalez v. State*, 35 FLW D1402a, 2d DCA.

Search and Seizure [Warrant] [Probable Cause]

Officer received information that defendant was involved in taking pornographic pictures of children. She applied for, and obtained, a search warrant for his residence twenty-two days after the incident occurred. Trial court erred in suppressing the evidence obtained. The information was not stale, and it was reasonable to assume that the defendant would keep these materials in his house. *State v. Sabourin*, 35 FLW D1372a, 1st DCA.

Search and Seizure [Dwelling] [Standing]

Defendant had been given an eviction notice. A walk-through was conducted and the apartment appeared abandoned. Defendant returned and barricaded himself inside. Even though the final judgment of eviction had not been entered, there was sufficient evidence to support the court's finding that he was not a lawful tenant, and thus did not have standing to challenge a warrantless search. *Caraballo v. State*, 35 FLW S374a, Fla. Sup. Ct.

Confessions [Voluntariness]

Defendant signed a Miranda waiver at 4 P.M. Questioning

began at 10. This length of time did not, without more, render the statement involuntary. *Caraballo v. State*, 35 FLW S374a, Fla. Sup. Ct.

Search and Seizure [Traffic Stop]

When an officer asks for a driver's car registration and proof of insurance in addition to his license, this does not convert a consensual encounter into an investigatory stop. *State v. Goodwin*, 35 FLW D1289b, 4th DCA.

Search and Seizure [Persons] [Probable Cause]

Officer stopped a juvenile who he suspected was a truant. Without any other justification, he could not conduct a pat down for officer safety. Items seized were suppressed. *T.M. v. State*, 35 FLW D1290b, 4th DCA.

Search and Seizure [Dwelling] [Exigent Circumstances]

Officers who responded to the scene of a robbery were told that the suspects had left. Officer walked into the defendant's apartment without permission. Defendant closed his bedroom door and asked the officer to leave. Officer discovered drugs and paraphernalia. These items are suppressed. The fact that the defendant did not protest when the of-

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ficer went inside was not equivalent to consent. The officer stated that he believed that the robbers might be inside. However, he did not feel that way until he was already inside and the defendant began to act nervous. *Dixon v. State*, 35 FLW D1298a, 4th DCA.

Search and Seizure [Consent] [Voluntariness]

Defendant was stopped by a Fish and Wildlife Officer who was going to give him a citation. When frisking the defendant the officer felt a plastic bag that he knew was not a weapon. In fact it contained drugs. Court holds that defendant did not voluntarily consent to turn over the bag, but rather that his actions were based on acquiescence to police authority. His motion to suppress should have been granted. *Broxton v. State*, 35 FLW D1264a, 5th DCA.

Search and Seizure [Persons] [Probable Cause]

Defendant had been asked to leave a bar. While he was outside, police were called and were asked to issue him a trespass warning. He was told he was not free to leave. This was not correct, as this was a consensual encounter. As a result, his subsequent convictions for possession of controlled substance and escape were reversed. *Gestewitz v. State*, 35 FLW D1177b, 4th DCA.

Search and Seizure [Persons] [Probable Cause]

Defendant and law enforcement

officer gave diametrically different testimony regarding their "encounter". Court granted Defendant's motion to suppress. Case was remanded for the trial court to make specific findings concerning the credibility of the witnesses. *State v. E.A.*, 35 FLW D1196c, 3d DCA.

Search and Seizure

Vehicles] [Reasonable Suspicion]

Defendant was asleep in his car with the motor running. The car was parked in a Mall lot at 4:15 in the morning. Officer approached, told defendant to turn off the motor, and asked for identification. Officer learned that defendant had a suspended license. This evidence should have been suppressed. The order to turn off the motor constituted an invalid show of authority. There were no facts demonstrated to indicate that the officer had concerns at that time about the defendant's safety. One Judge dissented. Case provides a thorough analysis of this issue. *Gentles v. State*, 35 FLW D2900a, 4th DCA.

Search and Seizure [Persons] [Probable Cause]

Police arrived at a crime scene while still talking on the phone to a witness, who gave a detailed description of the suspect. Police seized the only person who fit the description. They had a sufficient legal basis to do so. *Brown v. State*, 35 FLWD2692a, 4th DCA.

Search and Seizure [Traffic Stop] [Passenger]

Defendant was the passenger in a car stopped for a valid traffic infraction. Officer detected the odor of marijuana and suggested to the driver, outside the presence of the defendant, that he produce the marijuana. Driver went to the defendant and told her to give it to him. These actions did not make the driver an agent of the law enforcement officer. It was error for the marijuana in defendant's possession to be suppressed. *State v. C.D.M.*, 35 FLW D2581c, 2d DCA.

Search and Seizure [Persons] [Probable Cause]

Defendant was seen sleeping near a multi-colored pipe that was partially inside a red bag. Officer seized the pipe. There was no probable cause to support the seizure, as there was no evidence to support the assumption that the pipe contained contraband. *M.L. v. State*, 35 FLW D2456c, 3d DCA.

Search and Seizure [Vehicles] [Reasonable Suspicion]

Officers observed defendant sitting in the driver's seat with the engine running and the lights on. The car was in the parking lot of a convenience store. Officer could smell alcohol coming from the vehicle. Officers had reasonable suspicion

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to believe that the defendant was impaired, and were justified in making an investigatory stop. *State v. Jimoh*, 35 FLW D2469a, 2d DCA.

Search and Seizure [Consent] [Voluntariness]

Seven officers approached the defendant's house early in the morning. While one was talking to him, the others spread out around the residence. Court holds that defendant's consent to allow a search of his house was involuntary, as it was in response to a display of police force. *State v. Ojeda*, 35 FLW D2377a, 3d DCA.

Search and Seizure [Warrants] [Probable Cause]

Trial Judge ruled that the affidavit supporting a search warrant for child pornography did not establish a sufficient time line and that the term "suspected child pornography" was insufficient to establish probable cause. Appellate court, applying a "practical, common-sense review of the entire affidavit" reverses. *State v. Williams*, 35 FLW D2440a, 1st DCA.

Search and Seizure [Vehicles] [Passengers]

Defendant was the passenger in a car that was subject to a valid traffic stop. Driver gave consent to search. Defendant was properly detained until the search was

complete. Drugs found in his constructive possession were properly obtained. *England v. State*, 35 FLW D 2 3 0 2 c , 2 d D C A .

Confessions [Need for Warnings]

Officer discovered marijuana after a consensual search of a vehicle. He told the defendant and the driver that they would both be arrested unless one of them admitted to possessing the drugs. Defendant's statements made after this should have been suppressed, as the interrogation was custodial in nature and he was not advised of his Miranda rights. *England v. State*, 35 FLW D2302c, 2d DCA.

Search and Seizure [Persons] [Founded Suspicion]

Officer was responding to a BOLO issued concerning an armed robbery. Perpetrators were described as two Black males, one with a black shirt and one with a red shirt. He stopped the defendant, who matched the description. Defendant was not running, was not sweaty, and was not acting in an unusual manner. Officer did not have founded suspicion to detain him. As a result, defendant's failure to cooperate could not support a conviction for resisting without violence. *L.O. v. State*, 35 FLW D2253a, 4th DCA.

Search and Seizure

[Persons] [Voluntariness]

Defendant was stopped for careless driving. Officer observed that he was extremely nervous, and ordered him out of the car. Officer then asked for, and received permission, to search the defendant. The drugs obtained were suppressed. Defendant's consent was an acquiescence to authority. *State v. Watana*, 35 FLW D2824e, 4th DCA.

Trespass [Permission]

School security officer testified that he told the defendant that he was not to be on the property. The officer was not asked during trial about the source of his authority. The trespass conviction was still valid. *D.J. v. State*, 35 FLW D2011a, 3d DCA.

