Office of the State Attorney
Eighth Judicial Circuit

Law Enforcement Newsletter

JANUARY 2018

A Message from Bill Cervone State Attorney

Happy New Year to everyone! It's hard to believe that we've turned the calendar page already. Since 2018 is an election year the legislature convenes early, which really makes it seem like the time is flying by. We've barely had time to recoup from the 2017 session and here we go again.

I mean that literally. Many of the proposals that were floated last year but that did not pass are back. You and your state associations should pay careful attention as some proposals are not exactly law enforcement friendly.

Among these in general are continued efforts to roll back drug mandatory sentences, to reduce the classification of some crimes from felonies to misdemeanors, and to encourage non-traditional methods of handling criminal cases.

As to drug mandatories, I suspect that all of us understand the difference between users and pushers. Eliminating our ability to remove pushers from our community is a dangerous policy, especially at a time when new and often lethal drug compounds are surfacing all across the state. Reclassification of some offenses (notably, look for an increase in the cut off between petit theft and grand theft, perhaps raising the line to as high as $1000, as well as for changes to some traffic offenses like DWLSR and Fleeing) is likely less problematic. Somewhere in between are the many social engineering policies that edge close to saying that personal accountability for your criminal activity isn't all that much of a factor and that so-called "low-level" crimes don't need to be dealt with in the courts. All of us understand the concept of rehabilitation and that if someone is appropriately placed into a structured diversionary program in which they are successful then we all win. Making excuses for sometimes repeated criminal behavior without addressing its root causes or accountability, however, is another matter.

In any event, as things wind their way through the legislative process the SAO will send appropriate alerts, as will other organizations like the sheriffs and police chiefs associations. Making could voice heard might make the difference so pay attention and speak up!

INSIDE THIS ISSUE

We're on the web:
Www.sao8.org

REMINDER:
LAW ENFORCEMENT NEWSLETTER NOW ON-LINE

The Law Enforcement Newsletter is now available on-line, including old issues beginning with calendar year 2000. To access the Law Enforcement Newsletter go to the SAO website at <www.sao8.org> and click on the "Law Enforcement Newsletter" box.

SAO STAFF CHANGES

ASA John Nilon resigned from his position in the Baker County office on November 22nd. John will be entering private practice with an insurance defense firm in Jacksonville. He will be replaced in Baker County by ASA Harlan McGuire, who transfers to Macclenny from the Bradford County office. ASA Brooke King will be reassigned to Bradford County to fill that vacancy.

ASA Kate Artman resigned from her position in the Gainesville felony division on December 15th. Kate will be joining her father's law firm in Lakeland. ASA Lua Lepianka has been re-assigned to Kate's case load from the Gainesville intake division.

Joining the SAO in December as ASAs were Scott Lapeer and Andrew McCain. Scott has most recently been the Sports Director for TV20 in Gainesville, where he has been working while studying for the Bar exam, which he passed recently. Andrew comes to us after working as a prosecutor for almost 4 years in the 6th Circuit's Pasco County office. Scott and Andrew are both assigned to the County Court division in Gainesville.

The SAO Is Now On Twitter

The **SAO** has established a Twitter feed to better disseminate information to the media and others such as law enforcement agencies. Like us at #8THCIRCUITSAO. For more information contact Deputy Chief Investigator Darry Lloyd at 352-374-3670.

Congratulations To...

Gainesville Police Department Sergeant Tony Ferro and Corporal Visvambhara Nicoloff, both of whom were promoted to those ranks on September 25th, Sergeant Fred Melarano, promoted to that rank on November 6th, and Corporal Steven Sweeting, also promoted to that rank on November 6th.

ASO Deputy Tom Perseo, who retired on November 20th after a 43 year career in law enforcement. To many of us in recent years Tom has been the "go to guy" for witness and defendant extradition and transport problems in Alachua County.

ASA Chris Elsey, who welcomed his second child, son Joshua, on December 19th.

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

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 Paul Clendenin at the SAO at 352-374-3670.

Stand Your Ground And Law Enforcement

In a case of great significant to the law enforcement community, the 4th DCA held in September that a law enforcement officer is entitled to claim self-defense immunity under the Stand Your Ground law.

In the case, State v Peraza, Officer Peraza was on road patrol in Broward County when he heard a dispatch about an armed disturbance. Approaching the scene, he saw a man walking down the highway with what looked like a shotgun or rifle, and he was fearful that the man might open fire on passing vehicles. He briefly lost sight of the man while maneuvering his patrol vehicle to block oncoming traffic, and while doing that heard a supervisor say "This is going to end bad" over the radio, which heightened his concerns. Shortly afterwards, he and a sergeant saw the man and shouted commands identifying themselves and ordering him to stop and drop the weapon. They could hear other people, including children, in the immediate area. As they closed the distance to the man to within 5-10 feet, Officer Peraza decided in his mind that he would react to what the man did. if the man moved, he would follow. if the man stopped he would stop. He and the sergeant continued to give commands. The man stopped but did not drop the weapon. Office Peraza believed he was planning his next move. The man then brought the weapon over his head, turned towards Officer Peraza and his sergeant, and pointed the weapon at Peraza. Peraza fired several times in response, killing the man.

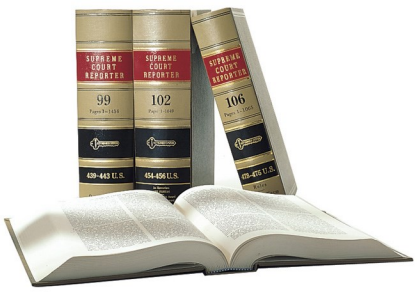
Peraza was indicted by a Grand Jury for Manslaughter. He filed a Stand Your Ground motion seeking immunity, which the circuit court granted. The State appealed, arguing that because a law enforcement officer is provided a defense under FS 776.05(1), justifiable use of force in making an arrest, that more specific provision of law pre-empts reliance on Stand Your Ground and it's much broader grant of full immunity.

In general, there is a principle of law saying that a specific statute does take priority over a general statute. In this case, the difference is that the provisions of FS 776.05(1) provide only a defense and not a pre-trial hearing that could result in absolute immunity, as would happen under Stand Your Ground. This position, in fact, was accepted by the 2nd DCA in a 2012 case that held that to be so. In Peraza, however, the 4th DCA has disagreed and held just the opposite. In its simplest terms, Peraza says that Stand Your Ground by its own language applies to "a person," a term that is neither unclear nor ambiguous and that serves to make it equally as available to a law enforcement officer as to anyone else.

There is, as there always is, more to the opinion than that, including details of whether Peraza was technically making an arrest and how that might factor into the matter. The bottom line, however, is that there is now a conflict between the 2nd and 4th DCAs, and the 4th DCA has asked the Supreme Court to resolve that conflict. It will be many months, likely into 2018, before that happens. In the meantime, there is no controlling 1st DCA case but the position the SAO has generally taken, now supported by the Peraza opinion, has been that Stand Your ground applies to officers.

As a side note, the Peraza case includes a discussion of several federal cases that can impact police shootings, and those merit some mention here as well. First, the Peraza court referred to a US Supreme Court case, Brosseau v Haugen, from 2004 that said that it was objectively reasonable for an officer to shoot a fleeing suspect out of fear that the suspect was endangering other officer on foot in the area, occupied vehicles in his path, and citizens in the area. The court also noted Mullenix v Luna, a 2015 US Supreme Court case holding that the law does not require an officer in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop him. The Mullenix case, in turn, refers to a lower federal court opinion, Long v Slaton, which rejected the notion that a deputy must first try less than lethal methods and said that police need not take a chance and hope for the best.

In today's climate all of us know that a dangerous situation could result in a national story at any minute in any place. What these cases point out is the uncertain legal arena that we proceed in, not to mention that agency policy also has a role in what can and should be done in a given instance. In total, however, cases like these can help everyone understand the legal posture even the most supposedly egregious acts can fall under. Those who are prone to snap judgements would do well.



Florida Supreme Court
Resolves Passenger Detention Questions

The Florida Supreme Court issued an opinion in September of 2017 that resolved the authority of a law enforcement officer to detain a passenger during a traffic stop. As you may recall, this had been the subject of conflicting DCA opinions during the last several years, with the 1st DCA, which controls 8th Circuit counties and cases holding that the detention of a passenger did not violate the 4th Amendment while other DCAs had ruled to the contrary. The Florida Supreme Court has now approved the 1st DCA position, settling the matter.

The case, which originated from the Gainesville Police Department, and was successfully argued at the trial court level by SAO8 before Judge Robert Groeb, stemmed from a simple traffic stop in January of 2015. To make a long story short, the original officer called for backup because passengers in a vehicle he had stopped had become belligerent, and one of the detained passengers was ultimately found to be in violation of an existing felony probation and to be in possession of narcotics.

In upholding the initial detention of the passenger, the Supreme Court noted that there has been an evolution in the law recognizing that it is not reasonable for passengers in such a situation to expect that a law enforcement officer will let other people move around in a way that could jeopardize his safety. Rather, the "weighty interest in officer safety" and the possible motivation of a passenger to escape apprehension for a more serious crime justify the detention of a passenger because that detention is minimal by comparison. The passenger's freedom of movement has already been interrupted by virtue of the stop of the driver and routine traffic stops are brief in nature. Therefore, allowing an officer to prevent passengers from leaving, as a matter of course and without more, does not violate the 4th Amendment.

The Supreme Court went on to address the allowable duration of such a detention, noting that it may last no longer than is necessary to effectuate the purpose of the stop and ends when the tasks associated with the stop are or reasonably should have been completed. For a routine stop, the Supreme Court added, this is the length of time necessary to check a driver's license, registration and insurance papers, to determine whether there are any outstanding warrants, to write any citation or warning that is issued, to return the documents involved, and to actually issue the citation to the driver. At that point, and absent any reasonable suspicion that a passenger is engaged in criminal activity, there is no longer a need to control the scene and passengers must be allowed to leave.

The actual case facts illustrate that not all stops are routine in that the passenger who was ultimately arrested tried to leave, resulting in a struggle, the need for backup, and the ultimate discovery of the passenger's criminal conduct. The Supreme Court approved everything involved as reasonable since the time involved was still related to attendant safety concerns, including for the arrival and assistance of backup officers.

The bottom line: once and for all, officer safety concerns allow for the routine but brief detention of vehicle passengers during a traffic stop.

A SAFER
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HIGHWAY SAFETY AND MOTOR VEHICLES

Terry L. Rhodes
Executive Director

2900 Apalachee Parkway
Tallahassee, Florida 32399-0500
www.flhsmv.gov

July 21, 2017

State Attorney's Office
Honorable William Cervone
120 West University Avenue
Gainesville, FL 32601

Dear State Attorney Cervone:

The Florida Department of Highway Safety and Motor Vehicles (DHSMV) is pleased to announce that a new, more secure Florida driver license and identification card will be available starting in August 2017 at select locations. The new design includes nearly double the fraud protection measures compared to the previous design and provides the most secure over-the-counter credential on the market today.

As our law enforcement partner, we understand that it is critical you and your members have all of the information necessary to help reduce credential and identity fraud. Security features on the new credential include redundant data, ultraviolet (UV) ink and optically variable features. Along with critical anti-fraud features, the new design incorporates designations for lifetime sportsman's, boater, freshwater, saltwater and hunting licenses, as well as designations for veteran, organ donor, deaf/hard of hearing and developmentally disabled.

By the end of December 2017, the new credential design will be available at all service centers throughout Florida and online. Though previous driver license and identification cards will still be in use alongside the new credential until they are replaced or phased out, **please note that all credentials issued after January 1, 2018 will have the new look and security features. Any credentials with the previous style (beach background) with an issue date after January 1, 2018 are fraudulent.**

To help answer questions, please see the enclosed trifold brochure detailing some of the security features and designations included in Florida's new driver license and identification card. Our website, flhsmv.gov/newDL, provides additional resources including a timeline for when offices statewide will begin issuing the new credential.

The department is also finalizing a Florida Driver License & ID Card Law Enforcement Guide detailing the security features of the new credential so your agency can easily identify an authentic Florida credential and recognize, confiscate and report fraudulent or counterfeit credentials. To request printed copies of the Florida Driver License & ID Card Law Enforcement Guide, please submit a request detailing the quantity and shipping location to LEADLguide@flhsmv.gov.

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Additionally, we are in the process of developing a condensed laminated chart of the front and back of the new credential, which will be distributed to law enforcement agencies statewide and can remain in an officer's vehicle for ease of reference.

Our goal is to provide the best service and maintain the highest level of security, and we ask you to please share this information with your members and stakeholders. If you have any additional questions, please do not hesitate to contact us.

Thank you for your partnership in the pursuit of *A Safer Florida*.

Sincerely,

Terry L. Rhodes
Executive Director
Florida Department of Highway Safety and Motor Vehicles

Colonel Gene Spaulding
Director
Florida Highway Patrol

Enclosure

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NEW CREDENTIAL, ENHANCED SECURITY

Starting in August 2017, the Florida Department of Highway Safety and Motor Vehicles will begin issuing a new, more secure Florida driver license and ID card. By the end of December 2017, the new credential will be available at all service centers throughout Florida and online.

Individuals are not required to replace their current driver license or ID card during this time, unless their current credential has reached its expiration or a required change is needed, such as a name or address change. Previous driver license and ID cards will still be in use alongside the new credential until replaced or phased out.

Florida's new credential incorporates nearly double the fraud protection measures compared to the previous credential, including redundant data, ultraviolet (UV) ink and optically variable features.

The new credential provides Floridians the most secure over-the-counter driver license and ID card on the market today.

DESIGNATED HEADER COLORS

SAFE SECURE CONVENIENT

NEW SECURITY FEATURES AND DESIGNATIONS

For more information on Florida's new secure driver license and ID card, visit flhsmv.gov/newDL.

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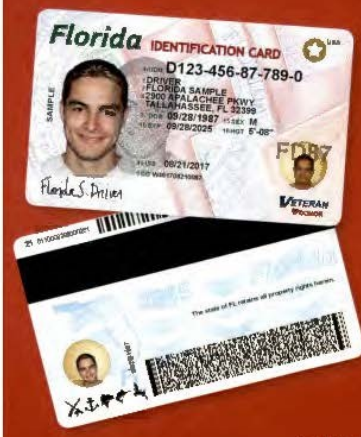
GETTING YOUR NEW CREDENTIAL

IN PERSON:
Beginning August 2017, the new credential will be offered at select locations, with additional locations each month. The new credential will be available at all locations statewide by the end of December 2017.

To renew or replace a credential, visit a local service center listed at flhsmv.gov/locations.

ONLINE:
The new credential will be available for online renewals at GoRenew.com by the end of December 2017.

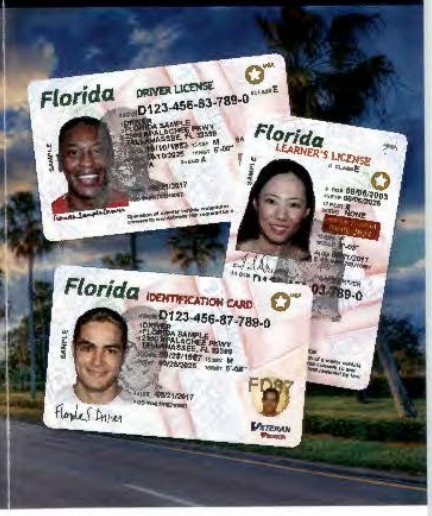


Rev. 2/13/2017

For more information on Florida's new, more secure driver license and ID card, visit flhsmv.gov/newDL.

SAFE SECURE CONVENIENT

Florida's **NEW** Driver License and ID Card



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"FLORIDA" ARRIVE ALIVE
BUCKLE UP

A SAFER FLORIDA

A SAFER FLORIDA
HIGHWAY SAFETY AND MOTOR VEHICLES

Terry L. Rhodes
Executive Director

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Tallahassee, Florida 32399-0600
www.flhsmv.gov

November 1, 2017

TO: Florida Law Enforcement Agencies
Florida E-Crash Vendors
Florida Department of Transportation (FDOT)
Signal 4 Analytics
Florida's Integrated Report Exchange System (FIRES)

FROM: Stephanie D. Duhart, Chief
Division of Motorist Services, Bureau of Records

SUBJECT: 2017 Legislative Changes to the Department of Highway Safety and Motor Vehicles (DHSMV) Crash Reporting Requirements

During the 2017 Legislative Session, Section, 381.989, Florida Statutes, was enacted which requires the Department to implement a statewide Impaired Driving Education Campaign to raise awareness and prevent marijuana-related and cannabis-related impaired driving.

Additionally, the Department is now required to establish baseline data on the number of marijuana related traffic crashes and fatalities each year, track these new measures annually, and submit a report by January 31 of each year on the evaluation of the campaign to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Effective January 1, 2018, the Department will require new data elements be included on all crash reports, both short form and long form reports, utilizing the Florida Traffic Crash Report (HSMV90010S). This data should be collected anytime a person involved in the crash tests positive for drugs.

For law enforcement agencies currently submitting crash reports via paper, a new Drug Test Result Data Collection document was created to capture anyone involved in the crash who tested positive for drugs. Effective January 1, 2018, the document is required if the field **DRUG TEST RESULT** is "1-positive." A copy of the new document can be found at: http://www.flhsmv.gov/courts/crash/

For law enforcement agencies currently submitting crash reports electronically, each state approved vendor must update their data collection software application to capture the required data elements and transmit the data to the Department via the XML export process. All vendors are required to submit test

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XML crash files to the Department for review by Monday, December 11, 2017 and begin submitting the data with all crashes reported on or after January 1, 2018. The Department has created a technical specifications document to provide further guidance on the changes, which can be found at: http://www.flhsmv.gov/courts/crash/

If you have any questions regarding the aforementioned changes, please contact Richie Frederick via email at richiefrederick@flhsmv.gov or via phone at 850-617-3440.

SDD/rcf

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MAIL TO: DEPARTMENT OF HIGHWAY SAFETY & MOTOR VEHICLES
TRAFFIC CRASH RECORDS, NEIL KIRKMAN BUILDING
TALLAHASSEE, FL 32399-0537

Drug Test Result Data Collection

Please Note: Required if person(s) in the crash test positive for drugs in accordance with F.S. 381.989(3)(b).

CRASH DATE	TIME OF CRASH	DATE OF REPORT	REPORTING AGENCY CASE NUMBER	HSMV CRASH REPORT NUMBER

PERSON #	Date of Birth / /	Positive Drug Test Results	
(Choose up to 4) ☐ ☐ ☐ ☐		1-Amphetamine 2-Cocaine 3-Marijuana 4-Opiate	5-Other Controlled Substance 6-PCP 7-Other Drug (excludes post-crash drugs) 88-Unknown

PERSON #	Date of Birth / /	Positive Drug Test Results	
(Choose up to 4) ☐ ☐ ☐ ☐		1-Amphetamine 2-Cocaine 3-Marijuana 4-Opiate	5-Other Controlled Substance 6-PCP 7-Other Drug (excludes post-crash drugs) 88-Unknown

PERSON #	Date of Birth / /	Positive Drug Test Results	
(Choose up to 4) ☐ ☐ ☐ ☐		1-Amphetamine 2-Cocaine 3-Marijuana 4-Opiate	5-Other Controlled Substance 6-PCP 7-Other Drug (excludes post-crash drugs) 88-Unknown

PERSON #	Date of Birth / /	Positive Drug Test Results	
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PERSON #	Date of Birth / /	Positive Drug Test Results	
(Choose up to 4) ☐ ☐ ☐ ☐		1-Amphetamine 2-Cocaine 3-Marijuana 4-Opiate	5-Other Controlled Substance 6-PCP 7-Other Drug (excludes post-crash drugs) 88-Unknown

Revised: 11/1/2017

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Crash Schema Changes, November 2017

1. ctAlcDrugsEMS.xsd:
   - added data element "Positive Drug Test Results"
   - min occurrence 0; max occurrence 4

     attributes:

     1 = Amphetamine
     2 = Cocaine
     3 = Marijuana
     4 = Opiate
     5 = Other Controlled Substance
     6 = PCP
     7 = Other Drug (excludes post-crash drugs)
     88 = Unknown

Example: XML snippet for AlcDrugsEMS where Positive Drug Results has 4 occurrences

```
<AlcDrugEMS>
        <SuspectedAlcoholUse>2</SuspectedAlcoholUse>
        <AlcoholTested>3</AlcoholTested>
        <AlcoholTestType>1</AlcoholTestType>
        <AlcoholTestResult>1</AlcoholTestResult>
        <BloodAlcoholContent>.045</BloodAlcoholContent>
        <SuspectedDrugUse>2</SuspectedDrugUse>
        <DrugTested>3</DrugTested>
        <DrugTestType>1</DrugTestType>
        <DrugTestResult>1</DrugTestResult>
        <PositiveDrugTestResults>
          <PositiveDrugTestResult>
            <PositiveDrugTest>1</PositiveDrugTest>
          </PositiveDrugTestResult>
          <PositiveDrugTestResult>
            <PositiveDrugTest>2</PositiveDrugTest>
          </PositiveDrugTestResult>
          <PositiveDrugTestResult>
            <PositiveDrugTest>3</PositiveDrugTest>
          </PositiveDrugTestResult>
          <PositiveDrugTestResult>
            <PositiveDrugTest>4</PositiveDrugTest>
          </PositiveDrugTestResult>
        </PositiveDrugTestResults>
        <SourceOfTransport>2</SourceOfTransport>
        <EMSAgencyNameOrId>EMSAgencyNameOrId1</EMSAgencyNameOrId>
        <EMSRunNumber>EMSRunNumb</EMSRunNumber>
```


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Crash Schema Changes, November 2017

<MedicalFacilityTransportedTo>MedicalFacility</MedicalFacilityTransportedTo>
</AlcDrugEMS>

- Increase MaxLength of stEMSRunNumber from 10 to 20

Suggested validation: If **DRUG TEST RESULT** = "1-positive" THEN **POSITIVE DRUG TEST RESULTS** is required.

2. ctViolation.xsd:
   Corrected stCitationNumber pattern value regular expression

KNOCK AND ANNOUNCE

Authorities learned that Jaun Falcon was engaged in a marijuana-growing operation out of his residence, the Sheriff's Office independently confirmed the presence of items consistent with a grow operation. After applying for and obtaining a court approved search warrant the entry team was briefed that Falcon lived in the residence with his family, which included an adolescent son and a teenage daughter.

At just past 6:45 a.m., a SWAT unit of at least six heavily armed deputies appeared on the front doorstep of Falcon's residence to execute the search warrant. Over a public address system, the deputies announced "Sheriff's Department" and demanded that those inside the residence open the door. This was done three times. The deputies observed no activity inside the residence. Their demand unmet, the deputies breached the door with a battering ram and then set off two "noise flash diversion devices" at the front and side of the residence. Falcon and his family had been sleeping when the deputies had arrived on their doorstep, and Falcon and his daughter were walking toward the front door when it was forced open. Numerous deputies entered the residence and secured Falcon, his wife, and his daughter by zip-tying their hands behind their backs.

Approximately twenty seconds elapsed between the moment that the deputies began the knock-and-announce procedure and their breach of the front door. At the suppression hearing, one deputy estimated that "more than fifteen seconds" had elapsed between the first knock-and-announce and the breach. The Court of Appeals thus noted that after duly notifying Falcon and his family of their purpose and authority to enter, deputies waited more than fifteen seconds but less than twenty seconds before breaching their front door.

Falcon in his motion to suppress argued that the deputies violated the knock-and-announce statute when they forcibly breached the front door of his residence to execute the search warrant. The trial court denied his motion. On appeal the 2nd D.C.A. reversed that ruling.

Issue:

Did the deputies by waiting 15 to 20 seconds after announcing their purpose and authority before breaching the front door of the defendant's residence comply with Florida law? **No**.

Knock-and-Announce:

Florida statute § 933.09, provides: "The officer may break open any outer door, inner door or window of a house, or any part of a house or

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anything therein, to execute the warrant, if after due notice of the officer's authority and purpose he or she is refused admittance to said house or access to anything therein."

The Florida Supreme Court has stated that the policy underlying section 933.09 derives from the sentiment that "there is nothing more terrifying to the occupants than to be suddenly confronted in the privacy of their home by a police officer decorated with guns and the insignia of his office. This is why the law protects its entrance so rigidly." *State v. Bamber*, (Fla. 1994) (quoting *Benefield v. State*, (Fla. 1964)).

Where officers knock, announce their authority and purpose, and then enter with such haste that the occupant does not have a reasonable opportunity to respond, the search violates section 933.09, and warrants suppression. But see *Benefield*, (identifying exigencies that justify unannounced intrusion that would otherwise violate section 933.09).

Importantly, however, section 933.09 does not provide how long "after due notice" the officer must wait before forcibly entering the residence, and case law provides no bright-line rule, although the 2nd D.C.A. has noted that "time periods less than five seconds are rarely deemed adequate, and periods in excess of fifteen seconds are often adequate." *Spradley v. State*, (2DCA 2006). "The question is whether the officer has waited a sufficient period, under all of the circumstances, so that the officer can reasonably infer or conclude that he or she has been refused admittance by the occupants," and "the only answer found in our case law is that the occupant must have a 'reasonable opportunity' to respond," *State v. Pruitt*, (Fla. 2d DCA 2007). In determining whether the occupant has been afforded a reasonable opportunity, "some factors the courts have considered include the nature of the underlying offense, the time of day the warrant is executed, the size of the home, whether any activity or movement is observed within the home at the time of execution, and whether any exigencies exist." *Mendez–Jorge v. State*, (5DCA 2014).

Court's Ruling:

Although the trial court failed to explicitly find how long the deputies had waited before breaching Falcon's front door, the trial court did conclude that it had been "reasonable."

The Court of Appeals found to the contrary, "We conclude that the fifteen to twenty seconds that the deputies provided Falcon and his family was not reasonable. Apart from the bare nature of the offense, no factor supported the urgency with which the deputies executed the warrant, and the facts of this particular case undercut the assumptions that the deputies would normally draw even from that factor: even allowing a general assumption that a marijuana-grower will be armed and dangerous, the State stipulated at the suppression hearing that the SWAT deputies had no reason to believe that there were weapons in the residence or that Falcon was armed and dangerous. To the contrary, the deputies knew that the residence was Falcon's family residence, which he shared with his wife and children, and that Falcon's criminal history consisted of one prior arrest for driving under the influence."

"Furthermore, in executing the warrant at 6:45 a.m., the deputies all but ensured that the entire family would be home and, as turned out to be the case, might still be asleep. See *Griffin v. United States*, (D.C. 1992) (holding thirty seconds unreasonable at 1:40 a.m.). None of the deputies observed any activity or movement inside the residence. See *Braham v. State*, (2DCA 1998) (considering officers' ability to hear phone ringing inside trailer and someone moving around inside as factors rendering five– to ten-second delay reasonable). And the deputies had no reason to believe that Falcon knew that they were coming, that anyone inside the residence was at risk of harm, or that Falcon or his family might try to escape or destroy evidence. See *Benefield v. State*, (Fla. 1964) (identifying exigencies justifying unannounced intrusion)."

"Upon consideration of all of these factors, we hold that the deputies violated section 933.03 by failing to afford Falcon a reasonable opportunity to respond and that this violation warranted suppression. In so holding, *we recognize that determining what is reasonable is not an exact science and that, in the wrong situation, waiting too long could have catastrophic results*. Nonetheless, maintaining the balance between the rightful force and authority of the State and the rights of its citizens can come down literally to a matter of seconds. Precisely because there is so little margin for error either way, **we urge law enforcement agencies to use SWAT tactics to execute search warrants sparingly and to take special care that their use does not simply become par for the course.** Reversed."

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Lessons Learned:

A separate statute, section 901.19(1), F.S. relative to arrest warrants provides: "If a peace officer fails to gain admittance after she or he has announced her or his *authority and purpose* in order to make an arrest either by a warrant or when authorized to make an arrest for a felony without a warrant, the officer may use all necessary and reasonable force to enter any building or property where the person to be arrested is or is reasonably believed to be."

In 1964 the Florida Supreme Court decided *Benefield v. State*, in which the Court held that a violation of Florida's knock-and-announce statute tainted the ensuing arrest and required the suppression of the evidence obtained as a result of the arrest. In yet another example of bad facts making bad law, the *Benefield* Court noted that "the officers totally ignored every requirement of the law…They barged into petitioner's home without knocking or giving any notice whatever of their presence; they did not have a search warrant or warrant to arrest anyone; they ransacked petitioner's home without the least semblance of any showing of authority." Under those facts the Court enforced the exclusionary rule.

The Florida Supreme Court went on to explain, "section 901.19, F.S. ... appears to represent a codification of the English common law which recognized the fundamental sanctity of one's home yet nevertheless provides that an arresting office 'may break open doors, if the party refused upon demand to open them.' "

"This sentiment has molded our concept of the home as one's castle as well as the law to protect it. The law forbids the law enforcement officers of the state or the United States to enter before knocking at the door, giving his name and the purpose of his call. There is nothing more terrifying to the occupants than to be suddenly confronted in the privacy of their home by a police officer decorated with guns and the insignia of his office. This is why the law protects its entrance so rigidly."

There are four exceptions to the reasonable time requirement of the knock-and-announce rule: (1) the occupant already knows of the officers' authority and purpose, (2) there is a reasonable belief that persons within are in peril of bodily harm, (3) the officers' peril would increase, and (4) the occupants might attempt to escape or to destroy the evidence. *Benefield v. State*, (Fla.1964).

Lastly, in preparing a search warrant reference to firearms possibly on the premises will assist in explaining a short knock-and-announce time frame. For a good discussion of the often found connection between drug trafficking, guns, and violence see *United States v. Cruz*, (11th Cir.1986) ("Guns are a tool of the drug trade, see *Harmelin v. Michigan*, (S.Ct.1991))

The U.S. Supreme Court has recognized that the dangers presented by in-home arrests and searches are often greater than those conducted on the street due to the "home turf" advantage the suspect has over the police. *Maryland v. Buie*, (S.Ct. 1990). Falcon's knowledge of the layout of his own house and other people in the house gave him an advantage that he would not otherwise have had if the search were conducted elsewhere.

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(Oct. 27, 2017)