

# LAW ENFORCEMENT NEWSLETTER

MAY 2020

## A MESSAGE FROM BILL CERVONE STATE ATTORNEY

Among the many cancellations caused by Coronavirus prevention measures will be the yearly law enforcement memorials held in May across our circuit and the nation. At this time whether any of our local ceremonies will be re-scheduled remains up in the air. Ironically, this year of all years the attention of the country is more focused on the

law enforcement community than usual as first responders of all stripes are on the front lines of the nation's fight against the pandemic.

It's also ironic that it takes a national crisis to focus that attention on the risks law enforcement personnel take every day, even in the most normal of times. Familiarity is said to breed

many things, and one of those is complacency. I've written about this before. No one wants to have any interaction with a cop but everyone wants one there and there fast when they need one. The rest of the time, for all the thanks our law enforcement community members get as they go about doing their jobs they might as well be invisible. More likely than not, it is only when some alleged misdeed becomes a *cause celebre* and the usual protestors come out of the national woodwork that the general public gives any thought to the men and women who serve and protect 24/7.

Suffice it to say, then, that in 2020 more than in most years May should bring to all of you a resounding



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We're on the web:  
[www.sao8.org](http://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](http://www.sao8.org)> and click on the "Law Enforcement Newsletter" box.



**Any changes in agency email addresses should be reported to our office at [clendeninp@sao8.org](mailto: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.**

## Continued: Message from State Attorney Bill Cervone

thank you. That is said far too infrequently and far too softly. It is far too inadequate. But it is and should be heartfelt from everyone to all of you.



## SAO STAFF CHANGES

Most notably in a time when the world as we know it has turned upside down there have been no attorney changes at the SAO since our last publication at the start of the year. That's a rare event.

The SAO and all six county offices will remain on restricted hours and closed to the public into May as a part of minimizing contact that might spread Covid19. Exactly when our offices can return to normal is unknown. Current court closures expire on Friday, May 29th, and unless those are extended by the Florida Supreme Court that means that courts should start returning to nor-

mal dockets on Monday, June 1, although what normal will be is anyone's guess.

For the time being many law enforcement depositions are being taken remotely by telephone, Zoom, or other similar web based sites. That will likely continue into the summer. Similarly, pre-filing testimony will more often than not be done in some way that avoids office visits. Everyone's co-operation as we work through this process is greatly appreciated.



## Congratulations To...

ASAs Ashley Chin and Anna-Lisa Riley, both of whom passed the Florida Bar exam in February.

Chief Assistant Jeanne Singer and ASA Pam Gordon, who were recognized with the Alachua County Coalition Against Human Trafficking's RISE (Recognition of Individuals Serving with Excellence) Award in recognition of outstanding case work and dedication to the community in prosecuting human trafficking cases in January. The Coalition serves the 8th Circuit and is being re-named the North Central Florida Human Trafficking Task Force shortly as a part of a partnership with the Attorney General's Office and Attorney General Ashley Moody's commitment to coordinating statewide efforts to combat human trafficking.

Lonnie Scott, who returned to the Gainesville Police Department in January in the position of Assistant Chief for Operations after having spent the last few years with the Tallahassee Police Department. His responsibilities will include supervision of patrol and detective functions.

ASA Ray Earl Thomas, who became a first time dad on March 3rd, welcoming baby Ray Earl Thomas III, who will be called Ret to distinguish him from dad and granddad.

ASA Andrew Fairbanks, who was married on March 14th to his now wife, Gwen.

*Congratulations*



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.

## Chief Assistant Jeanne Singer Wins National Award

The National District Attorney's Association has chosen 8th Circuit Chief Assistant State Attorney Jeanne Singer as the recipient of the Association's 2020 Distinguished Prosecutor award, a recognition that is made annually for an assistant prosecutor who has distinguished him or herself among their peers in seeking justice, holding offenders accountable, and protecting the rights of victims. The award was announced at the NDAA's Spring Board of Directors meeting in March and was to have been presented at the Association's summer conference in July in Denver, Colorado, until that event had to be cancelled.

In his nomination of Chief Assistant Singer for the award, State Attorney Bill Cervone, a member of the NDAA Board of Directors, noted not just her many years of service as a prosecutor under his administration and those of previous State Attorneys Rod Smith and Gene Whitworth but also her leadership in the prosecution of sex offenders and her role as a part of the trial team that handled the successful prosecution of serial killer Danny Rolling. He also commended her for having been a trailblazer for women entering the field of prosecution and a mentor to young prosecutors, especially women, over the years. He noted that "she epitomizes the values of a good prosecutor in seeking justice fairly and reasonably and in speaking for those who would otherwise have no

voice" in the criminal justice system.

**Congratulations, Jeanne!**



# Memo from the Department on the Use of Manufacturer License Plates



Terry L. Rhodes  
Executive Director

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

DATE: January 8, 2020  
TO: All Law Enforcement Agencies  
FROM: Robert Kynoch, Director  
Division of Motorist Services *(RK)*  
SUBJECT: Use of Manufacturer License Plates

It has come to our attention that some licensed motor vehicle manufacturers, importers, and distributors have experienced law enforcement interactions regarding the use of manufacturer license plates. We hope this letter can provide clarification.

Section 320.13(2), Florida Statutes, states:

A licensed manufacturer, importer, or distributor of motor vehicles may, upon payment of the license tax imposed by s. 320.08(12), secure one or more manufacturer license plates, which are valid for use on motor vehicles owned by the manufacturer, importer, or distributor to whom such plates are issued while the motor vehicles are in inventory and for sale, being operated for demonstration purposes, or in connection with the manufacturer's business, but are not valid for use for hire.

The above simply means that manufacturers, importers, and distributors licensed in the State of Florida may use a manufacturer plate to operate a vehicle on the highways of Florida at any time as long as the vehicle is in inventory and for sale, being operated for demonstration purposes, or in connection with the manufacturer's business.

The term "operated in connection with the manufacturer's business" may include, but is not limited to the demonstration of a vehicle to a prospective purchaser, the loaning of a vehicle to a customer while his or her vehicle is being serviced (as long as no fee is charged), or the promoting or advertising a vehicle to the general public. Manufacturer license plates are not registered to any one vehicle and may be used on any vehicle that meets the requirements of s. 320.13(2), F.S. A manufacturer, importer, or distributor is not required to take title in their name for motor vehicles held in their inventory.

Hopefully, this will clear up any confusion regarding the use of manufacturer license plates by licensed manufacturers, importers, or distributors.

RK/kh



**State Attorney Bill Cervone  
and Florida Prosecuting Attorneys Association  
President Phil Archer  
Present Sen. Keith Perry  
With The FPAA's 2019 Senatorial Leadership Award  
In Recognition Of His Commitment To Law Enforcement And  
Criminal justice Issues**





Attorney General Ashley Moody, State Attorney Bill Cervone and ASA/Executive Director Brian Kramer met at the Attorney General's Office on February 19<sup>th</sup> along with State Attorneys from other circuits . The meeting focused on co-operative efforts between the 20 State Attorneys and the AGO in order to enhance the use of limited resources and to address common issues and problems. Attorney General Moody and her office, including the Statewide Prosecutor, Nick Cox, continue to foster excellent relationships with the State Attorneys, all aimed at better protecting Florida citizens and visitors from criminal activity. Any agency having an issue or problem with criminal activity crossing circuit lines should consult with the SAO about possible involvement or assistance from the AGO.

**Assistant State Attorney Luis Bustamonte  
was presented with a  
Certificate of Appreciation from the  
Inspector General's Office  
on February 27, 2020 recognizing his work in Bradford County in  
prosecuting IG cases**

**(Left to Right)**

**Inspector Steven Donaldson, Inspector Justin Bates,  
Inspector General Lester Fernandez,  
Assistant State Attorney Luis Bustamante,  
State Attorney William Cervone,  
Inspector Danny Gonzalez**





## NDFL COVID-19 WORKING GROUP

April 7, 2020

Dear Law Enforcement Partners:

The United States Department of Justice (DOJ) and United States Attorney's Office for the Northern District of Florida (NDFL) are committed to combating the wide array of fraudulent and otherwise illegal schemes seeking to exploit the national emergency caused by COVID-19 (the coronavirus). This issue warrants a coordinated, nationwide response from the DOJ, USAO, and our federal, state, and local law enforcement partners. Therefore, in order to achieve the most effective response, we have established a district-wide working group that stands ready to assist you in your efforts to fight the criminal elements who seek to take advantage of the COVID-19 crisis. Below are available resources and contact information for our federal and state partners.

Members of the public should make all coronavirus-related complaints to the **National Center for Disaster Fraud (NCDF) Hotline** at **(866) 720-5721**, or by email to **[disaster@leo.gov](mailto:disaster@leo.gov)**. The NCDF is a national coordinating agency within DOJ's Criminal Division, whose mission is to improve and further the detection, prevention, investigation, and prosecution of criminal conduct related to natural and man-made disasters, such as COVID-19, and to advocate for the victims of such offenses. The NCDF Hotline is available 24/7 to receive reports from the public of potential fraud. Callers are connected to a live operator, or can leave a message detailing their reports. Where appropriate, the NCDF will enter the complaints into the *Federal Trade Commission's (FTC) Sentinel* system – a database that collects complaints from more than 35 nationwide databases and includes mechanisms for de-confliction, alerts, and pattern-mapping. All law enforcement have access to *Sentinel* and can use its full range of tools to identify schemes relevant to them.

In addition to the NCDC Hotline number and email address, below are the primary federal and state agency hotlines and/or email addresses for COVID-19 fraud or crimes:

1. Federal Bureau of Investigation (FBI): [www.IC3.gov](http://www.IC3.gov)
2. U.S. Department of Health and Human Services (HHS): **1-800-HHS-TIPS** and [www.oig.hhs.gov](http://www.oig.hhs.gov)
3. U.S. Department of Homeland Security: Homeland Security Investigations Tip Line: **(866)-DHS-2-ICE** and [www.ICE.gov/tips](http://www.ICE.gov/tips)
4. Office of the Florida Attorney General Hotline: **1-866-9NO-SCAM**

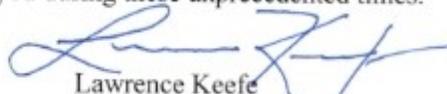
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**CONTACT INFORMATION FOR SELECT WORKING GROUP MEMBERS:**

<p><b>U.S. Attorney's Office (NDFL)</b> Justin M. Keen, Assistant U.S. Attorney <i>Coronavirus Fraud Coordinator</i> (850) 216-3802   <a href="mailto:Justin.Keen@usdoj.gov">Justin.Keen@usdoj.gov</a></p>	<p><b>Federal Bureau of Investigation (FBI)</b> Supervisory Sr. Res. Agent Ian Kaufmann <i>Healthcare Fraud Coordinator</i> (203) 615-3015   <a href="mailto:ipkaufmann@fbi.gov">ipkaufmann@fbi.gov</a></p>
<p><b>U.S. Health and Human Services (HHS) Office of Inspector General</b> ASAC Brian Martens (786) 412-9408 <a href="mailto:brian.martens@oig.hhs.gov">brian.martens@oig.hhs.gov</a></p>	<p><b>U.S. Department of Homeland Security Homeland Security Investigations (HSI)</b> ASAC Micah McCombs (202) 425-6456 <a href="mailto:Micah.C.McCombs@ice.dhs.gov">Micah.C.McCombs@ice.dhs.gov</a></p>
<p><b>U.S. Department of Homeland Security Office of Inspector General</b> ASAC James Depalma (407) 466-7108 <a href="mailto:James.Depalma@oig.dhs.gov">James.Depalma@oig.dhs.gov</a></p>	<p><b>U.S. Food &amp; Drug Administration (FDA) Office of Criminal Investigations</b> Special Agent Houston E. Ramsey, Jr. (954) 868-1611 <a href="mailto:Houston.Ramsey@fda.hhs.gov">Houston.Ramsey@fda.hhs.gov</a></p>
<p><b>U.S. Postal Service (USPS) Office of Inspector General</b> Special Agent Kari Vitale (850) 688-9175   <a href="mailto:kvitale@uspsoig.gov">kvitale@uspsoig.gov</a></p>	<p><b>U.S. Department of Veterans Affairs Office of Inspector General</b> RAC Jenny Walenta (954) 997-6187   <a href="mailto:jenny.walenta@va.gov">jenny.walenta@va.gov</a></p>
<p><b>Florida Department of Law Enforcement (FDLE)</b> Supervisory Special Agent Michael Kennedy (850) 251-5577 <a href="mailto:MichaelKennedy@fdle.state.fl.us">MichaelKennedy@fdle.state.fl.us</a></p>	<p><b>Florida Office of the Attorney General Office of Statewide Prosecution</b> Chief Asst. Statewide Pros. Joseph Spataro (813) 267-2544 <a href="mailto:Joseph.Spataro@myfloridalegal.com">Joseph.Spataro@myfloridalegal.com</a></p>

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Please let us know how we can assist you during these unprecedented times.

  
Lawrence Keefe  
United States Attorney  
Northern District of Florida

**CONTRIBUTED BY AND WITH THANKS TO THE  
15TH CIRCUIT STATE ATTORNEY'S OFFICE, PALM BEACH COUNTY**

**Driving with a Revoked License  
Kansas v. Glover  
U.S. Supreme Court (April 6, 2020)**

**Facts:**

A Kansas deputy sheriff ran a license plate check on a pickup truck, discovering that the truck belonged to Charles Glover and that Glover's driver's license had been revoked. The deputy pulled the truck over because he assumed the registered owner of the truck was also the driver. Deputy did not observe any traffic infractions, and further did not attempt to identify the driver of the truck. Based solely on the information that the registered owner of the truck was revoked; Deputy initiated a traffic stop.

Glover was in fact driving and was charged with driving as a habitual violator. He moved to suppress all evidence from the stop, claiming that the deputy lacked reasonable suspicion. The trial court granted the motion. However, the Kansas Court of Appeals reversed, holding that "it was reasonable for [Deputy] Mehrer to infer that the driver was the owner of the vehicle" because "there were specific and articulable facts from which the officer's common-sense inference gave rise to a reasonable suspicion." The Kansas Supreme Court then reversed and ruled that the deputy violated the Fourth Amendment by stopping Glover without reasonable suspicion of criminal activity. On appeal, the U.S. Supreme Court agreed with the Court of Appeals and reversed the Kansas Supreme Court ruling.

**Issue:**

Does a police officer violate the Fourth Amendment by initiating an investigative traffic stop after running a vehicle's license plate and learning that the registered owner has a revoked driver's license?  
**No.**

**Legal Basis for a Traffic Stop:**

Under the U.S. Supreme Court's precedents, the Fourth Amendment permits an officer to initiate a brief investigative traffic stop when he has "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cortez*, (1981); see also *Terry v. Ohio*, (1968). "Although a mere 'hunch' does not create reasonable suspicion, the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause."

Because it is a "less demanding" standard, "reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause." *Alabama v. White*, (1990). The standard "depends on the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Ornelas v. United States*, (1996). Courts "cannot reasonably demand scientific certainty ... where none exists." Rather, they must permit officers to make "commonsense judgments and inferences about human behavior." See, *Prado Navarette v. California*, (2014), noting that an officer "need not rule out the possibility of innocent conduct."

**Court's Ruling:**

"We have previously recognized that States have a 'vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles [and] that licensing, registration, and vehicle inspection requirements are being observed.' *Delaware v. Prouse*, (1979). With this in mind, we turn to whether

the facts known to Deputy Mehrer at the time of the stop gave rise to reasonable suspicion. We conclude that they did."

"Before initiating the stop, Deputy Mehrer observed an individual operating a 1995 Chevrolet 1500 pickup truck with Kansas plate 295ATJ. He also knew that the registered owner of the truck had a revoked license and that the model of the truck matched the observed vehicle. From these three facts, Deputy Mehrer drew the commonsense inference that Glover was likely the driver of the vehicle, which provided more than reasonable suspicion to initiate the stop."

"The fact that the registered owner of a vehicle is not always the driver of the vehicle does not negate the reasonableness of Deputy Mehrer's inference. Such is the case with all reasonable inferences. The reasonable suspicion inquiry 'falls considerably short' of 51% accuracy, see *United States v. Arvizu*, (2002), for as we have explained, 'to be reasonable is not to be perfect,' *Heien v. North Carolina* (2014)."

"Glover's revoked license does not render Deputy Mehrer's inference unreasonable either. Empirical studies demonstrate what common experience readily reveals: Drivers with revoked licenses frequently continue to drive and therefore to pose safety risks to other motorists and pedestrians."

The Supreme Court went on to note that Kansas law reserved revoking driver's license only for the worst of the worst, such as convictions for involuntary manslaughter, vehicular homicide, battery, reckless driving, fleeing or attempting to elude a police officer, or conviction of a felony in which a motor vehicle is used, and where a driver "has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways," or the motorist "has been convicted of three or more moving traffic violations committed on separate occasions within a 12-month period." Which led the Supreme Court to conclude, "The concerns motivating the State's various grounds for revocation lend further credence to the inference that a registered owner with a revoked Kansas driver's license might be the one driving the vehicle."

"Glover and the dissent argue that Deputy Mehrer's inference was unreasonable because it was not grounded in his law enforcement training or experience. Nothing in our Fourth Amendment precedent supports the notion that, in determining whether reasonable suspicion exists, an officer can draw inferences based on knowledge gained *only* through law enforcement training and experience. We have repeatedly recognized the opposite. ... The inference that the driver of a car is its registered owner does not require any specialized training; rather, it is a reasonable inference made by ordinary people on a daily basis."

"In reaching this conclusion, we in no way minimize the significant role that specialized training and experience routinely play in law enforcement investigations. We simply hold that such experience is not *required* in every instance."

Importantly, the Supreme Court also made clear that where there is conflicting information the reasonableness of the assumption that the registered owner is the driver is no longer reasonable. "We emphasize the narrow scope of our holding. Like all seizures, 'the officer's action must be 'justified at its inception.' 'The standard takes into account the totality of the circumstances—the whole picture.' As a result, **the presence of additional facts might dispel reasonable suspicion.** For example, if an officer knows that the registered owner of the vehicle is in his mid-sixties but observes that the driver is in her mid-twenties, then the totality of the circumstances would not 'raise a suspicion that the particular individual being stopped is engaged in wrongdoing.' 'Each case is to be decided on its own facts and circumstances' Here, *Deputy Mehrer possessed no exculpatory information—let alone sufficient information to rebut the reasonable inference that Glover was driving his own truck—and thus the stop was justified.* For the foregoing reasons, we reverse the judgment of the Kansas Supreme Court."

**Lessons Learned:**

At the outset it is important to keep in mind that the United States Supreme Court has found traffic stops a/k/a/ safety stops, merely to determine if a motorist is licensed as the sole basis for the stop unlawful. "It is a violation of the Fourth Amendment to stop an automobile and detain a driver to check his license and registration unless there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered." *Delaware v. Prouse*, (S.Ct.1979).

With that said, from a purely legalistic position this Supreme Court ruling does not break new ground. In *State v. Laina*, (5DCA 2015), Officer Bruns ran a check on a license plate, which revealed that the registered owner of the vehicle had a suspended license. Based on that information, and that information alone, Officer Bruns conducted a traffic stop. The defendant driver moved to suppress the stop and all evidence arising therefrom. The D.C.A. ruled, however, "The relevant probability here is that most vehicles are driven by their owners, most of the time. As such, once Officer Bruns discovered that the owner of the vehicle he was following had a suspended driver's license, this 'articulated fact' gave him a 'founded suspicion' that the driver might be driving illegally. As explained in *Smith v. State*, (5DCA1991), it is this articulated basis—grounded in reasonable probabilities—that distinguishes the legal stop in this case from an illegal stop in which 'the officer's conduct is ... dictated by personal whim or capriciousness.'"

And there are other prior cases that have held that an officer is permitted to rely on data from state agencies to lawfully stop a vehicle to investigate a possible infraction or violation. Where an officer actually had information indicating that the Department of Motor Vehicles had no record of a tag, which in light of Officer's experience gave her a reason to suspect that the car was not properly registered Officer was justified in stopping Ellis to investigate. "Ellis argues that Officer Wilson did not have a reasonable suspicion because she admitted that there had been occasions when she had received the 'no record found' response and then on further investigation determined the car was properly registered. 'Even in *Terry* the conduct justifying the stop was ambiguous and susceptible of an innocent explanation.' ...Where the facts known to an officer suggest, but do not 'necessarily' indicate ongoing criminal activity, an officer is entitled to detain an individual to resolve the ambiguity." "*Terry* does not require absolute certainty nor does it require an officer to ignore the facts that indicate an individual may be committing a crime simply because those facts do not rise to the level of probable cause to make an arrest." *Ellis v. State*, (2DCA 2006).

And in a case evaluating the legality of a traffic stop based solely on a DMV computer "hit" that the insurance status of the motorist was "unconfirmed," the court found the stop to investigate that data was lawful. "We agree that a state computer database indication of insurance status may establish reasonable suspicion when the officer is familiar with the database and the system itself is reliable. If that is the case, a seemingly inconclusive report such as 'unconfirmed' will be a specific and articulable fact that supports a traffic stop." *United States v. Broca-Martinez*, (5th Cir. 2017).

What ties all these cases together, along with the new Supreme Court ruling, is this simple statement of the law, "This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *U.S. v. Arvizu*, (S.Ct.2002).

Finally, just to reiterate the limitation on the current case ruling, the fact that the defendant offered no rebuttal evidence: "But that does not mean cases with more complete records will all wind up in the same place. A defendant like Glover may still be able to show that his case is different—that the 'presence of additional facts' and circumstances 'dispel[s] reasonable suspicion.' Which is to say that in more fully litigated cases, the license-revocation alert does not (as it did here) end the inquiry. It is but the first, though no doubt an important, step in assessing the reasonableness of the officer's suspicion." Justice KAGAN, with whom Justice GINSBURG joins, concurring.

## Joint Possession Update

Among the most vexing of situations encountered by both law enforcement officers and prosecutors is the problem of joint possession - who, if anyone, can be charged with possession of drugs found in a common area with multiple people present. A March case from the 3rd DCA both addresses and compounds the problem.

In the case, J.J. v State, released on March 18th, a juvenile was one of three people in a kitchen when officers made a warrantless entry in pursuit of another person. The officers saw a fork, a scale, and a glass beaker on the stove in the kitchen, each with a white substance suspected to be crack cocaine on it. There were two other adults in the kitchen but the juvenile was the closest to the stove. He was sitting in a chair, not facing the stove, not touching the stove, and looking at his cellphone which he was holding in both hands when the officers entered. He was neither asked nor said anything but he was arrested due to his proximity to the suspected cocaine and paraphernalia. There was no evidence that he lived in the residence or regarding his status as an owner, a renter, or a visitor, or whether he was with one of the adults who were there. In addition to the other two adults in the kitchen, several other adults were in other rooms in the residence. The juvenile was arrested for possession of the cocaine and the paraphernalia. Through a search incident to that arrest, the juvenile was found in possession of cannabis in his pocket, for which he was charged as well.

The juvenile was tried for the cannabis. Remember that probable cause for his initial arrest, possession of the cocaine and paraphernalia, was necessary to justify the search pursuant to that arrest and resultant discovery of the cannabis. To sustain that initial arrest, the State argued that the juvenile's proximity, his being the closest to the cocaine and paraphernalia, established his dominion and control over it, which would constructive possession. The DCA, however, disagreed, holding that while the facts and proximity may have created a founded suspicion to question the juvenile, they fell short of probable cause to arrest him. As a result, the cannabis was suppressed because the search that resulted in its discovery was not supported by probable cause and illegal. (The State apparently did not attempt to try the juvenile for the cocaine and paraphernalia themselves, apparently conceding that there was insufficient evidence to prove his possession of those articles.)

There is, unfortunately, nothing especially new in this ruling. In making it, the DCA noted the same necessity for specificity and detail that has always been required to establish or prove control in a joint possession case. The DCA essentially faulted the arresting officers for not conducting an investigation to develop probable cause before arresting the juvenile, his status in the premises, or anything else other than what was plainly visible during the few seconds within which everything happened. What may be new in this case is the extension of the problem of joint possession to a search incident to arrest and the loss of the fruits of that arrest because the evidence to support the original joint possession was lacking.

The dissent in this case, by the way, strongly believed that while the facts may not have proven the juvenile's joint possession beyond a reasonable doubt, or even that his possession was more likely than not, they "clearly support a 'substantial chance' of possession," and that that is all that the 4th Amendment requires. A dissent, again unfortunately, is of little more value than a consolation prize.

The moral of the story? Detail, detail, detail! If two or more people are involved you must articulate something that allows a court to distinguish among those who are present and show that someone actually has control over something illegal.