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CASE LAW UPDATES**

FEBRUARY, 2009

Case: Rigterink v. State, 2009 WL 217966 (Fla. 2009)

Date: January 30, 2009

Subject: Miranda Warnings

Facts: Defendant is suspect in double homicide. Polk County Sheriff's Office detectives give him Miranda warnings that stated in part that he had "the right to have an attorney present prior to questioning." During videotaped statement, defendant makes several incriminating admissions. He eventually goes to trial, is convicted and sentenced to death.

Holding: The defendant's right-to-counsel warning was materially deficient because it did not accurately and clearly convey that a custodial subject enjoys a right to the presence of counsel during, not merely before, a custodial interrogation. The defendant's conviction and sentence were reversed.

NOTE: This has been the status of the law for several years so it's a good reminder for law enforcement officers to review their department's Miranda cards and make sure they have the required language.

Case: State v. Chen, 2009 WL 323344 (Fla. 2nd DCA 2009)

Date: February 11, 2009

Subject: Anticipatory Search Warrants

Facts: Detectives with the Hillsborough County Sheriff's Office were working with CI to purchase 30 pounds of marijuana from defendant. After series of meetings where details of purchase are negotiated, control call is made where defendant advises that his supplier is on way with delivery and will be at defendant's house later in the evening. Detectives then obtained an anticipatory warrant to search the defendant's house for marijuana. After the CI advised that the marijuana had been delivered, detectives executed the warrant. Defense moved to suppress arguing that the warrant was invalid because it failed to state a triggering condition that would allow law enforcement to serve the warrant.

Holding: It was evident from a common-sense reading of the affidavit that delivery of the marijuana was the triggering condition for the execution of the warrant. The Fourth Amendment does not require that the triggering condition for an anticipatory search warrant be set forth in the warrant itself.

NOTE: An affidavit in support of an anticipatory search warrant must provide the issuing judge with sufficient information to evaluate the two aspects of probable cause inherent in anticipatory warrants, specifically (1) that if the triggering condition occurs there exists a fair probability that the contraband will be found at the place to be searched and (2) that there is probable cause to believe the triggering condition will occur.

Case: State v. Reyes, 2009 WL 383589 (Fla. 3rd DCA 2009)

Date: February 18, 2009

Subject: Stop & Frisk / Investigatory Stops

Facts: Miami Beach PD officer sees defendant pushing scooter. Officer notices that there are no keys in the scooter's ignition and the defendant is sweating and acting nervously. The officer knows that there have been recent reports of scooter thefts in area and defendant is coming from direction of scooter store. The officer asked for the defendant's ID but the defendant denied having any and gave (what the officer later found out) was a false name. Suspecting the scooter was stolen and fearing that the defendant might be armed, the officer performed a pat-down search of the defendant. The officer testified that although he did not see or feel any bulge in the defendant's clothing, and had no other indication that the defendant was in possession of a weapon, he reached into the defendant's pocket and retrieved his drivers' license. Defendant ultimately arrested for grand theft and giving false name.

Holding: The fact that the investigatory stop conducted by the officer and the defendant's subsequent temporary detention was supported by an articulable suspicion that criminal activity was afoot, does not, however, validate the search conducted during that stop and detention. To the contrary, section 901.151 of the Florida Statutes limits the scope of searches conducted during such stops to searches for weapons.

NOTE: During an investigatory stop, in order to perform a pat-down search for weapons the officer must be able to articulate that he saw a bulge on the defendant which based on the officer's training and experience he believed to be a dangerous weapon.

Any questions, drop me a line or give me a call!

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