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**OFFICE OF STATEWIDE PROSECUTION**  
**CASE LAW UPDATES**

**APRIL, 2009**

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Case: Mathis v. State, 2009 WL 928462 (Fla. 3rd DCA 2009)

Date: April 8, 2009

Subject: CI Information

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Facts: Police officer receives tip from confidential informant who provides physical description of location and suspect believed to be selling drugs. CI further states that he observed a hand-to-hand transaction and that the narcotics are in the suspect's left front pocket. Based on this the officer stopped the suspect, reached into his pocket and retrieved a bag containing crack cocaine.

Holding: The CI's report of observing a hand-to-hand transaction, standing alone, was insufficient under the totality of the circumstances to provide the officer with probable cause to search the defendant.

NOTE: The factors the court was looking for was the experience and training of the officer in narcotics investigations, reputation of the location for drug activity, history of previous arrests from that site, prior knowledge of the suspect, quality and extent of surveillance and detailed description of the event. The court noted that in this case the officer did not conduct any surveillance or acquire additional information to confirm the CI's report of suspected drug activity besides corroborating the physical description of the location and suspect.

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Case: Arizona v. Gant, 2009 WL 1045962 (U.S. 2009)

Date: April 21, 2009

Subject: Vehicle Searches

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Facts: Defendant arrested by Arizona police officers for driving on a suspended license and placed in back of police car. Officers then search defendant's car on theory of search incident to arrest and find cocaine in a jacket pocket.

Holding: Police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.

NOTE: This case is not as bad as it seems. Officers can still perform searches where evidence loss and officer safety considerations can be shown, where you have developed probable cause for evidence being in the car and where cars are towed and searched for inventory purposes. See NY v. Belton, 453 U.S. 454 (1981), Chimel v. California, 395 U.S. 752 (1969), Thornton v. U.S., 541 U.S. 615 (2004) and Dakota v. Opperman, 428 U.S. 364 (1976).

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Case: State v. Arango, 2009 WL 1066137 (Fla. 3rd DCA 2009)

Date: April 22, 2009

Subject: Search Warrants

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Facts: Miami-Dade County Police Department detectives received tip of suspected marijuana growhouse. Upon establishing probable cause, they obtained and executed search warrant authorizing the seizure of, among other things, "documents and records evidencing illegal activity or that would lead to the identification of persons responsible for the unlawful possession or distribution of controlled substances." In addition to narcotics, the detectives seized beer bottles and cigarette butts with the hope of obtaining fingerprints or DNA evidence. Judge granted motion to suppress as to these items because they were not specifically listed in the search warrant.

Holding: A seizing officer is not required to know certain items are contraband or evidence of a crime, what is required is that the facts available to the officer would warrant a person of reasonable caution in the belief that the items may be useful as evidence of a crime. In this case, the Court found that the bottles and cigarettes were useful as evidence of a crime because they assisted the officers in determining the identities of the individuals growing marijuana at the residence.

NOTE: This case is not a free ticket to seize items not listed in the search warrant. It's important to be as detailed as possible in what you expect to seize in the warrant and back up your belief with specific facts or your training and experience in the affidavit in support of the search warrant.

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Case: D.A. v. State, 2009 WL 1139204 (Fla. 3rd DCA 2009)

Date: April 29, 2009

Subject: Traffic Stops

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Facts: Miami-Dade County Police Department officer stops vehicle for displaying an expired tag. He obtains DL and registration from driver and on seeing that the tag was only expired for 10 days, decides not to issue citation. Officer testified that he still needed to investigate whether driver had a warrant and whether his DL was valid. Officer then asks driver if there's anything illegal in the vehicle the officer should know about. Driver admits to possession of cannabis inside vehicle and is arrested. Driver argues on appeal that once the officer had decided not to issue him a citation, he should have been released immediately and not subjected to unrelated questioning by the officer.

Holding: The general rule is that once a police officer stops a car for a traffic infraction, the officer is then justified in detaining the driver only for the time reasonably necessary to issue a citation or warning. Part of the reasonably necessary time is the customary driver's license, tag, insurance, registration and active warrant checks that routinely accompany the traffic stop. The officer had the right to ask the driver questions unrelated to the traffic stop, subject of course, to the right of the driver to refuse to answer.

NOTE: See also State v. Boles, 952 So.2d 586 (Fla. 4th DCA 2007) which held that during a valid traffic stop, or even if a valid traffic stop has had its lawful function completed and turns into a citizen encounter, there is no reason a law enforcement officer cannot ask for consent to search.

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

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