

12-05: Conspiracy to Commit Drug Trafficking

Case: Davis v. State, 2012 WL 3044260 (Fla. 5th DCA 2012).

Date: July 27, 2012

Subject: Conspiracy to Commit Drug Trafficking

FACTS: The defendant, Davis, was charged with trafficking in cocaine and conspiracy to traffic in cocaine. The evidence showed that the defendant agreed, on the phone, to sell two kilograms of cocaine to someone named Adams. The two kilos were to be sold on separate days. Ultimately, the defendant completed one of the sales, but not the other. The State charged the defendant with trafficking in cocaine (based on the sale he completed) and conspiracy to traffic (based on the sale he agreed to but did not complete). The defendant was convicted on both counts, and he appealed the conspiracy conviction.

RULING: A defendant cannot be charged with conspiracy to traffic based on the defendant's agreement to sell drugs to (or buy drugs from) another person. A conspiracy charge requires the defendant and the co-conspirator to agree to participate in the same type of transaction, i.e. both of them agree to sell, or both of them agree to buy.

DISCUSSION: According to the 5th DCA, the crime of conspiracy requires an agreement between two or more persons. In a simple buy-sell transaction, one person "agrees" to sell, while the other "agrees" to buy. However, the conspiracy statute was designed to punish people who agree to commit the same type of activity. As a result, a defendant cannot be charged with conspiracy simply because he agrees to sell and someone else agrees to buy. If the defendant and the co-conspirator agree to work together to sell (or deliver, or purchase) the drugs, *then* the defendant can be charged with conspiracy.

NOTE: The Court acknowledges that this ruling is incompatible with a previous case from the First District Court of Appeal (DCA). In Pallin v. State, 965 So.2d 1226 (Fla. 1st DCA 2007), the 1st DCA reasoned that the buyer and sellers shared a common objective to purchase or possess cocaine because the sellers had to purchase and possess the cocaine before the buyer could purchase or possess a smaller portion of it and that an agreement to buy and sell drugs would support a conspiracy conviction against the buyer or the seller. It certified conflict with the 1st DCA, meaning the Florida Supreme Court will now have an opportunity to resolve the conflict if it chooses to do so.

Until this conflict is resolved, investigators may face different prosecution determinations on this issue. Prosecutors operating in the counties making up the 5th DCA (Brevard, Citrus, Flagler, Hernando, Lake, Marion, Orange and Osceola, Putnam, St. Johns, Seminole, Sumter and Volusia) must follow the Davis opinion. Prosecutors operating in the counties making up the 1st DCA (Alachua, Baker, Bay, Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton and Washington) must follow the Pallin decision. Investigators working in counties falling within the other DCAs will have to determine with their prosecutors whether they will follow Davis or Pallin approach to this type of conspiracy since they are not bound to follow one or the other. Please consult with your agency legal advisor to determine the impact of the impact of the Pallin and Davis cases on your region. For now, there are two conflicting standards applied to these conspiracies in the state, and your investigative outcome may depend on what part of the state you are in.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.