

FLORIDA CASE LAW UPDATE 17-02

Case: State v. Johnson, 42 FLW D281b (Fla. 1st DCA)

Date: January 31, 2017

Subject: Officer's discovery of cocaine inside the defendant's car was not the result of an illegal search, where the officer was performing a caretaker function in order to protect the defendant's property, and not searching for evidence of a crime

FACTS: Police officers went to Johnson's home in order to execute an arrest warrant. Shortly after they arrived, Johnson arrived in a vehicle. Johnson exited the vehicle and walked to the rear of the car, where he was arrested, handcuffed, and searched incident to arrest. During the search an officer discovered \$1,188.00 in unbundled cash in Johnson's pocket. The officer initially placed the cash on the trunk lid, but concerned that it might blow away, then dropped it through the open car door onto the front seat of the car. The officers asked Johnson if he would prefer to take the cash to jail with him, or leave it with a friend, and he responded that he wanted it to go with him. Pursuant to this request, the officer reached into the still-open car door to retrieve the cash, and in doing so observed a packet of white powder (later determined to be cocaine) that had not been apparent from outside the vehicle. Johnson was charged with possession of the cocaine. At trial he moved to suppress the evidence, arguing that the cocaine was only discovered after an illegal search of his vehicle subsequent to arrest, as proscribed by *Arizona v. Gant*, 556 U.S. 332 (2009). The trial court agreed and suppressed the evidence. The state appealed.

RULING: The First District Court of Appeal reversed the trial court, holding that since the cocaine was discovered while attempting to retrieve and protect the defendant's property, and not during a search for evidence of a crime, no Fourth Amendment violation occurred.

DISCUSSION: The state agreed that under the facts of this case, a search of Johnson's vehicle would not have been warranted incident to his unrelated warrant arrest. However, the courts have long recognized that not all police intrusions into a protected space constitute a Fourth Amendment "search." Rather, some entries are conducted in connection with the police's "community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady v. Dombrowski*, 413 U.S. 433 (1973) (Search of vehicle to protect public from a missing handgun, not to discover evidence, did not violate the Fourth Amendment); *see also Harris v. U.S.*, 390 U.S. 234 (1968) (Inventory resulting in the discovery of evidence was not a search, but resulted from the process of protecting the defendant's car); *State v. Oglesby*, 379 So. 2d 714 (Fla. 1st DCA 1981) (Contraband found while collecting a correctional officer's personal belongings for safekeeping, after a medical emergency, was not the result of an illegal search.) The appellate court applied the same rule of law in this case, stating that the officer's intrusion was "no more than a routine and good faith attempt, in the exercise of reasonable caution, to safeguard the defendant's own property." Since it was undisputed that the officer reached into Johnson's car to retrieve the cash for safekeeping, and not to search for evidence, no Constitutional violation occurred. Once lawfully inside the vehicle, the officer had the right to seize evidence which was in plain view.

COMMENTS: Note that if the officers had been able to observe the baggie of cocaine inside the vehicle when they first approached it, search and seizure could have been authorized under the plain view doctrine independent of any issues relating to the defendant's money, since the officers would have viewed the evidence in plain view from a position where they then had the right to be. *State v. Cash*, 275 So. 2d 605 (Fla. 1st DCA 1973).

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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.