

12-06: Probable Cause to Believe Pills are Contraband

Case: Smith v. State, 37 Fla. L. Weekly D1980 (Fla. 1st DCA 2012).

Date: August 17, 2012

FACTS: A deputy was patrolling a residential neighborhood when he saw an unconscious man lying next to a truck. The deputy shined his flashlight at the man and asked for identification. The man stood up and identified himself as Smith, but he was acting strangely and, according to the deputy, "appeared to be under the influence of something." As Mr. Smith retrieved his driver's license from the truck, the deputy noticed a small, clear plastic bag containing several white pills on the driver's seat. It appeared that Smith was trying to hide the pills. The deputy told Mr. Smith to step aside, and then reached into the vehicle and picked up the bag. Smith later admitted that the pills were hydrocodone and that he lacked a valid prescription. Smith was charged with trafficking, and the trial court denied his motion to suppress the pills. However, the appellate court reversed, and held that the pills should have been suppressed.

RULING: Before an officer can use the "plain view" exception to seize a bag of pills, the officer must have sufficient reasons for believing that the pills contain a controlled substance.

DISCUSSION: The deputy's initial interaction with Mr. Smith began as a consensual encounter. However, when the deputy saw the pills in the truck and told Mr. Smith to step aside, the deputy's "show of authority" escalated the encounter into an investigatory detention. Like all investigatory detentions, this one required a reasonable suspicion that Smith had committed a crime.

In this case, the State tried to argue that the defendant's strange behavior, including his effort to hide the pills, created a reasonable suspicion that the pills consisted of controlled substances. Unfortunately, this evidence was not enough. The defendant made no admissions regarding the nature of the pills (before they were seized); the pills were not contained in a labeled bottle; the pills had no markings on them which would aid in their identification; and the deputy testified that people frequently use similar plastic bags to carry lawfully prescribed medications.

The State also argued that the deputy could seize the pills because he saw them in plain view. However, the Court held that even if the pills were seen in "plain view," the pills could not be seized unless the deputy had probable cause to believe the pills contained a controlled substance. The Court distinguishes this case from an earlier opinion: Keller v. State, 946 So.2d 1233 (Fla. 4th DCA 2007). In Keller, a "plain view" seizure was upheld where a pill bottle was seized from a pedestrian who publicly displayed the bottle. Unlike Mr. Smith, Keller was sitting outside a pharmacy known for distributing narcotics; she admitted that the bottle contained hydrocodone; and the bottle was labeled as a prescription issued to someone other than Keller. In this case, however, the deputy lacked an adequate basis for believing that the pills contained any controlled substances; therefore, the incriminating nature wasn't "immediately apparent," and the pills should have been suppressed as an unlawful seizure.

Note: Most scheduled pills will have a manufacturer's imprint on them. Below is a sample photo of a hydrocodone pill showing an imprint. If a pill is seen in open view, and the imprint can be associated with a controlled substance, the officer may be able to seize the

pill. In that scenario, the arrest report should carefully document why the officer believed the pill contained a controlled substance



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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.