

11-05: Consensual Search of Person

Case: A.L.T. v. State, 36 FLW D1203a (Fla. 4th DCA)

Date: June 8, 2011

Subject: Evidence discovered during a consensual search of juvenile's person and wallet should have been suppressed, when the search exceeded the scope of the consent agreed to by the subject

FACTS: An officer observed A.L.T. sitting a bicycle which did not display a bicycle registration sticker, as required by local ordinance. The officer approached A.L.T and asked specifically if he could "search him for weapons or drugs." The subject responded "that's fine, I don't mind." The officer proceeded to search A.L.T., and also searched through a wallet which the officer had removed from the subject's rear pocket. The officer later testified that he searched the wallet because "narcotics can commonly be found within the billfold..." Within the wallet the officer found a Florida ID Card belonging to an elderly female. When he inquired as to the card, A.L.T. responded that he had found the wallet and was planning to return it. The officer requested a records check on the address displayed on the ID card, and learned that the home had been burglarized six days previously. A.L.T. was released at the scene, but after the ID card was turned over to detectives, a warrant was issued for his arrest, charging him with the burglary. A.L.T. was subsequently arrested and interviewed, and admitted post-Miranda to having committed the burglary. At trial, A.L.T. moved to suppress the ID card and his subsequent confession, arguing that both were obtained as a result of an illegal search of his wallet. The trial court denied the motion, and this appeal ensued.

RULING: The 4th District Court of Appeal reversed the trial court, and held that since the discovery of the ID card exceeded the scope of the search consent granted to the officer, and since the inculpatory statements made by A.L.T. occurred after his arrest based on the illegally obtained evidence, the motion to suppress should have been granted.

DISCUSSION: The court acknowledged that "it is reasonable for the police to conduct a search once they have been permitted to do so" (citing Schneckloth v. Bustamonte, 412 U.S. 218 (1973).) However, determining the scope of a search after consent is evaluated by "objective reasonableness - what the typical, reasonable person would have understood the exchange of words, under the circumstances, to mean." Allen v. State, 909 So. 2d 435 (Fla. 5th DCA 2005.) In this case, the court noted that A.L.T. gave specific permission for the officer to search him for weapons or drugs; he did not grant the officer a general consent to search. The court held that since the ID card was obviously neither a weapon nor drugs, it should not have been inspected, and its seizure was improper.

COMMENTS: This case reminds us that when conducting a search based on consent, the authority of the officer is controlled by the scope of the permission granted by the consenting person, which can generally be limited or withdrawn at any time. If the scope of that consent is exceeded, the officer is no longer acting within the mandates of the 4th Amendment. While the discovery of contraband during a consent search can often provide grounds to continue or even expand the search in some circumstances, that justification did not occur in this case. Note that the result in this case could have been much different had the officer obtained a general consent to search the subject and his possessions, rather than limiting the scope of the search to weapons and drugs.

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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.