

## FLORIDA CASE LAW UPDATE 18-02

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**Case:** State v. Stouffer, 43 FLW D1157b (Fla. 4th DCA)

**Date:** May 23, 2018

**Subject:** Detective could properly serve as the sole affiant in applications to obtain search warrants outside of his jurisdiction

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**FACTS:** An Indian River County Sheriff's detective was involved in a multi-jurisdictional investigation which originated in his home county. In furtherance of the case, the IRC SO detective, using information from the investigation including sealed wiretap materials, served as the sole affiant on applications and affidavits for search warrants obtained in both Broward and Palm Beach Counties. The warrants were executed by officers with local or statewide jurisdiction. The defendants moved to suppress evidence derived from the warrants, arguing that the detective was without jurisdiction to act as the sole affiant for warrants outside of Indian River County. The trial court agreed with the defense, held that the detective acted outside of his jurisdiction "under color of office," and suppressed the evidence. The state appealed.

**RULING:** The Fourth District Court of Appeal reversed the trial court, holding that the applicable Florida Statutes permit the issuance of search warrants based upon the affidavit of any credible witness.

**DISCUSSION:** The court begins its analysis by noting key language found in Section 933.06, Florida Statutes which provides that the judge "must have the application of *some* person for said warrant duly sworn to and subscribed." Further, Section 933.18 states that "[n]o warrant shall be issued for the search of any private dwelling...except on sworn proof by affidavit of *some* credible witness...." The court notes that nowhere do the applicable statutes require that an affiant be a member of law enforcement from the jurisdiction where the search is to occur, nor do they require that an affiant be from law enforcement at all. In fact, Florida courts have held that a private citizen may properly act as the affiant in a search warrant application. See *Kaplan v. State*, 347 So.2d 659 (Fla. 4th DCA 1977). In this case, the detective was investigating an offense that originated in Indian River County, and did not violate the "under color of office" doctrine by performing any extra-jurisdictional acts not authorized by law. Thus, relying on the plain language of the statute, the appellate court held that the detective qualified as "some creditable person" and was thus qualified to act as the affiant.

**COMMENTS:** It is extremely important to note that this case involved the ability of the IRC SO detective to serve as the affiant for the Broward and Palm Beach County search warrants; it does not hold that he would have had jurisdiction to properly execute the warrants there. The court notes that the searches were actually conducted by officers with either local or statewide jurisdiction. Previous Florida case law affirms the proposition that warrants may only be executed by an officer to whom it is directed, acting within their jurisdiction. See *State v. Griffis*, 502 So.2d 1356 (Fla. 5th DCA 1987) rev. den. 513 So.2d 1063 (Fla. 1987) ("There is no statute which authorizes a police officer to serve a search warrant outside the boundaries of his territorial jurisdiction.") and ("Important...is the recognition of the principle that without some other valid basis [such as the officer being cross-sworn], the execution of a search warrant by a police officer outside of his jurisdiction is invalid.")

**ADDITIONAL NOTE:** The holding in this case may also help put to rest the fiction that warrant applications must add a "co-affiant" if the probable cause is provided by an officer from outside the jurisdiction of the search. This is not required by the applicable statutes.

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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.