

Concealed weapons licensee, traffic violations

Number: INFORMAL

Date: August 24, 1998

Officer Glen L. Parker
Department Training Officer
Pembroke Pines Police Department
9500 Pines Boulevard
Pembroke Pines, Florida 33024

RE: LAW ENFORCEMENT OFFICERS--FIREARMS--CONCEALED FIREARMS--TRAFFIC INFRACTIONS--request for guidance.

Dear Officer Parker:

Thank you for contacting this office regarding the authority of a law enforcement officer to request that an automobile driver, who has been stopped for a traffic infraction and who has a concealed firearms permit, deliver any firearm he or she may have in the car to the officer for safe keeping during the course of that stop. Attorney General Butterworth has asked me to respond to your letter.

After reviewing the information you have submitted, it does not appear that this is a matter upon which this office may comment formally. The factual circumstances surrounding a law enforcement officer's determination to stop a vehicle and the subsequent actions of the officer and the driver and passengers of the vehicle all enter into such a determination. This office cannot provide a set of guidelines which would be helpful in every such situation.

However, in an effort to assist you, I offer the following informal comments. Section 790.06(1), Florida Statutes, which provides for the issuance of licenses to carry concealed firearms, states that:

"The licensee must carry the license, together with valid identification, at all times in which the licensee is in actual possession of a concealed weapon or firearm and must display both the license and proper identification upon demand by a law enforcement officer. Violations of the provisions of this subsection shall constitute a noncriminal violation with a penalty of \$25, payable to the clerk of the court."

The statute does not require that the licensee display the firearm, rather, it specifically states that "both the license and proper identification" must be produced.

Section 790.08(1), Florida Statutes, provides:

"Every officer making an arrest under s. 790.07, or under any other law or municipal ordinance within the state, shall take possession of any weapons, electric weapons or devices, or arms mentioned in s. 790.07 found upon the person arrested and deliver them to the sheriff of the

county, or the chief of police of the municipality wherein the arrest is made, who shall retain the same until after the trial or the person arrested."

This statute is applicable to a person who has been arrested and may not be extended generally to someone subject to a stop for a traffic infraction.

Section 790.06(15), Florida Statutes, which expresses the Legislature's intent for adopting concealed firearms licensing statutes makes it clear that

"[t]his section shall be liberally construed to carry out the constitutional right to bear arms for self-defense. This section is supplemental and additional to existing rights to bear arms, and nothing in this section shall impair or diminish such rights."

A number of Florida cases discuss the extent to which law enforcement officers may conduct searches and seizures after making lawful stops for traffic infractions. Among these is *Rouse v. State*, 643 So. 2d 696 (Fla. 1st DCA 1994), a copy of which I am enclosing.

In that case the officers made a stop for a traffic infraction and noticed suspicious activity on the part of both the driver and his passenger. The officer questioned the driver who denied that he possessed anything illegal inside his car and denied the officer's consent to search the car. The K-9 unit was called and the driver was informed that it would conduct a check on his car. Thereafter the driver consented to be searched and cocaine was found and seized. The appellate court overruled the denial of a motion to suppress at the trial level and determined that the search and seizure were not legal.

In concluding that the search and seizure were not valid the First District Court of Appeal stated:

"The officers were clearly entitled to stop and detain appellant for the traffic infraction; however, such a detention can last no longer than the time necessary to write the traffic citation. To justify further detention, the officers were required to possess a reasonable suspicion based on articulable facts that criminal activity was afoot. Reasonable suspicion is something less than probable cause, but more than an inchoate and unparticularized suspicion or hunch." [1]

The court continued:

"Even if we were to assume that the officers possessed the requisite founded suspicion to justify the extended detention, the search and seizure of the cocaine cannot be sustained under any theory of the law. Initially, as neither officer had probable cause to believe appellant was armed with a dangerous weapon, the search and seizure cannot be justified under Florida's Stop and Frisk Law" [2]

Based on the articulated intent for Florida's concealed weapons license legislation, it would appear to be even more problematical to seize a concealed firearm under these circumstances.

In addition to the *Rouse* case you may wish to consider the following cases which my research indicates may be helpful: *Angaran v. State*, 681 So. 2d 745 (Fla. 2d DCA 1996); *Stalling v. State*, 678 So. 2d 843 (Fla. 1st DCA 1996), *reh. denied.*; *Graham v. State*, 685 So. 2d 1354 (Fla. 2d

DCA 1996); *Richardson v. State*, 599 So. 2d 703 (Fla. 1st DCA 1992); *State v. Callaway*, 582 So. 2d 745 (Fla. 2d DCA 1991).

Finally, any attempt to develop guidelines for conducting such seizures of firearms should be conducted in conjunction with your police legal advisor and the local state attorney's office.

I trust that this information will be of some assistance to you.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

Enclosure

[1] *Rouse* at p. 697.

[2] *Id.*