

Police Deception



Know Your Rights

by Atty.
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As television viewers, we are all intrigued when law enforcement investigators for NYPD Blue or CSI: Miami trick the guilty criminal into providing information or evidence that ultimately results in a conviction. While there is no doubt that television drama takes a great license with the truth and the realities of the real life criminal justice system, sometimes the techniques of

the television police are not that far from the real world.

In a recent Lake City criminal investigation, the investigating officers employed a little deception of their own. While the suspect was detained in the county jail for a probation violation on another matter, a police investigator asked him for a saliva sample and told the suspect that law enforcement believed he committed a burglary at a Winn Dixie supermarket.

In fact, the police detective had manufactured the fictitious Winn Dixie burglary in order to obtain the suspect's consent to take swabs of saliva for an ongoing sexual assault

investigation. No DNA match was obtained in the sexual assault case, and as a consequence, the suspect was exonerated as to the sexual assault charges.

During the sexual assault inquiry, another law enforcement officer was investigating a robbery that occurred at the Pink Magnolia, a gift shop in Lake City. That investigator asked his colleague who had created the Winn Dixie subterfuge to send the saliva swab he had obtained from the suspect to the FDLE lab for a comparison with blood drops that had been taken from the crime scene of the robbery of the Pink Magnolia.

The FDLE acquired a match. Based on these results, the suspect was charged and subsequently convicted of the burglary, grand theft, and criminal mischief which occurred at the Pink Magnolia. During the State's case, evidence of the saliva swabs and the DNA match were offered against him. He appealed his conviction.

The Florida appellate court provided an interesting dialog on the legal implications of

police deception. Citing such examples as a government informant placed in a defendant's hotel room, a government agent misrepresenting his identity to get invited into the defendant's home for a narcotics buy, and an undercover agent wearing a wire, the appellate court offered its opinion that deception does not negate consent.

Absent coercion, threats, or a misrepresentation of authority, the United States courts have long recognized deception as a viable and proper tool of police investigation. The court declared that the notion that deception is somehow morally reprehensible when practiced by the police in fighting crime, unfairly impugns the motives of those seeking to uphold the law. Just because a suspect is outsmarted by the police, does not mean the suspect somehow loses the will to refuse his consent.

In the case of the Pink Magnolia, the appeals court stated that the suspect was clearly aware of the fact that the police investigator wanted

a DNA sample in order to investigate a crime, and that the police officer did not misrepresent the fact that he had no search warrant. In addition, the investigating officer did not tell the suspect that he had no choice regarding whether or not he would provide the saliva sample.

Accordingly, the appeals court concluded that the deception employed by the investigating officer could not be characterized as coercion or threats or misrepresentations of authority. The convictions were affirmed by the appeals court.

This case is *Wyche v. State of Florida*, and can be found in legal publications at 906 So.2d 1142. It was decided on June 20, 2005, by the First District of Appeal in Tallahassee, Florida.

Jay Howell, a Jacksonville attorney, has been a State Prosecutor, a US Senate Investigator, and the founder of the National Center for Missing and Exploited Children. He represents crime victims in civil claims for damages and advocates for the legal rights of all victims.

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