

## JUDGE JERRY R. PARKER (MARCH 13, 1940– JANUARY 11, 2003)

Hon. Chris W. Altenbernd\*

I leave for each of you this farewell message. I know that there are right now some of my current and former staff members who are holding their breath because they have just realized that this is a release to the public of something written by me that they have not been able to review, criticize, rewrite, or reorganize. They each know only too well the danger of me writing without their help.<sup>1</sup>

There was something very special about Judge Jerry R. Parker's laugh. At his memorial service, every person who spoke mentioned Jerry's kindness and the gentle laugh that would emerge from this stern figure of a man. The memorial service concluded with Jerry's own personal message, and in the opening sentences above, you could hear his gentle laugh and see his little smile and tilt of his head. His message, by the way, needed no rewriting or reorganization.

Judge Parker was my friend and colleague for more than a dozen years. I read with interest and respect each of the 723 appellate opinions that he authored during his career. I admired his work ethic and his determination to give all the people his full measure as a public servant. I watched him fight an evil disease with the same dogged determination with which he faced every challenge in life. I marveled at his inner strength, and I miss him very much.

Jerry claimed that to know him was to know his roots. He was born in Oilton, Oklahoma, at an oil camp that no longer ex-

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\* © 2003, The Honorable Chris W. Altenbernd. All rights reserved. Chief Judge, Second District Court of Appeal; Judge, Second District Court of Appeal, 1988–present. B.A., University of Missouri, with honors in Psychology, 1972; J.D., Harvard Law School, 1975; Master of Laws in Judicial Process, University of Virginia, 1998. Attorney, Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., Tampa, Florida, 1975–1988.

1. Father Tom Madden, Memorial Service, *Judge Jerry R. Parker's Memorial Message* (St. Paul United Methodist Church, Jan. 17, 2003). Father Madden read these opening sentences at Judge Parker's memorial service.

ists. His youth was spent in a company town of 1,000 inhabitants on Deep Rock where everybody worked oil and nobody got rich—a town on a bleak plain in the shadows of the remnants of a great Native American culture. Jerry’s father died when he was about twelve. With a tenth grade education, his mother worked as a waitress and nurse’s aide, raising Jerry, his brother, and his sister to value a higher education. Her focus on education helped her children earn seven university degrees among them. As Jerry explained, “The fact that she had no money to help fund higher education made no difference because she assumed that her children’s hard work would overcome all obstacles.”<sup>2</sup>

Judge Parker earned his B.S. and J.D. from the University of Oklahoma in 1963 and 1966, respectively. During the summers of this period, he worked in the forests of the Northwest for the United States Forestry Service, and he always spoke fondly of his quiet times in the forests. Following law school, his life was far from quiet. He joined the Federal Bureau of Investigation (FBI) and served as a special agent from 1966 until 1973. During this time he met his wife, Linda, and his life-long friend, Paul Meissner.

His service in the FBI included an assignment in the Jackson, Mississippi office during the era of the civil rights movement. This was a badge of great distinction in the FBI because the Jackson office was staffed, whenever possible, by agents raised in the southern regions of the United States. The agents could be counted upon to protect the civil rights of all people and to protect the lives of civil rights workers when necessary. In 1969, I worked for the Delta Ministry in Greenville, Mississippi. I did not realize it, but Judge Parker was one of the agents assigned to protect my life. I am especially grateful for his service to his country during those difficult times.

The FBI eventually transferred Judge Parker to Tampa, Florida. The legendary Jimmy Russell, State Attorney for the Sixth Judicial Circuit, convinced Judge Parker and his new bride to move to Pinellas County. Judge Parker was an assistant state attorney from 1973 until 1976. Then, the voters of Pinellas County elected him County Judge for a term beginning in 1977. The quality of his service on the county bench quickly impressed

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2. *Id.*

both the bench and bar. As a result, in 1981, Governor Bob Graham appointed Judge Parker to the circuit bench. He served on the circuit bench until 1988, when Governor Robert Martinez appointed him to the Second District Court of Appeal. I should disclose that Governor Martinez chose Judge Parker from a list of three candidates that included Judge Oliver L. Green and myself. Despite my disappointment at the time, Governor Martinez made a wise selection. I was honored to join Judge Parker on the bench a year later. Judge Green joined the court in 1998.

Judge Parker's appellate career was marked by a long list of solid opinions. In this Article, I will not attempt to summarize his many years of work. However, three matters warrant special comment. First, as an FBI agent and prosecutor, one might expect that Judge Parker would have been very state-oriented when it came to the law of search and seizure. He wrote almost fifty opinions addressing the Fourth Amendment.<sup>3</sup> Those opinions are balanced and fair and often rule for the defendant. They could serve as an excellent textbook on the entire subject of search and seizure. Whenever I write a Fourth Amendment opinion, my research begins with the legal opinions of Judge Parker.

Second, Judge Parker led the battle, inside our court, to provide defendants with prompt review. Judge Parker came to the Second District at a time when the Public Defender of the Tenth Judicial Circuit had a serious backlog of cases. It often took several years to complete a criminal appeal because there simply were more appeals than the Public Defender's office was funded to handle. Judge Parker authored *In re Public Defender's Certification*,<sup>4</sup> a unanimous *en banc* decision requiring the counties to appoint additional attorneys to help the Public Defender overcome the mountain of cases.<sup>5</sup> When those additional attorneys transformed that mountain of cases into a greatly increased workload for the Second District for a period of nine months, Judge Parker rolled up his sleeves and worked on hundreds of extra cases, nights and weekends, to maintain a current docket. Thanks in large part to Judge Parker's efforts, criminal defendants now receive prompt review of their cases.

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3. For a complete list of Judge Parker's opinions addressing the Fourth Amendment, see *infra* Appendix A.

4. 793 So. 2d 1 (Fla. 2d Dist. App. 1998) (*en banc*).

5. *Id.* at 2-3.

Third, Judge Parker joined our court at the beginning of the computer era. He quickly realized that the courts must embrace this technology. He pushed our court into the twenty-first century. When the other judges elected him chief judge in 1997, he worked tirelessly to achieve cost-effective efficiency at all levels of our court through the use of computer technology. Chief Justice Charles T. Wells appointed Judge Parker to be the chair of the Florida Courts Technology Commission. Judge Parker probably shares with Justice Ben F. Overton the title of first computer mentor for all of Florida's courts.

Judge Parker's love of the law led him to obtain a Master of Laws in Judicial Process from the University of Virginia in 1992 and to work extensively with law students. He was a founding member of the Pinellas Chapter of the American Inns of Court and the Canakaris Inn of Court.

Judge Parker loved mock trials—he really loved mock trials. Professor William Eleazer of Stetson University College of Law encouraged this passion. In addition, Judge Parker presided at countless mock trials, where his fierce demeanor frightened a full generation of law students. He also wrote more than twenty-five moot court problems for national trial competitions sponsored by the Texas Young Lawyers Association, the American College of Trial Lawyers, and the American Bar Association. In the 1990s, he wrote six problems for use in the Chester Bedell Memorial Mock Trial Competition sponsored by the Trial Lawyers Section of The Florida Bar. I was privileged to read and critique many of these problems—and occasionally to forge a fictitious party's signature on a mock document. Much of his free time was spent tweaking these problems, always seeking to improve the balance of each problem to ensure a fair, challenging competition with just a hint of humor.

Along the way, Judge Parker and his wife Linda had two wonderful sons. From our conversations during our many rides together to and from Lakeland, I can attest to his great love for his wife and the pride he had in both of his sons. Though he died too young, he was blessed to see his first grandchild and to know that he had given his sons a foundation upon which both of them were building successful careers and pursuing fruitful lives.

Although he loved mock trials, Judge Parker loved Little League even more. He was the founder and first president of Clearwater Winter Instructional Baseball. He believed that Little

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League had helped his sons and could help all children. We should all judge ourselves by a few basic values in life. I believe that Judge Parker judged himself by *The Little League Pledge*, which states the following:

I trust in God. I love my country and will respect its laws. I will play fair and strive to win. But win or lose I will always do my best.<sup>6</sup>

Jerry lost a game that we wish he would have won, but he trusted in God, he loved his country, and he respected its laws. He always played fair, he always strived to win, and he always did his best. Somewhere in heaven there is a Little League field where Jerry is calling balls and strikes, and even the parents are cheering all the calls.

To my family and friends, I borrow the ending phrase from a Native American wedding ceremony, "Go now to your home, and may your days be good, and long upon this earth."<sup>7</sup>

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6. Hon. Chris W. Altenbernd, Memorial Service, *Judge Jerry R. Parker's Memorial Message* (St. Paul United Methodist Church, Jan. 17, 2003) (quoting Little League Baseball, Inc., *The Little League Pledge*, <http://www.littleleague.org/about/pledge.htm> (accessed June 17, 2003)).

7. Father Tom Madden, *supra* n. 1. Father Madden read this as the closing sentence of Judge Parker's memorial message.

## APPENDIX A

The following is a list of Judge Parker's Fourth Amendment decisions, in reverse chronological order:

1. *McGowan v. State*, 778 So. 2d 354, 357–358 (Fla. 2d Dist. App. 2001) (holding that mere proximity to contraband does not prove that defendant had constructive possession, especially when other people are in the vicinity; such proximity, therefore, does not establish probable cause necessary to arrest an individual for possession of controlled substance).

2. *Palmer v. State*, 753 So. 2d 679, 680 (Fla. 2d Dist. App. 2000) (suppressing evidence of cocaine found in defendant's car because justification for traffic stop ended when officer determined that vehicle's temporary license tag had not expired; continued detention and search, therefore, was unlawful).

3. *Brown v. State*, 744 So. 2d 1149, 1151 (Fla. 2d Dist. App. 1999) (reversing an order denying defendant's motion to suppress drug evidence because officers had no more than mere suspicion of illegal drug activity when they ordered defendant to exit vehicle; search conducted subsequent to illegal detention is not voluntary).

4. *Woodson v. State*, 747 So. 2d 965, 966 (Fla. 2d Dist. App. 1999) (suppressing evidence of cocaine found on defendant's person because officers must confirm or substantiate tip from anonymous informant to justify investigatory stop, and any search and seizure subsequent to unjustified police action requires clear "break in the chain of illegality").

5. *Langley v. State*, 735 So. 2d 606, 607 (Fla. 2d Dist. App. 1999) (reversing an order denying defendant's motion to suppress evidence of cocaine and drug paraphernalia because it was not reasonable for defendant to feel free to leave in presence of six police officers and police dog).

6. *Maggard v. State*, 736 So. 2d 763, 765 (Fla. 2d Dist. App. 1999) (reversing an order denying defendant's motion to suppress evidence of stolen papers and credit card receipts found in defen-

dant's home because initial search of backyard barbeque was unlawful without warrant, and defendant's consent to subsequent search of residence cannot be considered voluntary unless the State establishes "by 'clear and convincing evidence' that there has been an unequivocal break in the chain of illegality sufficient to dissipate the taint of the prior illegal police action" (citing *Jordan v. State*, 707 So. 2d 338, 338 (Fla. 2d Dist. App. 1998)).

7. *Maynard v. State*, 742 So. 2d 315, 318 (Fla. 2d Dist. App. 1999) (reversing an order denying defendant's motion to suppress evidence of concealed firearm because, even though informant notifying police was defendant's mother, informant was not considered reliable informant as the tip was not substantiated in any additional manner), *quashed*, 783 So. 2d 226 (Fla. 2001).

8. *Jacobs v. State*, 733 So. 2d 552, 555 (Fla. 2d Dist. App. 1999) (holding that a reasonable person would expect officers to search closed, unlocked containers within plain view when officer states police are conducting narcotics investigation).

9. *State v. Thomas*, 711 So. 2d 1241, 1243 (Fla. 2d Dist. App. 1998) (reversing an order suppressing evidence of methamphetamine and drug paraphernalia found because vehicle search is lawful when defendant has just exited vehicle, defendant is lawfully arrested on an independent, outstanding warrant, and arrest is not merely "a pretext to carry out a preplanned warrantless search of [defendant's] vehicle"), *quashed*, 748 So. 2d 988 (Fla. 1999).

10. *State v. Stevenson*, 707 So. 2d 902, 902 (Fla. 2d Dist. App. 1998) (reversing an order suppressing evidence of cocaine and paraphernalia seized pursuant to search warrant executed at defendant's residence because "the search warrant affidavit contained sufficient facts to establish probable cause").

11. *Phillips v. State*, 707 So. 2d 774, 775 (Fla. 2d Dist. App. 1998) (reversing an order denying defendant's motion to suppress evidence of possession of cocaine and resisting officer without violence because defendant was entitled to withdraw voluntary consent during consensual search).

12. *Sutton v. State*, 698 So. 2d 1321, 1323 (Fla. 2d Dist. App. 1997) (reversing an order denying defendant's motion to suppress evidence of cocaine and drug paraphernalia found on her person

during pat-down search because passenger in vehicle chased by officer after hit-and-run accident, without further incident, did not provide officer with “a reasonable belief that [defendant] was armed with a dangerous weapon”).

13. *McClanahan v. State*, 697 So. 2d 930, 931 (Fla. 2d Dist. App. 1997) (reversing an order denying defendant’s motion to suppress evidence of methamphetamine and unlawful possession of driver’s license because separate criminal proceeding cannot use evidence seized in warrantless search of probationer’s residence by probation officer).

14. *Butler v. State*, 697 So. 2d 907, 908–909 (Fla. 2d Dist. App. 1997) (reversing an order denying defendant’s motion to suppress evidence of possession of illegal substances found in residence because police did not have search warrant, there were no exigent circumstances present, and defendant’s consent to search his residence was not voluntary).

15. *Zelinski v. State*, 695 So. 2d 834, 836 (Fla. 2d Dist. App. 1997) (reversing an order denying defendant’s motion to suppress evidence of marijuana found on his person because officer’s request that defendant step out of vehicle constituted an investigatory stop, not a consensual encounter, and officer did not have well-founded, articulable suspicion to justify search and seizure).

16. *Williams v. State*, 694 So. 2d 878, 879–880 (Fla. 2d Dist. App. 1997) (reversing an order denying defendant’s motion to suppress evidence of an illegal substance found in baggie in defendant’s pants because substance was seized during unlawful detention and defendant had not voluntarily consented to search).

17. *W.R. v. State*, 688 So. 2d 1000, 1001 (Fla. 2d Dist. App. 1997) (reversing an order denying defendant’s motion to suppress evidence of marijuana found in defendant’s home because “there was no evidence to support the state’s argument that the officers’ actions satisfied any of the exceptions to the ‘knock and announce’ rule”).

18. *State v. Bolin*, 693 So. 2d 583, 585 (Fla. 2d Dist. App. 1997) (reversing an order suppressing evidence of suicide note seized from defendant’s prison cell after he attempted suicide because the United States Supreme Court had ruled that “a prison inmate did not have a reasonable expectation of privacy in his



prison cell entitling him to the protection of the Fourth Amendment against unreasonable search and seizures”), *rev’d*, 793 So. 2d 894 (Fla. 2001).

19. *Colomo v. State*, 687 So. 2d 880, 881 (Fla. 2d Dist. App. 1997) (reversing an order denying defendant’s motion to suppress evidence of cocaine found in defendant’s possession because police officer conducting pat-down search could not have reasonably believed object containing cocaine was a weapon).

20. *State v. Gibson*, 670 So. 2d 1006, 1009 (Fla. 2d Dist. App. 1996) (holding search of defendant’s property done with electric company employee constituted warrantless search without probable cause and infringed on defendant’s Fourth Amendment rights because “search was conducted pursuant to governmental instigation”).

21. *State v. Kennon*, 652 So. 2d 396, 399 (Fla. 2d Dist. App. 1995) (reversing an order suppressing evidence of marijuana and rock cocaine because defendant abandoned any reasonable expectation of privacy “when she chose to hide drugs under the wheel of a vehicle in a public area and walk away”).

22. *Powell v. State*, 649 So. 2d 888, 889 (Fla. 2d Dist. App. 1995) (reversing an order denying defendant’s motion to suppress evidence of cocaine, cannabis, and drug paraphernalia found in defendant’s vehicle because “officers did not have a founded suspicion or probable cause to believe that [defendant] possessed drugs”; validity of traffic stop ended once officer realized that defendant displayed temporary tag, and police dog’s subsequent external search was, therefore, improper).

23. *Burnett v. State*, 644 So. 2d 152, 153 (Fla. 2d Dist. App. 1994) (reversing an order denying defendant’s motion to suppress evidence of cocaine found in defendant’s vehicle because investigatory stop must be supported by reasonable suspicion founded on factual circumstances observed by police officer, and defendant’s behavior outside known crack house without visible exchange of cash or drugs did not constitute founded suspicion).

24. *State v. Lewinson*, 644 So. 2d 137, 138 (Fla. 2d Dist. App. 1994) (reversing an order suppressing evidence of marijuana seized without warrant because marijuana fields were not located

in home's curtilage, and search warrant is not required to seize property not within constitutionally protected area).

25. *State v. C.S.*, 632 So. 2d 675, 675 (Fla. 2d Dist. App. 1994) (reversing an order suppressing evidence of marijuana found in defendant's car because initial traffic stop was lawful, officer clearly advised juvenile of his right to refuse consent to search vehicle, and officer did not make threats or misrepresentations).

26. *State v. Hadden*, 629 So. 2d 1043, 1044 (Fla. 2d Dist. App. 1993) (reversing an order suppressing evidence of methamphetamine seized because reliable informant's information provided details sufficient to establish reasonable suspicion to justify officer's investigatory stop of defendant's vehicle).

27. *State v. Fedorchenko*, 630 So. 2d 213, 214 (Fla. 2d Dist. App. 1993) (holding that, once a person knows that he or she is under suspicion for committing a crime, he or she does not have reasonable expectation of privacy for his or her communications that occur while being detained in police vehicle).

28. *State v. Pollard*, 625 So. 2d 968, 969–970 (Fla. 2d Dist. App. 1993) (reversing an order suppressing evidence of cocaine, cocaine pipe, and cannabis found in defendant's vehicle because broken taillight and smashed windshield provided reason for officer to stop vehicle, suspended driver's license and outstanding warrant provided basis for arrest, and therefore, search was valid incident to lawful arrest).

29. *State v. Wynn*, 623 So. 2d 848, 849 (Fla. 2d Dist. App. 1993) (reversing an order suppressing evidence of cocaine found in defendant's truck because defendant voluntarily abandoned illegally parked vehicle in front of officers, and thus, gave officers probable cause to conduct search).

30. *State v. Sarantopoulos*, 604 So. 2d 551, 552 (Fla. 2d Dist. App. 1992) (reversing a holding that police violated defendant's reasonable expectation of privacy and, thus, conducted illegal search, when officer entered neighboring property without permission, peered over adjoining fence, and observed marijuana plants growing in defendant's backyard), *aff'd*, 629 So. 2d 1038 (Fla. 1993).

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31. *Grant v. State*, 596 So. 2d 98, 100 (Fla. 2d Dist. App. 1992) (reversing an order denying defendant's motion to suppress evidence of cocaine and paraphernalia found in defendant's possession because defendant's act of discarding bottle of cocaine resulted in illegal detention).

32. *Bristol v. State*, 584 So. 2d 1086, 1088 (Fla. 2d Dist. App. 1991) (reversing an order denying defendant's motion to suppress evidence because informant's information "was not sufficiently detailed to provide the required probable cause [for officer] to detain and search [defendant]").

33. *Bergeron v. State*, 583 So. 2d 790, 791 (Fla. 2d Dist. App. 1991) (reversing an order denying defendant's motion to suppress evidence because officer's search of defendant was unauthorized; driving onto driveway and approaching residence where officers were executing search warrant did not support finding of reasonable suspicion that defendant was involved in unlawful activities).

34. *State v. Stregare*, 576 So. 2d 790, 792 (Fla. 2d Dist. App. 1991) (reversing an order suppressing evidence of cocaine found in cigarette pack held by defendant because, "Based on the totality of the circumstances [and] viewed in light of the officer's knowledge and experience, there was probable cause to believe that the cigarette pack contained illegal drugs").

35. *Anderson v. State*, 576 So. 2d 319, 321 (Fla. 2d Dist. App. 1991) (reversing an order denying defendant's motion to suppress evidence because officer's factual observations were not sufficient to give rise to founded suspicion of criminal activity, temporary detention of defendant was unlawful, and defendant's abandonment of cocaine pipe was, therefore, not voluntary), *quashed*, 591 So. 2d 611 (Fla. 1992).

36. *Baggett v. State*, 562 So. 2d 359, 362 (Fla. 2d Dist. App. 1990) (reversing an order denying defendant's motion to suppress evidence of cannabis and hypodermic syringes found in defendant's purse "because the officers had no probable cause to arrest [defendant] for possession with intent to use drug paraphernalia at the time they searched her purse").

37. *State v. Booream*, 560 So. 2d 1303, 1304 (Fla. 2d Dist. App. 1990) (reversing an order suppressing evidence of illegal drugs and paraphernalia found in defendant's vehicle that was

parked on the driveway of targeted home because officers had a “search warrant that expressly permitted the search of vehicles within the curtilage” of property, including the driveway).

38. *State v. Brown*, 558 So. 2d 1054, 1058 (Fla. 2d Dist. App. 1990) (reversing an order granting motion to suppress statements and evidence from those statements because officer’s failure to inform defendant that he was without authorization to arrest defendant did not affect the voluntariness of suspect’s decision to cooperate and because “United States Constitution does not impose such an obligation of full disclosure upon law enforcement” (citing *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973))).

39. *State v. Russell*, 557 So. 2d 666, 667 (Fla. 2d Dist. App. 1990) (reversing an order suppressing evidence of marijuana seized from defendant’s vehicle because inoperative tag light provided valid reason for stopping defendant, and drug sniffing dog’s interest in vehicle after exterior sweep provided probable cause for search).

40. *Garcia v. State*, 554 So. 2d 1223, 1224–1225 (Fla. 2d Dist. App. 1990) (reversing an order denying defendant’s motion to suppress evidence of cocaine found in residence because affidavit to obtain warrant was insufficient to support probable cause necessary to search defendant’s residence).

41. *State v. Abrams*, 548 So. 2d 820, 822–823 (Fla. 2d Dist. App. 1989) (affirming an order to suppress evidence of cocaine found in defendant’s car because defendant’s consent to search vehicle did not extend to search of a purse that was neither locked nor sealed); *see also State v. Neeley*, 548 So. 2d 1165 (Fla. 2d Dist. App. 1989) (involving co-defendant of *Abrams*).

42. *State v. Edwards*, 547 So. 2d 183, 185 (Fla. 2d Dist. App. 1989) (reversing an order suppressing evidence because officer had probable cause to search defendant’s truck and its contents based on informant’s detailed information, officer’s personal observations, and the automobile exception to warrant requirement).

43. *London v. State*, 540 So. 2d 211, 213 (Fla. 2d Dist. App. 1989) (reversing an order denying defendant’s motion to suppress evidence because a BOLO alert does not on its own “constitute adequate probable cause for an arrest, absent some supporting

factual data in the possession of the arresting officer prior to making the arrest”).

44. *State v. Abiri*, 539 So. 2d 492, 493 (Fla. 2d Dist. App. 1989) (holding that warrantless search of defendant’s car in which marijuana was found was valid because officer had probable cause when he verified informant’s physical description of defendant and vehicle).

45. *State v. Bowden*, 538 So. 2d 83, 85 (Fla. 2d Dist. App. 1989) (holding that smell of burning marijuana emanating from defendant’s parked car in public park after it had closed established necessary probable cause for officers to conduct search of defendant’s car for contraband without warrant).

46. *State v. Boulia*, 522 So. 2d 528, 529 (Fla. 2d Dist. App. 1988) (holding that, once officer recognized marijuana in pipe commonly used in connection with controlled substances, officer had probable cause to arrest defendant and search defendant’s person and belongings incident to arrest).

47. *Martin v. State*, 521 So. 2d 260, 261 (Fla. 2d Dist. App. 1988) (suppressing cocaine and firearm found during improper search of defendant because officer did not have well-founded suspicion of criminal activity to justify defendant’s temporary detention).