

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2006

DAMIEN MCKENZIE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D04-4836

[August 23, 2006]

PER CURIAM.

The defendant appeals his conviction and sentence for aggravated assault with a firearm. He raises three issues, none of which warrant a reversal. We therefore affirm, but write to address the trial court's suggestion that the defendant waived the motion to suppress by failing to file it prior to trial.

Rule 3.190(h) of the Florida Rules of Criminal Procedure provides that a "motion to suppress shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court may entertain the motion or an appropriate objection at the trial." This rule provides the trial court with discretion to entertain a motion to suppress at trial. In this case, the trial court indicated that the defendant had waived any motion to suppress by failing to file a written motion prior to trial. A motion to suppress is not automatically waived by not having been filed prior to trial. However, having reviewed the merits of the defendant's proffered motion, we find the court's reliance on waiver to be harmless.

Affirmed.

GUNTHER, KLEIN and MAY, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit,

Broward County; Ilona Holmes, Judge; L.T. Case No. 02-17836-CF10A.

Carey Haughwout, Public Defender, and Dea Abramschmitt, Assistant Public Defender, West Palm Beach, for appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Melynda L. Melear, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.