LEGAL EAGLE

April 2025

Pole Cam Surveillance

Throughout 2019, the police investigated four suspects operating a drug ring, Rolando Williamson, Hendarius Archie, Ishmywel Gregory, and Adrien Taylor. As a result of a controlled buy, the Government applied for and received authorization for a wire intercept of the suspects.

As part of the Government's continuing investigation, Agent Gerhardt used two pole cameras to observe Williamson's home—one overlooking the front of his house and the other overlooking the backyard. Both pole cameras were installed without a warrant, ran continuously for 22 months, and recorded soundless footage of activity in their range of vision. *The cameras could view only what was visible from the public street in front of the house and the public alley behind it.*

An extensive investigation was conducted, involving numerous wiretaps and controlled buys. Ultimately, Williamson was arrested, and on the same day, officers executed a search warrant at his home and recovered drugs and firearms. To support probable cause for the warrant, Agent Gerhardt's application relied on pole camera footage, the controlled buy, and subsequent transactions. Specifically, Gerhardt's affidavit provided evidence from, among other things, intercepted phone calls, the contents of collected, abandoned trash detailing that Williamson was engaged in drug-related transactions with at least four others, including Gregory, during the period between the controlled purchase and the application for the warrant.

All participants were indicted for multiple drug and firearm felonies. The Defendants were tried jointly and the charges from each separate case were consolidated for trial. All were convicted and appealed. Gregory, with the lowest case number, is first on the appeal, though all four defendants are named in the appellate case heading. In its opinion, the 11th Circuit focused on the legality of the pole cam, sustaining all the convictions.

Issue:

Was a search warrant required for law enforcement to engage in long-term video surveillance using a pole camera? **No**.

4th Amendment Considerations:

Federal and state statutes governing the interception of wire, oral, and electronic communications were not implicated in the installation and monitoring of a video-only camera. The underlying constitutional issue here is whether Defendant Williamson had a reasonable expectation of privacy in the area surveilled and whether it was an interest that

In this issue:

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society was prepared to recognize. If a privacy interest exists, the Fourth Amendment requires law enforcement to make a search warrant application, unless there exists an exception to the warrant requirement.

As a general rule, observations of a person's activities by law enforcement that are neither inside a dwelling nor within the curtilage do not violate the Fourth Amendment. Curtilage is "the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life.' " What one exposes to public view does not enjoy 4th Amendment protection.

And again, a county sheriff received a tip that a man was growing marijuana on his 5 acres of rural property. Unable to see inside a greenhouse, which was behind the defendant's mobile home, the Deputy circled over the property using a helicopter. The absence of two roof panels allowed him to see, with his naked eye, what appeared to be marijuana growing inside. A search warrant was obtained and marijuana was recovered from the greenhouse.

On appeal, the Supreme Court ruled, "Nor, on the facts of this case, does it make a difference for Fourth Amendment purposes that the helicopter was flying below 500 feet, the Federal Aviation Administration's lower limit upon the navigable airspace for fixed-wing craft. Since the FAA permits helicopters to fly below that limit, the helicopter here was not violating the law, and any member of the public or the police could legally have observed Defendant's greenhouse from that altitude." *Florida v. Riley*, (S.Ct.1989).

Court's Ruling:

"We start with Williamson's challenges to the warrants authorizing searches of the home and apartment. First, as to the home warrant, Williamson argues that the pole camera footage used to generate probable cause constituted a warrantless search in violation of the Fourth Amendment."

"The Fourth Amendment protects 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' A search occurs in two ways: when the government 'obtains information by physically intruding on a constitutionally protected area,' and 'when an expectation of privacy that society is prepared to consider reasonable is infringed,' *United States v. Jacobsen*, (S.Ct.1984)). Here, Williamson does not contend that a trespass occurred. Instead, he asserts that the pole cameras invaded his reasonable expectation of privacy because they were focused on his home and recorded non-stop. We disagree."

"First, we cannot say Williamson had a reasonable expectation of privacy in the areas surveilled—the front area and backyard of his home—because they were both exposed to the public. *See Katz v. United States*, (S.Ct.1967). 'What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.' The front area, by all accounts, was entirely visible to the public. And the back area, Williamson himself concedes, is not fully enclosed. The magistrate judge expressly found that 'an observer standing [on a public road] could see into the Arlington Avenue House's back yard, with her view obstructed only by some overgrown vegetation.' And Williamson does not challenge that factual finding as clearly erroneous."

"Williamson's surveilled areas, … were visible by and exposed to the public—providing him no such expectation of privacy. See *United States v. Dennis*, (5th Cir. 2022) (explaining that the use of a pole camera was not a search because 'one can see through [the defendant's] fence and [thus] the cameras captured what was open to public view from the street'). Because Williamson's backyard was open to public view from an observer standing on the street, we need not—and do not—address whether the use of a pole camera to record over a privacy fence into an otherwise enclosed backyard invades a reasonable expectation of privacy."

"Second, the pole cameras' capacity to record non-stop does not transform the Fourth Amendment analysis in the manner Williamson suggests. *Nothing in the Constitution forbids the government from using technology to conduct lawful investigations more efficiently*. The authorities Williamson cites for support—Justice Alito's and Justice Sotomayor's concurrences in *United States v. Jones*, (S.Ct.2012) and the Supreme Court's decision in *Carpenter v. United States*, (S.Ct.2018)—are wholly consistent with that principle."

Distinguishing the present case from the *Jones* decision that focused on long-term GPS tracking of Defendant's vehicle, the 11th Circuit noted, "Williamson seizes on this language because it identifies a durational element to the Fourth Amendment analysis of surveillance—but he ignores that pole

cameras and GPS trackers are meaningfully different forms of surveillance. For Justice Alito, the GPS monitoring in *Jones* was a search because 'law enforcement agents tracked every movement that [Defendant] made in the vehicle he was driving.' By contrast, a pole camera does not track movement. It does not track location. It is stationary—and therefore does not 'follow' a person like a GPS attached to his vehicle."

Williamson also argued that the Supreme Court's rulings regarding cellphone tracking demonstrated that modern technology does not provide law enforcement *carte blanche* to ignore the Fourth Amendment. In opposition, the 11th Circuit again pointed out, "But as with *Jones*, the *Carpenter* decision concerned a technology that is meaningfully different than pole cameras. Pole cameras are distinct both in terms of the information they mine and the degree of intrusion necessary to do so. Moreover, the *Carpenter* majority clarified that its decision is 'narrow' and, of particular relevance here, does not 'call into question conventional surveillance techniques and tools, such as security cameras.' Pole cameras are a conventional surveillance technique very similar to security cameras—and the Government has used them for surveillance across the country for decades."

Citing to numerous other jurisdictions ruling accordingly, the Court concluded, "Thus, to the extent that *Carpenter* is relevant to Williamson's case, it cuts against him."

"Moreover, [in *United States v. Houston*, (6th Cir. 2016)] the court squarely addressed Williamson's contention concerning the duration of surveillance: 'the length of the surveillance did not render the use of the pole camera unconstitutional, because the *Fourth Amendment does not punish law enforcement for using technology to more efficiently conduct their investigations.*' In other words, 'while the ... agents could have stationed agents round-the-clock to observe Houston's farm in person, the fact that they instead used a camera to conduct the surveillance does not make the surveillance unconstitutional.' …"

"The Seventh Circuit [in *United States v. Tuggle,* (7th Cir. 2021)] concluded that the use of pole cameras—even the prolonged use—does not constitute a search under the Fourth Amendment as a matter of law. And in doing so, it noted a compelling legal reality: 'No federal circuit court has found a Fourth Amendment search based on long-term use of pole cameras on public property to view plainly visible areas of a person's home.' We decline to alter that status quo."

"… Conventional surveillance techniques and tools, such as security cameras,' are not searches just because they record large amounts of data. See, *Carpenter.* AFFIRMED."

Lessons Learned:

The combined lesson possibly drawn from *Ciraolo*, *Riley,* and this 11th Circuit case is that if law enforcement can observe a suspect's property from a location where they have a right to be, then no Fourth Amendment privacy interest is violated. Because utility company employees could be perched atop a utility pole on adjacent property in the normal course of their duties, so too, could a law enforcement officer and, by implication, the pole camera.

Needless to say, there are growing constitutional concerns each time a new device is utilized to spy on the unsuspecting public. In the present case, Williamson referenced *United States v. Jones*, (S.Ct.2012), in which the Supreme Court ruled that warrantless long-term GPS monitoring of an automobile violated an individual's reasonable expectation of privacy. The 11th Circuit ruled, however, that "unlike Justice Alito's concern in *Jones* that long-term GPS monitoring would 'secretly monitor and catalogue every single movement' that the defendant made, the surveillance here was not so comprehensive as to monitor Houston's every move; instead, the camera was stationary and only recorded his activities outdoors on the farm. Because the camera did not track Houston's movements away from the farm, the camera did not do what Justice Sotomayor expressed concern about with respect to GPS tracking: 'generate a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations.'"

Clearly, the application for a warrant to install a pole camera is the preferred route. If there is insufficient probable cause to make the application law enforcement runs the risk of being accused of engaging in a fishing expedition rather than a criminal investigation.

United States v. Gregory
U.S. Court of Appeals, 11th Cir.
(Feb. 13, 2025)

Florida's Speedy Trial Rule Amended

Supreme Court of Florida

No. SC2022-1123

IN RE: AMENDMENTS TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.191.

March 13, 2025

After considering the oral argument on the prior proposal and the comments on the current proposal, we amend rule 3.191 ...

Subdivisions (a) and (d) are amended to provide that speedy trial for purposes of this rule **now starts from the date that *formal charges* are filed rather than from the *date of arrest*.**

Formal Charges. For purposes of this rule, a person is formally charged with a crime by Information, or by Indictment, or in the case of alleged misdemeanors by whatever documents constitute a formal charge.

We amend ... to provide that dismissals under this rule will be without prejudice unless a Defendant's constitutional right to speedy trial has been violated, which requires dismissal with prejudice.

The amendments to the rules shall become effective July 1, 2025, at 12:01 a.m.

It is so ordered.

Recent Case Law

(Un)Necessary Use of Force

Officer Roberto Felix heard a radio broadcast from the Toll Road Authority giving the license plate number of a vehicle on the highway with outstanding toll violations. Spotting the vehicle, he initiated a traffic stop with the use of his emergency lights. Ashtian Barnes, the driver, pulled over to the median out of the immediate traffic zone. Officer Felix parked his car behind him.

Officer Felix approached the driver's side window and asked Barnes for his driver's license and proof of insurance. Barnes replied that he did not have the documentation, and that the car had been rented a week earlier in his girlfriend's name. During this interaction, Barnes was "digging around" in the car, Felix warned Barnes to stop doing so. In response, Barnes turned off the vehicle, placing his keys near the gear shift, and told Officer Felix that he "might" have the requested documentation in the trunk of the car. What happened next was captured on the Officer's dashcam.

Felix asks Barnes to get out of the vehicle. Barnes's driver-side door opens. Barnes's left blinker turns back on (indicating keys are back in the ignition). Officer draws his weapon. Officer points his weapon at Barnes and begins shouting "Don't fucking move" as Barnes's vehicle begins moving. At this point, Officer Felix stepped onto the car with his weapon drawn and pointed at Barnes, and—as claimed and as supported by the footage—"shoved" his gun into Barnes's head, pushing his head hard to the right. Then, the car started to move. While the car was moving, Officer Felix shot inside the vehicle with "no visibility" as to where he was aiming. The next second, Officer Felix fired another shot while the vehicle was still moving. After two seconds, the vehicle came to a full stop, and Officer Felix yelled "Shots fired!" into his radio. Officer Felix held Barnes at gunpoint until backup arrived while Barnes sat bleeding in the driver's seat. At 2:57 p.m., Barnes was pronounced dead at the scene.

The trial court dismissed the suit against the Officer finding, "The dash cam footage shows that Felix did not draw his weapon until Barnes turned his vehicle back on despite Felix's order to exit the vehicle. Regardless of whether Felix drew his weapon before or after the vehicle started moving, Plaintiffs offer no lawful explanation for Barnes turning his car back on after Felix ordered him to exit the vehicle."

The court also determined that the *moment of threat* occurred in the two seconds before Barnes was shot. At that time, "Officer Felix was still hanging onto the moving vehicle and believed it would run him over," which could have made Officer Felix "reasonably believe his life was in imminent danger." Ultimately, the trial court found that because "Barnes posed a threat of serious harm to Officer Felix" in the moment the car began to move, Officer Felix's use of deadly force was not excessive.

Issue:

Was the use of deadly force reasonable under the totality of the circumstances? **Yes.** Court of Appeals emphasized that the 'at the moment of the threat' test required that finding.

Court's Ruling:

"Bound by this Circuit's precedent, we affirm the [trial] court's order holding that there is no genuine dispute of material fact as to constitutional injury. As the [trial] court explained, we may only ask whether Officer Felix 'was in danger '*at the moment of the threat*' that caused him to use deadly force against Barnes.' In this Circuit, 'it is well-established that the excessive-force inquiry is confined to whether the officers or other persons were in danger at the moment of the threat that resulted in the officers' use of deadly force.' This 'moment of threat' test means that 'the focus of the inquiry should be on the act that led the officer to discharge his weapon.' *Any of the officers' actions leading up to the shooting are not relevant for an excessive force inquiry in this Circuit*."

"The [trial] court here determined that the moment of threat occurred in the two seconds before Barnes was shot. At that time, 'Officer Felix was still hanging onto the moving vehicle and believed it would run him over,' which could have made Officer Felix 'reasonably believe his life was in imminent

danger.' "

Harmon v. City of Arlington, Texas, (5th Cir. 2021), presented a similar fact pattern, in which an officer was perched on the running board of a runaway vehicle when the officer shot the fleeing driver. Finding no constitutional violation, the opinion noted that the 'brief interval—when [the officer] is clinging to the accelerating SUV and draws his pistol on the driver—is what the court must consider to determine whether [the officer] reasonably believed he was at risk of serious physical harm.' Similarly here, Officer Felix was still hanging on to the moving vehicle when he shot Barnes. Under *Harmon's* application of our Circuit's 'moment of threat' test, Felix did not violate Barnes's constitutional rights. We focus on the precise moment of the threat as required and affirm the [trial] court's judgment."

Lessons Learned:

In a concurring opinion, Patrick E. Higginbotham, Circuit Judge, made the point that sent this case and the "moment of threat" issue to the United States Supreme Court:

A routine traffic stop has again ended in the death of an unarmed black man, and again we cloak a police officer with qualified immunity, shielding his liability. The [trial] court rightfully found that its reasonableness analysis under the Fourth Amendment was circumscribed to the "precise moment" at which Officer Felix decided to use deadly force against Barnes. I write separately to express my concern with this Circuit's moment of threat doctrine, as it counters the Supreme Court's instruction to look to the totality of the circumstances when assessing the reasonableness of an officer's use of deadly force.

The Fifth Circuit's approach to the reasonableness analysis is the minority position, joined by the Second, Fourth, and Eighth Circuits. Indeed, a majority of circuits have adopted a distinct framework for assessing the reasonableness of an officer's use of deadly force.

If the "moment of threat" is the sole determinative factor in our reasonableness analysis, references to our supposed obligation to consider the totality of circumstances are merely performative. Isolating the police-civilian encounter to the moment of threat begs the *Garner* question. [*Tennessee v. Garner*, (S.Ct. 1985)]. That is, *the moment of threat approach removes the consideration of the entire circumstances required by Garner, including the gravity of the offense at issue.*

Here, given the rapid sequence of events and Officer Felix's role in drawing his weapon and jumping on the running board, the totality of the circumstances merits finding that Officer Felix violated Barnes's Fourth Amendment right to be free from excessive force. This officer stepped on the running board of the car and shot Barnes within two seconds, lest he get away with driving his girlfriend's rental car with an outstanding toll fee. It is plain that the use of lethal force against this unarmed man preceded any real threat to Officer Felix's safety—that Barnes's decision to flee was made before Officer Felix stepped on the running board. His flight prompted Officer Felix to jump on the running board and fire within two seconds. This case should have enjoyed full review of the totality of the circumstances. The moment of threat doctrine is an impermissible gloss on *Garner* that stifles a robust examination of the Fourth Amendment's protections for the American public. It is time for this Court to revisit this doctrine, failing that, for the Supreme Court to resolve the circuit divide over the application of a doctrine deployed daily across this country.

...

Editor's Note: Based, in part, on this concurring opinion, Barnes' Estate appealed this decision to the United States Supreme Court. On October 4, 2024, the Court granted the 5th Circuit's petition for a writ of certiorari, to resolve the conflict between the various courts of appeal. Oral arguments were heard on January 22, 2025, and the decision is currently pending.

Barnes v. Felix
U.S. Court of Appeals, 5th Cir.
(Jan. 23, 2024)

DUI and Accident Report

Gerson Saravia was involved in a motor vehicle crash. After an on-scene investigation, he was charged with DUI. He filed a motion to suppress all evidence, arguing there was no probable cause for his arrest. The State's evidence established that during the early morning hours, a vehicle registered to Defendant had crashed into a pet grooming business located in a shopping plaza. Three officers arrived on the scene. By the time they arrived, Defendant's vehicle had been moved from its location where the accident occurred. Defendant was standing near the vehicle with two other individuals. The officers did not witness the accident

or observe Defendant behind the wheel of the vehicle.

The officers testified that when they arrived at the scene, the bar manager identified himself as the person who had reported the accident and identified Defendant as the owner of the vehicle involved in the accident. The bar manager's interaction with the officers was recorded on the bodycam videos.

After speaking with the bar manager, the officers commenced an accident investigation to determine the cause of the crash. Defendant told the deputies that he did not know how the crash happened and could not remember whether he was driving the vehicle at the time of the crash. Defendant had the keys to the vehicle in his pocket, and the vehicle was registered in his name. The officers also spoke to the security guard, who reported that he had heard the crash and saw Defendant initially attempt, unsuccessfully, to drive the vehicle away. Thereafter, the security guard saw Defendant exit the driver's side of the vehicle. The security guard declined to provide his name. Based on the foregoing, the officers determined that Defendant was the driver of the vehicle at the time of the crash. One of the officers administered field sobriety test exercises upon Defendant and, after detecting numerous signs of impairment, arrested Defendant for DUI.

At the conclusion of the hearing, the County Court granted Defendant's motion to suppress, concluding that the officers relied exclusively on the hearsay statements of unnamed witnesses to establish that Defendant was driving the vehicle at the time of the crash. The court also concluded that the accident report privilege *precluded* the officer, who had arrested Defendant for DUI, from relying on information gathered during the accident investigation to establish probable cause to arrest him for DUI.

Issue:

Did the officers develop sufficient probable cause to support the Defendant's arrest? **Yes**.
Did the Accident Report Privilege bar the Defendant's arrest for DUI? **No**.

DUI Arrest – Basics:

An officer can arrest a person for misdemeanor DUI in three circumstances: 1. "the officer witnesses each element of a prima facie case," 2. the "officer is investigating an 'accident' and develops probable cause to charge DUI," or 3. "one officer calls upon another for assistance and the combined observations of the two or more officers are united to establish the probable cause to the arrest."

"The courts of this state have recognized that a legitimate concern for the safety of the motoring public can warrant a brief investigatory stop to determine whether a driver is ill, tired, or driving under the influence in situations less suspicious than that required for other types of criminal behavior. In *Bailey v. State*, 319 So.2d 22 (Fla.1975), the Florida Supreme Court upheld the traffic stop of a driver who was observed driving her vehicle at a slow rate of speed and weaving within her lane of traffic. The court expressly stated that there were no circumstances which would reasonably have led the officer to believe criminal activity was taking place. The court nevertheless validated the traffic stop, stating that because of the dangers inherent to our vehicular mode of life, there may be justification for the stopping of a vehicle by a patrolman to determine the reason for its unusual operation." *DHSMV v. DeShong*, 603 So.2d 1349 (2DCA 1992).

In *Jackson v. State*, (1DCA 1984), the court acknowledged that probable cause for a DUI arrest is required under section 316.1933(1) but determined that the phrase "under the influence of alcoholic beverages" is not equivalent to the term "intoxicated" or "impaired." The court stated:

"The purpose of the blood test taken under section 316.1933(1) is to aid in determining whether the driver causing a serious automobile accident, when reasonably believed to be under the influence of alcoholic beverages, had his normal faculties impaired by alcohol. The statutory provision contains sufficient requirements to establish probable cause to believe a criminal offense has been committed because, in addition to the required showing that the driver is 'under the influence,' the statute also requires that the driver 'has caused the death or serious bodily injury of a human being.' "

Thus, the 1st D.C.A. determined that evidence that a person has been drinking alcohol, coupled with evidence that the person has caused a serious or fatal accident, is enough to provide an officer with probable cause to believe that the person has committed a DUI offense.

In other words, drinking alcohol plus causing an accident equal probability of impairment. Citing *Jackson*, the 4th D.C.A. reached a similar conclusion in *State*

v. Cesaretti, (4DCA 1994). In that case the court reversed the suppression of blood alcohol test results upon determining that the smell of alcohol on the driver's breath, along with evidence that the driver had caused serious bodily injury, gave the officer sufficient probable cause to request a blood test under section 316.1933(1).

Accident Privilege:

The Florida Legislature created the accident report privilege to ensure that the statutory duty to report an accident did not violate the Federal and Florida constitutional protection against self-incrimination.

"The privilege is constitutionally mandated because the statutes require a report under penalty of law and in certain instances the report could otherwise be in derogation of one's Fifth Amendment rights."

The Legislature intended the accident report privilege "to clothe with statutory immunity only such statements and communications as the driver, owner, or occupant of a vehicle is compelled to make in order to comply with his or her statutory duty under section 316.066."

There is a body of law that has developed over time interpreting section 316.066(4). See, *Brackin v. Boles*, (Fla. 1984) (holding that the purpose of the statute "is to clothe with statutory immunity" the statements and communications a driver, owner, or vehicle occupant is legally required to make for the purpose of completing an accident report).

If police do ask the person questions about the accident, the investigative inquiry may cause additional information not explicitly compelled by the accident report statute, to fall within the accident report privilege.

However, the legislature substantially amended the statute in 1989 by deleting: 1. the term "privilege," 2. the language making the information confidential, and 3. the language prohibiting its disclosure outside of the Department. By deleting this language, the legislature clearly intended to change the statute from a true privilege to a law of trial admissibility. Indeed, the legislative history provides that the statute was amended "to make it clear that statements made to an officer by a person involved in an accident shall not be admissible in court but shall otherwise be public record."

Unfortunately, courts have continued to refer to the statute as creating an "accident report privilege" despite the 1989 amendment.

Court's Ruling:

"Probable cause to arrest exists when facts and circumstances within an officer's knowledge and of which he had reasonably trustworthy information are sufficient to warrant a person of reasonable caution to believe that an offense has [been] or is being committed." *McCarter v. State*, (5DCA 1985).

"The record reflects the officers did not rely on hearsay evidence in concluding probable cause existed to arrest Defendant for DUI. For instance, the security guard personally heard Defendant's vehicle crash into a nearby business, observed Defendant attempting to drive away from the scene, and, when unable to do so, watched Defendant exit the vehicle from the driver's seat. Additionally, the bar manager identified Defendant as the owner of the subject vehicle. The security guard's and the bar manager's out-of-court statements were not introduced at the suppression hearing for the truth of the matter asserted, but to show what information the officers had at the scene when making their probable cause determination."

"The foregoing information gathered during the accident investigation was compounded with the fact that Defendant admitted he had driven the vehicle earlier that evening to the shopping plaza where the bar was located; he admitted he had been drinking at the bar in the shopping plaza; he was found with the vehicle's keys in his pocket during the initial encounter with police; police confirmed that the vehicle was registered in Defendant's name; and Defendant had signs of impairment. Under the totality of the circumstances, this established the existence of probable cause to arrest Defendant for DUI."

"Turning to the accident report privilege, section 316.066(4), F.S. provides: 'Except as specified in this subsection, each crash report made by a person involved in a crash and any statement made by such person to a law enforcement officer for the purpose of completing a crash report required by this section shall be without prejudice to the individual so reporting. Such report or statement may not be used as evidence in any trial, civil or criminal. However, subject to the applicable rules of evidence, a law enforcement officer at a criminal trial may testify as to any statement made to the officer by the person involved in the crash if that person's privilege against self-incrimination is not violated.' "

"The accident report

privilege is not applicable substantively, as neither the bar manager nor the security guard were involved in the accident, and therefore their statements to the officers are not protected. See, *Sottilaro v. Figueroa*, (2DCA 2012) (noting that 'the statutes requiring an accident report and the case law interpreting those statutes demonstrate that *the privilege only applies to a driver, owner, or occupant of a vehicle* because those are the only people compelled to make a report under the statutes.' "

"Regarding the unnamed witnesses' identities, the record reflects the security guard and bar manager were easily identifiable as the officers were familiar with both witnesses and had prior dealings with them. Moreover, as to the bar manager, the officers said they could easily obtain his information, and the bar manager's face was clearly visible on the bodycam videos. Further, the two witnesses provided the information face-to-face with the officers. Based on these circumstances, the information provided was not from an anonymous tip. Rather*, the witnesses qualified as citizen informants* and the information was sufficiently reliable. See, *Milbin v. State*, (4DCA 2001) (holding that witness providing information through face-to-face communication is not an anonymous tipster and is deemed sufficiently reliable to be classified as a citizen informant)."

"The totality of the circumstances gave the officers probable cause to arrest Defendant for DUI. *See State v. Kliphouse*, (4DCA 2000) (holding that 'probable cause for a DUI arrest must be based upon more than a belief that a driver has consumed alcohol; it must arise from facts and circumstances that show a probability that a driver is impaired by alcohol or has an unlawful amount of alcohol in his system').

"Accordingly, we reverse the county court's order granting Defendant's motion to suppress. REVERSED."

Lessons Learned:

The Florida Supreme Court has made the extent of the Accident Report Privilege clear. "There is no justification or logical reason for holding as privileged the results of a blood alcohol test directed by an investigating officer who prepared an accident report. The statute only prohibits the use of communications 'made by persons involved in accidents' in order to avoid a Fifth Amendment violation. *The distinction this Court has previously made between investigations for accident report purposes and investigations for purposes of making criminal charges is artificial, is not a proper interpretation of the statute, and must be eliminated*. We clearly and emphatically hold that the purpose of the statute is to clothe with statutory immunity *only such statements and communications as the driver, owner, or occupant of a vehicle is compelled to make* in order to comply with his or her statutory duty under section 316.066(1) and (2). Accordingly, we hold that the blood alcohol test is admissible in the instant case." *Brackin v. Boles*, (Fla.1984).

State v. Saravia
4th D.C.A.
(Feb. 26, 2025)

Landlord Burglary

Victim rented a room in Patricia Sublett's home. The victim and Sublett did not have a written rental agreement. The rental was a "month-to-month room rental." The victim occupied a screen porch in the home, and she had blocked off a door leading outside. To access the porch, Victim used the home's front door. Victim "repeatedly" told Sublett to "stay out" of her room. Subsequently, Victim texted Sublett that she would vacate the room by a date certain.

Over a Ring camera, Victim observed Sublett inside her room and called law enforcement. The victim testified that she had not permitted Sublett to enter the room to access her medical marijuana. A detective and another officer responded to the home. Sublett admitted to taking "just a part of one" of the victim's medical marijuana cigarettes; she said that she entered the room and went through the victim's drawers because she "felt like getting stoned." After officers showed Victim "containers from pre-rolls and ... marijuana" that they had recovered from Sublett, she identified the objects as hers and said that she never gave Sublett permission to take or use her medical marijuana products.

Sublett was charged with burglary of a dwelling and petit theft. Her attorney argued that as the property owner, she had a right to be in the screened porch of her home and thus could not commit a burglary. The trial court denied the motion for judgment of acquittal ruling that Sublett's rental of the porch to the victim limited her right of access to it during the tenancy. That ruling was affirmed on appeal.

Issue:

Was the landlord/defendant's entry into the rental space unlawful? **Yes**.

Rental Room Rights:

The charged burglary in this case entails "entering a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless ... the Defendant is licensed or invited to enter." 810.02(1)(b)1., F.S.

Section 810.011(2) defines a "dwelling" as a building or conveyance of any kind, *including any attached porch*, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof.

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." A rental room—though not what ordinarily comes to mind when one pictures a "house"—qualifies as a place in which the people remain "secure" against unreasonable searches and seizures.

In *Stoner v. California*, (S.Ct.1964), the police got the night manager of a motel to consent to a motel room search. The Supreme Court found the action unconstitutional. "No less than a tenant of a house, or the occupant of a room in a boarding house, a guest in a hotel room is entitled to constitutional protection against unreasonable searches and seizures. *Johnson v. United States*, (S.Ct.1948). That protection would disappear if it were left to depend upon the unfettered discretion of an employee of the hotel." See also, *United States v. Forker*, (11th Cir. 1991) ("A person does not forfeit Fourth Amendment protections merely because he is residing in a motel room."). The same operation of law pertains to renters.

Court's Ruling:

"The porch that the victim had rented from Sublett falls under this definition of a dwelling. The victim's occupancy of the porch as a tenant constituted a 'possession which is rightful as against the burglar and is satisfied by proof of special or temporary ownership, possession, or control.' *In re M.E.*, (Fla. 1979). Florida's residential landlord and tenant law is consistent with the victim's assertion of dominion over the porch."

The Florida Residential Landlord and Tenant Act, applies to 'the rental of a dwelling unit.' 83.41, F.S. In pertinent part, section 83.43 (2)(a) defines a 'dwelling unit' as a 'structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person.' A dwelling unit may be rented by an oral agreement. See, 83.43(7), F.S."

"A tenant generally has exclusive possession of a rented dwelling unit. Section 83.53(2) sets forth the circumstances allowing a landlord to enter rented premises during the term of a tenancy:

The landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. 'Reasonable notice' for the purpose of repair is notice given at least 24 hours prior to the entry, and reasonable time for the purpose of repair shall be between the hours of 7:30 a.m. and 8:00 p.m. The landlord may enter the dwelling unit when necessary for the further purposes set forth in subsection (1) under any of the following circumstances:

(a) With the consent of the tenant;

(b) In case of emergency;

(c) When the tenant unreasonably withholds consent; or

(d) If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

The victim did not consent to or otherwise license Sublett's entry onto the porch. None of the section 83.53(2) circumstances, which authorize a landlord's entry into a tenant's dwelling unit, apply in this case. *Affirmed*."

Lessons Learned:

Notwithstanding the Defendant's name, Sublett (pun intended), as landlord, she was required to respect the victim/tenant's privacy and property rights in the rented porch, despite the verbal and month-to-month rental agreement.

The important takeaway from this decision is that the Constitution protects a rental room to the same extent it does one's permanent residence. A private home, which includes a rental room, "is an area where a person enjoys the highest reasonable expectation of privacy under the Fourth Amendment." *Turner v. State*, (Fla.1994). "A motel room is considered a private dwelling if the occupant is there legally, has paid or arranged to pay, and has not been asked to leave."

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