LEGAL EAGLE

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Vehicle Search

Police Officers were surveilling Christopher Poller's residence in preparation for his planned arrest pursuant to an out-of-state warrant. The officers also had a search and seizure warrant for Poller's residence as part of a narcotics and weapons investigation. After watching Poller engage in hand-to-hand sales from his vehicle, the officers then observed Poller exit his car and enter his apartment residence.

While one group of officers approached Poller's apartment to execute the search and arrest warrants, another group approached his vehicle. The car's windows were tinted. One officer opened his iPhone's camera application and through it saw what he thought looked like two firearms that were wedged between the front seats and the center console. The Officer then walked to the other side of the car and again held his iPhone's camera near the window, pointing out to another officer on his iPhone screen two firearms in the car. Another officer also used his iPhone camera to see through the passenger-side window and noted that he observed two firearms, including one with an extended magazine, and a bag containing an unknown substance. An officer then approached the front of the car, cupped his hands around his eyes, and looked into the front windshield *without touching his hands, arms, or face to the glass*. He stated, "I see a bag of heroin on the front seat, two guns, one's got an extended mag, and looks like probably ... a bag of drugs right there in the passenger seat." His body camera also captured the interior of the car.

The officers then towed Poller's car and applied for and obtained a warrant to search the car. Inside, they found and seized the drugs and guns they had observed, which formed the basis for the charges to which Poller ultimately pleaded guilty after reserving his right to appeal the denial of his motion to suppress. He argued that the officers' observations into his car through iPhone cameras violated his reasonable expectation of privacy, and the officers' physical touching of his car during those observations constituted a trespassory search. The trial court denied his motion. On appeal, that ruling was affirmed..

Issue:

Did the officers violate the Defendant's reasonable expectation of privacy by using cell phone cameras to observe the interior of his car through its tinted windows? **No**.

Fourth Amendment and Trespassory Viewing:

The Fourth Amendment provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." In assessing whether that right is implicated, courts must first determine whether officers engaged in a "search." The Supreme Court has articulated two tests for determining whether a police officer's conduct constitutes a 'search' for purposes of the Fourth Amendment: 1. "whether the officer violated a person's reasonable expectation of privacy," and 2. "whether the police officer physically intruded on a constitutionally protected area." *United States v. Weaver*, (2d Cir. 2021).

"If the inspection by police does not intrude upon a legitimate expectation of privacy, there is no 'search' " subject to the Fourth Amendment. *Illinois v. Andreas*, (S.Ct.1983). The legitimate, or reasonable, expectation of privacy test is a "two-part inquiry: first, has the individual manifested a subjective expectation of privacy in the object of the challenged search? Second, is society willing to recognize that expectation as reasonable?" *California v. Ciraolo*, (S.Ct.1986); see also, *Katz v. United States*, (S.Ct.1967).

As a general matter, the Supreme Court has never "deviated from the understanding that mere visual observation does not constitute a search." *United States v. Jones*, (S.Ct.2012). That is because "what a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." Thus, an object "ordinarily in plain view of someone outside [an] automobile" is not "subject to a reasonable expectation of privacy." *New York v. Class*, (S.Ct.1986).

"The fact that the objects observed by the officers lay within an area that ... was protected by the Fourth Amendment does not affect [the] conclusion" that the officers did not violate Defendant's reasonable privacy expectations by observing those objects. *United States v. Dunn*, (S.Ct.1987). That proposition holds true even when the interior is not entirely visible to the naked eye and requires an officer to, for example, "shine a flashlight to illuminate the inside of the vehicle." *Mollica v. Volker*, (2d Cir. 2000); see *Texas v. Brown*, (S.Ct.1983) (It is "beyond dispute that the officer's action in shining his flashlight to illuminate the interior of the defendant's car [did not encroach] upon a right secured to the letter by the Fourth Amendment" see also, *United States v. Delos-Rios*, (2d Cir. 1981) (finding no Fourth Amendment issue with observations through binoculars of activities that occurred on the street). Similarly, the Supreme Court has not deemed the use of a "precision aerial mapping camera" from as high as altitudes of "12,000, 3,000, and 1,200 feet" a search because "the mere fact that human vision is enhanced somewhat, at least to the degree here, does not give rise to constitutional problems." *Dow Chem. Co. v. United States*, (S.Ct.1986).

Court's Ruling:

"Poller first claims that because the tinted windows shielded the 'inside of his car from the casual passerby,' he 'established an expectation of privacy.' However, the inquiry does not turn on whether Poller's employed safeguards would have sufficiently shielded the interior from the gaze of a mere casual observer. Instead, the Supreme Court has made clear that 'there is no legitimate expectation of privacy shielding that portion of the interior of an automobile which may be viewed from outside the vehicle by either inquisitive passersby or diligent police officers.' *California v. Greenwood*, (S.Ct.1988) (concluding that there was no reasonable expectation of privacy in garbage bags left at the curb in part because they are accessible to 'scavengers' and 'snoops').

Thus, in *California v. Ciraolo*, for example, the fact that the Defendant 'took normal precautions to maintain his privacy' by erecting a 10-foot fence around his backyard was insufficient to establish a reasonable expectation of privacy, in part because the fence might not shield the interior 'from the eyes of a citizen or a policeman perched on top of a truck or a two-level bus.' See, *Florida v. Riley,* (S.Ct.1989) (concluding that Defendant 'could not reasonably have expected the contents of his greenhouse to be immune from examination by an officer' from an aircraft above, even though he took precautions 'against ground-level observation'). The pertinent question here, then, is whether the installation of tinted windows established a legitimate expectation of privacy from 'all observations' of the interior of Poller's car. It does not."

"Whatever Poller's subjective expectation of privacy may have been, his expectation that the installation of tinted windows

shielded the car's interior from all observations is not a reasonable one. …Under Connecticut law, both the front and side tinted window cannot be 'mirror-like in appearance' and must have 'a total light transmission of not less than 35% plus or minus three per cent.' [Florida law provides that for sedans, the front side windows must allow at least 28% of light to pass through, while the back side and rear windows can have a VLT of 15% or more.] … The manifest purpose of the law's tint limitation was so people, including officers, would not be prevented from seeing into the vehicle. This law… evinces, at least to some degree, that society has not approved of tinted windows that conceal a car's interior from all view."

"Furthermore, Poller's expectation of privacy was not reasonable because the window tint did not prevent passersby from observing the interior of his vehicle while parked on a public street. The 'mere fact that an individual has taken measures to restrict some views of his activities' does not 'preclude an officer's observations from a public vantage point where he has a right to be and which renders the activities clearly visible.' …The record in this case alone demonstrates a number of ways in which an officer or private citizen could see through the car's tinted windows from the public vantage point of the street: by cupping his hands around his eyes to block out external light and leaning close to the window, using an iPhone camera application, or utilizing any number of widely available digital cameras. Given that the tinted windows continued to make the interior of Poller's vehicle susceptible to view by those standing outside of the car in a myriad of ways, Poller 'knowingly exposed the interior of the car to the public in a manner that 'is not subject to Fourth Amendment protection.' *California v. Ciraolo*."

"In the alternative, Poller argues that, by repeatedly touching Poller's car while looking into its interior, the officers engaged in a trespassory search under *United States v. Jones*, (S.Ct.2012). In *Jones*, the Supreme Court revived the property-based 'common-law trespassory test' for determining whether the Government conducted a search under the Fourth Amendment. There, the Government installed a GPS tracking device on the undercarriage of a Jeep and then monitored the Jeep's movements for a four-week period. The Court concluded that, under the trespass inquiry, this constituted a search because the Government 'physically occupied private property for the purpose of obtaining information.' "

"Here, Poller cannot establish the requisite causal link because he conceded to the [trial] court 'that it was not necessary for the iPhone to be in physical contact with the car in order for the camera function to allow the police to see the contents inside.' Thus, 'whether or not the constitutional violation occurred' (the touching of the vehicle that we are assuming, without deciding, was a trespassory search), the officers' observation of the guns through the use of the iPhone cameras, without coming into contact with the car, would have established the requisite probable cause to support an eventual warrant, and led to the discovery and seizure of the guns, as well as the drugs, in the car upon its execution. Accordingly, suppression of the guns and drugs recovered from Poller's car is not warranted. For the foregoing reasons, we AFFIRM the judgment of the [trial] court."

Lessons Learned:

The Court also explored another potential challenge to the Officers' use of their iPhone to inspect the interior of Defendant's vehicle. *Kyllo v. United States*, (S.Ct.2001), the thermal imaging case, could form the basis of a suppression of the evidence because the officers required the assistance of iPhone cameras to see into the car's interior.

Kyllo examined whether the use of a thermal-imaging device aimed at a private home from a public street to detect relative amounts of heat to disclose an indoor marijuana "grow" operation constituted a 'search' within the meaning of the Fourth Amendment. In answering in the affirmative, the Supreme Court underscored the primacy of the home under the Fourth Amendment: "At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."

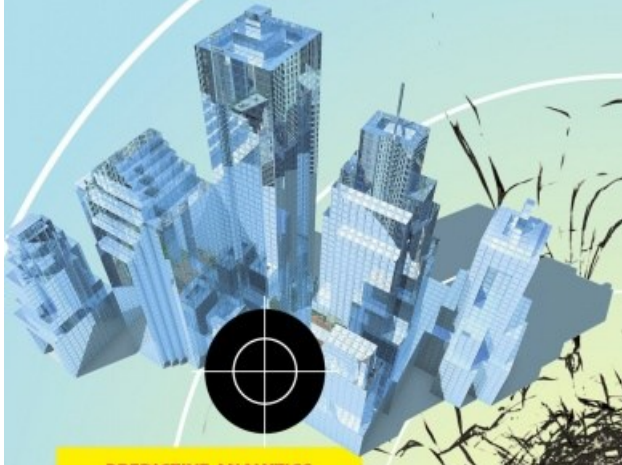
In order to preserve this expectation of privacy within an individual's home, the Court held that "obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical intrusion into a constitutionally protected area constitutes a search—at least where (as here) the technology in question is not in general public use."

(Continued on page 10)

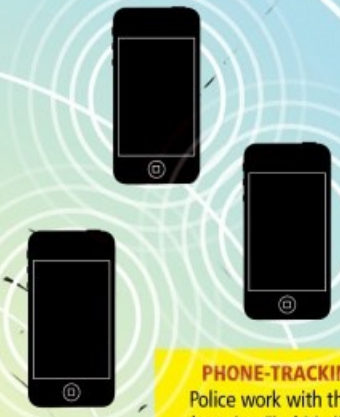
THE FUTURE OF PUBLIC SAFETY

SMART POLICING

Technology has long served as a force multiplier for improving police operations. The new focus is on finding proactive ways to fight crime, says Joanna Salini, a research analyst for justice/public safety and homeland security at Deltek. These emerging technologies are helping support law enforcement efforts:



PREDICTIVE ANALYTICS
Cities have begun using business intelligence software to crunch data to identify patterns of criminal activity and deploy resources appropriately.

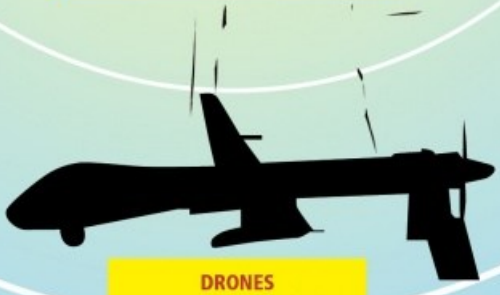


PHONE-TRACKING APPS
Police work with theft victims by using Find My iPhone and similar apps to track down stolen mobile devices.

GUNSHOT DETECTION SYSTEMS
Gunshot detection technology pinpoints the precise location of gunfire by triangulating sounds picked up by acoustic sensors placed on utility poles or rooftops.

DIGITAL EVIDENCE MANAGEMENT
Evidence management software streamlines the handling of digital and physical evidence through the use of a single electronic repository.

NEXT-GENERATION 911
NG911 will enhance traditional 911 emergency communications to support text, data, video and images from all types of networked devices.



DRONES
Unmanned aerial vehicles can serve as an eye in the sky for public safety agencies.

STATETECH

Source: //statetechmagazine.com/

Recent Case Law

Good Faith Exception

Kevin Johnson was being prosecuted for possession of a firearm by a felon, possession of less than twenty grams of marijuana, and possession of synthetic cannabinoids. The evidence supporting those charges was seized during the execution of a search warrant at his residence. In his affidavit and application for the search warrant, Detective Corey Rawles described his six-month investigation of Johnson. He began by recounting his experience, knowledge, and training, as well as his current assignment to a multi-agency drug task force within the local sheriff's office.

The next seven pages of the affidavit detailed Rawles' surveillance of Johnson, leading him to believe that Johnson was selling drugs that he kept at his residence. Johnson already had a long criminal history of possessing and dealing drugs. Over six months, Rawles watched him leave his home on weekdays and engage in repeated hand-to-hand transactions with known drug users at his friend's house. Rawles also watched Johnson engage in other hand-to-hand transactions daily with individuals at a nearby vacant lot known for drug trafficking.

In furtherance of the investigation, Rawles and another officer performed two trash pulls at Johnson's residence during the two months immediately before he applied for the search warrant. Both pulls revealed a large number of twisted and torn plastic bags that Rawles recognized as remnants used to make smaller "corner bags" to package drugs for sale.

Finally, Rawles testified how, based on his training and experience, drug dealers routinely keep contraband such as their drug supply and paraphernalia along with the proceeds, instrumentalities, and records of their criminal activities at their homes. He then explained why, based on the facts in his affidavit, he believed that such evidence would be found in Johnson's residence. Persuaded that the affidavit established probable cause, a circuit court judge issued a search warrant for Johnson's residence. In the search that followed, officers discovered a firearm and illegal narcotics, leading to the charges against him.

Pre-trial, Johnson moved to suppress the evidence obtained from the search, arguing that the affidavit supporting the warrant lacked probable cause and the "good-faith exception" to the exclusionary rule did not apply. After a non-evidentiary hearing, the trial court entered a written order agreeing with Johnson. It concluded there was no nexus linking the criminal activity at the alleged sales locations with Johnson's residence.

On appeal, the 1st D.C.A. held that the officer's reliance on the warrant was objectively reasonable, and therefore, the evidence seized during the search is admissible. The suppression order was reversed.

Issue:

Did the affidavit in support of the warrant establish a sufficient nexus linking criminal activity with Defendant's residence? **Yes**.

Was the officer's reliance on the search warrant objectively reasonable? **Yes**.

Good Faith Exception:

The exclusionary rule was created by the U.S. Supreme Court to safeguard the 4th Amendment rights of individuals through its deterrent effect of denying a LEO the use of the illegally obtained evidence at trial. "The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the Defendant of some right. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular investigating officers, or their future counterparts, a greater degree of care toward the rights of an accused. Where the official action was pursued in complete good faith, however, the deterrence rationale loses much of its force."

Thus, the exclusionary rule applies when police misconduct is "deliberate, reckless, or grossly negligent ... or in some circumstances recurring or systemic negligence," but not when police have acted in good faith.

The U.S. Supreme Court created the good-faith exception in *U.S. v. Leon* (1984). The Court ruled that where the officer's actions were objectively reasonable, without any

intent to circumvent the 4th Amendment rights of the accused, imposing the exclusionary rule had no deterrent effect.

"This is particularly true, we believe, when an officer acting with objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope. In most such cases, there is no police illegality and thus nothing to deter. It is the magistrate's responsibility to determine whether the officer's allegations establish probable cause and, if so, to issue a warrant comporting in form with the requirements of the Fourth Amendment. In the ordinary case, *an officer cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient*. 'Once the warrant issues, there is literally nothing more the policeman can do in seeking to comply with the law.' Penalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations."

Situations in which an officer's reliance on a judicially issued search warrant would not be reasonable are: 1. the affidavit in support of the warrant included information that the officer knew to be false, either intentionally or by a reckless disregard for the truth; 2. the affidavit was so devoid of factual assertions that any reasonable officer would have known it failed to establish probable cause; 3. the judge failed to act in a neutral and detached manner, i.e. he was merely a rubber-stamp for the police conduct; and 4. that the warrant was so facially deficient by failing to describe with specificity the place to be searched and the item(s) to be searched for, that the officer could not reasonably assume the warrant to be valid.

In the present case, the 1st D.C.A. overruled the trial court's ruling suppressing the fruits of the search, finding that the officers acted in objectively good faith reliance on a facially valid search warrant. "The exclusionary rule is not an individual right, but rather it is to be applied only where its effect as a deterrent outweighs the substantial cost of letting a guilty party go free." See, *State v. Rushing*, (5DCA 2011).

Court's Ruling:

The D.C.A. began with a review of the legal principles at work here. "To be clear, the absence of probable cause does not make every affidavit 'bare bones.' That distinction matters 'since the whole point of *Leon* was to preclude suppression of evidence seized in reasonable reliance on a warrant that was not properly supported by reasonable cause.' Thus, the standard for assessing an affidavit under the good-faith exception is less demanding than the 'substantial basis' threshold required to establish probable cause in the first instance. More to the point here, 'all that's required in the *Leon* context are facts that show a nexus and that are not 'so vague as to be conclusory or meaningless,'—all less than what's needed to show probable cause.' "

"Indeed, it is 'rare' to find a case in which, although *a neutral magistrate has found that there is probable cause, a lay officer executing the warrant could not reasonably believe that the magistrate was correct*. Applying these principles to the facts of this case, we find that the affidavit supporting the warrant was not so lacking in indicia of probable cause that it was unreasonable for the officer to rely on it. *Far from it*."

"Investigator Rawles' affidavit confirmed that for six months, Johnson was seen conducting daily hand-to-hand transactions with known drug users and other individuals who made short-term visits to the driveway or porch of his friend's house. That high-volume, short-term foot traffic would occur only when Johnson's vehicle was parked there. … Johnson was also seen conducting hand-to-hand transactions while on foot and from his vehicle with groups of individuals at a nearby vacant lot known for drug trafficking. *Investigator Rawles followed Johnson as he travelled back to his residence and then returned to continue his activities at the other locations shortly thereafter.*"

"Trash was pulled from Johnson's residence twice, just days before Investigator Rawles applied for the search warrant. The residence was also listed as Johnson's home address with the Department of Corrections while he was on probation for a controlled substance offense. … . In the first bag of trash, Investigator Rawles found multiple plastic bags that had been twisted with the corners torn off. Based on his training and experience, Rawles knew these bags were used to make corner bags for packaging smaller amounts of narcotics. The second bag of trash contained seventy such torn plastic bags stuffed inside another bag. See, *Cross v. State*, (Fla. 1990) (concluding that an **officer's training, education, and experience are significant factors when deciding whether his observations amount to probable cause, particularly as**

it relates to the unique packaging of narcotics at the street level)."

"All of that information must also be considered in the context of Johnson's criminal history. He has a long criminal record with seven convictions for possessing and dealing narcotics beginning in 1995. At the time of this investigation, he was on probation for his most recent conviction in 2022 for possession of a controlled substance."

"*The affidavit is not obviously deficient simply because the drug sales took place at locations away from Johnson's residence*. 'When attempting to secure a valid search warrant, an applicant is not required to provide direct proof that the objects of the search are located in the place to be searched.' *State v. Sabourin*, (1DCA 2010). 'Nor is the affiant obligated to rebut every possible hypothetical a defense attorney may later imagine. Rather, the applicant must supply a sworn affidavit setting forth facts upon which a reasonable magistrate could find probable cause to support such a search.' "

"The nature of a crime can also support an inference that contraband or instrumentalities of a crime will still be in a suspect's residence, particularly the longer his criminal activity continues or when there is a close proximity in time between his crime and the search. See, *State v. Weil*, (5DCA 2004) (reversing an order suppressing evidence seized from a suspect's residence that concluded the warrant was defective for not providing *direct proof* his home was the repository of instruments used to commit crimes elsewhere; reasoning that probable cause must be evaluated in light of the nature of the crime, and that the *nexus element of a search warrant may be inferred despite the lack of direct proof that the items sought are located in the place to be searched*)."

"Thus, an officer could reasonably rely on the judge's conclusion that there was probable cause to search Johnson's residence for evidence related to his sale of drugs elsewhere. Far from being a 'conclusory statement' as characterized by Johnson and the trial court, Rawles' belief that evidence of drug activities would be found inside Johnson's residence is ***supported by the detailed information recounted above that must be evaluated through the lens of his training and experience***."

"For the same reasons, it was not entirely unreasonable for an officer to rely on the warrant even though no drugs were seized or identified at the sales locations. Rawles' experience with the drug trade and his comprehensive observations over several months firmly support a good-faith belief that Johnson was selling drugs."

"Even if the [issuing] judge erred by determining there was probable cause in the first instance, the affidavit still contains more than enough information for the officer to defer to that legal conclusion. See … *United States v. Matthews*, (7th Cir. 2021) (reasoning that *ordinarily, an officer cannot be expected to question a probable cause determination by a magistrate or judge because they are typically more qualified to make that decision*)."

"At bottom, the affidavit shows a nexus that is not 'so vague as to be conclusory or meaningless,' thus satisfying the less demanding good-faith standard articulated in *Leon*. There is nothing to suggest that the officer acted deliberately, recklessly, or with gross negligence in relying on the issuing judge's determination regarding the warrant's validity. At the very least, the affidavit 'provided evidence sufficient to create disagreement among thoughtful and competent judges as to the existence of probable cause. Under these circumstances, the officer's reliance on the judge's determination of probable cause was objectively reasonable, and the application of the extreme sanction of exclusion is inappropriate. REVERSED."

Lessons Learned:

The United States Supreme Court was very clear in its logic and ruling set out in *U.S. v. Leon* (1984). Because the purpose of the exclusionary rule is to deter police misconduct, "it is a rule of last resort, only to be applied when it 'results in appreciable deterrence' and the benefits of deterrence outweigh the societal costs of suppressing evidence, thereby frustrating the truth-seeking process." *Brown v. State*, (5DCA 2009) (quoting *United States v. Leon*). Thus, the exclusionary rule applies when police misconduct is "deliberate, reckless, or grossly negligent ... or in some circumstances recurring or systemic negligence," but not when police have acted in good faith. (quoting *Herring v. United States*, (S.Ct.2009)).

Ordinarily, the defendant has the burden of going forward with a claim that his 4th Amendment rights were violated. Searches under a warrant are presumed lawful, while searches without a warrant are presumed unlawful. Thus, the effort in preparing and obtaining a judicially approved search warrant is well

worth the exertion. The warrant shifts the burden to establish a 4th Amendment violation to the defendant. Without a showing that the officer fabricated the facts in his affidavit or that the issuing judge caved to the officer's request, the exclusionary rule is inapplicable even when the warrant is subsequently ruled deficient.

State v. Johnson
1st D.C.A.
(July 16, 2025)

Knock and Talk

Officers responded to a 911 call from a woman reporting that a black man with dreadlocks yelled at and punched her 15-year-old son in the face several times, breaking her son's jaw. The attack occurred near a two-story house in the 1900 block of 11th Avenue East. She reported that the attacker was sitting outside the two-story house.

Officer Morningstar had worked in the neighborhood for 14 years; thus, he knew there was only one large two-story house in this area of 11th Avenue East. He and Officer Gwodz visited the two-story house to "see if there were any witnesses or a suspect, anyone that saw anything." The two-story house belonged to the Davion Rivers family. The structure had a 20th Street entrance as well as a side entrance on 11th Avenue East. A chain-link fence encircles the property. A sign posted on the fence in the front yard stated, "No trespassing. Authorized personnel only." The front gate was closed and padlocked.

However, the side driveway ran off the public road of 11th Avenue East. The side driveway extended from the public road to a side door, next to which is a porch. Officer Morningstar testified that the gate at this side driveway (leading to the home's side door) was always open. The porch was completely unenclosed except for a wooden railing. Three signs posted on the tree next to the side driveway entrance read: "Beware of the Dog," "No Trespassing. Police Take Notice," and "Posted. No Trespassing. Keep Out." Officer Morningstar testified that he did not see any of the signs because he arrived at the house at 9:22 p.m.

Officers Morningstar and Gwodz approached the side of the house using the side driveway, which Morningstar testified was "the only way to really go there" and was the way that he and other officers customarily approached the two-story house. Morningstar testified that the gate across the side driveway was open. The officers proceeded up the side driveway and saw Rivers asleep on the porch. The officers spoke loudly to Rivers, waking him. When Rivers woke up, he told the officers to "get off his grandmother's property." In response, the officers immediately turned and began to walk away from the property, but Rivers belligerently followed them.

Rivers told the officers to stop several times, but the officers responded that they were leaving. Once the officers were on the 11th Avenue East roadway, Rivers stepped in front of the officers a few times. Eventually, Rivers stepped in front of Officer Morningstar and shoved him. After pushing the officer Rivers turned and started walking away, at which time Officer saw "the butt of a handgun sticking out of Rivers' pocket." Officer told Rivers to stop, deployed his Taser, and arrested Rivers for battery on a law enforcement officer. After arresting Rivers, the officers conducted a pat-down and recovered a Taurus revolver containing five spent shells.

Rivers argued that the officers unlawfully entered the curtilage of his residence through the side driveway entrance and that his subsequent arrest and the discovery of the firearm were direct results of this illegal entry. The trial court disagreed and ruled that the officers acted within the scope of an implied license to approach the home to conduct a "knock-and-talk" because they entered what appeared to be an open and customary entrance to the property and left when asked. The court also found that regardless of whether the porch was curtilage of the house, the officers' testimony that they did not enter or step onto the porch was uncontradicted, and in any event, their arrest of Rivers for battery on a law enforcement officer provided probable cause for a search incident to that arrest. Defendant was additionally charged with being a felon in possession. On appeal, the conviction was affirmed.

Issue:

Did the officers lawfully enter upon the residential property? **Yes.** Was the Defendant's arrest lawful? **Yes**, once the officers exited the property, there was no constitutional violation.

Knock and Talk:

The Fourth Amendment prohibits unreasonable searches and seizures by government agents, whether federal, state, or local. That legal concern is not implicated when an officer engages in a consensual encounter. Police conduct in such an instance is viewed in the same manner as the ordinary conduct of private

citizens. Thus, absent express orders to the contrary from the person in possession, "Officers are allowed to knock on a residence's door or otherwise approach the residence seeking to speak to the inhabitants just as any private citizen may." While a "knock and talk" may, by the terms of its designation, presuppose an encounter at the residence's front door, officers may move away from the front door so long as they do so for a legitimate purpose unconnected to a search of the premises. *U.S. v. Taylor*, (11th Cir. 2006) (noting that officers may depart from the front door as part of a legitimate attempt to contact the occupants of a residence). Importantly, as has long been recognized, officer safety is a concern whenever officers and arrestees or potential arrestees are in close proximity. See, *United States v. Robinson*, (S.Ct. 1973) (adopting search-incident-to-arrest rule in part for reasons of officer safety).

If the citizen's cooperation is induced by "coercive means" or if a reasonable person would not "feel free to terminate the encounter," however, then the encounter is no longer consensual, a seizure has occurred, and the citizen's Fourth Amendment rights are implicated.

In determining whether a police-citizen encounter is consensual or whether a seizure has occurred, the courts consider the following factors: "whether a citizen's path is blocked or impeded; whether identification is retained; the suspect's age, education and intelligence; the length of the suspect's detention and questioning; the number of police officers present; the display of weapons; any physical touching of the suspect, and the language and tone of voice of the police." *United States v. Jordan*, (11th Cir. 2011).

"The ultimate inquiry remains whether a person's freedom of movement was restrained by physical force or by submission to a show of authority." "The government bears the burden of proving voluntary consent based on a totality of circumstances." In the present case, there was no dispute that once Defendant ordered the officers to leave the property, they immediately turned and left. The police-defendant contact occurred off the property.

Court's Ruling:

"The Fourth Amendment guarantees 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' As such, the Fourth Amendment ordinarily requires that law enforcement obtain a warrant before conducting a search of a home. *United States v. Watts*, (11th Cir. 2003). One exception is a 'knock and talk' at a home, which allows a 'police officer not armed with a warrant [to] approach a home and knock, precisely because that is no more than any private citizen may do.' *Florida v. Jardines*, (S.Ct.2013). The knock-and-talk exception is premised on the implicit license that all individuals, including police officers, have to 'approach [a] home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave.' "

"We recognize, as some sister circuits have, that the Fourth Amendment does not strictly require officers to approach a home's front door where a back or side entrance is *customarily used* in the normal route of access. See, *United States v. Shuck*, (10th Cir. 2013); *United States v. Titemore*, (2d Cir. 2006); *United States v. Thomas*, (6th Cir. 2005); *United States v. Reyes*, (2d Cir. 2002); *United States v. Raines*, (8th Cir. 2001); *United States v. Daoust*, (1st Cir. 1990). The implied license afforded to officers to conduct a knock-and-talk, however, can be revoked, but only by express orders from the person in possession of the home. See, *United States v. Taylor*, (11th Cir. 2006)."

"Here, the officers responded to a 9-1-1 call reporting that a man punched a boy in the face several times, breaking the boy's jaw, and that the incident occurred near a two-story house on 11th Avenue East. The only two-story house in that area was the Rivers residence, with which Officer Morningstar was familiar because he had worked in that neighborhood for more than a decade and had responded to the two-story house for various reasons over the years. The officers went to the Rivers residence that night to locate any witnesses to the attack and to gather information. There was no evidence of pretense in their doing so. *The officers' conduct falls squarely within the scope and purpose of the knock-and-talk exception*."

"The officers' approach up the side driveway to the home's side entrance was also not unlawful. That side driveway was located on 11th Avenue East, a public roadway. Officer Morningstar and other officers customarily used the side driveway to approach the side door of this two-story house. While Rivers argues that the side door entrance was not the customary entrance, he points to no evidence contradicting Morningstar's testimony. Because the side

driveway was a reasonable route of approach to this home, and nobody claims they strayed, Rivers has not shown that the officers' conduct exceeded the knock-and-talk exception."

"Rivers also contends that the no trespassing signs in the front yard and on the tree by the side driveway constitute express orders revoking the implied license to enter to conduct a knock-and-talk. Rivers ignores that Officer Morningstar testified that he could not see the signs on the tree at night and that the side gate was open, all of which testimony the [trial] court credited. See, *United States v. Fernandez*, (11th Cir. 1995). On this record, we conclude that the [trial] court properly denied Rivers' motion to suppress the firearm. AFFIRMED."

Lessons Learned:

"A 'knock and talk' is a purely consensual encounter, which officers may initiate without any objective level of suspicion." Thus, the key to the legitimacy of the knock-and-talk technique, as well as any other technique employed to obtain consent to search, is the absence of coercive police conduct, including any express or implied assertion of authority to enter or to search. "In properly initiating a knock-and-talk encounter, the police should not deploy overbearing tactics that essentially force the individual out of the home. Nor should overbearing tactics be employed in gaining entry to a dwelling or in obtaining consent to search."

United States v. Rivers
U.S. Court of Appeals, 11th Cir.
(April 25, 2025)

(Continued from page 3)

Vehicle Search

The Court of Appeals disposed of this argument as follows: "Given *Kyllo*'s unmistakable reliance on the heightened privacy interests within the home, we conclude that its holding, and the reasoning on which it rests, generally does not extend to observations directed towards the interior of an automobile. *Kyllo* itself expressly acknowledged that the home was the critical factor differentiating its outcome from those cases where the Court deemed the use of advanced technology pointed at other types of property not to be a search. ('While we upheld enhanced aerial photography of an industrial complex in *Dow Chemical v. U.S.*, (S.Ct.1986), we noted that we found it important that this is not an area immediately adjacent to a private home, where privacy expectations are most heightened.') .

"For that reason, our own Circuit has consistently declined to extend *Kyllo* beyond the context of the home. …*Kyllo* similarly finds little applicability in the automotive context. The Supreme Court has 'on numerous occasions pointed out that cars are not to be treated identically with houses or apartments for Fourth Amendment purposes.' *Rakas v. Illinois*, (S.Ct.1978). As the Court has explained, privacy expectations in an automobile are significantly diminished because, among other reasons, 'it seldom serves as one's residence or as the repository of personal effects,' 'has little capacity for escaping public scrutiny,' and, 'unlike homes, is subject to pervasive and continuing governmental regulations and controls, including periodic inspection and licensing requirements.' In short, automobiles simply 'do not present the privacy interests associated with the 'intimate details' of one's life which are inherently associated with the home.' "

"Moreover, we are not persuaded that the kind of technology about which *Kyllo* expressed concerns is present here. *Kyllo* feared the encroachment upon privacy by 'sense-enhancing technology' that could glean 'information regarding the interior of the home that could not otherwise have been obtained without physical intrusion.' In other words, *Kyllo* guarded against those technologies, such as thermal-imaging devices, that '*do not so much enhance police senses as they do replace them with something superhuman*, an ability to perceive that people simply do not have.' [i.e. looking through walls]. By contrast, the iPhone camera here only aided the officers in viewing what they undisputably could see with their naked eyes. We therefore cannot say that the use of an iPhone camera here, compared to the use of cameras and illumination devices generally, which the Supreme Court has consistently sanctioned, differs by an order of constitutional magnitude.

As in *Dow Chemical*, the officers here were 'not employing some unique sensory device that, for example, could penetrate the walls of buildings ... but rather a conventional ... commercial camera.' "

United States v. Poller
U.S. Court of Appeals, 2nd Cir.
(Feb. 20, 2025)