Legal Eagle

August 2026

2nd Amendment—Again

The United States Supreme Court has made its position regarding the Second Amendment clear and consistent. Courts have looked to their precedent in deciding whether juveniles, convicted felons, mentally ill, non-citizens, enjoy the Second and Fourteenth Amendments protections to carry a handgun for self-defense outside the home. The present case seeks to answer whether disqualifying law-abiding adults aged 18 to 20 from being able to satisfy the criteria for concealed carry, that is available to other law-abiding adults, is unconstitutional. The 4th D.C.A. rules here that it is.

An officer responded to a call that a person had pulled out a handgun in the direction of a vehicle. The police detained Jaylen Tyrus Eubanks, who matched the caller's description. The officer patted him down and found an unholstered handgun on his waist. Eubanks was 18 at the time, and was charged with carrying a concealed firearm, as well as the improper exhibition of a firearm. He was not charged with any violation of the ban on openly carrying a firearm.

Defendant moved to dismiss the charge of carrying a concealed firearm, arguing that the categorical ban on those aged 18 to 20 from carrying a concealed firearm was violative of the Second Amendment. The State Attorney's Office argued that there was "nothing inherently unconstitutional about requiring a person to qualify for a permit to carry a concealed firearm or carefully restricting a few citizens from carrying a concealed firearm because of a concern for the public safety." The trial court denied the motion to dismiss. On appeal, that ruling was reversed.

Issue:

Can law-abiding adults, aged 18 to 20, be prohibited from exercising their Second Amendment rights to self-defense available to other law-abiding adults? **No**.

Supreme Court Cases:

To determine the rights and limitations of the Second Amendment the four United States Supreme Court cases that have defined how to analyze Second Amendment issues are instructive. In *District of Columbia v. Heller*, (2008), the Court determined that the Second Amendment protects an individual's private right to keep and bear arms for self-protection. They ruled a District of Columbia handgun ban unconstitutional on the ground that it "amounts to a prohibition of an entire class of 'arms' that is overwhelmingly chosen by American society for [the] lawful purpose [of self-defense]."

In this issue:

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However, *Heller* recognized a list of accepted longstanding prohibitions such as "possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places ...." *Heller* also generally recognized limitations on the "commercial sale of arms" as well as the "prohibitions on carrying concealed weapons."

In *McDonald v. City of Chicago*, (2010), the Supreme Court made the Second Amendment applicable to the states through the Fourteenth Amendment. The Supreme Court recognized that the right to keep and bear arms for self-defense was not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees ...."

In *New York State Rifle & Pistol Ass'n v. Bruen*, (2022), the Court found a New York licensing requirement under which the applicants had to demonstrate a special need for self-protection as differentiated from that of the general public, violated their Second and Fourteenth Amendment right to carry a handgun for self-defense outside the home. Further, the City's special needs scrutiny was inconsistent in the Second Amendment context. And New York's "proper cause" standard violated the 14th Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms. "Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.' "

Lastly, in *United States v. Rahimi*, (2024), the Court upheld a federal statute that prohibited individuals subject to a domestic violence restraining order from possessing a firearm where the restraining order contained findings that the individual posed a credible threat to the physical safety of their partner. The Court stated that "since the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms."

The laws banning guns by a category of persons who "present a special danger of misuse ... apply only once a court has found that the Defendant 'represents a credible threat to the physical safety' of another." The Court significantly noted that the statute in *Rahimi* did "not broadly restrict arms use by the public generally." The restriction applied only where there was evidence that the individual banned was a "credible threat" to the physical safety of another. The Court rejected the theory that an individual, and thus a group of individuals, could be subject to being disarmed "simply because he is not 'responsible.' "

Other courts have also dealt with this issue. In *Worth v. Jacobson*, (8th Cir. 2024), the Eighth Circuit struck down a Minnesota law that prohibited 18- to 20-year-olds from carrying firearms in the same manner as other adults. The Eighth Circuit found that "the people" included "ordinary, law-abiding, adult citizens that are 18 to 20-year-olds." Additionally, the State did not offer any founding-era precedent setting forth the history and tradition of the public carry ban geared towards 18- to 20-year-olds.

Court's Ruling:

"Based on the framework in *Bruen*, we must first determine whether 'the Second Amendment's plain text covers an individual's conduct.' If so, then 'the Constitution presumptively protects that conduct.' Initially, the right to 'keep and bear arms' encompasses the right to the public carry of a firearm. Additionally, 18- to 20-year-olds are part of 'the people' referred to in the Second Amendment. The term 'the people' refers to all 'members of the political community, not an unspecified subset.' *Heller* also referred to 'the people as law-abiding, responsible citizens.' In *Bruen*, the Court reiterated that 'ordinary, law-abiding, adult citizens ... are part of 'the people' whom the Second Amendment protects.' Even when the Eleventh Circuit upheld restrictions on the purchase of firearms, it still found 18- to 20-year-olds to be part of 'the people.' See, *Nat'l Rifle Ass'n v. Bondi*, (11th Cir. 2025). Thus, the plain text of the Second Amendment covers the right of 18- to 20-year-olds to the public carry of firearms, which would include concealed carry as a manner of public carry."

"Because the Second Amendment presumptively protects the right of 18- to 20-year-olds to the public carry of firearms, which includes concealed carry, then the burden shifts to the State to 'demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation.' *This burden has not been met here*. After considering the 'how and why' of this regulation, we find that it impermissibly burdens the right of 18- to 20-year-olds to armed self-defense. A categorical ban on adults aged 18 to 20 who are part of 'the people,' 'the how,' is not consistent with the history and tradition of firearm regulations. As to the 'why,' no historical analogues provided categorically prohibit the public carry, including concealed carry, of firearms for self-defense for those aged 18 to 20, who are a subset of all adults."

"We do not define adults today as starting at age 21 like adulthood was defined at the time of the founding. We define adulthood today in 'the world we know.' Similarly, we do not define weapons of self-defense as being limited to muskets or firelocks. As *Heller* explained, such an argument borders on 'frivolous' because 'we do not interpret constitutional rights that way.' 'Just as the First Amendment protects modern forms of communications, and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.' Thus, just as the definition of 'arms' has changed over time, so too has the definition of majority or the age commencing adulthood."

"Eighteen-to twenty-one-year-olds in Florida today—in other words, adults—are analogous to legal adults at the time of the Founding, not legal minors. The Constitution's protections are not limited to those persons who are older than the most common age of majority in the 1700s. In Florida today, 18- to 20-year-olds are defined by statute as being adults. See § 743.07(1), F.S. ('The disability of nonage is hereby removed for all persons in this State who are 18 years of age or older, and they shall enjoy and suffer the rights, privileges, and obligations of all persons 21 years of age or older ....')."

"However, the regulation here does not apply to all adults, but rather to just a subset of adults who are part of 'the people' and, thus, entitled to the same Second Amendment rights as all law-abiding adults. The entire focus of that part of the statute is on regulating based solely on the age of those asserting their Second Amendment rights, and not on the particular action or manner of public carry being regulated. In other words, the *thrust of the regulation is on age and not on the manner of carry, that being concealed carry*. After all, all other adults 21 and older are eligible for concealed carry. As *Rahimi* stated: 'Even when a law regulates arms-bearing for a permissible reason,' such as concealed carry, the permissible restriction 'may not be compatible with the [Second Amendment] if it does so to an extent beyond what was done at the founding.' That is exactly what is being done here."

"Nowhere does the list of presumptively lawful prohibitions mention those aged 18 to 20 years old. Obviously, 18- to 20-year-olds are not 'comparable to the mentally ill.' Nor do 18- to 20-year-olds evince, as a group, 'a clear threat of physical violence to another.' *Rahmi*. We cannot deem a subset or category of people as dangerous based solely on rank belief. No historical analogue presented would place 18- to 20-year-olds in the same category as felons, the mentally ill, or domestic violence offenders."

"We conclude that **all those in the age of majority have the same rights to public carry, which includes the right to concealed carry**. … All those who reach the age of 18 are able, and encouraged, for example, to join the military to defend our country. Yet those very same law-abiding adults are burdened in their ability to exercise the same Second Amendment rights that other adults have. Eighteen- to 20-year-olds can defend the country without restriction but can only utilize their Second Amendment right to self-defense with severe restrictions. This burden on law-abiding 18- to 20-year-olds' right to public carry—and specifically here concealed carry—which is not applicable to any other adults, is a burden that is facially unconstitutional as to 18- to 20-year-olds."

"In conclusion, we find that section 790.06(2)(b) is facially unconstitutional as it applies to people aged 18 to 20, as it is contrary to our historical tradition and violates the Second Amendment. As such, we vacate [Defendant's] conviction for concealed carry of a firearm. REVERSED."

Lessons Learned:

The historical basis for the D.C.A.'s ruling is made abundantly clear in *Lara v. Comm'r Penn. State Police*, (3d Cir. 2025). The 3rd Circuit invalidated statutes banning 18- to 20-year-olds from carrying firearms outside their homes during a state of emergency. The court concluded that "founding-era laws reflect the principle that 18-to-20-year-olds are 'able-bodied men' entitled to exercise the right to bear arms." The court looked to the Second Militia Act, passed in 1792, a mere five months after the ratification of the Second Amendment, to demonstrate that "all able-bodied men" were required "to enroll in the militia and to arm themselves upon turning 18." "That young adults had to serve in the militia indicates that founding-era lawmakers believed those youth could, and indeed should, keep and bear arms."

The 3rd Circuit concluded that "the Second Militia Act is good circumstantial evidence of the public understanding at the Second Amendment's ratification as to whether 18-to-20-year-olds could be armed," and further found that no "founding-era statute imposed restrictions on the freedom of 18-to-20-year-olds to carry guns."

In contrast to the 11th Circuit's ruling in *N.R.A. v. Pam Bondi*, (11th Cir. 2025), finding that a Florida statute that prohibited the purchase of firearms by minors did not violate the Second and Fourteenth Amendments. In response to the massacre at Marjory Stoneman Douglas High School, the Florida Legislature enacted the Marjory Stoneman Douglas High School Public Safety Act to "address the crisis of gun violence, including but not limited to, gun violence on school campuses." The law states that a "person younger than 21 years of age may not purchase a firearm." See, 790.065(13), F.S. The law contains exceptions permitting the purchase of a rifle or shotgun by peace officers, correctional officers, or military personnel under the age of 21.

"The question is whether the modern law is 'analogous enough,' and the Florida law is. Like the Founding-era legal regime, the Florida law prevents purchases by minors. The difference between the Florida law and the Founding-era regime is that the law at the Founding was more restrictive than the Florida law because it prevented the purchase of many goods besides firearms. The Florida law does not violate the Second and Fourteenth Amendments because it restricts the rights of minors less than the Founding-era law did."

"Notably, the Florida law is less restrictive than the law at the Founding in some ways. The militia laws did not empower any individuals under the age of 21 to purchase arms. But the Florida law contains exceptions permitting the purchase of a rifle or shotgun by peace officers, correctional officers, or military personnel. This exception is more generous than the Founding-era militia laws because it empowers minors to purchase firearms when needed for public service."

"The Florida law that prohibits minors from purchasing firearms does not violate the Second and Fourteenth Amendments because it is consistent with our historical tradition of firearm regulation. From the Founding to the late-nineteenth century, our law limited the purchase of firearms by minors in different ways. The Florida law also limits the purchase of firearms by minors. And it does so for the same reason: to stop immature and impulsive individuals, like Nikolas Cruz, [Marjory Stoneman Douglas High School shooter] from harming themselves and others with deadly weapons. Those similarities are sufficient to confirm the constitutionality of the Florida law. The judgment in favor of the Commissioner is AFFIRMED."

Eubanks v. State
4th D.C.A.
(June 17, 2026)

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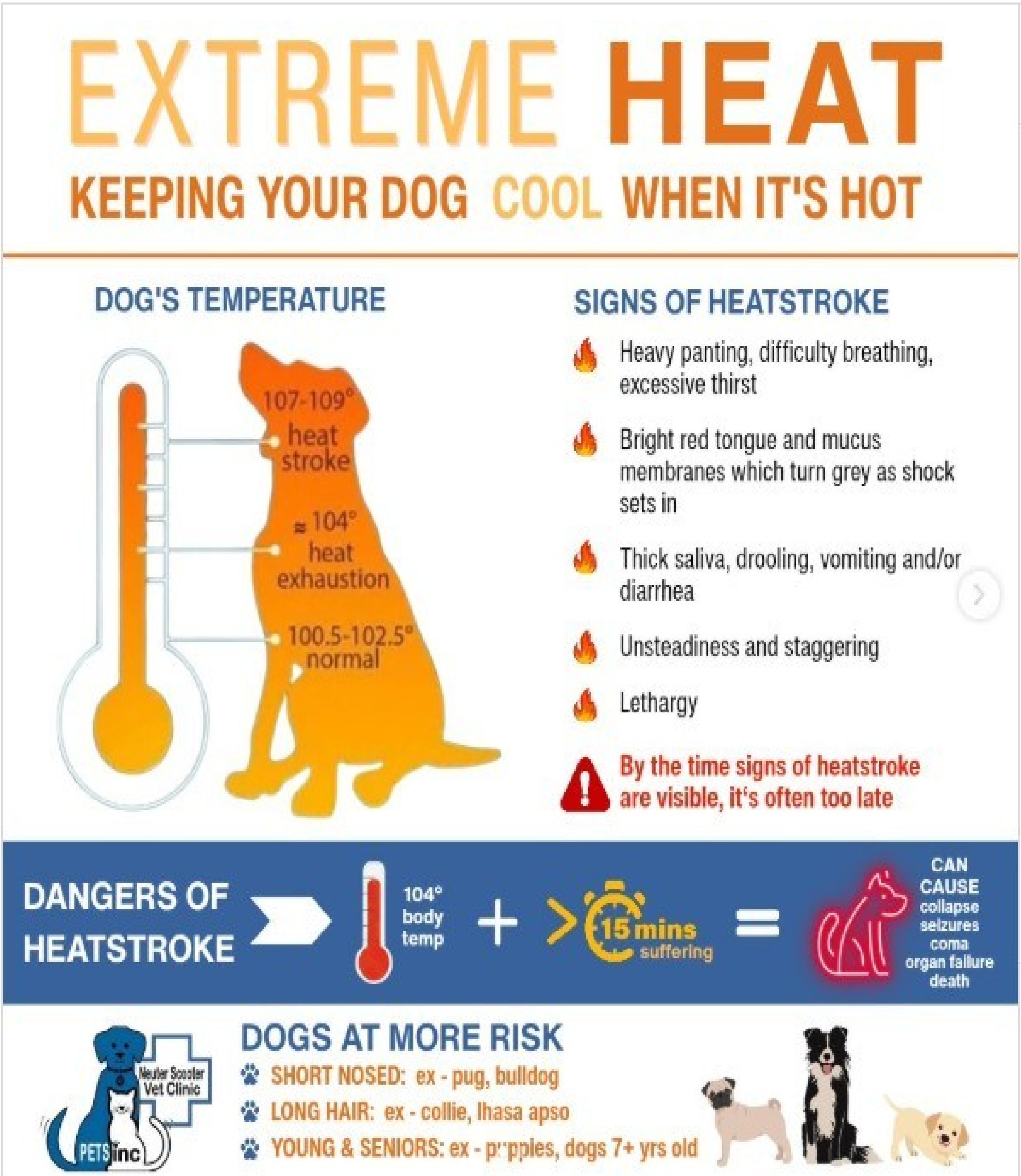

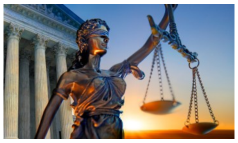

Recent Case Law

License Plate Reader

While on patrol Ofcr. Charles Hoggard received an alert on his phone that an LPR (License Plate Reader) located at a specific intersection captured the license plate of a vehicle that was wanted for investigation of criminal activity. Officer stated there had been other LPR "hits" on Porter's vehicle earlier that day and the day before, but he was not able to locate the vehicle on those occasions because of heavy traffic. He acknowledged that he did not have a physical description of Porter when he initiated the traffic stop. He contacted dispatch and was told that the vehicle was "associated with" Elijah Porter, who had a warrant for Aggravated Assault. Hoggard conducted a computer check for the license plate, and verified the vehicle was associated with E.L. Porter." Officer located the vehicle and conducted a traffic stop.

After identifying Porter as the driver, Officer detained him and patted him down next to the open driver's side door and asked if he had any weapons, to which Porter said he did not. However, Officer observed a firearm protruding from under the driver's seat and was able to see the slide and barrel of the firearm, and a "little silver switch on the back of it," which he "believed to be the switch of an automatic Glock." Hoggard said, "it was basically in plain view," and "the barrel [was] sticking out from under the seat, so I saw it in plain view."

Porter argued that the use of LPR cameras to detect his vehicle's location constituted a search under the Fourth Amendment and that the vehicle-location data should be suppressed. He posits that he had a reasonable expectation of privacy in his location and movements that were captured by the LPR cameras and that a warrant was required for police to obtain such data from the LPR system. And Porter claimed that possession of a machinegun in violation of 18 U.S.C. § 922(o) violated the Second Amendment, both facially and as applied to him.

The trial court denied his motions. The court determined that § 922(o) was not unconstitutional and denied Porter's motion to dismiss the Indictment. The court denied his motion to suppress the vehicle-location data, reasoning that "an individual traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in their movements from one place to another" and "motorists do not have a privacy interest in their license plates," since they are "constantly open to plain view of" passersby. On appeal those rulings were affirmed.

Issue:

Did the LPR "hit" provide the officer with reasonable suspicion to effect a lawful vehicle stop? **Yes**.

Investigative Stop:

Stopping an automobile and detaining its occupants constitute a "seizure" within the meaning of the Fourth Amendment. *Delaware v. Prouse*, (S.Ct.1979). "The essential purpose of the proscription in the Fourth Amendment is to impose a standard of 'reasonableness' upon the exercise of discretion by a government official in order to safeguard the privacy and security of individuals against arbitrary invasions." "The permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." See, *Prouse*. The reasonableness standard usually requires that the facts upon which an intrusion is based be capable of measurement against an objective standard such as probable cause or a less stringent test such as reasonable suspicion. Accordingly, the Supreme Court has held that it is a violation of the Fourth Amendment to stop an automobile and detain a driver to check his license and registration unless "there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of the law." *Prouse.*

Police may make an investigatory stop if they have reasonable suspicion that a suspect has committed, is committing, or is about to commit a crime, based on the totality of the circumstances. *Popple v. State*, (Fla. 1993). Reasonable suspicion is more than a mere hunch, but specific and articulable facts, together with the rational inferences from those facts, that reasonably warrant the investigatory stop.

In *U.S. v. Williams*, (8th Cir. 2015), the court explained: "However, as we have held, 'if a flyer or bulletin has been issued on the basis of articulable facts supporting a reasonable suspicion that the wanted person has committed an offense, then reliance on that flyer or bulletin justifies a stop to check identification, to pose questions to the person, or to detain the person briefly while attempting to obtain further information.' 'Police officers may rely upon notice from another police department [BOLO] that a person or vehicle is wanted in connection with the investigation of a felony 'when making a *Terry* stop, even if the notice omits the specific articulable facts supporting reasonable suspicion.' "

"We fail to see how the use of the LPR system makes any difference in this case. Williams does not cite any precedent holding that the mechanism through which an officer receives notice from another department matters for Fourth Amendment purposes. Indeed, the LPR system merely automates what could otherwise be accomplished by checking the license-plate number against a 'hot sheet' of numbers, inputting a given number into a patrol car's computer, or 'calling in' the number to the police station. Thus, we conclude that Officer Hendricks was entitled to 'rely upon notice from another police department,' she obtained by using a more automated process: the LPR system."

Carpenter v. U.S.:

The Supreme Court held that Government entities violated the Fourth Amendment to the United States Constitution when accessing historical CSLI (a.k.a. cell site location information) records containing the physical locations of cellphones without a search warrant.

Prior to *Carpenter*, Government entities could obtain cellphone location records from service providers by claiming the information was required as part of an investigation, without a warrant. However, the *Carpenter* ruling changed this procedure. Recognizing the influence and ubiquitous of cellphone devices, the Court expanded its concept of constitutional rights toward protecting the privacy of this type of data.

When individuals travel with their cellphones, the CSLI data can theoretically track every place the person has gone, and possibly the locations of other people encountered from their corresponding data. The tracking possibilities were viewed by the Court as an extreme privacy infringement.

Court's Ruling:

"Contrary to Porter's assertion, the use of an LPR system did not invade any reasonable expectation of privacy and did not constitute a search, so no warrant was required. Where an individual has a reasonable expectation of privacy, 'official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause.' *United States v. Smith*, (5th Cir. 2024). 'A person does not surrender all Fourth Amendment protection by venturing into the public sphere,' *Carpenter v. United States*, (2018), but 'a person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another,' *United States v. Knotts*, (S.Ct.1983)."

"The LPR system provides periodic information about a vehicle's location on 'public streets and highways.' A scan occurs when a vehicle passes one of the locations where a camera is stationed. The LPR system is not capable of tracking the 'whole of [an individual's] physical movements,' much less 'for a very long period,' to the extent that a cell phone can because the LPR system does not 'faithfully follow' individuals 'beyond public thoroughfares.' Indeed, Hoggard's previous inability to locate Porter's vehicle, notwithstanding the earlier 'hits' and the LPR technology's around-the-clock capabilities, illustrates the significant limitations of this technology relative to cell-site location information ('CSLI'), which can 'provide an intimate window into a person's life, revealing not only his particular movements, but through them his familial, political, professional, religious, and sexual associations.' See, *Carpenter*."

"The traffic stop was lawful because Hoggard had reasonable suspicion to stop Porter's vehicle. The 'touchstone of Fourth Amendment analysis is reasonableness.' *United States v. Henry*, (5th Cir. 2022). 'If police have reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony, then a *Terry* stop may be made to investigate that suspicion.' "

Further the court found no reason to disagree with the trial court's ruling: "Officer Hoggard had 1. reasonable suspicion to initiate the traffic stop based solely on the automatic license plate reader, or the

ALPR, hit that revealed an outstanding arrest warrant for Mr. Porter; 2. the BOLO, or ALPR, hit does not need to include a physical description of the driver to provide an officer reasonable suspicion to initiate a traffic stop; and 3. under the collective knowledge doctrine, the ALPR was reliable and provided Officer Hoggard with reasonable suspicion to initiate the traffic stop."

"After all, the BOLO report 'provided the reasonable suspicion necessary to justify an investigatory stop' because the arrest warrant information from the other Mississippi jurisdiction was 'credible and reliable'—it 'specified Porter's vehicle information, allowed Hoggard to 'verify' the match, and related to an active warrant, which turned out to be valid. Even though he didn't need to do so because 'the reasonable suspicion inquiry 'falls considerably short' of 51% accuracy,' Hoggard carefully conducted a computer check for the license plate, which revealed the vehicle was associated with 'James Stewart' or 'E.L. Porter.' That the vehicle may have belonged to someone other than Porter or that Hoggard lacked a physical description of the driver does not change the calculus in Porter's favor because Hoggard had sufficiently specific information to stop the car—he knew the make and model, its license plate number, its approximate location, and that Porter was wanted for arrest for aggravated assault."

Lastly, "Hoggard found the Glock pistol and machinegun conversion switch and testified in open court 'that the barrel was sticking out from under the seat' in plain view. Not only was the 'incriminating nature' of the automatic conversion switch 'immediately apparent,' but the [trial] judge, who had an opportunity to observe Hoggard's demeanor, said in no uncertain terms, 'I do find Officer Hoggard's testimony to be credible.' There is no reason to depart from the [trial] court's sound determination. AFFIRMED."

Lessons Learned:

With regard to the Defendant's challenge to 18 U.S.C. § 922(o), see *United States v. Alsenat*, U.S. Court of Appeals – 11th Cir. (April 21, 2026) ruling that machineguns "do not receive Second Amendment protection."

In a case of similar facts, *Ellis v. State*, (2DCA 2006), the Officer testified that she randomly entered vehicle tags into her on-board computer as she patrolled. On this occasion she received back from DMV, "no record found." Based on that response she effectuated a traffic stop. She acknowledged at the motion to suppress that there had been occasions when she had stopped cars on the basis of a "no record found" response and found that the car was properly registered. She further testified that "that's why you conduct the stop to see the paper registration, to *verify the paper*." The Defendant argued that because there was a possible innocent explanation the stop was unlawful. The D.C.A. disagreed:

"Officer Wilson actually had information indicating that the Department of Motor Vehicles had no record of the tag, which in light of her experience gave her a reason to suspect that the car was not properly registered or that there was 'something wrong' with the tag… Officer Wilson was justified in stopping Ellis to investigate after having received information that indicated that the Department of Motor Vehicles had no record of the tag affixed to Ellis's car.

"Ellis argues that Officer Wilson did not have a reasonable suspicion because she admitted that there had been occasions when she had received the 'no record found' response and then on further investigation determined the car was properly registered. 'Even in *Terry* the conduct justifying the stop was ambiguous and susceptible of an innocent explanation.' *Illinois v. Wardlow*, (S.Ct.2000). *Terry* does not require absolute certainty nor does it require an officer to ignore facts that indicate an individual may be committing a crime simply because those facts do not rise to the level of probable cause to make an arrest. Where the facts known to an officer suggest, but do not 'necessarily' indicate ongoing criminal activity, an officer is entitled to detain an individual to resolve the ambiguity. See, *Wardlow*."

"Accordingly, we conclude that the trial court correctly denied Ellis's motion to suppress."

United States v. Porter
U.S. Court of Appeals, 5th Cir.
(March 17, 2026)

Photo Evidence

Jeffrey Madden was charged with crimes that arose from his crashing his vehicle into the victim's vehicle. During trial, the State presented numerous photos of the crash scene and the vehicles. Some of the photos showed that Madden's vehicle had a Confederate flag tag affixed to the front. Madden objected to these photos' admission, arguing that their *prejudicial effect substantially outweighed their probative value*. The State responded that the photos were relevant to show damage and paint transfer from the collision, which would illustrate both where and how hard Madden's vehicle hit the victim's vehicle. Madden asserted that the Confederate flag tag could be redacted, but the State pointed out that some of the relevant damage and paint was on the tag itself.

The trial court reviewed **each** photo, admitted some, and removed duplicative ones. The State did not belabor the photos when sharing them with the jury and excluded photographs that displayed the confederate flag from the exhibits that the jury received for deliberations. One photo was briefly shown during the State's closing argument. On appeal, Madden asserts that the trial court erred by admitting the photos and that he was unfairly prejudiced. On appeal the trial court's review and ruling were affirmed.

Issue:

Did the probative value of the photographs from the crash scene displaying that Defendant's vehicle had a Confederate flag tag affixed to it outweigh its prejudicial effect? **Yes**.

Photographic Evidence:

There is no provision in the Evidence Code dealing with the general requirements for the admissibility of photographs in particular. The Rules of Evidence are succinct in this regard, sec. 90.401, Definition of relevant evidence. "Relevant evidence is evidence tending to prove or disprove a material fact."

Photographs, when properly authenticated, are admissible if relevant to prove a material fact at trial. Photographs, like all other evidence, will not be admitted when their probative value is substantially outweighed by the danger of unfair prejudice or misleading the jury. In order to lay the necessary foundation for a photograph, it is usually necessary to establish that the photograph is a fair and accurate representation of the scene that it depicts. Any witness with knowledge that it is a fair and accurate representation may testify to the foundational facts; *the photographer need not testify*. See, *Smiley v. State*, (Fla. 2020); and *Mullens v. State*, (Fla. 2016).

The passage of time between the event in question and when the photograph is taken does not result in inadmissibility if the proponent can demonstrate that the conditions have not changed. However, even changed conditions will not result in inadmissibility if the changes can be explained to the jury so that they can understand the probative worth of the pictures and, as always, if the changes do not unfairly prejudice a party or mislead the jury.

While not relevant to the present case, gruesome photos are generally admitted on the same basis as are other pictures. Simply because photographs are gruesome does not mean that they are inadmissible. They are admissible if they fairly and accurately represent some material fact and are not excluded under section 90.403. "Exclusion on grounds of prejudice or confusion. Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence. This section shall not be construed to mean that evidence of the existence of available third-party benefits is inadmissible." Thus, photographs may be admissible to show cause of death, the location and nature of decedent's wounds, the nature and extent of the force and violence used to commit the crime.

This language should not be interpreted to mean that if the State shows that a photograph tends to prove a material fact it automatically will be admitted regardless of its gruesomeness. Rather, these cases mean that relevant photographs will not be excluded simply because they are gruesome. Photographs, like all other evidence, are subject to section 90.403 balancing test. Photographs that are gruesome or tend to inflame the jury will be excluded when they are "unduly prejudicial," i.e., when their probative value is substantially outweighed by the danger of unfair prejudice.

Pope v. State, (Fla.1996) is instructive here. Pope asserted that the trial court erred by admitting inflammatory photographs of the bloody bathroom where the stabbing occurred, autopsy photographs, and the victim's bloody clothes. The Florida Supreme Court disagreed:

"The test for admissibility of photographic evidence is relevancy rather than necessity. *Nixon v. State*, (Fla.1990). The photographs of the bathroom and the clothes were relevant to establish the manner in which the murder was committed and to assist the crime scene technician in explaining the condition of the crime scene when the police arrived. The autopsy photographs were relevant to illustrate the medical examiner's testimony and the injuries he noted on the victim.

Relevant evidence which is not so shocking as to outweigh its probative value is admissible. Having viewed the photographs, we cannot say the trial judge abused her discretion. See *Jones v. State*, (Fla.1994)."

Court's Ruling:

"The record shows that the trial court reviewed each photo, admitted some, and removed duplicative ones. The State did not belabor the photos when sharing them with the jury and excluded ones that showed the [license] tag from the exhibit stack that the jury would have for deliberations. One photo was briefly shown during the State's closing argument. On appeal, Madden asserts that the trial court erred by admitting the photos and that he was unfairly prejudiced."

"Generally, the admission of photographic evidence is within the trial judge's discretion and ... will not be disturbed on appeal unless there is a clear showing of abuse. *Pangburn v. State*, (Fla. 1995). Even so, 'trial judges should carefully scrutinize photographs for prejudicial effect, especially when less graphic photographs are available to illustrate the same point.' In *Pangburn*, the Supreme Court concluded that the trial court did not abuse its discretion in admitting prejudicial photos, highlighting that the trial court 'specifically viewed the pictures after defense counsel objected' and that the photos were relevant. Indeed, as we have noted before, **the test for admissibility of photos is 'relevancy rather than necessity**.' *Harris v. State*, (1DCA 2024) (quoting *Pope v. State*, (Fla. 1996))."

"Here, the record shows that the photos were relevant and that photos without the [license] tag could not have illustrated the same point. The record also shows that the trial court carefully reviewed each photo and checked for duplicative ones. Finally, the record shows that the State did not dwell on any photo that showed the tag. Given these facts, it cannot be said that the trial court abused its discretion in admitting the photos. See also *Zack v. State*, (Fla. 2005) (finding no merit in the claim that the Confederate flag visible on the defendant's hat rendered the hat inadmissible, as the hat was relevant). AFFIRMED."

Lessons Learned:

Smiley v. State, (Fla. 2020), is of interest to the present case. "The proponent of photographic evidence bears the burden of establishing that the evidence is a fair and accurate representation of the events depicted. *Mullens v. State*, (Fla. 2016). 'Any witness with knowledge that it is a fair and accurate representation may testify to the foundational facts; *the photographer need not testify*.' See, Ehrhardt's Florida Evidence § 401.2, (2019 ed.).

"Authentication for the purpose of admission is a relatively low threshold that requires evidence sufficient to support a finding that the photograph in question is what the proponent claims. *City of Miami v. Kho*, (3DCA 2019) (Google Maps image of sidewalk where trip and fall occurred was not authenticated where there was no evidence that the image depicted the sidewalk on the day of the accident. Discussing the methods of authenticating photographs and images.)."

Madden v. State
1st D.C.A.
(May 27, 2026)

TAKE FIVE FRIDAYS – A Legal Update Series

The Take Five: Friday Legal Update is a series of concise, web-based legal training sessions designed for law enforcement professionals and instructors. The series will be conducted over six consecutive Fridays at 11:45 a.m. Eastern time, from July 24, 2026, through August 28, 2026.

Each session will focus on a newly-decided and significant federal appellate court case impacting law enforcement practice. Presented by attorneys, the training provides a brief overview of the case, key legal issues, and the practical implications for law enforcement operations. Sessions are designed to be efficient and informative, lasting between 5 and 15 minutes, making them ideal for busy professionals seeking timely legal updates. **All sessions will be held at 11:45 a.m. Eastern.**