LEGAL EAGLE

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SYG and Attack Dog

Cassanova Gabriel was walking his small dog when a large pit bulldog came at them. The pit bull made threatening sounds and moved toward Gabriel and his dog. He tried to kick the pit bull away, which caused the pit bull to become even more aggressive. Gabriel then tried to scare the pit bull away by firing warning shots with a gun over the pit bull's head, but the pit bull continued to attack, pinning Gabriel and his dog into a corner. Perceiving no other choice, Gabriel shot and killed the pit bull. The dog's owner, who had been *walking the pit bull without a leash*, came around the corner of the building and asked what happened. Gabriel gave his version of the events to the pit bull's owner and then left. Police arrested him and the State filed animal cruelty charges. Defendant argued he was entitled to Stand Your Ground immunity and sought an evidentiary hearing.

The State opposed Defendant's attempt to assert SYG immunity from prosecution, arguing that the statutory language authorized deadly force only by a person against *another person* and does not apply to the use of deadly force against *an animal*. After hearing arguments from both sides, the trial court agreed with the State and struck the motion to dismiss, concluding that immunity from prosecution does not apply to a person who has used deadly force against an animal, but instead "is applicable only in cases involving person to person interactions." On appeal, that ruling was reversed.

Issue:

Is the statutory immunity of SYG limited to person-to-person contact? **No**.

Stand Your Ground:

In an earlier case, the 4th D.C.A. explained the operation of SYG law, "We reject, however, [Defendant's] contention at trial that a *mere battery of any sort* implicates the Stand Your Ground law. The statute permits a person to 'meet force with force.' A battery may not always be a matter of force. It may involve only an intentional 'touching' against the will of the victim. See § 784.03(1)(a), F.S. Therefore, the mere tugging at a jacket may be a battery but not an attack with force which would justify the person to use force in return." *T.P. v. State*, (4DCA 2013).

F.S. 776.012(2), Self-defense, provides: "A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent *imminent death or great bodily harm* to himself or herself or another or to *prevent the imminent*

commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be."

F.S. 776.032, Immunity from criminal prosecution, provides further that a person who uses deadly force as permitted in section 776.012 is justified in such conduct and is immune from criminal prosecution so long as the person against whom the force was used was not a law enforcement officer. When a defendant raises a claim of statutory immunity before trial, the trial court must determine whether the defendant has shown by a preponderance of the evidence that the immunity attaches. *Dennis v. State*, (Fla.2010).

The 1st D.C.A. noted in *Peterson v. State*, (2008), "The wording selected by our Legislature makes clear that it intended to establish a true immunity and not merely an affirmative defense. In particular, in the preamble to the substantive legislation, the session law notes, 'The Legislature finds that it is proper for law-abiding people to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.' "

Court's Ruling:

"Section 776.012's plain text distinguishes the authorizations for the use of nondeadly and deadly force in defense of person. Nondeadly force in defense of person is authorized when used against **'another'** to defend 'against the other's imminent use of unlawful force.' Deadly force in defense of person is authorized when 'necessary to prevent imminent death or great bodily harm to himself or herself or another' or 'to prevent the imminent commission of a forcible felony.' As can be seen from section 776.012's plain text, deadly force, in contrast to nondeadly force, does not include language that the force must always be used against a person. Thus, *we conclude that section 776.012(2) authorizes deadly force against an animal when the person using or threatening to use the force 'believes such force is necessary to prevent imminent death or great bodily harm to himself or herself or another*.' "

"The petitioner's motion to dismiss travels on the authorization of deadly (not nondeadly) force in defense of person, specifically under section 776.012(2)'s use of the phrase 'necessary to prevent imminent death or great bodily harm to himself or herself or another.' Thus, we agree that section 776.012(2)'s plain, unambiguous text does not require that the deadly force be used against a person, rather than against an animal. *And we will not add words limiting section 776.012(2)'s application to force solely against persons and not animals*."

"Section 776.032(1), which grants immunity from criminal and civil actions for authorized uses of force, does not change this result. It provides: 'A person who uses or threatens to use force as permitted in s. 776.012 ... is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against whom the force was used or threatened ....' The State argues this provision necessarily excludes immunity for deadly force used against an animal because it only covers claims by or on behalf of the '*person* against whom the force was used.' The trial court agreed with the State's reasoning. However, the reasoning is flawed."

"The primary flaw with this reasoning is that section 776.032(1) frames entitlement to immunity with reference to *who brings the action*. Thus, the words, 'immune from ... civil action for the use or threatened use of such force by the person, personal representative, or heirs of *the person against whom the force was used or threatened*' clearly means that a Defendant in a **civil action** is immune from civil prosecution by the plaintiff/decedent if the Defendant used or threatened to use force permitted under section 776.012 against the plaintiff/decedent. In other words, 'by the person, personal representative, or heirs' *clearly and unambiguously apply to the status of a plaintiff in civil actions alone, thereby limiting immunity to the use of force against another person, but such limitation* ***does not apply to a criminal prosecution***."

"Because entitlement to immunity is framed from the perspective of who brings the action, immunity as to criminal prosecutions could not be limited to force used or threatened to be used against a person, as the State contends, because section 776.032(1) does not limit immunity in criminal prosecutions in the same manner as civil actions. A criminal prosecution is always

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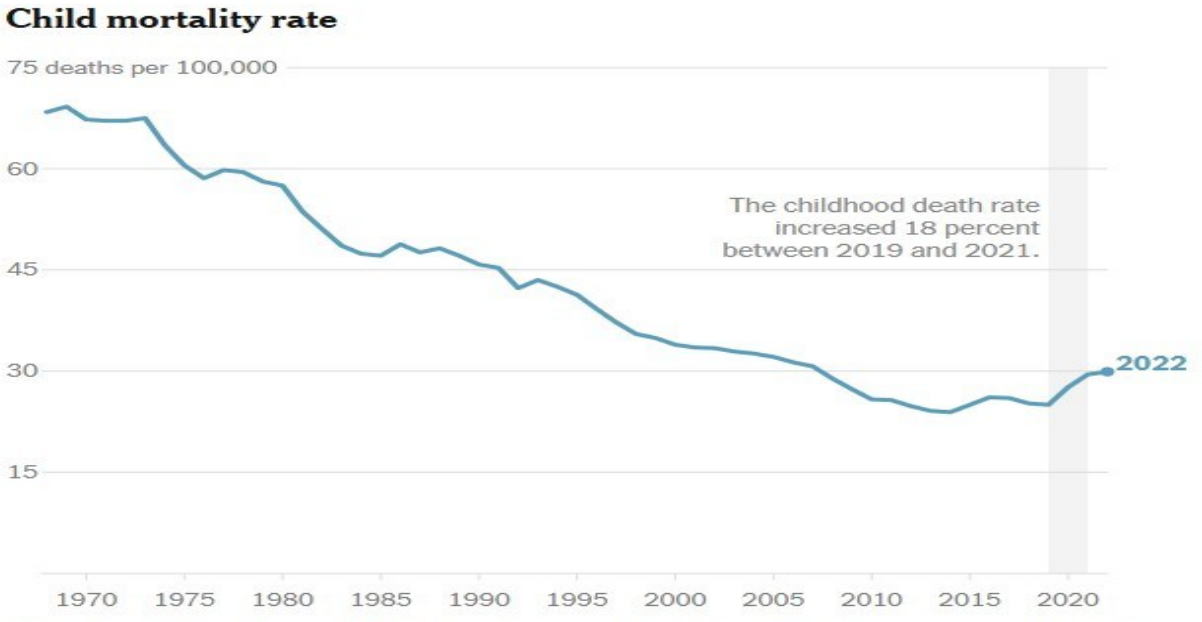
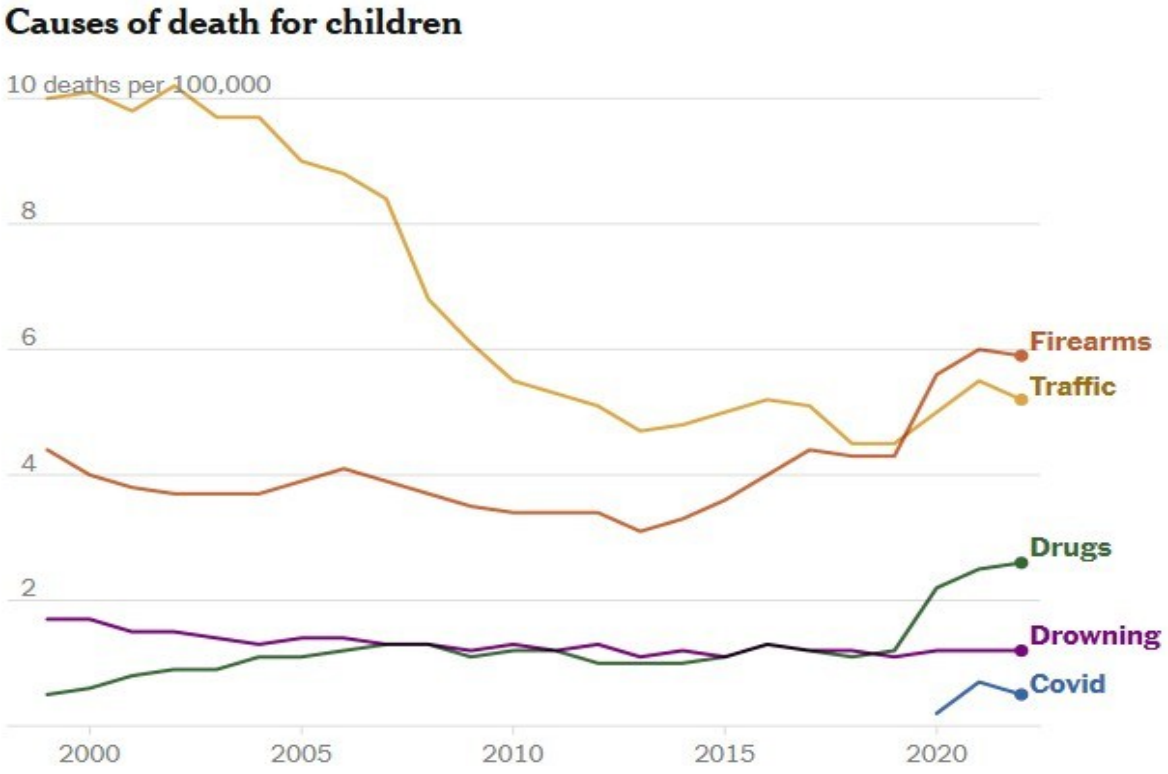
Guns, Drugs, and Children



Note: The chart shows the mortality rate for children ages one through 19 - Source: Centers for Disease Control and Prevention WONDER Database - By The New York Times



Note: The chart shows the mortality rate for children ages one through 19 - Source: Centers for Disease Control and Prevention WONDER database - By The New York Times

Recent Case Law

Traffic Stop and Community Caretaking

Florida Highway Patrol Trooper observed Christopher Sheldon weaving several times over the fog line at around two o'clock in the morning. Trooper testified that he initiated the traffic stop to conduct a "welfare check" because he was concerned the driver was ill, impaired, sleepy, or having mechanical issues. Trooper's bodycam video, which captured thirty seconds before the trooper activated his blue lights, showed at least two instances in which Defendant's vehicle swerved over the fog line. Trooper testified that he observed Defendant's vehicle weaving multiple times, and some of those instances occurred before the video was activated. The trial court found there was "nothing talismanic about the words 'welfare check' " and granted the motion to suppress. On appeal, that ruling was reversed.

Issue:

Is the community caretaking exception to the warrant a reasonable basis for a traffic stop? **Yes**.

Community Caretaking:

The community caretaking exception derives from *Cady v. Dombrowski*, (S.Ct.1973), a case in which the Supreme Court upheld the warrantless search of a disabled vehicle when the police reasonably believed that the vehicle's trunk contained a gun. The Court explained that police officers frequently engage in such "community caretaking functions, *totally divorced from the detection, investigation, or acquisition of evidence* relating to the violation of a criminal statute." Police activity in furtherance of such functions (at least in the motor vehicle context) does not, the Court held, offend the Fourth Amendment so long as it is executed in a reasonable manner pursuant to either "state law or sound police procedure."

Since *Cady*, the community caretaking doctrine has become "a catchall for the wide range of responsibilities that police officers must discharge aside from their criminal enforcement activities. … There are widely varied circumstances, ranging from helping little children to cross busy streets to navigating the sometimes stormy seas of neighborhood disturbances, in which police officers demonstrate, over and over again, the importance of the roles that they play in preserving and protecting communities. Given this reality, it is unsurprising that in *Cady*, the Supreme Court determined, in the motor vehicle context, that police officers performing community caretaking functions are entitled to a special measure of constitutional protection." *Caniglia v. Strom*, (1st Cir. 2020)

A temporary detention may also be based on an officer's discharge of his "community caretaking" duties. Police officers are charged with community caretaking functions, which are totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. In keeping with such community caretaking responsibilities, the Trooper could properly check up on Sheldon to determine whether he needed any assistance or aid. This type of limited contact has been deemed a reasonable and prudent exercise of an officer's duty to protect the safety of citizens. Thus, even without reasonable suspicion of criminal activity, a police officer may detain an individual pursuant to a community caretaking function under certain circumstances.

The U.S. Supreme Court has stated that the Fourth Amendment establishes "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. And yet, "There are exceptional circumstances in which, on balancing the need for effective law enforcement against the right of privacy, it may be contended that a magistrate's warrant for search may be dispensed with."

In *Mincey v. Arizona*, (S.Ct.1978), the U.S. Supreme Court specifically recognized the Emergency Exception. "We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. … 'The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an

exigency or emergency.' And the police may seize any evidence that is in plain view during the course of their legitimate emergency activities."

Court's Ruling:

"Welfare checks fall under the 'community caretaking doctrine,' an exception to the Fourth Amendment's search warrant requirement, which recognizes the duty of police officers to ensure the safety and welfare of the citizenry at large. *Taylor v. State*, (1DCA 2021). Under the welfare check exception, 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.' *Agreda v. State*, (2DCA 2014) (quoting *State, Dep't of High. Saf. & Motor Veh. v. DeShong*, (2DCA 1992)); *see also State v. Rodriguez*, (5DCA 2005) (stop may be justified even in absence of traffic infraction when vehicle is being operated in unusual manner causing legitimate concern for safety of the public). The investigatory stop *must still be based on specific articulable facts demonstrating that the stop was necessary to protect the public*. *Dep't of High. Saf. & Motor Veh. v. Morrical*, (5DCA 2019).

"Contrary to the trial court's struggle with this concept, Florida law is clear that **an officer is justified in stopping a vehicle even in the absence of a traffic infraction when the vehicle is being operated in an unusual manner causing legitimate concern for the safety of the public**. *See e.g., Yanes v. State*, (5DCA 2004) (police officer's observation of vehicle crossing fog line three times in space of one mile provided reasonable suspicion sufficient to justify vehicle stop, irrespective of whether anyone was endangered by such conduct, where nature of vehicle's abnormal movement caused officer to suspect that driver was impaired or otherwise unfit to drive); *Ndow v. State*, (5DCA 2004) (police officer's suspicion that motorist may have been driving while impaired was reasonable and investigatory stop warranted, where car behind police vehicle had green light at intersection but sat through light's entire cycle, car slowed down in apparent effort not to pass police vehicle, officer turned into motel to let car pass, and officer observed upon exiting motel that car had pulled over to side of road and occupants were trading places); *State v. Carrillo*, (5DCA 1987) (weaving within lane five times within one-quarter mile sufficient to establish reasonable suspicion of impairment); *Esteen v. State*, (5DCA 1987) (weaving within lane and driving slower than posted speed justified stop based on reasonable suspicion of impairment, unfitness, or vehicle defects, even absent a traffic violation)."

"Here, the Trooper had specific, articulable facts demonstrating a specific concern, and a traffic stop for a welfare check was justifiable under the circumstances. **Reversed**."

Lessons Learned:

Well beyond the simple traffic stop, the courts have recognized the awesome responsibility officers exercise each day contained within the community caretaking rubric.:

"A warrant is not required to break down a door to enter a burning home to rescue occupants or extinguish a fire, to prevent a shooting or to bring emergency aid to an injured person. The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency. Fires or dead bodies are reported to police by cranks where no fires or bodies are to be found. Acting in response to reports of 'dead bodies,' the police may find the 'bodies' to be common drunks, diabetics in shock, or distressed cardiac patients. But the business of policemen and firemen is to act, not to speculate or meditate on whether the report is correct. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process. Even the apparently dead often are saved by swift police response. A myriad of circumstances could fall within the terms 'exigent circumstances'…e.g., smoke coming out a window or under a door, the sound of gunfire in a house, threats from the inside to shoot through the door at police, reasonable grounds to believe an injured or seriously ill person is being held within." *Wayne v. United States*, (D.C. Cir. 1963).

State v. Sheldon
5th D.C.A.
(Oct. 8, 2024)

Resisting an Officer Without Violence

Detective Brandon Benavides was assigned to the Crime Suppression Team. This suppression team was a proactive law enforcement unit that responded to crime trends within a geographical district. Detective was driving an unmarked vehicle in an area that had recently experienced a spike in violent crime. Although he

was not in uniform, he was wearing a police-issued vest with "POLICE" in large, bold letters displayed on the front and back of the vest.

Detective observed T.I.J. and another male walking in the area. He noticed that T.I.J. matched the physical description of a suspect in a strongarm robbery that had occurred in the same location three days earlier. Detective exited his vehicle and began walking toward him. After seeing Detective approaching him, T.I.J. began walking away. At that point, and without any action, command, or other statement by Detective he reached into the pouch pocket of his hoodie and removed a black firearm. The firearm had been concealed from Detective's view. At that point, Detective told T.I.J. to drop the firearm. Instead, he threw the firearm (still in its holster) into the air and began to run away from the Detective.

Detective gave chase, ordering T.I.J. to stop. He refused to comply with the order to stop. Detective eventually caught him a few blocks away. T.I.J. was transported to the police department. Another officer retrieved and impounded the firearm.

After trial the Defendant was found guilty of resisting an officer without violence. Defendant argued that the trial court erred by denying his motion for a dismissal on that charge, asserting that the evidence was insufficient to establish that the officer was engaged in the lawful execution of a legal duty at the time he ordered Defendant to stop. On appeal, that ruling was affirmed.

Issue:

Was Detective engaged in the lawful execution of a legal duty when Defendant resisted by fleeing? **Yes.**

Obstructing Without Violence:

Section 843.02, F.S. provides in part that "whoever shall resist, obstruct, or oppose any officer ... *in the lawful execution of any legal duty*, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree." Thus, the crime of obstructing or opposing an officer without violence requires a showing that the officer was engaged in the lawful execution of any legal duty. If the duty being performed by the officer is an investigatory stop, as in this case, the lawfulness of the stop is an essential element of the offense.

The State must prove: 1. the officer was engaged in the lawful execution of a legal duty and 2. the Defendant's action constituted obstruction or resistance of that lawful duty, to establish the crime of resisting an officer without violence. *J.P. v. State*, (4DCA 2003). To conduct an investigatory stop, a law enforcement officer must have a reasonable suspicion that the person has committed, is committing, or is about to commit a crime.

The Florida Supreme Court, in *C.E.L.* v. *State*, (Fla.2009), analyzed flight as obstruction. The Court tied the act of flight to the statute: "Therefore, the act of flight alone is not a criminal offense. To be guilty of unlawfully resisting an officer, an individual who flees must *know* of the officer's intent to detain him, and the officer must be *justified* in making the stop *at the point when the command to stop is issued*. A stop is justified when an officer observes facts giving rise to a reasonable and well-founded suspicion that criminal activity has occurred or is about to."

Court's Ruling:

"In this case, Defendant's argument focuses on the first element of the offense of resisting an officer without violence: whether the officer was engaged in the lawful execution of a legal duty at the time that he ordered Defendant to stop running. Under the Fourth Amendment, 'an officer may reasonably detain a person only if he or she has a well-founded, articulable suspicion that the individual is engaged in criminal activity.' *Hill v. State*, (3DCA 2010). Thus, the question is whether, under the circumstances, Detective Benavides had the requisite articulable suspicion to justify a temporary, investigatory stop, and was thus in the 'lawful execution of a legal duty' when he ordered Defendant to stop.

"As we held in *M.J. v. State*, (3DCA 2011), 'The element of lawful execution of a legal duty is satisfied if an officer has either a founded suspicion to stop the person or probable cause to make a warrantless arrest. A stop is justified when an officer observes facts giving rise to a reasonable suspicion that criminal activity has occurred or is about to occur. Whether an officer's suspicion is reasonable must be determined from the totality of the circumstances existing at the time of the investigative stop, based on the facts known to the officer before the stop.' (citing *C.E.L. v. State*, (Fla. 2009)."

The Defendant then argued that the basis for the stop was unlawful, citing to prior cases finding that stopping a person solely for possession of a concealed firearm violates the Fourth Amendment. See, *Regalado v. State*, (4CA 2009),

which held that there was no reasonable suspicion for a temporary detention based solely on the observation of a concealed firearm, where the officer did not observe any criminal behavior or threatening acts and had no information of any suspicious activity."

"Defendant contends that because there was no articulable suspicion for the stop, he had the legal right to walk (or run) away from the officer. We certainly agree with the proposition that, when Detective Benavides first began approaching Defendant to speak with him, it was merely a consensual encounter which does not implicate the Fourth Amendment, and Defendant was within his rights to walk away. See, *Florida v. Bostick*, (S.Ct.1991) ('Our cases make it clear that a seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free 'to disregard the police and go about his business,' the encounter is consensual and no reasonable suspicion is required. The encounter will not trigger Fourth Amendment scrutiny unless it loses its consensual nature.' 'Where an officer has no basis to detain an individual, the individual's action in ignoring an officer's command to stop cannot constitute resisting arrest.' *F.B. v. State*, (3DCA 1992)."

"Relying upon these legal principles, Defendant contends the State failed to prove Detective was engaged in the lawful execution of a legal duty when he ordered Defendant to stop *based on the mere observation of a firearm in Defendant's possession*. It is here Defendant's argument falters, because it is based on a faulty factual premise: Detective Benavides' actions were not based solely on observing Defendant in possession of a concealed firearm, but rather upon the totality of the circumstances at the time he ordered Defendant to stop."

"The 'totality of the circumstances' analysis is an objective one, and 'a determination of reasonable, articulable suspicion is to be based on 'commonsense judgments and inferences about human behavior.' 'As a matter of fact, even conduct consistent with innocent activity can give rise to a reasonable suspicion in support of a *Terry*-stop when all the circumstances are taken into consideration.' 'Thus, the police officer's suspicions need not be inconsistent with a hypothesis of innocence. Rather, they need to be based only on rational inferences, from articulable facts, which reasonably suggest criminal activity.' 'In determining whether a police officer possesses a reasonable suspicion to justify an investigatory stop, the court must consider the totality of the circumstances viewed in light of a police officer's experience and background.' " [Citing to various cases].

"As the trial court correctly pointed out, Detective Benavides did not order Defendant to stop until he observed Defendant remove the concealed firearm from inside the pocket of his hoodie, throw it into the air and start to run away. Only then did Detective Benavides command Defendant to stop. Defendant refused to comply and continued to run away, and it is these actions which constituted resisting an officer without violence. These actions, combined with the Detective's knowledge that Defendant matched the physical description of a suspect in a strong-garm robbery that had occurred in the same location three days earlier, provided a well-founded, articulable suspicion for a temporary, investigatory stop, and thus Detective Benavides was engaged in the lawful execution of a legal duty when he ordered Defendant to stop running."

"Under the totality of the circumstances, applied as an objective standard, and in light of the law enforcement officer's training and experience, we hold the trial court correctly determined Detective Benavides had an articulable suspicion of criminal activity and that his attempt to conduct an investigatory stop of Defendant was reasonable under the Fourth Amendment. Detective Benavides was thus engaged in the lawful execution of a legal duty at the time he ordered Defendant to stop. Defendant's refusal to do so constituted resisting an officer without violence, and the trial court properly denied Defendant's motion for judgment and dismissal."

Lessons Learned:

T.I.J. was fourteen years old at the time he was arrested and charged with resisting an officer without violence. What was not mentioned by the D.C.A. in evaluating the basis for the Detective's investigative stop was the Florida statute that criminalizes a juvenile's possession of a firearm. Hence, the cases to the contrary relied upon by Defendant (i.e. *Regalado v. State*, (4DCA 2009)), ignored section 790.22, (3), which provides that a minor under 18 years of age may not possess a firearm, other than an unloaded firearm at his or her home, unless: [under parental supervision].

Juvenile gun possession,

according to Florida Statute 790.22 (3), is a first-degree misdemeanor. If it's a first offense, there's a mandatory sentence of 100 hours of community service, but the judge may also sentence an offender to up to 3 days at a "secure detention facility."

Repeat offenders can be charged with a third-degree felony, with a minimum of 15 days in a detention center and up to 250 hours of community service. In addition, juveniles convicted of gun possession charges can lose their driver's license for a year. There are also enhanced penalties (longer sentences) for juveniles who commit a crime while in possession of a firearm, or if the crime is a gang-related offense.

T.I.J. v. State
3rd D.C.A.
(Nov. 6, 2024)

Search Warrant Vehicle

Federal and Florida-state law enforcement received a tip from a confidential informant that Brian Joins was distributing methamphetamine from a mobile home. Based on this tip, law enforcement officers obtained a warrant to search the mobile home. The search warrant authorized the officers to "enter the [mobile home] premises *and the curtilage* thereof *and any vehicles parked thereon* ... and then and there to search diligently for the property described in this warrant."

Officers went to the residence to execute the search warrant. When they arrived at the mobile home, they saw two men, later identified as Joins and Joshua Webb, standing outside of a silver Nissan sedan. The officers detained the two men as they began the search. Inside the mobile home, the officers observed drugs and drug paraphernalia in rooms throughout the mobile home. The officers encountered Randall and Amanda Grant inside. Officers also found a bag on the residence's front step filled with a substance that looked like methamphetamine. Randall told Officers that Joins and Webb came to the mobile home in the silver Nissan parked outside and that Joins brought with him the bag that was sitting on the mobile home's front step, which had been found to contain contraband drugs.

The officers also searched the silver Nissan. Inside the Nissan, they found a bag containing a substance that appeared to be methamphetamine. In the resulting criminal case, Webb moved to suppress the evidence found inside the Nissan. He argued that the search of the car exceeded the warrant's scope because the car was not parked within the mobile home's curtilage.

The trial court issued an order denying the suppression motion. The court agreed with Webb that the Nissan was not within the mobile home's curtilage; thus, the search of it exceeded the scope of the search warrant. However, the court concluded that the evidence was nevertheless admissible because the search was justified by the automobile exception to the Fourth Amendment's warrant requirement. That ruling was affirmed on appeal.

Issue:

Did the officers conduct an unlawful search of the Nissan? **No**. .

Search Warrant Curtilage:

In 1987, the U.S. Supreme Court set forth a narrow definition of curtilage in *United States v. Dunn*. The Court opined that curtilage questions should be resolved with particular reference to four factors: 1. the proximity of the area claimed to be curtilage to the home, 2. whether the area is included within an *enclosure* surrounding the home, 3. the nature of the uses to which the area is put, and 4. the steps taken by the resident to protect the area from observation by people passing by. These factors do not "produce a finely tuned formula," but they "are useful analytical tools" because "they bear upon the centrally relevant consideration -- *whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection*." "The primary focus is whether the area in question harbors those intimate activities associated with domestic life and the privacies of the home."

Auto-Search:

Because vehicles are mobile the U.S. Supreme Court has been exceedingly liberal in permitting law enforcement to stop, search, and seize vehicles. *Carroll v. United States*, (S.Ct.1925).

"In light of the 'automobile exception' to the usual search warrant requirement, it is difficult to pick a worse place to conceal evidence of a crime than an automobile. The Supreme Court has interpreted—and reinterpreted—the automobile exception so expansively that the Court essentially has obviated the requirement that the Government obtain a warrant to search a vehicle provided it has *probable cause* to believe that the vehicle contains evidence of a crime." *U.S. v. Donahue*, (3rd Cir. 2014).

Even when there is no exigency in the case, and the police have ample time to secure a search warrant, a stop and search is valid

under the motor vehicle exception. The automobile exception to the warrant requirement is based on its mobility, it has no separate exigency requirement. "If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment ... permits police to search the vehicle without more." *Maryland v. Dyson,* (S.Ct.1999). See also, *Pennsylvania v. Labron*, (S.Ct. 1996), the ready mobility of a vehicle is viewed by the Supreme Court as an inherent exigency that is always present when conducting a motor vehicle search.

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, shall not be violated, and no warrants shall issue, but upon probable cause.' The prohibition on 'unreasonable' searches and seizures 'generally requires the obtaining of a judicial warrant.' *Riley v. California*, (S.Ct.2014). 'But not always: The warrant requirement is subject to certain exceptions.' *Lange v. California*, (S.Ct.2021)."

"One such exception is the automobile exception. A warrantless search of an automobile is constitutional when 1. the vehicle is 'readily mobile,' and 2. there is 'probable cause to believe that it contains contraband or evidence of a crime.' *United States v. Lanzon*, (11th Cir. 2011). The first prong is satisfied if the vehicle is operational. *United States v. Lindsey*, (11th Cir. 2007). And as to the second prong, an officer has probable cause to search a vehicle when 'the facts, considering the totality of the circumstances and viewed from the perspective of a reasonable officer, establish 'a probability or substantial chance of criminal activity.' *Washington v. Howard*, (11th Cir. 2022); see *California v. Acevedo*, (S.Ct.1991) (explaining that if officers have probable cause to believe a car contains evidence of criminal activity, they may search every part of the car that may conceal this evidence)."

"Here, both prongs of the automobile exception were satisfied. On the first prong, the [trial] court's finding of fact that the Nissan was operational was not clearly erroneous. Indeed, Webb does not, nor could he, dispute that the car was operational and readily mobile when it was searched. After all, Joins and Webb drove the car to the mobile home on the night of the search."

"As to the second prong, the officers had probable cause to believe that the Nissan contained contraband or evidence of drug trafficking… The evidence before the [trial] court demonstrated that before searching the Nissan, the officers 1. saw Joins and Webb standing outside the vehicle near the mobile home, 2. discovered in a shoebox on the mobile home's front step a large amount of white powder that was field tested and confirmed to be methamphetamine, and 3. heard from Randall that Joins and Webb had come to the mobile home in the Nissan and arrived with the bag containing the shoebox of drugs. And given that the search warrant was specifically directed at finding evidence of drug-trafficking activity in the mobile home, the record established a substantial chance that the Nissan contained contraband or evidence of drug trafficking."

"Accordingly, we conclude that the search was justified by the automobile exception to the warrant requirement. We therefore affirm the [trial] court's denial of Webb's motion to suppress the methamphetamine evidence discovered in the vehicle."

Lessons Learned:

The 11th Circuit affirmed the trial court's ruling finding probable cause to sustain the reasonable belief that the drugs being offered for sale were in Webb's vehicle.

Of importance here to the Court's ruling was the holding in *United States v. Arvizu*, (S.Ct.2002). "In making reasonable-suspicion determinations, reviewing courts must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." This requires the reviewing court to evaluate the "totality of the circumstances," rather than assessing each underlying fact piecemeal. This standard "allows officers to draw on their own experience and specialized training to make inferences from and deductions about the *cumulative information* available to them that 'might well elude an untrained person.' "

"The [lower court] identified innocent explanations for most of these circumstances in isolation, but again, this kind of divide-and-conquer approach is improper. A factor viewed in isolation is often more 'readily susceptible to an innocent explanation' than one viewed as part of a totality." *District of Columbia v. Wesby*, (S.Ct.2018).

United States v. Joins and Webb
U.S. Court of Appeals, 11th Cir.
(Aug. 22, 2023)

(Continued from page 2)

Stand Your Ground

brought by the State, and alleged victims and their agents do not make unilateral prosecutorial decisions. Because a criminal prosecution is never initiated by a 'person, personal representative, or heirs of the person,' no portion of this language could ever modify 'criminal prosecution.' If the Legislature intended such a result, it would have written: 'A person ... is immune from criminal prosecution and civil action for the use or threatened use of such force by the Defendant against the victim, person, personal representative, or heirs of the person against whom the force was used or threatened ....' Thus, from the specific context of the words used in section 776.032(1), we conclude the legislature was clear that immunity from a criminal prosecution is not limited to the use of force against a person."

"We conclude as a matter of law, based on section 776.012(2)'s and section 776.032(1)'s plain meaning and context, a person is immune from criminal prosecution for the use of deadly force against an animal *where the person has a reasonable belief that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another*. Having determined the trial court misinterpreted the statutory language and departed from the essential requirements of law, … [we] remand for further proceedings consistent with this opinion."

Lessons Learned:

This is a case of first impression, and thus there is limited precedent. The doctrine of *stare decisis* requires courts to apply the law in the same manner to cases with the same facts. The D.C.A. did add in a footnote, "While noting 'that there is additional statutory language, namely in sections 776.013 and 776.031, Florida Statutes (2022), that appears to authorize the use of force in other contexts involving force against another person, rather than against an animal,' the majority acknowledges that *an animal could be used in the commission of a forcible felony*. Because those statutory provisions could otherwise be invoked to justify the use or threatened use of deadly force to prevent the commission of a forcible felony, they also provide Stand Your Ground immunity when such force is necessary against an animal involved in the commission of a forcible felony. Moreover, whenever the use or threatened use of deadly force is justified, anything less would also be justified because 'the legal question to be resolved in all [Stand Your Ground] cases is whether 'a reasonable and prudent person in the same position as the defendant would believe' that the level of *authorized force used was 'necessary' to prevent the harm or offense* for which such force is statutorily permitted.' *See Paese v. State*, (4DCA 2024) (quoting *Bouie v. State*, (2DCA 2020)). In other words, if the use or threatened use of deadly force is justified, any action or threat short of deadly force would also be justified if used to prevent the harm or offense for which the use or threatened use of deadly force would be justified."

Gabriel v. State
4th D.C.A.
(Oct. 16, 2024)