LEGAL EAGLE

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Duty to Intervene

Police officers responded to a 911 call. The officers found Anthony Nute standing in his yard in a pair of boxer shorts with his pants down around his ankles. He was staring off into space, breathing almost convulsively, and he refused to respond to the Officers. When one of them moved closer to him, Nute shouted, "Get away from me!" Nute appeared to be in a trance and under the influence of some drug. The Officer told Nute to stay where he was, continued to call his name, and asked him what he had taken. Nute continued to ignore the Officers' attempts to communicate with him.

One of the Officers requested that the 911 dispatcher send paramedics to the scene. The paramedics arrived and tried unsuccessfully to communicate with Nute. As one of them got close to him, Nute swung his right arm at the man. After three more minutes of unsuccessful attempts at communication, and after Nute had failed to respond to repeated orders to put his hands behind his back, the Officers wrestled him to the ground, Tased him, and handcuffed his arms and legs behind his back.

He was arrested for misdemeanor assault, public intoxication, and resisting arrest. The Police Chief directed Officer Bryant White to transport Nute to the County jail because there were better medical personnel there than at the City jail.

After White took Nute to the jail, the jailers became frustrated with Nute during the booking process and beat him in the presence of White, who did not attempt to intervene. About twenty-seven seconds after the jailers first hit Nute, and while they continued to beat him, White turned and left the room where the beating was taking place. For at least six minutes following White's departure from the room where he had witnessed, without any attempt to intervene or protest, an ongoing attack on the helpless Nute, the beating continued, and he was repeatedly punched, kicked, kneed, pepper-sprayed, and Tased.

On his way out of the jail, White didn't talk to anyone about the beating he had seen. He testified at his deposition that it never occurred to him to mention the beating to any supervisors at the jail.

Nute sued White and others for civil rights violation. One of his claims against Officer White was that his failure to intervene while Nute was being beaten violated the Fourth Amendment. The trial court denied White's motion for summary judgment on qualified immunity grounds. That ruling was affirmed by

the 11th Circuit Court of Appeals.

Issue:

Did Officer White violate clearly established law, i.e., he had fair warning, that his failure to intervene gave rise to a Fourth Amendment violation? **Yes**.

The correction officers who actually inflicted the excessive force on Nute were employed "by another law enforcement agency," and thus, White had no authority over them. Despite having had no authority over them, was White still liable for his failure to intervene and to stop them from using excessive force? **Yes**.

Duty to Intervene:

"A police officer is under a duty to intercede and prevent fellow officers from subjecting a citizen to excessive force and may be held liable for his failure to do so if he observes the use of force and has sufficient time to act to prevent it." *Figueroa v. Mazza*, (2nd Cir. 2016).

That a police officer had a duty to intervene when he witnessed the use of excessive force and had the ability to intervene was clearly established. See, *Byrd v. Clark*, (11th Cir. 1986) ("If a police officer, *whether supervisory or not*, fails or refuses to intervene when a constitutional violation such as an unprovoked beating takes place in his presence, the officer is directly liable under Section 1983.")

"[Officer] Cushing observed the entire attack and had the time and ability to intervene, but he did nothing. No particularized case law was necessary for a reasonable police officer to know that, on the facts of this case and given that the duty to intervene was clearly established, he should have intervened." See, *Priester v. City of Riviera Beach*, (11th Cir. 2000).

The duty to intervene does not lie without these underlying factors: 1. Excessive force. 2. The backup officer had a realistic opportunity to do something to prevent the harm from occurring. 3. The backup officer failed to take reasonable steps to prevent harm from occurring. 4. The backup officer's failure to act caused Plaintiff to suffer harm.

While the backup officer is being held to account for the actions of another officer, the case law is clear that the court must evaluate the facts with an eye to the individual officer's liability. "To start, each [officer's] liability must be assessed individually based on his own actions. To hold an officer liable for the use of excessive force, a Plaintiff must prove that the officer: 1. actively participated in the use of excessive force, 2. supervised the officer who used excessive force, or 3. owed the victim a duty of protection against the use of excessive force." *Pollard v. City Columbus Ohio*, (6th Cir. 2015).

Liability will be imposed only if the bystander officer or supervisor has *sufficient time* to prevent the unlawful act. "In order for liability to attach, there must have been a realistic opportunity to intervene to prevent the harm from occurring." "We do not know of any clearly established law that would require [backup officer] to abandon his crowd control duties and intervene to stop Officer Clarke's use of force." *Lennox v. Miller*, (2nd Cir. 2020).

It is not necessary that a police officer actually participate in the use of excessive force in order to be held liable under 42 U.S.C. § 1983. Rather, an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held liable for his nonfeasance. *Bruner v. Dunaway*, (6th Cir. 1982), *Byrd v. Brishke*, (7th Cir. 1972); see also *Wright v. City of Ozark*, (11th Cir. 1983) (citing as an example of "a special relationship" necessary to impose liability on police for negligently or recklessly facilitating criminal action of third party). See also, *Harris v. Chanclor*, (5th Cir. 1976) (deliberate indifference to inmate's severe and obvious injuries is tantamount to an intentional infliction of cruel and unusual punishment). *Fundiller v. City of Cooper City*, (11th Cir. 1985).

Court's Ruling:

"We have long recognized that 'an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force, can be held liable for his nonfeasance.' See, e.g., *Velazquez v. City of Hialeah*, (11th Cir. 2007); see also *Helm v. Rainbow City*, (11th Cir. 2021) ('The principle that an officer must intervene when he or she witnesses unconstitutional force has been clearly established in this Circuit for decades.'); *Byrd v. Clark*, (11th Cir. 1986). Officer White and Nute do not disagree about that."

"They do disagree about whether it was clearly established that an Alabama city police officer who was outside of his city limits had a duty to take reasonable steps to intervene to stop the unlawful use of force by officers employed by a different law enforcement agency. Officer White contends that the law was not clearly established that he had a duty to intervene in that

scenario; Nute disagrees."

"Officer White's no authority/no liability position is contrary to our precedent, which clearly establishes that when 'a police officer, *whether supervisory or not*, fails or refuses to intervene when a constitutional violation such as an unprovoked beating takes place in his presence, the officer is directly liable under Section 1983.' *Byrd v. Clark*, (11th Cir. 1986). In *Byrd,* the assaulting officer and the non-intervening officer were both simply an Officer. Neither had authority over the other. We've reiterated the statement in *Byrd* that a non-intervening officer may be held liable, 'whether supervisory or not' at least seven times since the *Byrd* decision was issued."

"Our clearly established law that a failure to intervene claim does not require that the Defendant officer had authority over the officer inflicting excessive force makes good sense. As our *Byrd* opinion explained:

'A police officer may not ignore the duty imposed by his office and fail to stop other officers who summarily punish a third person in his presence or otherwise within his knowledge. That responsibility ... must exist as to non-supervisory officers who are present at the scene of such summary punishment, for to hold otherwise would be to insulate non-supervisory officers from liability for reasonably foreseeable consequences of the neglect of their duty to enforce the laws and preserve the peace.' (quoting *Byrd v. Brishke*, (7th Cir. 1972)). **The duty of an officer to intervene derives from the Constitution, not from a chain of command**."

"Under our clearly established law, Officer White had a duty to intervene when he watched three jailers beating for no apparent reason a helpless man whom he had arrested and delivered into the custody of those jailers. It matters not for qualified immunity purposes that he had no supervisory authority over them."

"Officer White argues that he didn't have a reasonable opportunity to intervene because the assault happened so quickly, and he was unarmed and outnumbered by three to one. We have recognized that there are circumstances where an officer is entitled to qualified immunity because the infliction of excessive force occurred too quickly for him to have had a reasonable opportunity to intervene. For example, we affirmed the grant of summary judgment based on qualified immunity to an Officer who stood nearby while another officer used pepper spray on the plaintiff for half-a-second to three seconds. See, *Brown v. City of Huntsville*, (11th Cir. 2010). We reasoned: 'Because the relevant events happened so quickly, the record does not reflect any point at which [the non-intervening Officer] could have intervened to prevent [the other Officer's] use of excessive force, especially pepper spray, on' the plaintiff. *But this is not a three-second case*."

"The record in the present case, including the surveillance video, shows that the assault took place for twenty-seven seconds from the time it started in Officer White's presence until he left the scene. The record also shows that the assault continued for *six-and-a-half minutes* after White had walked out of the door without saying anything. That's a total time of about seven minutes from the start to finish of the beating."

"Obviously, where excessive force is being inflicted in violation of the Constitution, an Officer witnessing it *cannot voluntarily leave the scene and then be let off the hook because he did not stay there long enough to intervene*. If he had not left so he wouldn't have to witness the assault (as a jury could find), Officer White would have had seven minutes to intervene. Our precedent clearly established that is long enough to provide an opportunity to intervene, even if only verbally."

"Officer White argues that he was unarmed and outnumbered because there were three jailers and only one of him. That does not excuse his failure to **say something** to the jailers in an attempt to get them to stop physically abusing the helpless detainee. Or to say something about it to someone else at the jail."

"It had been clearly established for almost twenty years before the incident in this case that an Officer has a duty to at least *say something* in an attempt to stop a clear and continuing use of excessive force on a helpless arrestee. It is uncontested that Officer White did nothing at the jail. **Saying something might not have made any difference, but we will never know because White left the jail without uttering a word about the assault to anyone**."

"Finally, Officer White asserts that he actually did do something. 'I then left the jail and got in my vehicle and called my police

chief and told him what had happened. He told me he would talk to the jail administrator.' In any event, this is a **failure to intervene case, not a failure to report case**. Not only that, but at the time he made the phone call, White was in his car outside the jail in Fort Payne, where the assault was taking place. He was in a better position to urge the administrator of the jail there to stop it than his chief of police was. We also hold that *the duty to intervene is not discharged by a phone call to the Officer's supervisor* where, viewing the evidence in the light most favorable to the Plaintiff, the supervisor was not in a location or position where he could intervene in time to stop the assault."

"Officer White is not entitled to summary judgment on the Fourth Amendment failure to intervene claim against him. Affirmed."

Lessons Learned:

While not an issue in the present case, Nute came to the attention of Officer White based on a 911 call that he was acting erratically. In fact, neither the police nor the responding paramedics were able to communicate with him. He was arrested for taking a swing at the paramedic, public intoxication, and resisting arrest, and transported to jail. It would seem that a more appropriate response would have been a mental health referral, such as a Baker Act, under Florida law.

The Baker Act, sections 394.451 through 394.4789, F.S., provides for the voluntary and involuntary commitment of people suffering from mental illness. Sec. 394.463(2)(a)(2), states in part, "Law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the nearest receiving facility for examination."

The seizure of a person meeting the criteria for the Baker Act is lawful. From a constitutional standpoint, a Baker Act seizure would be an exigent circumstance where warrantless seizure is permissible. The criteria for involuntary examination outlined in Section 394.463(1), are as follows:

CRITERIA. -- A person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

(a) 1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or

2. The person is unable to determine for himself or herself whether examination is necessary; and

b) 1. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; ...; or

2. There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

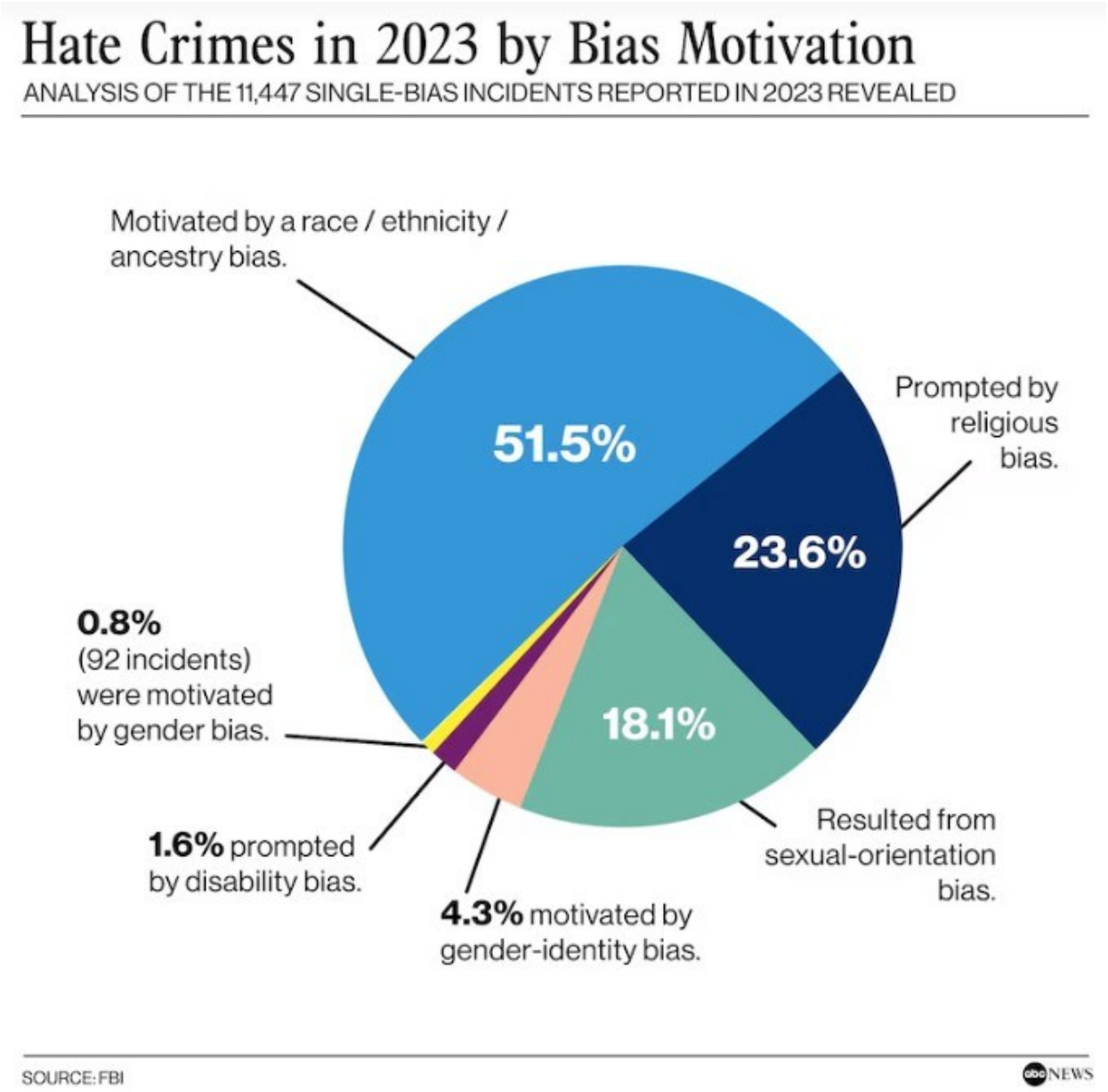
"A mental-health seizure is lawful if there is probable cause to believe that the person is a danger to herself or others." *Bruce v. Guernsey*, (7th Cir. 2015). In the present case, Nute appeared unaware of his surroundings. The officers' impression that he was more disoriented than usual, coupled with his unintelligible speech, and swinging his right arm at the paramedic, gave the officers probable cause to detain him for his own safety and that of others.

The 7th Circuit in *Bruce v. Guernsey* noted that they had found probable cause for protective detention in other cases with less compelling evidence of danger. Thus, with the lawful power to detain Nute came the legal power to use reasonable force to accomplish the detention. See, *Graham v. Connor*, (S.Ct.1989). ("The right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it."); *United States v. Place*, (S.Ct.1983).

That principle applies to protective detention as well. These prior rulings supported the court's finding in *Turner v. City of Champaign*, (7th Cir. 2020). There, the officers decided to detain Richard Turner for his own protection and to send him to a hospital for mental-health treatment. The Officer called for an ambulance.

While waiting for the ambulance, the Officer asked Turner to sit on the curb. Instead, he turned and ran away. The 7th Circuit ruled that the Officer did not violate the Fourth Amendment when he caught up with Turner and grabbed his shoulder to stop his flight. Since Turner, like Nute, never submitted to the authority of spoken police commands, this physical contact was the moment police first seized him. See, *California v. Hodari D.*, (S.Ct.1991).

Nute v. White
U.S. Court of Appeals, 11th Cir.
(Sept. 16, 2025)



Nationwide, the number of reported hate crimes have increased by about 100% since 2015, rising from 5,843 to 11,679.

The FBI classifies hate crimes into three categories: crimes against persons, property, or society. In 2024, 79% of hate crimes were against a person, 40% were against property, and 2% were against society.

Within these three broad categories are specific crimes. Intimidation was the most common hate crime in 2024 at 38%, followed by destruction, damage or vandalism of property (29%), simple assault (26%) and aggravated assault (14%). All other crimes made up the remaining 13%.

See: FBI Crime Data explorer: https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime

Recent Case Law

Forfeiture of U.S.C.

Romelia Rodriguez appealed a final judgment forfeiting $56,000 of United States currency seized from her suitcase at a traveler checkpoint in the International Airport. The County Sheriff filed a verified complaint for forfeiture pursuant to the Florida Contraband Forfeiture Act, related to the discovery and seizure of the $56,000 by the County Narcotic Interdiction Task Force. Summary judgment was granted to the county. Rodriguez challenged that ruling.

On appeal, the D.C.A. reversed the trial court's ruling, finding that the court based its findings on an erroneous burden of proof.

Issue:

Did the County establish, by a preponderance of the evidence, that the owner either knew, or should have known after a reasonable inquiry, that the property was being used or was likely to be used in criminal activity? **No**.

Forfeiture:

As used in the Florida Contraband Forfeiture Act, s. 932.701, F.S., "Contraband article" means:

1. Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or **currency** or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if *the totality of the facts presented by the State is clearly sufficient to meet the State's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.*

Court's Ruling:

"Both Sheriff's Office and the trial court misapprehended the Government's burden in a forfeiture trial, which requires the Government to prove 1. *beyond a reasonable doubt* that contraband was being used in violation of the Forfeiture Act, and 2. by a *preponderance of the evidence* that the owner of the property subject to seizure knew or should have known that such property was being employed, or was likely to be employed, in criminal activity."

"The Florida legislature made 'substantial changes' to the Forfeiture Act in 2016. One of the amendments was to section 932.704 (8), which provides: '**Upon proof beyond a reasonable doubt** that the contraband article was being used in violation of the Florida Contraband Forfeiture Act, the court shall order the seized property forfeited to the seizing law enforcement agency.' "

"In addition, section 932.703(7)(a) states: Property may not be forfeited under the Florida Contraband Forfeiture Act unless the seizing agency establishes by a preponderance of the evidence that the owner either knew, or should have known after a reasonable inquiry, that the property was being employed or was likely to be employed in criminal activity."

"Consistent with these two statutes, we recognized in *Zarcadoolas v. Tony*, (4DCA 2023), that a forfeiture proceeding consists of two stages: 1. the *probable cause stage*, where the seizing agency must establish **probable cause to believe** that the property at issue has been used in violation of the Forfeiture Act in order to justify the continued seizure of the property; and 2. the *forfeiture trial*, where the seizing agency must prove **beyond a reasonable doubt** that the property has been used in violation of the Forfeiture Act, and must prove by a **preponderance of the evidence** that the owner knew or should have known that the property was being used in criminal activity, in order to obtain title to the property."

"The trial court failed to take into consideration the Government's burden of proof in a forfeiture case and allowed Sheriff's Office to meet its burden merely by showing probable cause that the cash was illicitly used within the meaning of the forfeiture statute."

"Sheriff's Office and the trial court relied on outdated law. As we explained in *Sanchez v. City of West Palm Beach*, (4DCA 2014):

'While now codified by sections 932.703 and 932.704, Florida Statutes (2013), this two-step approach to forfeiture proceedings has its origins in *Department of Law Enforcement v. Real Property*, (Fla. 1991), a case concerning a due process challenge to the Act's then-current procedure. Prior to the *Real Property* decision, the above-

mentioned seizure and forfeiture stages were truncated into a single proceeding, initiated either by the State within 90 days of the seizure or by the claimant in an action to recover the property. At the proceeding, the 'Governmental entity seeking forfeiture bore the initial burden of going forward' by demonstrating 'probable cause that the *res* subject to forfeiture was illicitly used within the meaning of the forfeiture statute.' If this hurdle was cleared, the burden then shifted to the claimant 'to rebut the probable cause showing, or by a preponderance of the evidence, to establish that the forfeiture statute was not violated or that there is an affirmative defense which entitles the appellant to repossession of the item.' *Lobo v. Metro–Dade Police Dep't*, (3DCA 1987)."

"Because Sheriff's Office and the trial court misunderstood Sheriff's Office's burden of proof at a forfeiture trial, and summary judgment was granted without Sheriff's Office carrying its burden of proof under current law, we reverse the summary final judgment of forfeiture and remand to the circuit court for further proceedings consistent with this opinion. REVERSED."

Lessons Learned:

In a landmark 2019 decision, the U.S. Supreme Court in *Timbs v. Indiana* ruled that the Eighth Amendment's prohibition against excessive fines applies to State governments through the Fourteenth Amendment. The case involved Tyson Timbs, whose $42,000 Land Rover was seized by Indiana after he was convicted of a minor drug crime, and seized at forfeiture. The State claimed forfeiture was permissible because the vehicle was used to transport the drugs. The Supreme Court unanimously decided that States cannot impose fines or forfeitures that are "grossly disproportionate" to the offense, incorporating this protection against State governments.

In view of the ruling in *Timbs v. Indiana*, (S.Ct. 2019), it would appear that the days of forfeiting vehicles for minor crimes are at an end. The high-end expensive vehicles will be most impacted by sale or trafficking in controlled substances, which are second-degree felonies and above, and should still support a forfeiture action, as not overly punitive. The rent-a-wreck vehicles with little or no resale value are always useful as undercover vehicles and, given their limited value, if any, should be subject to forfeiture. However, not every felony charge lodged against the vehicle owner is grounds for forfeiture.

In accord with *Timbs*, F.S. 932.704 (1) was amended to provide: "The potential for obtaining revenues from forfeitures must not override fundamental considerations such as public safety, the safety of law enforcement officers, or the investigation and prosecution of criminal activity. It is also the policy of this state that law enforcement agencies ensure that, in all seizures made under the Florida Contraband Forfeiture Act, their officers adhere to federal and state constitutional limitations regarding an individual's right to be free from unreasonable searches and seizures, including, but not limited to, the illegal use of stops based on a pretext, coercive-consent searches, or a search based solely upon an individual's race or ethnicity."

Agencies also need to be aware of changes to the forfeiture statute, sec. 932.704, effective January 1, 2023:

(2) In each judicial circuit, all civil forfeiture cases shall be heard before a circuit court judge of the civil division, if a civil division has been established. The Florida Rules of Civil Procedure shall govern forfeiture proceedings under the Florida Contraband Forfeiture Act unless otherwise specified under the Florida Contraband Forfeiture Act.

(3) Any trial on the ultimate issue of forfeiture shall be decided by a jury, unless such right is waived by the claimant through a written waiver or on the record before the court conducting the forfeiture proceeding.

(4) The seizing agency shall promptly proceed against the contraband article by filing a complaint in the circuit court within the jurisdiction where the seizure or the offense occurred, paying a filing fee of at least $1,000 and depositing a bond of $1,500 to the clerk of the court. Unless otherwise expressly agreed to in writing by the parties, the bond shall be payable to the claimant if the claimant prevails in the forfeiture proceeding and in any appeal.

Rodriguez v. State
4th D.C.A.
(Nov. 12, 2025)

Consensual Encounter Search

Deputy Chase Price noticed Herbert Hall walking on the side of Orlando East Bypass, a toll road with no pedestrian walkways. Deputy Price activated the blue emergency lights on his vehicle to alert oncoming traffic, and he and Defendant

approached each other. Deputy stated that Defendant was violating the law by walking on the side of the toll road; however, he was not approaching to issue a citation, but rather to conduct a wellness check.

Deputy asked Defendant if he was all right. He responded that an acquaintance dropped him off on the side of the road and that he was walking toward the nearest gas station. Deputy asked for identification and was furnished with a Florida identification card. A records check proved negative.

Deputy then told Defendant that he would be happy to give him a courtesy ride. The two began walking toward Deputy's vehicle. Before Defendant could get in the car, however, Deputy advised him that, due to department policy, he would have to pat him down. Deputy did not precisely recall Hall's verbal response but understood it as an acceptance of the offer. Deputy then explained that the pat-down was to ensure the Defendant did not have any weapons on his person. The body camera footage showed that Defendant raised his arms in response. The dashcam footage likewise shows that Defendant raised his arms and responded verbally, but it does not capture what was said. Deputy testified that Defendant responded by saying something like "okay" or "all right, where at?"

Deputy began the pat-down but stopped and asked, "What's that?" and "Is that a gun?" Defendant said, "Yes." Immediately, Deputy handcuffed Defendant, and moved him to the front of the cruiser. Deputy retrieved a firearm from Defendant's waistband and a phone from his pocket, placing them on the hood of the cruiser. When asked, "Are you a convicted felon?" he said, "Yes, sir." A more extensive search revealed controlled drugs.

The Defendant was charged with carrying a concealed firearm, being in possession of a firearm while a convicted felon, and possession of methamphetamine. He moved to suppress all evidence found and statements made during the search, claiming that he did not consent to the initial pat-down search. The State stipulated that no warrant or probable cause supported the search. Instead, the State argued that Defendant consented. The trial court denied the motion, and on appeal, that ruling was affirmed.

Issue:

Was there competent, substantial evidence of consent? **Yes.** Did the Defendant's body language or other conduct manifest an implied consent to the search? **Yes**.

Consent to Search:

The present case began with the Deputy engaging the Defendant in a consensual encounter. The Florida Supreme Court in *Popple v. State*, (Fla.1993), has ruled that there are essentially three levels of police-citizen encounters. The first level is considered a consensual encounter and involves only minimal police contact. During a consensual encounter, a citizen may either voluntarily comply with a police officer's requests or choose to ignore them. Because the citizen is free to leave during a consensual encounter, constitutional safeguards are not invoked. *United States v. Mendenhall*, (S.Ct.1980).

The second level of police-citizen encounters involves an investigatory stop as enunciated in *Terry v. Ohio*, (S.Ct.1968). At this level, a police officer may reasonably detain a citizen temporarily if the officer has a *reasonable suspicion* that a person has committed, is committing, or is about to commit a crime. (See, sec. 901.151). In order not to violate a citizen's Fourth Amendment rights, an investigatory stop requires a well-founded, articulable suspicion of criminal activity. *Mere suspicion is not enough to support a stop*. See, *Carter v. State*, (2DCA 1984).

While not involved in the present case, the third level of police-citizen encounters involves an arrest, which must be supported by *probable cause* that a crime has been or is being committed. *Henry v. United States*, (S.Ct.1959); see also, sec. 901.15 F.S.

Warrantless searches are *per se* unreasonable unless the search falls within an exception to the warrant requirement (i.e., exigent circumstances, consent). The State has the burden to show that the Defendant freely and voluntarily gave the necessary consent. This burden is not satisfied by a showing of *mere submission* to a claim of lawful authority. "If there is any doubt as to whether consent was given, that doubt must be resolved in favor of the person who was searched." To waive search and seizure rights, the evidence must demonstrate that the Defendant voluntarily permitted or expressly invited and agreed to the search. *Bailey v. State*, (Fla. 1975).

"Whether consent is voluntary is a question of fact to be determined from the totality of the circumstances." **"Consent to search may be in the form of conduct, gestures, or words."** See, *U.S. v.*

Ramirez-Chilel, (11th Cir. 2002) (finding implicit consent to search where Defendant stepped aside and allowed officers to enter his home).

"We've repeatedly made it clear that consent can be non-verbal; stepping aside and 'yielding the right-of-way' to officers at the front door is valid consent to enter and search." *Gill ex rel. K.C.R. v. Judd*, (11th Cir. 2019).

"To decide whether a consent is voluntary, courts consider a number of factors, including the time and place of the encounter, the number of police officers present, the officers' words and actions, and the age, education, or mental condition of the person detained."

"Consent searches are part of the standard investigatory techniques of law enforcement agencies" and are "a constitutionally permissible and wholly legitimate aspect of effective police activity." *Schneckloth v. Bustamonte*, (S.Ct.1973). The Court has found that it would be unreasonable— indeed, absurd—to require police officers to obtain a warrant when the sole owner or occupant of a house or apartment voluntarily consents to a search. The owner of a home has a right to allow others to enter and examine the premises, and there is no reason why the owner should not be permitted to extend this same privilege to police officers if that is the owner's choice. *Michigan v. Summers*, (S.Ct.1981).

There are three basic rules with regard to consent searches: 1. an individual may define as he chooses the scope of a consensual search; 2. once given, consent may be withdrawn "at any time for any reason;" and 3. a trial court's determination regarding "the scope of the consent given and whether the search conducted was within the scope of that consent are questions of fact to be determined by the totality of the circumstances."

Court's Ruling:

"We start by recognizing that where, as here, no constitutional violation preceded the search, the State must prove consent only by a preponderance of the evidence. A police officer is allowed to approach an individual in public for a conversation—and even ask for identification—without implicating the Fourth Amendment. See, *State v. Gonzalez*, (5DCA 2006). Thus, we review the denial of the motion to suppress with the understanding that the State needed to show only that [Defendant] more likely than not consented to the pat-down search."

"[Defendant] argues that there was no competent, substantial evidence of consent, claiming the evidence was too ambiguous and focusing on the imprecision of his response, 'okay' or 'all right, where at?' To be sure, words spoken between an individual and law enforcement are not always dispositive in determining consent to a search. That is because certain speech may be susceptible to more than one meaning. For example, someone who says 'Yes' in response to 'Do you mind if I search you?' could mean either 'yes, I mind, and therefore you may not search,' or 'no, I don't mind, and therefore you may search.' See, *V.H. v. State*, (2DCA 2005) (concluding that a simple 'Yes' to the question of 'do you mind if I search you?' failed to unequivocally establish consent to search); see also *J.W.E. v. State*, (2DCA 2011) (concluding that a 'Yes' to a similar 'do you mind?' question 'tended to establish that [the defendant] did not consent')."

"We have reviewed the video evidence, and we conclude that [Defendant's] actions resolved any arguable ambiguity in his spoken words and established consent to Price's pat-down. 'Consent to search may be [found] in the form of *conduct, gestures, or words*." Although an individual 'has no obligation to protest or interfere with the search,' his consent may be established by a combination of his oral replies and his body language, *Watson v. State*, (1DCA 2008)."

"Immediately before the search, [Defendant] and Price engaged in a friendly interaction, and nothing indicated that [Defendant] was not free to leave. [Defendant] said 'okay' or 'all right, where at?' when Price explained that the courtesy ride was conditioned on a pat-down search and asked if he could search [Defendant]. Moreover, [Defendant] also raised his arms—a strong, non-verbal indication of consent to the search. See *State v. Gamez*, (2DCA 2010) (holding that the Defendant consented to a search by raising his hands above his head and spreading his feet in response to a request to search his person). And when Price began searching him, [Defendant] did not back away, ask Price to stop, or otherwise object to the search. Finally, when Price asked [Defendant] about the presence of a firearm, [Defendant] answered frankly. [Defendant] began to object only after Price moved to handcuff him. Under these circumstances, the Circuit Court did not err in concluding that the State had met its burden in proving that [Defendant] more likely

than not consented to a pat-down search for weapons. AFFIRMED."

Lessons Learned:

In the present case, the court made a clear finding that Officer Price explained to the Defendant that the courtesy ride off the highway was *conditioned on* a pat-down search and asked if he could search him. The Defendant made the legal issue simpler by consenting to the pat-down. However, the reality was that once Price had encountered the Defendant walking along a highway with no pedestrian walkway, he could not allow Defendant to continue on his way, thereby permitting a noncriminal traffic infraction or civil liability exposure. As the Supreme Court has stated, "It may well be that by voluntarily undertaking to provide Petitioner with protection against a danger it played no part in creating, the State acquired a duty under State tort law to provide him with adequate protection against that danger." *DeShaney v. Winnebago County Department of Social Services*, (S.Ct.1989).

The case law reviewing the transport of juvenile truants to school or a service center is helpful here. See, *D.O. v State*, (3DCA 2011): "Notwithstanding the fact that D.O. had not committed a crime and was not being placed under arrest, he nonetheless was being taken into custody [as truant] and being transported by the officer in a police vehicle... The encounter in this case thus defies classification as either a, 1. search incident to arrest pursuant to a full custodial arrest or, 2. a pat-down search pursuant to a valid temporary detention and reasonable suspicion that the person is armed; rather, the encounter is a hybrid bearing certain characteristics and underpinnings of each."

"Weighing the governmental interests against the individual rights, the balance should be struck in favor of permitting the search conducted in this case. In recognition of the individual interests, and to minimize its intrusiveness, *the search must be limited in scope to a pat-down of the outer clothing* of the juvenile and limited in purpose to locating any weapons on the juvenile's person."

In the present case, Officer Price did in fact conduct an initial pat-down search. See also, *L.C. v. State*, (3DCA 2009). "The uniqueness of this case lies in the fact Officer Quintas **did not** pat-down L.C. prior to directly searching her pockets. *Although we appreciate the concern of officer safety, we are aware of no case that stands for the proposition officers can search an individual without having performed a pat-down simply because the individual is being placed in a police vehicle*."

"To the contrary, case law consistently indicates the officer must have a reasonable belief his safety is in danger and must first perform a pat-down. See, *Ybarra v. Illinois*, (1979) ('A law enforcement officer, for his own protection and safety, may conduct a pat-down to find weapons that he reasonably believes or suspects are then in the possession of the person he has accosted.')."

"In the absence of reasonable suspicion, Officer Quintas was not justified in proceeding to a direct search of L.C. merely because he felt uneasy about his safety, *nor could he do so based upon blanket department policy*. At a minimum, he was required to perform a pat-down. We, therefore, reverse the order denying the motion to suppress."

The D.C.A. did acknowledge the danger to an officer transporting an individual behind the officer's back in a patrol car while the officer was fully focused on the road ahead. "Under these circumstances, the officer has exposed himself to a significantly increased risk of harm from a person with access to a weapon." Thus, conducting a pat-down, not a full search, before transport was reasonable under the 4th Amendment.

Lastly, case law also instructs that where the individual being transported was carrying a backpack, it should be secured in the patrol car trunk rather than Officer conducting a full warrantless search of it. See, *White v. State*, (2DCA 2015), where they concluded, "Thus, we leave open the issue of whether contraband discovered in a warrantless search of a backpack or other bag should be suppressed when the person under protective custody is not being transported to a jail and when the officer has no reason to believe that the item could not be safely transported in the trunk of the officer's vehicle."

Hall v. State
5th D.C.A.
(June 18, 2025)