Legal Eagle

January 2026

Shooting into a Vehicle

Officer David Collier and Officer Raymong Hart went to Jacob Settle's house to execute arrest warrants for him and his wife. Settle was in his truck when the officers arrived. Collier and Hart announced that they were from the sheriff's office and asked Settle, by name, to exit the vehicle. He refused to exit the truck when Collier ordered him to do so. Within seconds, the situation escalated as Collier threatened to break open the vehicle windows, and Settle then started the engine of the truck and placed the transmission into gear. Officer Collier was in a tight space between the truck and the house and feared the truck would hit him and his partner, resulting in his firing his service weapon into the truck. At the time of firing, the Officer was "eight to ten feet" away from the truck. Both bullets went through the driver's side door window, not through the front window. The two shots struck Settle; he died at the scene. Settle's toxicology report showed both methamphetamine and THC carboxy in his blood at the time of death. His Estate sued Officer Collier for excessive force in violation of the Fourth Amendment and for battery under Florida law. Collier invoked qualified immunity and State immunity. The trial court denied Collier's motion for summary judgment. On appeal, that ruling was reversed.

Issue:

Did the shooting of Settle constitute excessive force in violation of the Fourth Amendment? **No**. Did the officer's failure to issue a warning render his use of force excessive in violation of the Fourth Amendment? **No**. Was Officer Collier entitled to self-defense immunity under Florida's Stand Your Ground law? **Yes**.

Reasonableness and Force:

When an officer reasonably believes an assailant's actions place him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise deadly force. An officer does not violate the Fourth Amendment by firing at a suspect when the officer reasonably believed that the suspect had committed a felony involving the threat of deadly force, was armed with a deadly weapon, and was likely to pose a danger of serious harm to others if not immediately apprehended. Under some circumstances, a police officer may therefore use deadly force as a reasonable means to prevent a suspect's escape.

Application of the reasonableness test "requires careful attention to the facts and circumstances of

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each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham v. Connor*, (S.Ct.1989). "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." Unlike the court, the officers "lacked [the] luxury of pausing, rewinding, and playing the videos [of the incident] over and over."

"Outrageously reckless driving" that "poses a grave public safety risk" can be enough to justify the use of deadly force under some circumstances. *Plumhoff v. Rickard*, (S.Ct.2014) (reversing denial of summary judgment for officers who shot at fleeing suspect to end car chase. In the present case, the Court ruled, "even viewing the evidence in the light most favorable to the estate, there was some amount of time between Settle starting the truck and Collier firing the shots. In that short time, Collier recognized Settle's intent to drive the truck and so convert it into a deadly weapon."

Court's Ruling:

"An excessive force claim [that] arises in the context of an arrest ... is most properly characterized as one invoking the protections of the Fourth Amendment, which guarantees citizens the right 'to be secure in their persons ... against unreasonable ... seizures.' *Graham v. Connor* (1989). As the text of the Fourth Amendment suggests, excessive force claims are governed by an 'objective reasonableness' standard. In reviewing the reasonableness of an officer's use of force, 'we look at the fact pattern from the perspective of a reasonable officer on the scene with knowledge of the attendant circumstances and facts, and balance the risk of bodily harm to the suspect against the gravity of the threat the officer sought to eliminate.' *McCullough v. Antolini*, (11th Cir. 2009). Our inquiry does not employ the 20/20 vision of hindsight."

"The use of deadly force is reasonable when an 'officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others.' *Tennessee v. Garner*, (S.Ct.1985). So, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.' 'This rule covers situations in which 1. an officer believed his life was in danger because a suspect used a vehicle as a weapon against the officer or 2. the suspect's use of the vehicle otherwise presented an immediate threat of serious physical harm.' This Court has 'consistently upheld an officer's use of deadly force' under this framework. And the Fourth Amendment does not 'require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect.' *Long v. Slaton*, (11th Cir. 2007)."

"Even if the truck never moved, Collier could reasonably perceive that Settle's vehicle was a deadly weapon. He reasonably interpreted Settle's starting the engine and putting it into gear as escalatory. Common sense would suggest that Settle's next step would be to drive—not to remain stationary. Settle had already resisted arrest; by starting the truck engine and putting it into gear, Collier reasonably believed that Settle intended to escape in reckless disregard of the officers' safety or to evade arrest by injuring them. By starting the engine and putting the transmission into gear, Settle converted his truck into a 'deadly weapon with which [he] was armed.' And because Collier had probable cause to believe Settle intended to drive the truck dangerously, he was not 'required ... to wait [to fire] until the moment' that Settle drove it."

"The estate insists that Collier was unreasonable in firing because he 'was not in the path of the truck' and was about eight feet away when he fired. This argument answers the wrong question. Reasonableness hinges on the perspective of the officer, so the more apt question is whether Collier could have reasonably perceived that he was in the path of the vehicle and that his safety was in danger. See, *Tillis v. Brown*, (11th Cir. 2021). And we do not impose on officers 'the benefit of hindsight.' When officers must make split-second judgments, we accept that they 'do not have time to calculate angles and trajectories to determine whether they are a few feet

outside of harm's way.' "

"Collier was in a narrow space between the car and the porch—even if more than four feet away. Had Collier tried to escape by rushing directly away from the house toward the back of the truck, the air conditioning unit and debris would have obstructed his path. And he reasonably could have feared being struck if the vehicle went in reverse. Moving the other way would have required him to step in front of the vehicle, which had been put into gear. He had no way of knowing what Settle would do next, especially considering that Settle was actively resisting arrest. And he was standing on foot next to Settle's truck, exposing him to danger from the truck's movements. Collier had little-to-no visibility in the 'pitch black' backyard. And Collier no longer had his flashlight in hand. So even if there were a clear path of escape, Collier would not have been able to see it. We cannot hold Collier to the benefit of hindsight by requiring him to have 'calculated angles and trajectories' of the truck's potential paths or for an escape attempt."

"The Estate faults Collier for neither giving a warning that he was about to fire nor 'displaying his weapon' before firing the shots. 'Officers are required to give a warning before using deadly force if a warning is feasible. The critical inquiry is feasibility.' *Davis v. Waller*, (11th Cir. 2022). The feasibility requirement is **not** an 'inflexible rule that, in order to avoid civil liability, an officer must always warn his suspect before firing—particularly where ... such a warning might easily have cost the officer his life.' Settle's rapid escalation and Collier's proximity to the truck put Collier in immediate danger, so he was not required to issue a warning before firing. …Settle put the truck in gear as if to drive. In the light of the proximity of the truck to Collier, Collier's lack of visibility, and Settle's escalatory actions, Collier could forego a warning. A delay could have put his or Hart's life in danger."

Lastly, the 11th Circuit found that Florida's Stand Your Ground law immunized the officer from criminal or civil liability: "Florida's self-defense immunity statute provides that a 'person who uses or threatens to use force as permitted in section 776.012 ... is justified in such conduct and is immune from ... civil action for the use or threatened use of such force.' Fla. Stat. § 776.032(1).

Section 776.012 also provides that a person who 'reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself ... or another' may use deadly force, and that there is no 'duty to retreat' before using or threatening to use such force. We have ruled that section 776.012 is at least co-extensive with the Fourth Amendment standard for the use of deadly force. See, *Penley v. Eslinger*, (11th Cir. 2010). Because Collier's use of deadly force was not excessive in violation of the Fourth Amendment, Collier was also entitled to immunity from the Estate's claim of battery. REVERSED."

Lessons Learned:

Importantly, this is not a case where the Officer stepped in front of a moving vehicle, thereby creating the circumstance where the use of deadly force became necessary. Officer Settle was standing off to the right side of the vehicle on the edge of the curb or near the house. He was yelling simple, non-contradictory orders to exit the truck, yet Collier did not comply, rather escalating the situation by placing the vehicle in gear. See also, *Baxter v. Santiago-Miranda*, U.S. Court of Appeals, 11th Cir. (Nov. 13, 2024).

The 11th Circuit ruling herein is consistent with *State v. Peraza*, (4DCA 2017); affirmed by the Florida Supreme Court, (2018), holding that, "law enforcement officers are eligible to assert Stand Your Ground immunity, even when the use of force occurred in the course of making a lawful arrest. Based upon the trial court's findings of fact, Deputy Peraza is entitled to that immunity and is therefore immune from criminal prosecution. Accordingly, we approve the Fourth District's decision." Thus, there was no duty to give a warning that he was about to fire, nor 'to display his weapon' before firing, nor a duty to retreat. Force may be met with equivalent force.

Shooting into an occupied vehicle has come under court scrutiny. Officers should review their department General Orders and be mindful of any restrictions on the use of deadly force. As an example:

"Firing a weapon at a moving vehicle is prohibited, unless the occupant of a vehicle is using or threatening to use deadly force by means other than the vehicle itself and the employee reasonably believes there is an imminent threat to life."

Settle v. Collier
U.S. Court of Appeals – 11th Cir.
(Dec. 09, 2025)

HOLIDAY SAFETY ALERT

BE AWARE OF SCAMS & PACKAGE THEFTS THIS SEASON

Common Holiday Scams to Watch Out For

- Fake Delivery Notifications: Don't click suspicious links.
- Verify directly with the delivery company.
- Online Shopping Scams: Beware of deals that look too good to be true.
- Phone & Gift Card Scams: No real agency will ever ask for gift card payments.

Prevent Package Theft

- Track all packages through delivery apps.
- Request secure drop-off locations or signature delivery.
- Ask trusted neighbors for help receiving packages.
- Ensure home cameras and doorbell systems are working.

We're here to help keep your holidays safe! If you see something, say something.

Recent Case Law

Multi-Unit Search Warrant

Officers executed a search warrant at 4279 Violet Circle, Lake Worth, FL 33461. The officers were seeking evidence against Defendant Steven Schmitz. At the time the officers swore out and executed the warrant, they believed that 4279 Violet Circle was a single-family home occupied by Schmitz. However, Schmitz lived in one of three efficiency apartments on the back of the single-family home at 4279 Violet Circle. The apartments, including Schmitz's, lacked their own addresses, mailboxes, or any markings demarcating them as separate residences from the single-family home. Accordingly, when the officers began executing the search warrant and asked for Schmitz, they had to be directed by residents in the other units to the front door of his apartment. The Violet Circle homeowner testified that "unless you enter the backyard of [the main] residence, you wouldn't know if those efficiencies existed." Even "standing directly in front" of the main residence, a person would not be able to tell that the efficiency apartments existed. Searching officers found the guns and drugs they were looking for, and Schmitz was charged with unlawful possession of those items.

Officer Valencia testified that when he initially applied for the search warrant, he did not know about the efficiency apartments on the property despite reviewing property records. The County property appraisal stated that the residence "was a one single-family home."

Schmitz moved to suppress the guns and drugs, arguing that the search warrant was defective under the Fourth Amendment for listing the address of the single-family home—rather than his specific apartment—as the premises to be searched. The trial court denied Schmitz's motion. On appeal, that ruling was affirmed.

Issue:

Did the search warrant comply with the Fourth Amendment despite not specifying Schmitz's apartment as the premises to be searched? **Yes.**

Search Warrant Probable Cause:

To be reasonable under the Fourth Amendment, a search warrant must not be overbroad; its breadth must be limited to the scope of the probable cause on which the warrant was based. To determine whether a warrant was overbroad, courts review, with deference, whether the issuing judge had a substantial basis to conclude that the affidavit supporting the search warrant established probable cause. Probable cause "is not a high bar." *Kaley v. United States*, (S.Ct. 2014).

A search warrant affidavit will demonstrate probable cause "if, under the totality of the circumstances, it reveals a fair probability that contraband or evidence of a crime will be found in a particular place." What is needed is only a *fair probability* and not a certainty that evidence of a crime or contraband will be found. See, *Illinois v. Gates*, (S.Ct.1983).

"When a structure contains two residences or two residences share a lot, there must be probable cause to search each. But in *United States v. Alexander*, (9th Cir. 1985), the court held that a warrant authorizing the search of an entire ranch was not overbroad, even though there were multiple dwellings on the ranch, because the entire property was under the suspect's control. The court explained that a warrant is valid when it authorizes the search of a street address with several dwellings if the Defendants are in control of the whole premises, if the dwellings are occupied in common, or if the entire property is suspect."

An Officer's authority to search property listed in a search warrant is not unlimited. If officers know or should know there is a risk that they are searching a residence that was erroneously included in a search warrant, then they must stop the search as soon as they are "put on notice" of that risk. "The *discovery of facts demonstrating that a valid warrant was unnecessarily broad does not retroactively invalidate the warrant*." *United States v. Ofshe*, (11th Cir. 1987). The Court cautioned, however, that if "the officers had known, or even if they should have known, that there were two separate dwelling units on the third floor of 2036 Park Avenue, they would have been obligated to exclude respondent's apartment from the scope of the requested warrant."

See, *Maryland v. Garrison*, (S.Ct.1987).

The Fourth Amendment provides, in relevant part, that search warrants must "particularly describe the place to be searched." "This particularity requirement exists to protect individuals from being subjected to general, exploratory searches." *United States v. Moon*, (11th Cir. 2022). But "elaborate specificity is unnecessary." *United States v. Strauss*, (11th Cir. 1982). A "warrant need only describe the place to be searched with sufficient particularity to direct the searcher, to confine his examination to the place described, and to advise those being searched of his authority." *United States v. Burke*, (11th Cir. 1986). "An erroneous description of premises to be searched does not necessarily render a warrant invalid," so long as "the search warrant describes the premises in such a way that the searching officer may with *reasonable effort* ascertain and identify the place intended."

Court's Ruling:

"Maryland v. Garrison controls our conclusion in this case that the search warrant complied with the Fourth Amendment's particularity requirement and lawfully authorized a search of Schmitz's efficiency apartment. As in *Garrison*, 'the description of [4279 Violet Circle] was broader than appropriate because it was based on the mistaken belief that there was only one' residence at that address when, in fact, there were four: the main residence and the three efficiency apartments. But the officers' mistaken belief that 4279 Violet Circle was only one residence was premised on '*a reasonable investigation*,' and the record does not demonstrate that the officers 'had known, or even [that] they should have known, that there were ... separate dwelling units' on the property when they sought the warrant."

"Specifically, [Officer] Valencia and his team surveilled 4279 Violet Circle at least once per week for over six months, but from their vantage points they could never see the efficiency apartments. The officers could see Schmitz arrive at and leave the property, but they could not see that Schmitz entered and exited the residence through his own door rather than through the main residence. Valencia and his team did not see any physical signs of multiple units because none existed. *The house had just one mailbox, just one address, just one garbage can, and no exterior markings delineating the apartments*. Indeed, it was impossible to see the attached efficiencies unless a person was in the backyard of the property. Additionally, officers conducted a trash pull that yielded mail with just one address on it along with drug residue for which officers were investigating Schmitz. And for good measure, Valencia reviewed county property records, which also revealed that 4279 Violet Circle was 'one single-family home.'

"Only after officers executed the warrant did they learn that '4279 Violet Circle' includes premises that do not belong to Schmitz and that Schmitz cannot access. But this *ex post facto* 'discovery of facts demonstrating that a valid warrant was unnecessarily broad does not retroactively invalidate the warrant.' Accordingly, because officers reasonably investigated 4279 Violet Circle and reasonably concluded that the property was just one residence, the search warrant listing just that address instead of Schmitz's specific apartment was valid."

Defendant argued on appeal that the Building Permit issued by the City should have put the officers on notice that there were other apartments within the dwelling. The Court of Appeal disagreed. "The permit is of little use. … The description of the permit was for [homeowner] to 'convert family room & porch into 1 bedroom and 1 bathroom addition.' Nothing about that description suggests that [homeowners] were turning parts of their house into three separate apartments that they were then planning to rent out."

"Finally, Schmitz argues that police should have known multiple units existed on the property because officers knew 'several unrelated people were actively living there.' We reject the logic of this argument. Unrelated people sharing a single-family home is not an uncommon phenomenon. Without more, the fact that unrelated people lived at 4279 Violet Circle could not put police on notice that the property had multiple distinct residences."

"In sum, Schmitz has failed to show that the officers in this case *knew or should have known* that 4279 Violet Circle was a multi-unit residence. Indeed, the record reflects that officers reasonably believed, based on a reasonable investigation, that the residence was a single-family home when they sought the first search warrant. Accordingly, the warrant was valid. Thus, the [trial] court properly denied the motion to suppress. AFFIRMED."

Lessons Learned:

The present case is an example of the officers' good faith belief that their warrant was accurate. Several earlier cases are germane to this analysis. In each the officers *ignored warning signs* that their warrant application did not describe the place to be searched with sufficient particularity: *Maryland v. Garrison*, (S.Ct.1987), Officers who were executing a search warrant and who were put on notice of a risk that they had entered a home that was unconnected with the illegal activity described in the warrant had an immediate duty to retreat.

United States v. Bershchansky, (2d Cir. 2015), The agents signed a search warrant application verifying in detail that they wanted to search Apartment 2 at a certain location where the Defendant supposedly lived and where his computer IPS address was located. The warrant was issued. When the agents arrived, *they realized* that the Defendant lived in Apartment 1. Regardless, they searched that apartment. The Second Circuit held that the search was improper and was not conducted in good faith.

United States v. Ritter, (3rd Cir. 2005), the police obtained a search warrant for a house but learned after entering that it was a multi-dwelling structure. The proper course of conduct was for the police to return to the magistrate and seek a more particularized warrant. In deciding whether to suppress any evidence, the question is what the police observed before determining that the house was a multi-dwelling structure.

United States v. Schmitz
U.S. Court of Appeals, 11th Cir.
(Sept. 25, 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*. *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 search incident to arrest pursuant to a full custodial arrest or, 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, however, the danger to an officer transporting an individual behind his back in a patrol car, while 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 Fourth 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 the backpack prior to placing it in the passenger compartment.

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