LEGAL EAGLE

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Seizure of a Runaway

S.M.'s father reported to deputies that she had turned twelve years old just six days earlier, and had "gone missing, run away." S.M.'s father and others had been looking for her for several hours, without success. He thereafter reported S.M. missing and explained to law enforcement that she frequently visited an abandoned building in Winter Haven.

When deputies arrived at the suspected abandoned building, they spotted S.M. and other juveniles inside, who saw them and took off running. One deputy was able to catch S.M., who struggled, thrashed, cursed the deputies, and threatened to run away again. The deputies decided to handcuff her to put her in the car. As the deputies walked to the car with her between them, S.M. kicked one of the deputies. She was charged with resisting an officer without violence and battery on a law enforcement officer. The trial court denied S.M.'s motion for judgment of dismissal, found her guilty of the two offenses, withheld adjudication, and placed her on probation.

S.M. argued on appeal that the trial court erred in denying her motion to dismiss both charges, alleging that the officers were not in the lawful performance of their duties when the charged offenses occurred. The D.C.A. disagreed and affirmed the convictions.

Issue:

Were the officers acting within their lawful duties when they seized S.M. as a runaway? **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. 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.

"To determine whether an

officer had reasonable suspicion for an investigatory stop, we look at the totality of circumstances. Law enforcement must be able to articulate a well-founded suspicion of criminal activity in light of the officer's training and experience. Mere suspicion is not enough."

In the present case, there is no question but that the officers were acting within their lawful authority. F.S.984.13, Taking a child into custody, provides:

(1) A child may be taken into custody:

(a) By a law enforcement officer when the officer reasonably believes that the child has run away from his or her parents, legal guardian, or custodian.

The statute acts much in the same manner when seizing truants. F.S. 984.13 provides in part, (1) A child may be taken into custody:

(b) By a law enforcement officer when the officer has reasonable grounds to believe that the child is absent from school without authorization or is suspended or expelled and is not in the presence of his or her parent or legal guardian, for the purpose of delivering the child without unreasonable delay to the appropriate school system site.

Truancy by its very nature is not a crime. It is a status offense. One based on the person's status as a child. The primary purpose of Florida's truancy laws appears to be the promotion of academic success. (Sec. 1003.26, F.S.)

"An 'arrest' by an officer under a truancy statute is a severely limited type of arrest, the sole purpose of which is to quickly place the minor in a school setting, and the arresting officer may not use the truancy arrest as a pretext for investigating criminal matters." *L.C. v. State*, (3DCA 2009)

Court's Ruling:

"We begin our analysis with the observation that both of the offenses with which S.M. was charged, resisting without violence and battery on a law enforcement officer, require the deputies' engagement in the *lawful performance of a legal duty* when the offenses occurred. See, § 784.07(2)(b) ('Whenever any person is charged with knowingly committing ... battery upon a law enforcement officer ... while the officer ... is engaged in the lawful performance of his or her duties, the offense for which the person is charged shall be reclassified ... [to a third-degree felony].'); see also, § 843.02 (stating that a person who 'resists, obstructs, or opposes any officer ... in the *lawful execution of any legal duty*' without violence is guilty of the offense of resisting an officer without violence, a first-degree misdemeanor)."

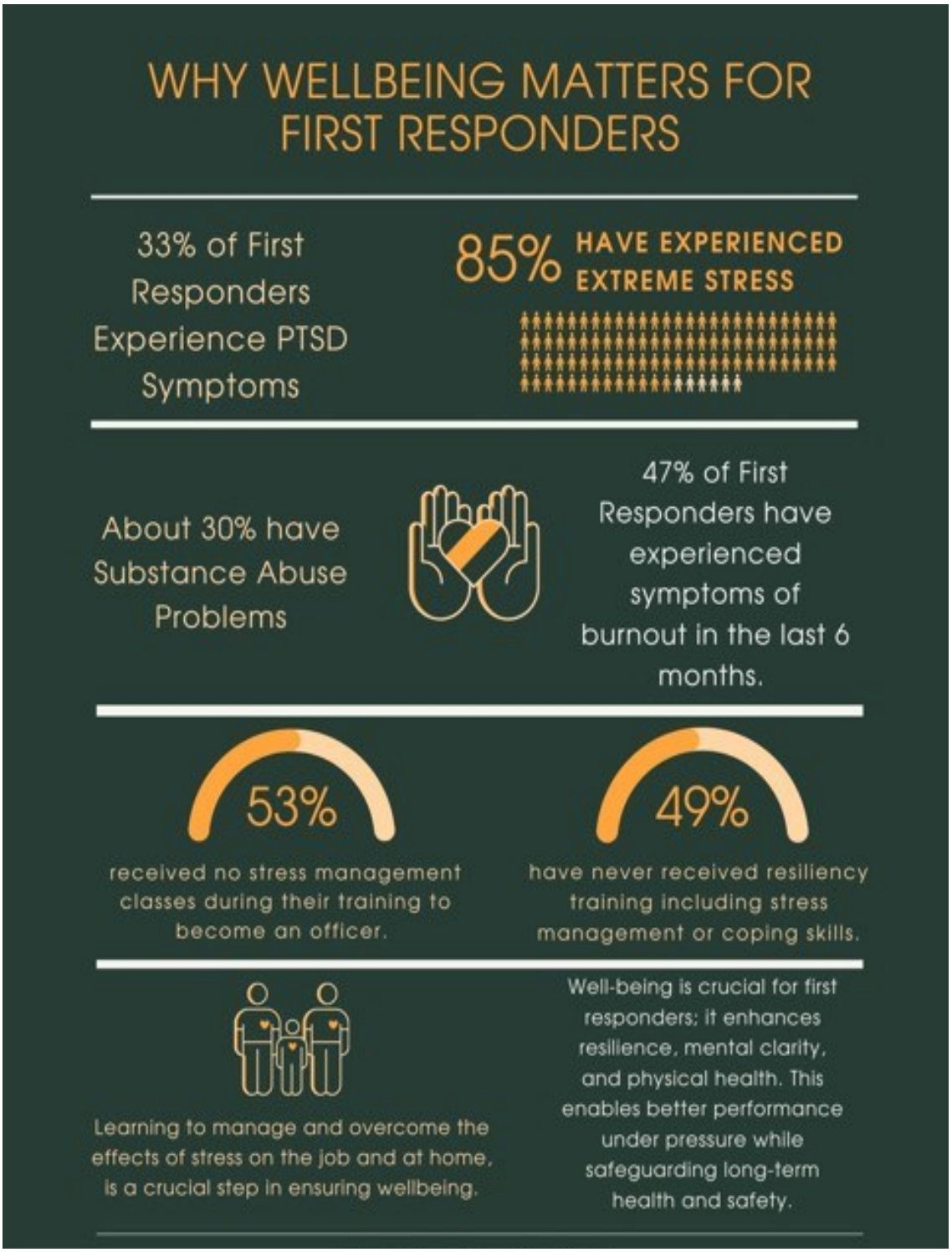
"S.M. asserts that the deputies were not, in fact, engaging in the lawful performance of a legal duty when the incident occurred. Specifically, she argues that the deputies overreacted and exceeded the scope of their lawful duties when they detained and handcuffed her. In her view, once the deputies determined she was where her father suspected she might be, the only lawful act the deputies could have performed was to report back to her father that they had located her at the vacant house. S.M. posits that the 'only possible reason' the deputies chased her when she fled the house upon seeing them was that she ran from them. She cites case law for the proposition that flight alone does not give a founded suspicion to justify a detention. See, *Robinson v. State*, (1DCA 2004) ('Flight alone is not a proper basis for a founded suspicion of criminal activity as would justify an arrest, or even an investigatory stop.'); *Hernandez v. State*, (3DCA 1999) Defendant's attempt to leave the area when he saw the police officer was not, by itself, enough to create a reasonable suspicion. However, flight can be considered when there are other suspicious circumstances."

"We disagree because S.M.'s running was not what triggered the deputies to detain her and was, in fact, immaterial. The deputies were actively looking for S.M. so that they could take her into temporary custody and return her to the custody of her father, who had reported that she was a missing, runaway child. They were going to temporarily detain her once they found her, regardless of whether she ran."

"The question is whether the deputies had the lawful authority to take temporary physical control of S.M. to return her to her father. That answer is 'Yes.' "

Section 984.13(1)(a), F.S., expressly authorizes law enforcement to take a child into custody 'when the officer has reasonable grounds to believe that the child has run away from his or her parents, guardian, or other legal custodian.' Here, there were reasonable grounds to believe S.M. had run away because her father had reported her as a missing, runaway child. *Because the deputies had reasonable grounds for their belief, the deputies were engaging in the lawful execution of a legal duty when they located S.M.*

(Continued on page 10)



Source: Palm Beach County Sheriff's Office

First responders should contact their Employee Assistance Program to access stress management and coping skills training.

Recent Case Law

Voluntary DUI Blood Draw

George Marshall's vehicle struck a pedestrian. The pedestrian died at the scene. Ultimately, a traffic homicide investigator concluded Marshall had "neither caused nor contributed to this accident," noting evidence that the pedestrian had been intoxicated and jaywalking when he ran into vehicle traffic.

However, at the accident scene, several investigating officers observed signs of Marshall's own intoxication, primarily the odor of an alcoholic beverage emanating from his person. He readily admitted he had consumed alcoholic beverages earlier in the day. A DUI unit officer asked him to consent to a blood draw because he showed signs of impairment and because the accident had involved, at a minimum, serious bodily injury. No person told him he "had to" submit to a blood draw. The DUI officer never provided *Miranda* warnings because Marshall was not under arrest, nor did the officer explicitly tell him that the officer was conducting a DUI investigation. In response to the request to give a blood sample, Marshall asked if he had any alternatives. The officer failed to respond to this question but told him that "it's his right" not to submit to a blood draw.

Ultimately, Marshall signed a consent form for the blood draw and submitted to it. The DUI officer acknowledged that the form did not state that a person has a constitutional right to refuse the blood test. Marshall's blood was drawn twice at the accident scene, and the results showed his blood alcohol level was .142 and .138, both above the legal limit. The State ultimately charged him with misdemeanor driving under the influence.

Defendant moved to suppress the blood draw results, arguing he had not "consented" to that draw and Florida's "implied consent" law did not apply because he did not cause or contribute to the accident. The trial court granted Defendant's motion to suppress. On appeal, the 4th D.C.A. sent the case back to the trial court to explain the basis for its ruling.

Issue:

Did the Defendant consent to the blood draw? **Yes**. Was the blood test thereby outside the scope of the implied consent law? **Yes**.

Implied Consent Law:

The "Implied Consent" law is defined in Section 316.1932(1)(c), F.S. Under the law, any person who accepts the privilege of driving within the State of Florida is deemed, by operating a vehicle, to have given his or her consent to submit to lawful requests for breath or urine testing for the purpose of determining the alcohol content of his or her breath or blood, or for detecting the presence of chemical or controlled substances if lawfully arrested for DUI.

In other words, by accepting the privilege of driving in Florida, a person legally accepts the responsibility of permitting law enforcement to test for the presence of alcohol or drugs in the course of a lawful arrest for DUI. "The implied consent statute and its exclusionary rule 'apply only when blood is being taken from a person based on *probable cause* ... as a result of a DUI offense specified in the statutes.' " *State v. Murray*, (5DCA 2011) (quoting *Robertson v. State*, (Fla. 1992).

Breath Test: A breath test may only be requested as incident to a lawful DUI arrest. The test is conducted at the request of a law enforcement officer who has probable cause to believe such person was driving or was in actual physical control of a motor vehicle within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. Thus, police may request a breath test in conjunction with a urine test.

Blood Test: Use of a blood test is more limited. There are three circumstances when police can request or compel a blood test of a driver suspected of DUI: 1. when the person appears for treatment at a hospital, clinic or other medical facility and breath or urine testing is impractical or impossible; 2. when there is probable cause to believe that a DUI driver has caused death or serious bodily injury; and 3. by ***voluntary consent of the suspect driver***. Section 316.1932(1)(a) applies when the blood test is "incidental" to a lawful arrest and conducted "at the request of a law enforcement officer

who has reasonable cause to believe [the individual] was driving or was in actual physical control of a motor vehicle while under the influence" of alcoholic beverages. The statute also requires the driver to be informed that refusal to submit to a blood test will result in consequences to his or her driver's license privileges. Additionally, this section applies when the driver appears at a hospital or medical facility for treatment.

Court's Ruling:

While the D.C.A. had issues with the trial court's suppression order, it did make the law clear. "Section 316.1932(1)(a) applies when the blood test is "incidental" to a lawful arrest and conducted "at the request of a law enforcement officer who has reasonable cause to believe [the individual] was driving or was in actual physical control of a motor vehicle while under the influence" of alcoholic beverages. Here, [Defendant] was not 'lawfully arrested' before the blood test was performed, nor informed of the refusal consequences as outlined within section 316.1932 (1)(a). *Dep't of High. Saf. & Motor Veh. v. Whitley*, (5DCA 2003) (recognizing that a lawful arrest must precede administration of the breath test). And Sec. 316.1932(1)(c) applies when the driver appears at a hospital or medical facility for treatment. [Defendant's] blood draw occurred in a fire rescue ambulance parked at the accident scene, not at a hospital or medical facility."

"Section 316.1933 requires law enforcement to perform a blood test if the officer has 'probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury of a human being.' 'Evidence that a driver was drinking coupled with evidence that the driver caused a serious or fatal accident suffices for probable cause to compel a blood draw under section 316.1933(1).' *State v. Acevedo*, (4DCA 2023)."

"Here, officers were investigating the circumstances of the pedestrian's death when [Defendant's] blood draw occurred. The State ultimately concluded [Defendant] did not cause the pedestrian's death. Nevertheless, the State argues—as an alternative to its 'voluntary consent' theory—that the DUI officer had 'probable cause' to believe [Defendant] was under the influence based on observed signs of impairment (alcohol odor, red and watery eyes) and because [Defendant's] car caused the pedestrian's death. The trial court rejected this argument, finding a lack of probable cause to believe [Defendant] was under the influence, because the investigating officer had detected the odor of an alcoholic beverage coming from [Defendant], as distinguished from *Acevedo*, which involved 'a strong odor' "

"Whether consent is voluntary is a question of fact determined by the totality of the circumstances. The State has the burden of showing the voluntariness of consent by a preponderance of the evidence, and this burden is not satisfied by a mere submission to authority. Here, the trial court made conflicting findings regarding consent. While explicitly finding [Defendant] had voluntarily consented to the blood draw, the trial court appears to have also negated the 'voluntariness' element by reference to our opinion in *Chu v. State*, (4DCA 1988)."

"*Chu* involved a blood test administered outside of a hospital or other medical facility. We refused to exclude a blood test requested outside of a medical facility if that test was the result of voluntary consent and 'provided [that] the person has been fully informed that the implied consent law requires submission only to a breath or urine test and that the blood test is offered as an alternative.' "

The D.C.A. then considered a 5th D.C.A. ruling that reached a contrary result. "In *State v. Murray*, (5DCA 2011), the Fifth District Court addressed a situation similar to the instant case. There, the Defendants were involved in a crash that killed another driver. Although neither Defendant appeared to be impaired or under the influence of alcoholic beverages, the police asked the Defendants to voluntarily provide blood samples. No implied consent warnings were given, and the Defendants signed written consent forms."

"The lower court suppressed the blood for the reasons set out in *Chu*. However, the 5th DCA reversed, finding that "the *Murray* Defendants 'were not under lawful arrest and did not seek medical treatment, and the Troopers did not have probable cause to believe that they were impaired ... the implied consent law was clearly not implicated.' "

"*Murray* highlighted that 'a person only receives the protection of the implied consent law if the testing provisions of that law are being utilized by the State. **'If the Defendant has consented to the test ...**

then the blood test falls wholly outside the scope of the implied consent law.' "

"Accordingly, we quash the trial court's suppression order and remand for the trial court to either apply *Murray* or explain the basis for not doing so and render a new determination consistent with that application. Quashed and remanded."

Lessons Learned:

The U.S. Supreme Court reviewed this issue in *Birchfield v. North Dakota*, (June 23, 2016): "Having assessed the effect of BAC tests on privacy interests and the need for such tests, we conclude that the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving. The impact of breath tests on privacy is slight, and the need for BAC testing is great."

"We reach a different conclusion with respect to blood tests. Blood tests are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test. Respondents [State governments] have offered no satisfactory justification for demanding the more intrusive alternative without a warrant."

"It is true that a blood test, unlike a breath test, may be administered to a person who is unconscious (perhaps as a result of a crash) or who is unable to do what is needed to take a breath test due to profound intoxication or injuries. But we have no reason to believe that such situations are common in drunk-driving arrests, and when they arise, the police *may apply for a warrant* if need be."

"Because breath tests are significantly less intrusive than blood tests and in most cases amply serve law enforcement interests, we conclude that a breath test, but *not a blood test*, may be administered as a search incident to a lawful arrest for drunk driving. As in all cases involving reasonable searches incident to arrest, a warrant is not needed in this situation."

"Having concluded that the search incident to arrest doctrine does not justify the warrantless taking of a blood sample, we must address Respondents' alternative argument that such tests are justified based on the driver's legally implied consent to submit to them. It is well established that a search is reasonable when the subject consents… It is another matter, however, for a *State not only to insist upon an intrusive blood test, but also to impose criminal penalties on the refusal to submit to such a test. There must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads*…. Applying this standard, **we conclude that motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense**."

State v. Marshall
4th D.C.A.
(Aug. 13, 2025)

Pretext Stop

An F.H.P. Trooper sat stationary in his patrol car, observing traffic, tasked with intercepting the flow of contraband and criminal activity. Trooper noticed a black sedan with the driver being "seated very low in his vehicle and pushed back behind the B-pillar"—a posture the trooper took to be "not normal" and "unusual." The trooper, believing the driver's behavior to have been "unusual" and "suspicious," asked FHP's regional communications center to verify the validity of the sedan's vehicle tag. Trooper received information from the communications center that the registered owner was Cedrick Powell, who did not have a valid license.

Believing Powell to be operating the sedan without a valid driver's license, Trooper initiated an investigatory traffic stop. Upon approaching the passenger side of Powell's car, about a foot away from the window, Trooper detected the odor of "fresh green marijuana." He asked Powell for his driver's license, registration, and proof of insurance. The Trooper explained to Powell the reason for the stop, informing him that when he ran Powell's tag, he did not have a valid driver's license. Powell confirmed that he had a valid Florida driver's license but that it had been stolen. Roughly eight minutes into the stop, dispatch confirmed Powell did in fact have a valid Florida driver's license.

Trooper told Powell that he smelled marijuana in his car. Powell did not correct him or try to claim that he had hemp. Instead, he admitted to having smoked marijuana in his car the previous evening, but he claimed no marijuana was presently in his car. *He also confirmed he did not have a medical marijuana card*. After placing Powell in the backseat of the patrol car, Trooper started searching Powell's vehicle and found drugs. Specifically, thirteen grams of raw, unburnt marijuana and less than one gram of ecstasy in the car. Trooper then placed Powell under arrest.

Before trial, Powell moved to suppress the items discovered in his car, as well as his statements, arguing the trooper had conducted an unlawful stop, detention, and search. The trial court granted the motion, basing its decision on "profiling." The court explained, "*This is pretext*. Because the only reason he would go after any vehicle is because he suspects they're transporting illegal drugs. And I don't – he would never have followed or pursued Mr. Powell had he not come up with the *pretext* argument that he looks like a drug dealer because of the way he is sitting in his vehicle." On appeal, that ruling was reversed.

Issue:

Did the trial court err by granting the motion to suppress based on the appearance of pretextual motivation for the stop? **Yes**.

Whren v. United States:

The 6th Circuit ruled in *State v. Hickman*, (6DCA 2023), that the trial court erred by relying on the officer's subjective intent in effecting the stop. "The Fourth Amendment to the United States Constitution and section 12 of Florida's Declaration of Rights guarantee citizens the right to be free from unreasonable searches and seizures. See, *Golphin v. State*, (Fla. 2006). A traffic stop is a seizure. See, *Whren v. United States*, (S.Ct.1996). This type of seizure is considered reasonable, though, under the Fourth Amendment where an officer has probable cause to believe a traffic violation has occurred. Thus, when addressing the constitutional validity of a traffic stop, Florida courts employ a "strict objective test which asks only whether any probable cause for the [traffic] stop existed."

Stated differently, *the officer's subjective motivation for speaking to [driver] is irrelevant to the determination of whether the stop was reasonable*. "Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." See, *Whren*. "In determining whether the suppression order in the instant case should be reversed, we are constrained to review the record under the objective test of *Whren*. When applying the objective test, generally the only determination to be made is whether probable cause existed for the stop in question." See *Holland v. State*, (Fla.1997).

The temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures, *even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective*. In *Holland v. State*, the Supreme Court found *Whren* binding on Florida courts and overruled *State v. Daniel*, (Fla. 1995), which created the "reasonable officer" test.

Court's Ruling:

"An investigative traffic stop is thus 'subject to the constitutional imperative that it not be 'unreasonable' under the circumstances.' See, *Kansas v. Glover*, (S.Ct.2020) (explaining that 'the Fourth Amendment permits an officer to initiate a brief investigative traffic stop when he has a particularized and **objective** basis for suspecting the particular person stopped of criminal activity.' In this context, *the U.S. Supreme Court rejected the pretext objection to a stop, adopting instead a purely objective test*. See, *Whren*, noting that prior cases 'foreclose any argument that the constitutional reasonableness of traffic stops depends on the *actual motivations* of the individual officers involved,' so '**subjective** intentions play no role' in the Fourth Amendment analysis. Rather, we apply a strictly objective test, which asks only *whether the particular officer who initiated the traffic stop had an* **objectively** *reasonable basis for making the stop*."

"Applying these precepts to the issue before us, we find the 'whole picture' presented to the Trooper provided a particularized and objective basis to suspect that Powell was operating his car without a valid driver's license, a misdemeanor offense in Florida. To be sure, Powell's 'unusual' and 'suspicious' posture first caught the Trooper's attention, prompting a deeper probe based on those observations. That, however, is not relevant here, as the trooper did not initiate the traffic stop on that basis alone."

"Before initiating the stop, the Trooper knew the car had a valid Louisiana tag, the car was registered to Powell, and the car was associated with an expired Louisiana identification card in Powell's name. The Trooper also identified the driver of the car as Powell after obtaining a photograph of Powell. The Trooper, however, did not know Powell had a valid Florida driver's license until Powell claimed to have one that had been stolen, and dispatch did not confirm Powell had one until eight minutes into the stop. That is, at the time of the stop, the Trooper possessed no exculpatory information—let alone sufficient information to rebut the reasonable inference that Powell was driving his Louisiana-

registered car without a valid Louisiana license. On these facts, the Trooper combined database information and commonsense judgments to "form a reasonable suspicion that [Powell] was potentially engaged in specific criminal activity—driving without a valid driver's license,' rendering a sufficient basis for further investigation. The stop was justified."

"Viewed in this context, the record before us amply supports a finding that probable cause existed to search Powell's car. The Trooper had several years of experience with the Criminal Interdiction Unit—the sole mission of which is to interdict drug couriers and other criminal activity—and he had conducted roughly 1,500 traffic stops. He was familiar with the odor of marijuana, having smelled it 'on a regular basis' while conducting those stops. Powell also confirmed to the Trooper that *he did not have a medical marijuana card*. And it must not be overlooked that Powell openly admitted to the Trooper that he had smoked marijuana in his car the night before, rather than attempt to mitigate the Trooper's observation by claiming that the smell emanated from hemp."

"In finding the Trooper initiated the traffic stop on a pretextual basis and granting the motion to suppress, the trial court committed legal error. The Trooper had an objectively reasonable basis for conducting the traffic stop and, during the ensuing investigation into the reason for the stop, the Trooper developed probable cause sufficient to justify his searching Powell's car. The order granting suppression cannot stand. **REVERSED**."

Lessons Learned:

Suffice it to say, the "reasonable officer test" is dead.

Defendants have claimed that because the police may be tempted to use commonly occurring traffic violations as a means of investigating violations of other laws, the Fourth Amendment test for traffic stops should be whether a "reasonable officer" would have stopped the car for the purpose of enforcing the traffic violation at issue. However, the Florida Supreme Court in *Holland v. State* (1997), foreclosed the argument that ulterior motives can invalidate police conduct justified based on probable cause. In short, if there is a legitimate violation of traffic laws, there cannot be a charge that it was a "pretext stop" by law enforcement.

The constitutionality of a traffic stop is not dependent on the motivations, biases, or prejudices of the individual officer involved, but only whether the particular officer who initiated the traffic stop had an objectively reasonable basis for making the stop."

"Since an actual traffic violation occurred, the ensuing search and seizure of the offending vehicle was reasonable." *Whren v. United States* (S.Ct.1996).

Therefore, **write the traffic ticket** (warning)! It will rebut any argument made at the inevitable motion to suppress.

State v. Powell
1st D.C.A.
(Aug. 6, 2025)

Opinion Evidence

In a trial where Defendant argued self-defense the lead detective was asked by the State, "From your review of all of the evidence ... did you have any indication from the physical evidence or otherwise that this was an accidental shooting?"

Before the Detective could answer, defense counsel objected due to *improper opinion on an ultimate issue and invading the province of the jury.* The trial court overruled the objection, and the Detective answered, "No, I did not think it was accidental. In my experience from working all sorts of shootings and different cases, it's very uncommon for someone to just accidentally pull a trigger."

Issue:

May a law enforcement officer, testifying as a lay witness, offer his opinion on the ultimate issue under consideration by the jury at trial? **No**.

Lay Person Testimony:

"Acceptable lay opinion testimony typically involves matters such as distance, time, size, weight, form, and identity." "Opinion testimony of a lay witness is only permitted if it is based on what the witness has personally perceived." *Fino v. Nodine,* (4DCA 1994).

Non-eyewitnesses may testify as to the identification of persons depicted or heard on a recording, so long as it is clear the witness is in a *better position than the jurors to make those determinations*. See, *State v. Cordia*, (2DCA 1990) (finding that officer's identification of Defendant's voice on a recording was admissible where officer had worked with Defendant in the past and was familiar with his voice).

However, when factual determinations are within the realm of an ordinary juror's knowledge and experience, such determinations and the conclusions to be drawn therefrom must be made by the jury.

See, *Ruffin v. State*, (5DCA 1989) (finding the court erred in allowing three officers to identify defendant as the man in the videotape, where the officers were not eyewitnesses to the crime, did not have familiarity with Ruffin, and were not qualified as experts in identification); see also, *Proctor v. State*, (5DCA 2012) (finding court erred in allowing officer to identify defendant as the perpetrator in a surveillance video where the *officer was in no better position than the jury to make that determination*).

Court's Ruling:

" 'Generally, a lay witness may not testify in terms of an inference or opinion, because it usurps the function of the jury.' *Floyd v. State*, (Fla. 1990). However, a lay witness is permitted to testify in the form of opinion or inference as to what the witness perceived when:

1. The witness cannot readily, and with equal accuracy and adequacy, communicate what he or she has perceived to the trier of fact without testifying in terms of inferences or opinions and the witness's use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and 2. The opinions and inferences do not require a special knowledge, skill, experience, or training.

"Thus, 'opinion testimony of a lay witness is only permitted if it is based on what the witness has personally perceived.' *Fino v. Nodine*, (4DCA 1994); *Bolin v. State*, (Fla. 2010) (An intelligent person with some degree of experience may testify as a lay witness to what they observe.'). 'The lay witness's testimony must be grounded in reliability and personal perception rather than speculation.' *Lewek v. State*, (4DCA 1997)."

"Here, Lead Detective did not personally observe the shooting. When he first arrived at the shooting scene, 'most of the witnesses were gone' and Defendant was not there. Lead Detective assigned other deputies to interview witnesses, go to the hospital, locate Defendant, and process the crime scene. He viewed video footage from the gas station, but the footage showed a gas pump obstructing the shooting as it had occurred."

"Lead Detective's opinion testimony was based entirely on information conveyed to him, not from his personal perceptions. His lay opinion that the shooting was intentional was based on photographs of the gunshot wounds to Driver and Passenger, autopsy results, witness statements taken by other investigators, or crime scene evidence collected by other investigators. Thus, Lead Detective provided impermissible lay opinion testimony…"

"Here, Lead Detective gave impermissible lay opinion testimony that did not rely on his actual observations. Rather, his opinion was speculative. His opinion ruled out Defendant's theory that the shooting had been accidental, thus prejudicing the defense. Therefore, the trial court abused its discretion in admitting Lead Detective's testimony that the shooting was not accidental. REVERSED."

Lessons Learned:

A detective who has not been qualified as an expert by the court prior to his testimony is no different from any other lay witness. The Evidence Code places limitations on what non-expert witnesses can testify about.

"For example, lay opinion as to identity of a person is admissible when it is shown that the witness had 'a personal acquaintance with or knowledge of' the person identified and 'bases his opinion upon such acquaintance or knowledge.' Sec. 90.701 requires a lay witness to base his or her opinion upon facts which the witness has perceived.' A non-expert witness may identify a person, animal, or thing which the witness knows or has observed if the opinion is based on knowledge or acquaintance." Ehrhardt's Florida Evidence (2008 ed.), sec. 701.1.

It is error to permit a witness to comment on the credibility of another witness because it is solely within the province of the jury to determine the credibility of witnesses. *Calloway v. State*, (Fla. 2017). Such improper bolstering "can result in harmful error when the credibility of the bolstered witness is of critical importance to the State." (e.g. vouching for C.I.).

This offers an insight into another trial issue. "Improper vouching or bolstering of witness testimony occurs when the State places the prestige of the government behind the witness or indicates that information not presented to the jury supports the witness's testimony." *Jackson v. State*, (Fla. 2014). "It is elemental in our system of jurisprudence that the jury is the sole arbiter of the credibility of witnesses. Thus, it is an invasion of the jury's exclusive province for one witness to offer his personal view on the credibility of a fellow witness."

Stukins v. State
4th D.C.A.
(Aug. 13, 2025)

(Continued from page 2)

Runaway Seizure

and took her into temporary custody; this was a legitimate use of law enforcement authority. Accordingly, the State properly charged S.M. with resistance and battery. AFFIRMED."

Lessons Learned:

While not an issue in the present case, a problem that does arise regularly when officers interact with runaways and/or truants is the authority to conduct a search of the juveniles before placing them in the patrol car. *A.B.S. v. State,* (2DCA 2010) reviewed the applicable case law.

A.B.S. was taken into custody as a possible runaway in need of services pursuant to section 984.13. The officer who took A.B.S. into custody stated that, at a minimum, he was going to take A.B.S. home. Before the officer placed A.B.S. inside his police car, he handcuffed and **searched** A.B.S. "as was his practice." The search revealed contraband drugs. The officer acknowledged that *he did not conduct a pat-down* before reaching into A.B.S.'s pocket.

The case law is fairly consistent that prior to a search for weapons, an officer must have an articulable concern for his safety and must first conduct a pat-down. This basic rule was stated by the U.S. Supreme Court in *Ybarra v. Illinois*, (S.Ct.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."

The 2nd D.C.A. ruled that the officer's search of the juvenile prior to transport was unsubstantiated and, as such, a 4th Amendment violation. "We reverse the denial of A.B.S.'s motion to suppress the contents of the container because the officer did not have a legal basis to search A.B.S.'s person before transporting him in his cruiser. *Circumstances that allow a juvenile to be taken into custody under section 984.13 are not crimes; therefore, the search incident to arrest exception to the warrant requirement does not apply*."

"Further, in this case, the officer had no indication that A.B.S. was in possession of either a weapon or contraband when he searched A.B.S. He admitted that he searched A.B.S. solely because it was his policy to search people before transporting them in his cruiser… Because the search was conducted without a legal basis, the trial court erred in denying the motion to suppress."

See also, *D.O. v. State*, (3DCA 2011), "Weighing the governmental interests [officer safety] against the individual rights, I believe 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."

Officers should be cognizant of their agency's S.O.P. regarding Missing Persons, specifically focused on missing children of tender age, i.e. less than 13 years of age.

S.M. v. State
6th D.C.A.
(Sept. 26, 2025)