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Shooting Family Dog

Officers responded to a 911 call. A neighbor had called to report a domestic disturbance was occurring at the Buschmann-Morrison home. At the scene, the neighbor told officers that he heard yelling, fighting, and breaking glass at the house next door.

To approach the house, the officers walked through a dark, wooded area. The neighbor had informed the officers that there was a dog on the property but expressed his opinion that the dog was not likely to attack. Given the nature of the call and the description of the property, the officers were concerned that they could be in danger. As they approached the house, Ofcr. Beck drew his firearm, and Ofcr. Lagud took out his Taser. Lagud knocked on the door. Beck was behind Lagud, approximately five feet from the door. As soon as Lagud knocked, Beck heard a dog's paws approaching the door, along with barking and growling noises. Moments later, the door opened, and a dog charged directly toward Beck.

Beck fired a shot at the dog, and the dog turned left in the direction of Lagud. Beck fired a second shot that killed the dog. Brandee Buschmann was near the door at the time, but the officers did not see her until later. As is usually the situation in cases reported, further investigation determined that the noises reported by the neighbor had come from elsewhere, so the officers departed the residence.

As expected, the dog owners sued the officers alleging that Ofcr. Beck committed an unreasonable seizure by shooting their dog. The trial court dismissed the case, and on appeal, that ruling was affirmed.

Issue:

Is the shooting of the family dog a taking under the Fourth Amendment? **Yes**.

4th Amendment Seizure:

In *Carroll v. County of Monroe*, (2nd Cir. 2013), the Court of Appeals found numerous cases that have held that the unreasonable killing of a "companion animal" constituted an unconstitutional "seizure" of personal property under the Fourth Amendment.

"To determine whether a seizure is unreasonable, a court must 'balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interest alleged to justify the intrusion' and determine whether 'the totality of the circumstances justified [the] particular sort of ... seizure.' *Tennessee v. Garner*, (S.Ct.1985). We have

long held that the plaintiff has the burden to prove that a seizure was unreasonable."

The Court of Appeals went on to find, "There is no dispute that Deputy shooting of the plaintiff's dog was a severe intrusion given the emotional attachment between a dog and an owner. On the other hand, ensuring officer safety and preventing the destruction of evidence are particularly significant governmental interests." Thus, to be constitutionally permissible, an officer's conduct in fatally shooting a pet "must have been reasonable."

As always, in Fourth Amendment cases, a court must be mindful to judge reasonableness "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham v. Connor*, (S.Ct.1989) ("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.").

However, "the state's interest in protecting life and property may be implicated when there is reason to believe the pet poses an imminent danger." In such a case, "the State's interest may even justify the extreme intrusion occasioned by the destruction of the pet in the owner's presence." Such is the facts of the present case. See, *Altman v. City of High Point, N.C.*, (4th Cir. 2003) (noting that "when a dog leaves the control of his owner and runs at large in a public space, the government interest in controlling the animal ... waxes dramatically, while the private interest correspondingly wanes").

Court's Ruling:

"The dog owners contend that Beck's actions violated their rights under the Fourth Amendment. Shooting a dog is a seizure of a person's effect, so the constitutional standard is reasonableness. *Andrews v. City of West Branch*, (8th Cir. 2006). Even if an officer's actions are deemed unreasonable under the Fourth Amendment, he is entitled to qualified immunity if a reasonable officer could have believed, mistakenly, that the seizure was permissible—if he was 'reasonably unreasonable.' " [a.k.a. lawful but awful].

"At the time of the shooting, *Andrews* was this court's most prominent case on the reasonableness of a dog seizure. There, this court held that an officer's alleged conduct violated the Fourth Amendment when, in the course of searching for a loose dog, he approached a backyard and shot a *passive dog* in an enclosed area without warning. The dog was not growling, acting fiercely, or harassing anyone. The court reasoned that *an officer may not 'destroy a pet when it poses no immediate danger and the owner is looking on, obviously desirous of retaining custody.*' (quoting *Brown v. Muhlenberg Twp.*, (3d Cir. 2001))."

"The situation in *Andrews* differs starkly from the circumstances confronted by Beck. Beck and Lagud responded to a report of a domestic disturbance that suggested violence. After Lagud knocked on the door, Beck heard sounds of a dog barking, growling, and running toward the door. Moments later the door opened, and a dog ran directly toward Beck. Given the behavior of the dog, and **the failure of the owner to control the animal at the doorway**, a reasonable officer could have perceived the dog as an imminent threat. Beck's firing of a first shot was reasonable. *See Bailey v. Schmidt*, (8th Cir. 2007) (ruling that officers did not act unreasonably by killing dogs that either advanced on or acted aggressively toward the officers)."

Given the behavior of the dog, and **the failure of the owner to control the animal at the doorway**, a reasonable officer could have perceived the dog as an imminent threat.

"The dog then turned left toward Lagud. Beck was presented with a split-second decision whether to fire again in order to protect his colleague. A video recording of the incident *may suggest in hindsight* that the dog was bound for the doorway of the house rather than for Lagud's body, but Beck *did not have the luxury of a slow-motion replay*. In the brief moment that was available for Beck to react, it was reasonable for him to conclude that the dog posed a threat to Officer Lagud. At a minimum, it was a necessarily quick decision in a gray area where officers are protected by qualified immunity."

"The dog owners also cite *LeMay v. Mays*, (8th Cir. 2021), but that decision is not persuasive support for their claims. *LeMay* came after the incident in this case, so it

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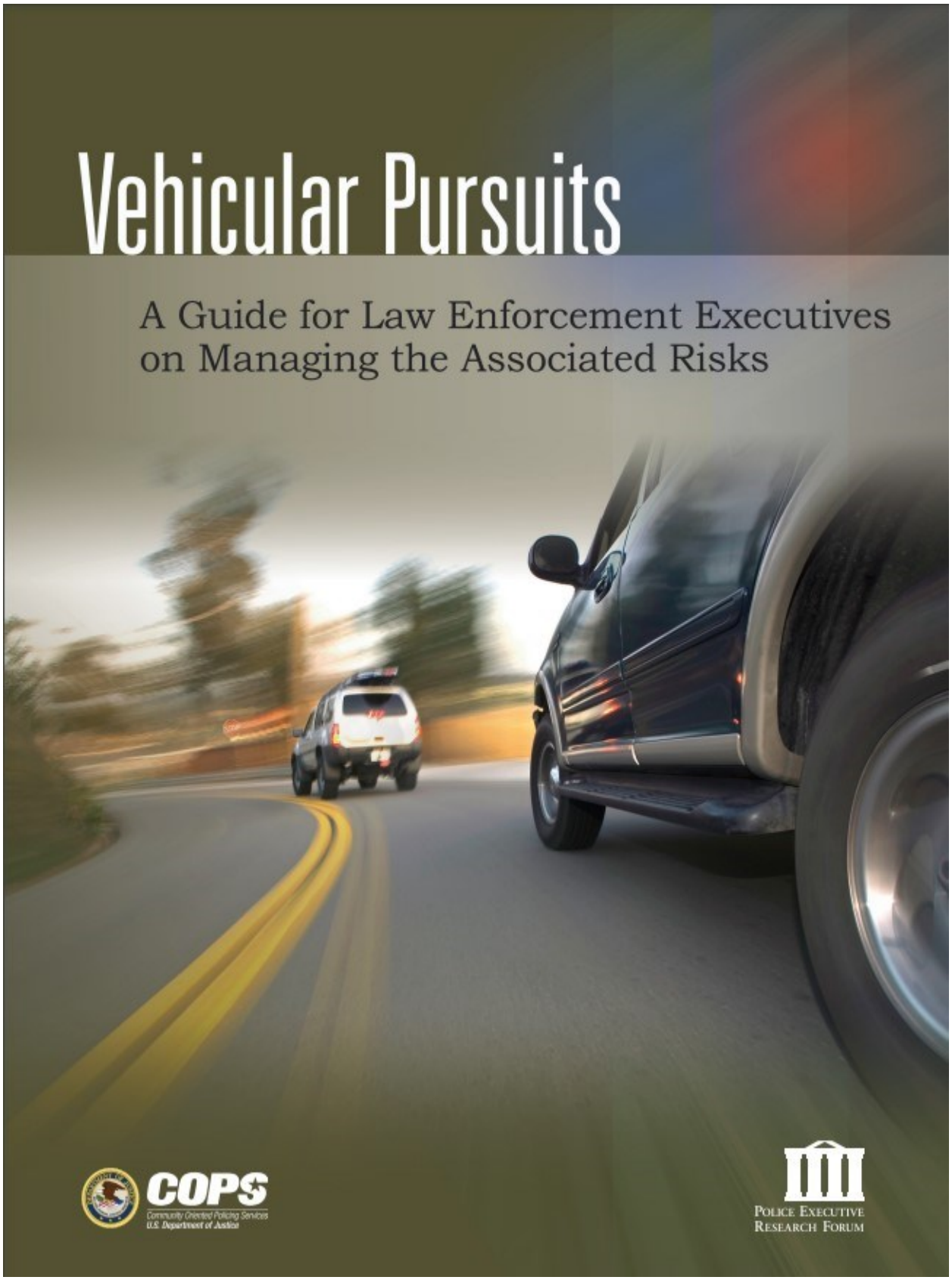
Vehicular Pursuits
A Guide for Law Enforcement Executives on Managing the Associated Risks
COPS
Community Oriented Policing Services
U.S. Department of Justice
Police Executive Research Forum

Vehicle Pursuits Executive Summary

Police vehicular pursuits present physical, emotional, and economic risks to the officer, bystanders, any passengers, and the fleeing suspect. Given these risks, law enforcement agencies need a resource that identifies solutions for managing high-risk vehicular pursuits.

In 2020, Congress directed the National Highway Traffic Safety Administration (NHTSA), in partnership with police jurisdictions, to conduct a study that would lead to the development of accurate reporting and analyses of crashes that involve police pursuits.

While NHTSA currently collects data on first responder vehicles that are involved in fatalities during police pursuits, those data are subject to significant underreporting. NHTSA and the Office of Community Oriented Policing Services (COPS Office) tasked the Police Executive Research Forum (PERF) with developing a guide, using the findings from that research, to provide pursuit safety information, research data, and model policies to foster the promotion of safer vehicular pursuits. PERF, NHTSA, and the COPS Office developed this resource in consultation with the Pursuits Working Group to help police agencies manage the risks of vehicular pursuits. This document explains the context for decision-making on pursuit policy, including the choices and risks associated with pursuits, and gives guidance to executives on making the best choices for their agency and community.

This guide is applicable to law enforcement agencies of all types. The fundamental consideration that any agency—state or local, urban or rural, etc.—must consider when establishing its vehicle pursuits policy is the same: balancing risk and reward.

Source: https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-r1134-pub.pdf

Recent Case Law

Open Door Knock and Announce

Sheriff's Office received an arrest warrant for Robb Wallin. Robb was known to reside in a motel. Each room had sliding glass doors that faced onto the sidewalk and common area. There were no walls, gates, or other barriers that surround or close off public access to the motel and its common areas. The Deputies went to the motel, entered the common area, identified the location of Wallin's room, and walked up to it.

The sliding glass doors to Wallin's room were "completely wide open." Upon walking up to the room, the officers stopped approximately four or five feet from the doorway and looked inside. From that location—and through the open doors—the officers saw Wallin inside the room, along with suspected narcotics. At that point, one of the Deputies approached Wallin and announced, "Hey, Robb, sheriff's office, you have a warrant." The Deputies arrested Wallin based on the warrant, and they seized the narcotics and related paraphernalia.

Wallin was charged with possession of a controlled substance and possession of drug paraphernalia. He moved to suppress the evidence found in his motel room, arguing that the officers violated the knock-and-announce requirement in section 901.19 while executing the arrest warrant. The trial court granted the motion and suppressed the evidence based on Supreme Court's decision in *State v. Cable*, (Fla. 2010). On appeal, the trial court's ruling was reversed.

Issue:

Did the knock-and-announce requirement invalidate the seizure of the drugs observed in plain view? **No**.

Knock and Announce:

"The interests protected by the knock-and-announce requirement are quite different—and do not include the shielding of potential evidence from the government's eyes. One of those interests is the protection of human life and limb, because an unannounced entry may provoke violence in supposed self-defense by the surprised resident. Another interest is the protection of property. … The knock-and-announce rule gives individuals 'the opportunity to comply with the law and to avoid the destruction of property occasioned by a forcible entry.' And thirdly, the knock-and-announce rule protects those elements of privacy and dignity that can be destroyed by a sudden entrance…'The brief interlude between announcement and entry with a warrant may be the opportunity that an individual has to pull on clothes or get out of bed.' In other words, it assures the opportunity to collect oneself before answering the door."

"What the knock-and-announce rule has never protected, however, is one's interest in preventing the government from seeing or taking evidence described in a warrant. Since the interests that were violated in this case have nothing to do with the seizure of the evidence, *the exclusionary rule is inapplicable*." *Hudson v. Michigan*, (S.Ct. 2006).

Section 901.19(1), F.S. provides: "If a peace officer fails to gain admittance after she or he has announced her or his *authority and purpose* in order to make an arrest either by a warrant or when authorized to make an arrest for a felony without a warrant, the officer may use all necessary and reasonable force to enter any building or property where the person to be arrested is or is reasonably believed to be."

A separate statute, section 933.09, F.S., parallels this language for search warrants: "The officer may break open any outer door, inner door or window of a house, or any part of a house or anything therein, to execute the warrant, if after due notice of the officer's authority and purpose he or she is refused admittance to said house or access to anything therein."

In 1964 the Florida Supreme Court decided *Benefield v. State*, (Fla. 1964), in which the Court held that a violation of Florida's knock-and-announce statute tainted the ensuing arrest and required the suppression of the evidence obtained as a result of the arrest. In yet another example of bad facts making bad law, the *Benefield* Court noted that "the officers totally ignored every requirement of the law…They barged into petitioner's home without knocking or giving any notice whatever of their presence; they did

not have a search warrant or warrant to arrest anyone; they ransacked petitioner's home without the least semblance of any showing of authority." Under those outrageous facts the Court enforced the exclusionary rule.

The Florida Supreme Court went on to explain, "section 901.19, Florida Statutes, ... appears to represent a codification of the English common law which recognized the fundamental sanctity of one's home yet nevertheless provides that an arresting office 'may break open doors, if the party refused upon demand to open them.' "

The Florida Supreme Court concluded that the U.S. Supreme Court's holding in *Hudson* was based on the Fourth Amendment, while their ruling in *Benefield* was premised upon Florida statute. As a consequence, *Hudson* was not binding on Florida. "As a matter of state law, a state may provide a remedy for violations of state knock-and-announce statutes, and nothing in *Hudson* prohibits it from doing so. *Benefield* was based on state law grounds and not the Fourth Amendment."

Court's Ruling:

The present case presented facts not previously ruled upon by the D.C.A. The unique facts of consequence here were the physical layout of the motel and its rooms, as well as the Defendant's door being wide open providing the Deputies with an unobstructed view of Defendant and the interior of his room. The State argued that section 901.19 was inapplicable because the door to Wallin's room was open and no force was used or needed to enter.

Section 901.19 is entitled, "Right of officer to break into building." It provides: "If a peace officer fails to gain admittance after she or he has announced her or his authority and purpose in order to make an arrest either by a warrant or when authorized to make an arrest for a felony without a warrant, the officer may use all necessary and reasonable force to enter any building or property where the person to be arrested is or is reasonably believed to be."

The D.C.A. ruled: "This court has not previously determined whether the knock-and-announce requirement for arrest warrants in section 901.19 applies to open doors. But this court considered a similar knock-and-announce requirement for search warrants in *State v. Brown*, (2DCA 1990), and we held it inapplicable where the defendant's doors were open and the officer entered peaceably."

"In *Brown*, an officer executing a search warrant found both the door to the defendant's porch and the inner door to his home open. The officer entered through the open doors and discovered cocaine and marijuana inside the home. The trial court suppressed the evidence on the basis that the officer violated the knock-and-announce requirement for search warrants in section 933.09. But we reversed because 'section 933.09 [did] not apply' and 'the officer was justified in walking through the open doors to execute the valid search warrant.' We also reiterated our holding in *State v. Gray*, (2DCA 1987), wherein we explained, 'The plain language of the statute [section 933.09] restricts its applicability. A literal reading of the statute reveals that the requirements are applicable *only when an officer desires to effect a* ***forcible*** *entry into a residence.* ... Nothing in the statute reflects that the enumerated steps [notice and wait for response] must precede a *peaceful entry* that does not involve force."

"Our Supreme Court has determined that the statute for arrest warrants at issue here, section 901.19 (1), 'parallels the language for search warrants' in section 933.09. Therefore, like section 933.09, a literal reading of section 901.19 renders the statute inapplicable where the officer has not executed a forcible entry. Because the officers in this case did not encounter a closed door or entryway, they did not have to execute a forcible entry into Mr. Wallin's room. *Nothing in the statute's language suggests it applies where an officer peaceably enters a dwelling without needing to use even the slightest bit of force to enter.*"

"The record establishes that the doors to Mr. Wallin's room were 'completely wide open' and the officers entered without force to execute a valid arrest warrant. The knock-and-announce requirement in section 901.19(1) did not apply based on the statute's plain language, and as we held in *Brown*, the officers 'did not need to stop and wait for permission to enter peaceably,' We therefore reverse the order suppressing the evidence found in Mr. Wallin's motel room and remand for further proceedings. REVERSED."

Lessons Learned:

Unlike the facts of the present case, when officers need to effect a forcible entry the Florida Supreme Court has drawn a line in the sand when it comes to entry into a citizen's private dwelling. Failure on the part of a LEO to announce both his purpose and authority that support a lawful entry will result in the suppression of

the fruits of that entry.

The Florida Supreme Court in *State v. Cable*, (Fla. 2010), explained an officer's rights and obligations as such: "When an officer is authorized to make an arrest in any building, he should first approach the entrance to the building. He should then knock on the door and announce his name and authority, sheriff, deputy sheriff, policeman or other legal authority and what his purpose is in being there. If he is admitted and has a warrant, he may proceed to serve it. He is not authorized to be there to make an arrest unless he has a warrant or is authorized to arrest for a felony without a warrant. If he is refused admission and is armed with a warrant or has authority to arrest for a felony without a warrant, he may then break open a door or window to gain admission to the building and make the arrest. If the building happens to be one's home, these requirements should be strictly observed."

Lastly, in preparing a search warrant reference to firearms possibly on the premises will assist in explaining a short knock-and-announce time frame. For a good discussion of the often found connection between drug trafficking, guns, and violence see *United States v. Cruz*, (11th Cir. 1986) ("Guns are a tool of the drug trade," and *Harmelin v. Michigan*, (S.Ct.1991) ("Studies ... demonstrate a direct nexus between illegal drugs and crimes of violence,").

The U.S. Supreme Court has recognized that the dangers presented by in-home arrests and searches are often greater than those conducted on the street due to the "home turf" advantage the suspect has over the police. See, *Maryland v. Buie*, (S.Ct. 1990).

State v. Wallin
2nd D.C.A.
(Aug. 18, 2023)

Traffic Stop Duration

Ambriz-Villa drove past Trooper John Payton. When Ambriz-Villa's car crossed the solid white line on the shoulder of the road, Trooper Payton executed a traffic stop. As was his custom, Trooper Payton asked Ambriz-Villa to sit in the front seat of the patrol car as a safety measure for the duration of the traffic stop. *While processing a warning for the traffic violation*, Trooper Payton asked Ambriz-Villa about his background and purpose for traveling. When asked why he chose to drive alone, Ambriz-Villa "floundered nonresponsive," and then when asked again, stated that it was because he liked to drive. Still processing the warning, Trooper Payton asked more questions. Throughout this conversation, Ambriz-Villa's unusual responses and excessively nervous and evasive reactions raised Trooper Payton's suspicion that Ambriz-Villa was involved in criminal activity.

After processing the warning, Trooper Payton handed it to Ambriz-Villa, who then opened the door and began to exit the patrol car. When Ambriz-Villa was "halfway out the door," Trooper Payton asked, "Do you mind if I ask you a few more questions?" Ambriz-Villa agreed, and Trooper Payton then asked whether he was involved in any drug activity (which Ambriz-Villa denied) and if he would consent to a search of his car. Ambriz-Villa said "yes." Trooper Payton asked again "for clarification", and Ambriz-Villa again confirmed that he consented to the search of his car. The search uncovered thirteen one-kilogram packets of methamphetamine.

Defendant moved to suppress the stop and search. He argued that the stop was unreasonably delayed, and he did not consent to the search. The trial court denied the motion. On appeal, that ruling was affirmed.

Issue:

Did the Trooper unlawfully extend the traffic stop in violation of the Fourth Amendment? **No**.
Did the Trooper unlawfully search Defendant's vehicle without a warrant? **No**.

Reasonable Traffic Stop:

A traffic stop is a seizure within the meaning of the Fourth Amendment. *Whren v. United States*, (S.Ct.1996). And to comply with the Fourth Amendment, an officer must have reasonable suspicion. *Heien v. North Carolina*, (S.Ct.2014) ("All parties agree that to justify [a traffic stop], officers need only reasonable suspicion." In other words, an officer making a stop must have "a particularized and objective basis for suspecting the person stopped of criminal activity." *Navarette v. California*, (S.Ct.2014). Even minor traffic violations qualify as criminal activity. Thus, the question here is whether Defendant crossing a solid traffic line created reasonable suspicion that a traffic violation had occurred. Both courts found that it did.

After initiating a traffic stop an officer is entitled to conduct safety-related checks that do not bear directly on the reasons for the stop, such as requesting a driver's license

and vehicle registration or checking for criminal records and outstanding arrest warrants. See, *Rodriguez v. United States*, (S.Ct.2015). "An officer's suspicion of criminal activity may reasonably grow over the course of a traffic stop as the circumstances unfold and more suspicious facts are uncovered." *United States v. Magallon*, (8th Cir. 2021). Reasonable suspicion requires "a particularized and objective basis for suspecting legal wrongdoing based upon [the officer's] own experience and specialized training." While a "mere hunch" is insufficient, "the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard." *United States v. Arvizu*, (S.Ct.2002). The reasonable suspicion analysis is based on the "totality of the circumstances" meaning individual elements of suspicion are not to be viewed in isolation.

A traffic stop is reasonable only insofar as "it is 1. justified at its inception and 2. reasonably related in scope to the circumstances which justified the interference in the first place." But during a traffic stop an officer can request the documents concerning the travel—such as driver's license, registration, rental contract, or, the driver's log and shipping documents. The officer can also inquire about the trip being taken and can ask questions on any subject so long as the questioning does not prolong the detention beyond what is otherwise necessary to perform such routine tasks as computer checks and preparing reports and citations.

Generally, however, an officer's focus must remain on the basis for the traffic stop, in that the stop must be "sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure." Thus, when following up on the initial reasons for a traffic stop, the officer must employ "the least intrusive means reasonably available to verify or dispel [his] suspicion in a short period of time."

Relatedly, a legitimate traffic stop may "become unlawful if it is prolonged beyond the time reasonably required" to complete its initial objectives. See, *Illinois v. Caballes*, (S.Ct.2005). Put differently, an officer cannot investigate "a matter outside the scope of the initial stop" unless he receives the motorist's consent or develops *reasonable, articulable suspicion of ongoing criminal activity*.

Finally, although an officer may extend a traffic stop when he possesses reasonable suspicion, he cannot search the stopped vehicle unless he obtains consent, secures a warrant, or develops *probable cause* to believe the vehicle contains evidence of criminal activity.

Consent Search:

As with most Fourth Amendment analyses, courts consider the totality of the circumstances to evaluate whether consent was voluntary, including: 1. the individual's age and mental ability; 2. whether the individual was intoxicated or under the influence of drugs; 3. whether the individual was informed of [his] *Miranda* rights; and 4. whether the individual was aware, through prior experience, of the protections that the legal system provides for suspected criminals.

It is also important to consider the environment in which an individual's consent is obtained, including 1. the length of the detention; 2. whether the police used threats, physical intimidation, or punishment to extract consent; 3. whether the police made promises or misrepresentations; 4. whether the individual was in custody or under arrest when consent was given; 5. whether the consent was given in public or in a secluded location; and 6. whether the individual stood by silently or objected to the search.

Court's Ruling:

"Ambriz-Villa concedes that Trooper Payton was permitted to stop him based on the traffic violation but argues that the scope and manner of the stop was unreasonable because Trooper Payton asked him repetitive and persistent questions not tailored to the reason for the initial stop while he was in the confines of the patrol car. But Trooper Payton was permitted to ask Ambriz-Villa questions unrelated to the reason for the stop without reasonable suspicion of other criminal activity, even if the questioning was repetitive and persistent, **so long as the questioning did not prolong the duration of the stop,** which Ambriz-Villa does not contest on appeal. And it makes no difference that Ambriz-Villa was in the patrol car during the questioning. Trooper Payton was permitted to ask Ambriz-Villa to sit in the patrol car while he wrote the warning. See *United States v. Lewis*, (7th Cir. 2019) (an officer may ask a driver to sit in his patrol car during a valid traffic stop, without any particularized suspicion). Ambriz-Villa provides no authority for the proposition that the legality of an officer's questioning differs whether it is done while the traffic offender is outside the patrol car or in it, and we could

find none. Ambriz-Villa was free to respond to the questions, or not, and he makes no argument that he felt coerced into answering these questions. See *Berkemer v. McCarty*, (S.Ct.1984) (stating that at a traffic stop, 'the detainee is not obliged to respond'). What matters is that *Trooper Payton's questioning did not prolong the duration of the traffic stop.* [He stopped when the ticket was written]. We agree with the [trial] court that the scope and manner of the stop did not violate Ambriz-Villa's Fourth Amendment rights."

"Ambriz-Villa next argues that his verbal consent to search his car was tainted because the scope and manner of the stop was overly intrusive and expansive. But as we discussed above, the traffic stop was lawful so his consent to search was not tainted by an unlawful stop. And there was no impermissible extension of the stop because the traffic stop concluded when he received the warning. See *United States v. Rivera*, (7th Cir. 1990) (finding defendant was not in custody after he was given his written warning, 'had all his identification, he was told that the investigation was over, he was free to leave at his pleasure and, indeed, was leaving when the trooper popped the question of consensual search')."

"Ambriz-Villa also argues that his consent was not voluntarily given. To evaluate voluntariness of consent to a search, we look to the totality of the circumstances, considering the following factors: '1. the person's age, intelligence, and education; 2. whether he was advised of his constitutional rights; 3. how long he was detained before he gave his consent; 4. whether his consent was immediate, or was prompted by repeated requests by the authorities; 5. whether any physical coercion was used; and 6. whether the individual was in police custody when he gave his consent." *United States v. Figueroa-Espana*, (7th Cir. 2007)."

"Ambriz-Villa argues that when he was exiting the patrol car to return to his car with the warning violation in his possession, no reasonable person would have felt free to ignore the Trooper's question and simply walk away. But under the totality of the circumstances, Ambriz -Villa's consent was freely given. Ambriz-Villa was in fact leaving: it is undisputed that Trooper Payton had handed him the warning ticket and that Ambriz-Villa was exiting the police car at the time the consent to search was sought. As noted above in a case with very similar facts, we found that a reasonable person in a comparable position would have felt free to leave at this point of the interaction. Furthermore, the interaction took place on a public interstate highway during the day; Trooper Payton showed no weapons or other physical force; and the language and tone were limited to a series of targeted questions and confirmed whether a search would be allowed. AFFIRMED."

Lessons Learned:

There are numerous cases ruling similarly, when the driver's responses to routine traffic stop questions raise a red flag for the officer. Including but not limited to, conflicting statements by driver and passenger, rental agreements that contradict driver's statements, strong odors, and the driver claiming not to have a trunk key. As long as these inquiries do not unreasonably delay the traffic stop. As noted above, when following up on the initial reasons for a traffic stop, the officer must employ "the least intrusive means reasonably available to verify or dispel [his] suspicion in a short period of time."

Importantly, it should be noted that the Trooper's questioning only occurred while he was processing the warning ticket. As soon as the ticket was completed, he handed it to Defendant and told him he was free to go. "Oh, by the way, do you mind if a search your vehicle," all occurred after the traffic stop was concluded.

"The proper standard for addressing an unlawfully prolonged stop, then, is this*: a stop is unlawfully prolonged when an officer, without reasonable suspicion, diverts from the stop's purpose and adds time to the stop in order to investigate other crimes. In other words, to unlawfully prolong, the officer must (1) conduct an unrelated inquiry aimed at investigating other crimes (2) that adds time to the stop (3) without reasonable suspicion*." *United States v. Campbell*, (11th Cir. 2022).

Once again, effective report writing is the key to surviving a motion to suppress. All observations made and actions taken should be detailed. The underlying justification for the traffic stop should be the basis for the issuance of a traffic citation. An arrest for a firearm or drugs does not obviate the traffic stop. Only by sustaining the stop will the firearm, or other contraband, survive the suppression motion. Write the ticket!

United States v. Ambriz-Villa
U.S. Court of Appeals – 7th Cir.
(March 14, 2022)

SYG and False Arrest

Timothy Allen Davis, Sr. got into a verbal and physical dispute with his son and shot the unarmed twenty-two -year-old, Timmy, killing him. Mrs. Davis called 911, "that Mr. Davis had had a confrontation with their son and that she believed her husband had shot" him. She did not tell the 911 operator that her husband had to shoot her son Timmy to protect himself or that the shooting was in self-defense. It was never alleged that she said anything like that in the 911 call or to the officers when they arrived at the scene or at any other time.

After acquittal at trial, Defendant sued the officers for false arrest. The 11th Circuit dismissed the action.

Issue:

Could the arresting police officers reasonably have believed that Davis did not act in self-defense, and thus the officers had probable cause to arrest him for murder? **Yes**.
Does the Florida Stand Your Ground Law change that finding? **No.**

Reasonable Suspicion:

Courts have pointed out that arrests are different from criminal prosecutions, and "police officers are not expected to be lawyers or prosecutors." And "officers are not required to perform error-free investigations or independently investigate every proffered claim of innocence." Neither are officers expected to be judges. It is not unusual to find evidence pointing in different directions at the scene of a crime, but "a law enforcement officer is not required to resolve every inconsistency found in the evidence." That is especially true because on-the-scene officers are often "hampered by incomplete information and forced to make a split-second decision between action and inaction." *Crosby v. Monroe Cnty.*, (11th Cir. 2004); *see also Ryburn v. Huff*, (S.Ct.2012) (reversing a court of appeals for "not heeding the ... wise admonition that judges should be cautious about second-guessing a police officer's assessment, made on the scene," and for not following the Court's instructions that "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"). Am issue the Supreme Court has been unequivocal about.

Court's Ruling:

After reviewing their probable cause pronouncements and prior cases the 11th Circuit followed up: "In the same vein, when officers are making a probable cause determination they simply are not required 'to rule out a suspect's innocent explanation for suspicious facts.' We have been nothing if not consistent about that rule. Thirty-three years ago we held in *Marx v. Gumbinner*, (11th Cir. 1990), that '[the officers] were not required to forego arresting [the plaintiff] based on initially discovered facts showing probable cause simply because he offered a different explanation'."

"This widespread, bedrock principle of probable cause law is particularly relevant in violent crime cases like this one where, as the Florida Supreme Court has pointed out, 'suspects will often claim self-defense even when the facts would not appear to support such a claim.' *Kumar v. Patel*, (Fla. 2017). Given that, and 'considering the well-established body of law detailing the responsibilities of law enforcement officers,' **the Florida Supreme Court decided that, regardless of what the state's Stand Your Ground statute says, the reality is that officers cannot be expected to make on-the-spot self-defense determinations at the scene of a violent crime before deciding whether to make an arrest.** A more particular self-defense determination will have to await later proceedings, or as the Florida Supreme Court has put it, 'a *post*-arrest and *post*-charging immunity determination [of the self-defense issue] ... will be the best that we can do.' "

"Some of the most volatile circumstances that officers face and some of the most difficult decisions that they must make are on the scene in domestic violence cases. Probable cause determinations in that context often present special challenges coupled with the need for quick action to sort things out, to get the wounded medical treatment, and to protect everyone's safety."

The Court of Appeals then reviewed the facts as known to the officers on the scene: "Davis' argument that the officers were required to accept his self-serving claim of self-defense or to hold off on arresting him because he made that claim flouts common sense, and more importantly, runs contrary to the holdings of the Supreme Court and this Court. As we have already discussed, the Supreme Court and this Court have consistently held in decisions spanning more than thirty years that where the initial facts show probable cause, *officers are not required to forego making an arrest because the suspect offers an innocent explana-*

tion for those facts. Officers are not required to believe what the suspect says or to launch into an investigation of his claim."

"Based on the totality of the circumstances, an officer reasonably could have concluded that there was a substantial chance that the shooting Davis confessed to was unlawful. (The test for probable cause is whether 'a reasonable officer *could* conclude ... that there was a substantial chance of criminal activity.')." "The Supreme Court has instructed us that a 'probable cause decision, by its nature, is hard to undermine, and still harder to reverse.' In this case Davis invites us to undermine the probable cause decision in more ways than one. He would have us raise the bar for probable cause above where the Supreme Court and this Court have set it. He would have us scrap the bedrock principle that officers making a probable cause determination at the scene are not required to accept a suspect's innocent explanation, such as a claim of self-defense, or to forego making an arrest until they have investigated and ruled out that explanation. He would have us armchair-quarterback and second-guess the decision of three officers who responded to a 911 call about a domestic shooting and arrived to find a gravely wounded young man lying on the ground with the shooter, still in possession of the firearm, on top of him."

"Davis asks us to assume the role of Investigator-in-Chief and criticize the investigation the officers made, finding it wanting based on his assertions that they should have done more or done it better. He assumes that if the officers had interviewed more people, or asked more questions of those they did interview, they might have found something to exonerate him. His invitation for us to *post hoc* superintend the investigation and accept his speculation about what might have been found runs directly contrary to binding precedent. And Davis never points to any probable-cause-precluding evidence that the officers would have uncovered if they had run the investigation the way he says they should have."

"Davis has failed to state a claim under § 1983 that he was arrested without probable cause or that the officers' investigation was constitutionally inadequate. For the same reasons, he has failed to state a claim for false arrest under Florida law. ('The standard for determining whether probable cause exists is the same under Florida and federal law.'); *see also Harder v. Edwards*, (4DCA 2015) (rejecting the plaintiff's argument that an officer's 'investigation was too unreasonable to support probable cause, in that he conducted an inadequate investigation' before her arrest). **AFFIRMED**."

Lessons Learned:

There is not much more that can be added to the excellent analysis of the issues set out by the 11th Circuit. Of interest is, however, that despite the acquittal after trial, the arrest was reinforced by a filed felony case. Demonstrating that the reviewing prosecutors found not just probable cause for the arrest but sufficient proof to proceed to trial. And given the Stand Your Ground pre-trial motion that was undoubtedly heard by the trial court, the charges still stood for trial.

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Shooting Family Dog

could not have placed Officer Beck on notice of clearly established law. Nor does *LeMay* suggest an unreasonable seizure here. That case involved an officer who allegedly shot two dogs who presented themselves in a non-threatening manner, and this court ruled that the dog owner stated a claim at the pleading stage. The circumstances in *LeMay* are readily distinguishable from *Beck's doorway encounter with a growling dog who suddenly rushed at him and then turned in the direction of his fellow officer*. The judgment of the [trial] court is Affirmed."

Lessons Learned:

The unreasonable seizure of a person's property is protected by the Fourth Amendment. Destroying a family dog constitutes a taking and must be reasonable under the totality of the circumstances.

A law enforcement operation that is prepared to the point that a no-knock warrant is applied for and granted by the court should include a plan to neutralize known dogs on the premises. If there is no reasonable approach, then the fact that the issue was considered should be recorded in the OPS plan or police report.

For civil liability purposes agencies should consider a General Order regulating the use of force against an animal. Including but not limited to the use of deadly force against an aggressive animal which is a threat to officers and/or others. Consider a policy to address a sick or injured animal.

Buschmann v. Kansas City, et. al.
U.S. Court of Appeals – 8th Cir.
(Aug. 10, 2023)