LEGAL EAGLE

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2nd Amendment Protection

Police recovered a handgun with an obliterated serial number from Randy Price's vehicle during a traffic stop. He was charged in an Indictment with possession of a firearm with an obliterated serial number. Price filed a motion to dismiss the Indictment against him, arguing that the statute with which he was charged was unconstitutional following the Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen*, (S.Ct. 2022). The Government opposed the motion.

The trial court did find criminalizing possession of a firearm with an obliterated serial number, to be in violation of the Supreme Court's ruling in *Bruen*. On appeal, the U.S. Court of Appeals, 4th Circuit, disagreed .

Issue:

Are firearms with obliterated serial numbers in common use for lawful purposes, and thus protected by the 2nd Amendment? **No**.

***Bruen* Ruling:**

In simple terms, two average citizens who sought unrestricted licenses to carry a handgun in public, together with a public-interest group organized to defend the 2nd Amendment rights of New Yorkers, brought a civil rights action against the New York State Police and an individual licensing officer. The Plaintiffs argued that the denial of their license applications for failing to satisfy New York's "proper cause" standard, under which the applicants had to demonstrate a special need for self-protection as differentiated from that of the general public, violated their Second and Fourteenth Amendment rights.

The case made its way to the U.S. Supreme Court, where the Court found the City's licensing requirements violative of the 2nd Amendment as inconsistent with the "principles that underpin" our nation's historical tradition of firearm regulation

The Second and Fourteenth Amendments protect an individual's right to carry a handgun for *self-defense outside the home*. Thus, the City's special needs scrutiny did not comport within the Second Amendment context. And New York's "proper cause" standard violated the 14th Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms.

In the present case, the 4th Circuit explained, "The Second Amendment provides that a well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms,

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shall not be infringed. The phrase 'keep and bear Arms' cannot be divorced from the text that immediately precedes it— 'the right of the people.' This right of the people is to be interpreted based on the scope of the historical right 'inherited from our English ancestors.' See, *District of Columbia v. Heller*, (S.Ct.2008) (quoting *Robertson v. Baldwin*, (S.Ct.1897))."

"And *Heller* further cautioned that like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose; (noting that 'nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.'). See, *United States v. Rahimi*, (S.Ct.2024) ('At the founding, the bearing of arms was subject to regulations ranging from rules about firearm storage to restrictions on gun use by drunken New Year's Eve revelers. Some jurisdictions banned the carrying of 'dangerous and unusual weapons.' Others forbade carrying concealed firearms.' "

"Most relevant here, *Heller* concluded that 'the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes.' That is, the Court recognized that an 'important limitation on the right to keep and carry arms' existed regarding the 'sorts of weapons protected.' Drawing on its opinion in *United States v. Miller*, (S.Ct.1939), the Court recognized that a limitation on the types of weapons protected was supported by the 'historical tradition of prohibiting the carrying of dangerous and unusual weapons.' "

Court's Ruling:

The Court of Appeals examined prior Supreme Court rulings to flesh out the *Bruen* decision. "In *Miller*, the Supreme Court considered whether a federal ban on the possession or use of a shotgun with a barrel of less than eighteen inches violated the Second Amendment. The Court concluded that 'in the absence of any evidence' showing that a short-barreled shotgun had any 'reasonable relationship to the preservation or efficiency of a well-regulated militia,' it 'could not say that the Second Amendment guarantees the right to keep and bear such an instrument.' And it further concluded that 'certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.' … Most relevant here, *Heller* concluded that 'the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes.' "

The Court of Appeals then focused on "whether the weapons regulated by § 922(k) are in common use for a lawful purpose.

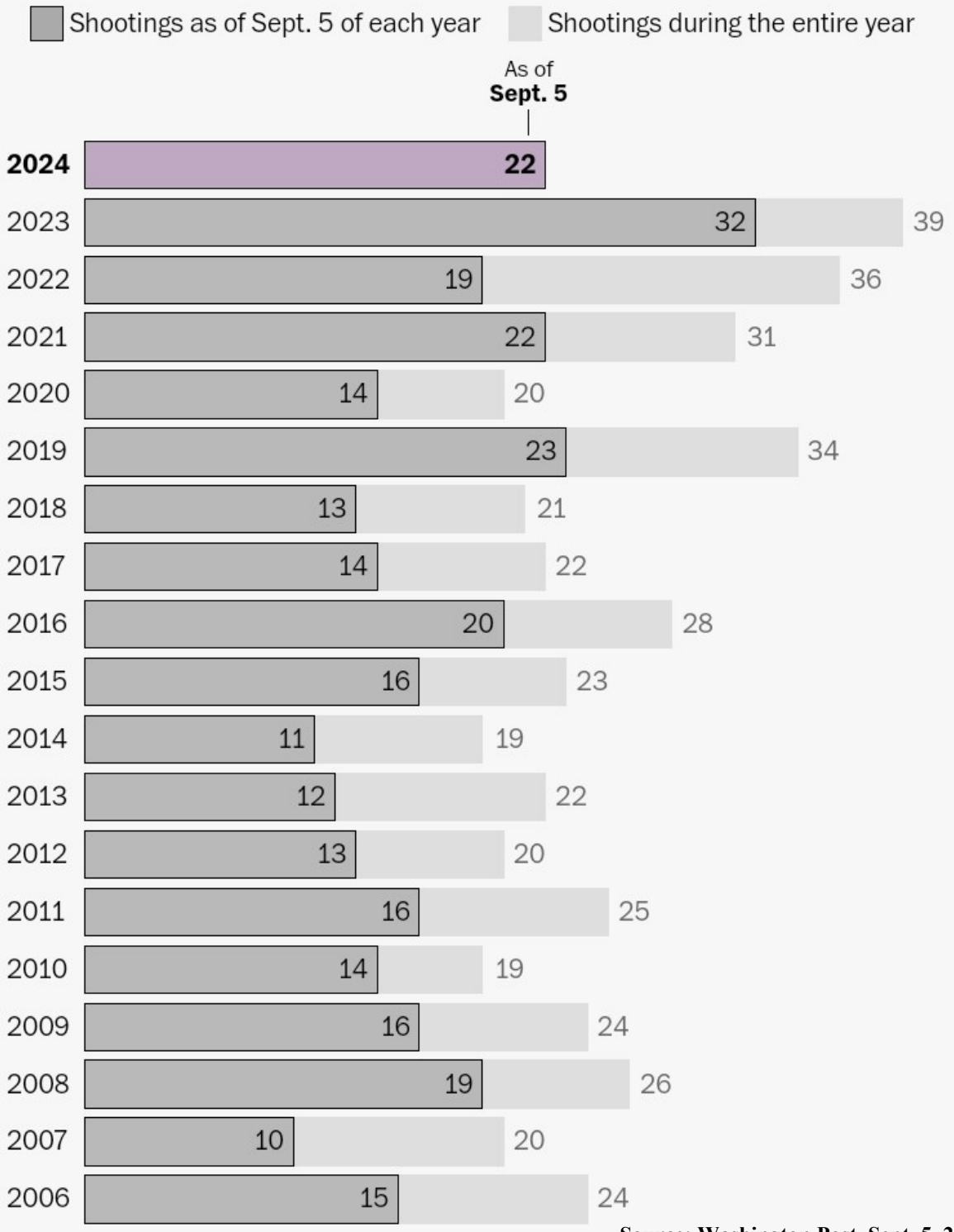
"We know from Supreme Court precedent that short-barreled shotguns and machineguns are not in common use for a lawful purpose but handguns—the quintessential self-defense weapon—are. Still, the Supreme Court has not elucidated a precise test for determining whether a regulated arm is in common use for a lawful purpose. *And we are the first Circuit Court to resolve the constitutionality of § 922(k) after Bruen."*

"In *United States v. Marzzarella*, (3d Cir. 2010), the Third Circuit analyzed whether a firearm with an obliterated serial number is a dangerous and unusual weapon by comparing it to the short-barreled shotgun at issue in *Miller.* The court observed that 'the District Court could not identify, and [the defendant] does not assert, any lawful purpose served by obliterating a serial number on a firearm.' It further noted that there was 'no compelling reason why a law-abiding citizen would prefer an unmarked firearm' because unmarked firearms have value 'primarily for persons seeking to use them for illicit purposes.' We find these aspects of its opinion persuasive."

"We focus our analysis as to whether a weapon is protected on whether it is in common use for a lawful purpose, not solely on its functionality. Under this test, if we conclude that a weapon is not in common use for a lawful purpose, it can be permissibly excluded from the Second Amendment's protection based on the *tradition* of regulating 'dangerous and unusual' arms. See, *United States v. Fincher*, (8th Cir. 2008) (applying *Heller* and concluding that 'machine guns are not in common use by law-abiding citizens for lawful purposes and therefore fall within the category of **dangerous and unusual weapons** that the government can prohibit for individual

(Continued on page 9)

How many mass shootings happen each year



Source: Washington Post, Sept. 5, 2024

Recent Case Law

Parking Enforcement

Two deputies observed Marlon Diaz operate his vehicle and then stop in a designated and marked handicapped parking space. The vehicle did not display a disabled parking permit, or a license plate issued pursuant to Chapter 316., F.S. After Diaz *began driving away*, the Deputies initiated a traffic stop. In response to their query, Diaz did not provide the Deputies with a disabled parking permit, driver's license, or state identification card reflecting a disability or handicap. Diaz told the deputies that he was not handicapped, and he apologized to them for parking in the handicapped parking space.

Additionally, Diaz had a passenger in his vehicle. Diaz did not claim that this person was disabled. The Deputies noted that they had observed the passenger before she entered Diaz's vehicle and that she appeared to have no difficulty walking.

Diaz was asked to step out of his vehicle. See, *Pennsylvania v. Mimms*, (S.Ct.1977) (holding that when a driver has been lawfully stopped for a traffic violation, law enforcement officers may ask the driver to exit the vehicle without violating the Fourth Amendment). Prior to exiting his vehicle, Diaz advised the deputies that he had a handgun and had no concealed weapons permit. After Diaz stepped out of his vehicle, the firearm, previously concealed by Diaz, became visible to the Deputies, which they confiscated. Diaz was arrested, and the Deputies then conducted an inventory search of the vehicle where they discovered the fentanyl and methamphetamine.

Defendant filed a motion to suppress all physical evidence and his statements. In granting Diaz's motion to suppress, the trial court concluded that because the Deputies only observed Diaz in the "handicapped parking" spot for two minutes, there was insufficient evidence that Diaz had committed a "clear traffic infraction." The trial court related from its own "background" that it can take "a lot more than two minutes" to display a disability parking permit. On appeal, that ruling was reversed.

Issue:

Did the Deputies have a lawful (within the 4th Amendment) basis for the traffic stop? **Yes**.

Parking Enforcement:

There are a few Florida Statutes that are relevant to this analysis:

Section 316.1955, provides in part: "1. It is unlawful for any person to **stop, stand, or park** a vehicle within, … any such specially designated and marked parking space provided in accordance with 553.5041, unless the vehicle displays a disabled parking permit …or a license plate issued under [chapter 320], and the vehicle is transporting the person to whom the displayed permit is issued.....

"(d) A law enforcement officer or a parking enforcement specialist has the right to demand to be shown the person's disabled parking permit and driver license or state identification card when investigating the possibility of a violation of this section. If such a request is refused, the person in charge of the vehicle may be charged with resisting an officer without violence,…"

Chapter 316 defines "stop" as "complete cessation from movement"; "stand" as "the halting of a vehicle ... otherwise than temporarily, for the purpose of, and while actually engaged in, receiving or discharging passengers"; and "park" as "the standing of a vehicle ... otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers."

Section 316.1955(3), reads: "Any person who is chauffeuring a person who has a disability is allowed, without need for a disabled parking permit or a special license plate, to stand temporarily in any such parking space, for the purpose of loading or unloading the person who has a disability. A penalty may not be imposed upon the driver for such temporary standing."

Anyone with a disabled parking permit will be able to park for free on the street at a turnstile meter for four hours maximum. The law also allows local municipalities to exceed the four hours maximum by local ordinance. *(Source, Florida Highway Safety and Motor Vehicles).*

Generally, "the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has

occurred." *Whren v. United States,* (S.Ct.1996). Nonetheless, "the stop must last no longer than the time it takes to write the traffic citation." *Cresswell v. State,* (Fla.1990). Further, the term "traffic violation" encompasses non-criminal, non-moving violations. *K.S. v. State,* (4DCA 2012) (stating officer was permitted to issue traffic violation for inoperable tag light).

In the present case, the officer had probable cause to conduct a traffic stop under section 316.1955, which states, "It is unlawful for any person to **stop, stand, or park** a vehicle within, [a designated handicap parking space]."

Court's Ruling:

"A traffic stop is a seizure and thus implicates Fourth Amendment protections. See, *State v. Hickman*, (6DCA 2023) (citing *Whren v. United States*, (1996); *Holland v. State*, (Fla. 1997)). In analyzing the constitutional validity of a traffic stop, courts in Florida employ a 'strict objective test which asks only whether any probable cause for the [traffic] stop existed.' "

"First, the trial court's analysis that the evidence must be suppressed because there was no clear traffic violation to justify the stop applied an incorrect standard. The test to be applied in analyzing the propriety of the traffic stop was whether probable cause existed that a traffic offense was committed. *State v. Crume*, (Fla. 6th DCA, Aug. 21, 2024), (citing *State v. Wimberly*, (5DCA 2008)). Here, applying the objective standard, probable cause existed regarding Diaz's apparent violation of section 316.1955. [In accord], *State v. Arevalo*, (4DCA 2013) (defendant's parking in a no-parking zone provided probable cause for the traffic stop)."

"Second, there was no competent substantial evidence about how long it takes a person to display a disability parking permit; *nor does section 316.1955 contain language expressly requiring that law enforcement wait a specific amount of time before initiating a traffic stop* for improper parking, standing, or stopping in a designated handicapped parking space…. Moreover, Diaz admitted that he did not have a disability parking permit."

"Third, there was no evidence that Diaz was chauffeuring or loading or unloading a disabled person. As previously indicated, the traffic stop was initiated after Diaz drove away from the handicapped parking space without ever having displayed the required decal and without having loaded or unloaded any person, let alone a person who may have had a disability. And, as previously mentioned, the only evidence before the trial court was that Diaz's one passenger did not appear to be disabled, nor did Diaz or the passenger indicate that she was disabled."

"Diaz was also properly directed by the deputies to exit his vehicle. See, *Mimms*, (1977). Upon doing so, the concealed firearm then became visible to the deputies and should not have been suppressed by the trial court. See, *State v. Benjamin*, (5DCA 2017) (reversing a trial court order suppressing a firearm hidden under the defendant's leg and discovered when he was ordered out of his vehicle as part of a lawful traffic stop), See, *State v. Creller*, (Fla. 2024). Reasonable suspicion that Diaz was involved in criminal activity then existed, resulting in his arrest. The post-arrest inventory search of Diaz's vehicle, which itself was not sufficiently challenged below, permissibly uncovered the fentanyl and methamphetamine in a satchel located in front of the driver's seat. REVERSED."

Lessons Learned:

A somewhat related issue arose in *State v. Arevalo*, (4DCA 2013). The Deputy observed the Defendant park in a designated "No-Parking" zone and walk away. The Deputy called him back to issue the parking ticket, thereby learning he was driving without a valid license. Defendant claimed the stop was unlawful as the Deputy could have simply issued the ticket by placing it under the windshield wiper without effecting the stop.

The D.C.A. ruled, "Here, we conclude that the Deputy's act of calling [Defendant] back to his vehicle to issue a citation, warning, or even request [Defendant] to move his vehicle, did not transform the encounter into an impermissible seizure under the Fourth Amendment. The Deputy observed [Defendant] park in a grassy area marked with 'Do not park' signs, which provided the Deputy with probable cause to conduct a traffic stop. Simply because [Defendant] had exited his car by the time the Deputy arrived, and the Deputy could have left the citation on the vehicle, does not mean the Deputy lacked the authority to order [Defendant] to return to the vehicle. See*, State v. Gross,* (Kan.App. 2008) (stating that 'officers had reasonable suspicion that a traffic violation had occurred,' after observing driver illegally park near a driveway and begin walking towards a house, and

thus 'the officers could have briefly detained [the driver] to issue him a ticket for the parking violation.')."

"Mighty oaks from little acorns grow" is an English proverb that reminds us that something big and successful can come from small, insignificant beginnings, such as a parking violation resulting in a firearm seizure. There are numerous examples of traffic enforcement that have led to felony arrests.

Such as failure to stop behind the stop line. See, *State v. Daniels*, (5DCA 2014). "This Court has previously held that when a vehicle 'pulled beyond or ahead of the stop line,' a traffic infraction has occurred under section 316.123(2)(a), and a valid traffic stop may result. However, neither the statute nor any Florida case defines what it means to stop 'at' a stop line. The State contends that the statute, properly interpreted, requires a vehicle to stop before any part of the automobile crosses the line. A stop line protects other motorists and pedestrians only if a vehicle stops when its front bumper reaches that line. This is particularly true because vehicles vary greatly in length. If we construe the statute otherwise, a big rig truck would not violate the statute even if its midsection is straddling the stop line and its tractor is protruding into the intersection. The Legislature could not have intended that potentially perilous result."

Yet another common infraction, crossing the double yellow. Sec. 316.0875 does not permit crossing solid double yellow lines even if done safely. It states, "no driver shall at any time drive. . . on the left side of any pavement striping designed to mark such no-passing zone." "Thus, the officer's observation of Defendant crossing the solid double yellow lines constituted probable cause for the traffic stop, regardless of the fact that driver did not create a safety hazard." *Lomax v. State*, (1DCA 2014).

Importantly, officers should write the traffic ticket for the underlying traffic violation that led to the stop and subsequent felony arrest. The documentation will substantiate the lawful stop at the inevitable motion to suppress.

State v. Diaz
6th D.C.A.
(Sept. 13, 2024)

CI Tip & Reasonable Suspicion

Jonathan Torres had several outstanding arrest warrants; the Sheriff's Office issued a BOLO notice to law enforcement to be on the lookout for the Defendant. Prior to initiating the traffic stop, Sergeant Ball reviewed Defendant's lengthy criminal history. He also verified the active warrants telephonically. As a result of Defendant's criminal history, Ball believed he "needed to use caution" if he had to arrest Torres. Ball also received a tip from a confidential informant that Defendant was driving a dark green Honda with dark-tinted windows and could be located at a specific address.

The "past reliable" CI provided Sergeant Ball with details about the make, model, color, and a specific feature -- dark tinted windows -- of the vehicle he could find Defendant driving. The CI also provided Ball with a specific address where he could locate Defendant. It was undisputed that Ball observed Defendant walking around a parked dark green Honda Accord with tinted windows in the driveway of the exact address provided by the CI.

Ball initiated a stop by activating his blue lights. As he approached the vehicle Ball testified that he recognized Defendant from the warrant photo as the driver. Defendant was arrested without incident. Sergeant Ball received a call back from dispatch informing him that the vehicle Defendant had been driving was reported stolen. The Defendant was charged with the open felony warrants, and possession of a stolen vehicle.

Issue:

Did the informant's tip possess sufficient "indicia of reliability" to justify the officer's reasonable suspicion? **Yes**.

Reasonable Suspicion:

An arrest must be supported by probable cause, whereas an investigatory stop requires reasonable suspicion of a crime. Reasonable suspicion "is a less demanding standard than probable cause" yet requires "at least a minimal level of objective justification for making the stop." *Illinois v. Wardlow*, (S.Ct.2000). The burden is on the State to prove that reasonable suspicion justified a warrantless seizure. *United States v. Kehoe*, (4th Cir. 2018), "To effect a constitutionally permissible investigatory stop, a law enforcement officer must have a well-founded, articulable suspicion that the person stopped has committed, is committing, or is about to commit a crime" "Mere suspicion is not enough to support a [Terry] stop." *Popple v. State*, (Fla. 1993).

In deciding whether an officer had a well-founded suspicion

of criminal activity, the trial court must consider the totality of the circumstances. *D.C. v. Wesby*, (S.Ct. 2018), ruled that the totality of the circumstances test does not allow the viewing of each fact in isolation and "the whole is often greater than the sum of its parts." Factors that may be considered in making that determination include the time of day, the suspect's appearance and behavior, and anything unusual in the situation as interpreted in light of the officer's experience, knowledge, and training.

"Reasonable suspicion ... is dependent upon both the content of information possessed by police and its degree of reliability." *Alabama v. White*, (S.Ct.1990). "In analyzing whether third-party information can provide the requisite reasonable suspicion, courts have looked to the reliability of the informant as well as the reliability of the information provided." "The less reliable the tip, the more independent corroboration will be required to establish reasonable suspicion." On the one end of the spectrum of reliability is an anonymous tip that has relatively low reliability because it rarely demonstrates the informant's basis of knowledge or veracity; thus, it must be sufficiently corroborated by the officer to constitute reasonable suspicion. *Baptiste v. State*, (Fla. 2008), ruled that an anonymous tip alone generally does not provide reasonable suspicion for a stop but could do so under a totality of the circumstances analysis, such as when an officer makes subsequent observations of a suspect who matches the description given, as occurred in the present case. On the other end of the spectrum is a tip from a citizen informant that is presumed highly reliable because the informant's motivation is the promotion of justice and public safety and the informant provides their name and can be held accountable; therefore, it is sufficient by itself to provide police with reasonable suspicion.

However, where, as here, the tip, though reliable, fails to provide a well-founded, articulable suspicion that the person observed has committed, is committing, or is about to commit a crime," police will need to make further observations and investigation to establish objective reasons for the stop. This "more information" must be provided by the investigating officer by corroborating the underlying facts in the tip.

Court's Ruling:

"The Fourth Amendment's protection against unreasonable searches and seizures extends to investigatory stops 'that fall short of traditional arrest.' *United States v. Arvizu*, (S.Ct.2002). However, 'for investigatory stops, the balance between the public interest and the individual's right to personal security tilts in favor of a standard less than probable cause.' Accordingly, "if police have a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony, then a *Terry* stop may be made to investigate that suspicion.' *United States v. Hensley*, (S.Ct.1985)."

"When assessing the constitutionality of traffic stops, we employ a two-prong analysis: First, we 'assess whether the articulated bases for the traffic stop were legitimate.' 'Second, we examine whether the actions of the authorities during the traffic stop were reasonably related in scope to the basis for the seizure.' *United States v. Palmer*, (4th Cir. 2016)."

"Whether an officer's suspicion is legitimately 'reasonable' and 'articulable' depends on the totality of circumstances. *United States v. Cortez*, (S.Ct.1981) (noting that reasonable suspicion involves the 'totality of the circumstances—the whole picture'). 'Factors which by themselves suggest only innocent conduct may amount to reasonable suspicion when taken together.' *United States v. Perkins*, (4th Cir. 2004)."

"We evaluate an officer's justification for an investigatory stop on an objective basis. *See Illinois v. Wardlow*, (S.Ct.2000). 'If sufficient objective evidence exists to demonstrate reasonable suspicion, a [*Terry*] stop is justified regardless of a police officer's subjective intent.' *United States v. Branch*, (4th Cir. 2008). In cases where an informant's tip supplies part of the basis for reasonable suspicion, courts must ensure that the tip possessed sufficient 'indicia of reliability.' *Florida v. J.L.*, (S.Ct. 2000)."

"The tip Sergeant Ball received in this case was a key factor among the broader swath of information and circumstances known to Sergeant Ball at the time of the traffic stop. [Defendant] argues that the tip 'lacked sufficient indicia of reliability' to support reasonable, articulable suspicion. [Defendant's] argument centers largely on his contention that the CI's tip was an anonymous tip and that Sergeant Ball failed to obtain the corroboration necessary for anonymous tips. But there is a difference between a purely anonymous tip from an ordinary

citizen-informer and a tip from a confidential police informer. And here, Sergeant Ball testified that he knew the CI and that the CI had previously given him reliable information. Thus, Sergeant Ball 'relied not on an unknown informant but one whom he knew and who had provided reliable information in the past.' *United States v. Bynum*, (4th Cir. 2002)."

"It is well established that a known, reliable informant 'is entitled to far more credence than an unknown, anonymous tipster.' *Adams v. Williams*, (S.Ct.1972). Although *it would have been preferable if Sergeant Ball 'had expressly stated in his affidavit the basis for his statement as to his informant's reliability, he did at least swear ... that he was relying on a known and proven confidential source, not a never-known, never-verified tipster.*' And 'corroboration can confirm the reliability of an informant who is known (rather than anonymous) but whose credibility is unknown to the officer.' *United States v. Gondres-Medrano*, (4th Cir. 2021) 'Where a tipster is shown to be right about some details, he is probably right about other alleged facts, ... justifying reliance on the anonymous tip.' "

"Here, the CI provided Sergeant Ball with details about the make, model, color, and a specific feature -- dark tinted windows -- of the vehicle Sergeant Ball could find [Defendant] driving. The CI also provided Sergeant Ball with a specific address where he could locate [Defendant]. It is undisputed that Sergeant Ball observed someone walking around a parked dark green Honda Accord with tinted windows in the driveway of the exact address provided by the CI."

"Moreover, Sergeant Ball had been looking for [Defendant] since the S.O. issued [a BOLO] for [Defendant] just a few days earlier. Sergeant Ball also knew [Defendant] had an extensive criminal history as well as several active outstanding warrants, including two … for felony breaking and entering and felony larceny after breaking and entering. The corroborating aspects of the tip sufficiently establish the informant's reliability, and the totality of the circumstances provided Sergeant Ball with sufficient justification to conduct an investigatory stop for the purpose of determining whether [Defendant] was the vehicle's driver. See, *United States v. Hensley*, (S.Ct.1985) (noting that law enforcement interests are stronger where suspect is wanted for felony offenses 'or crimes involving a threat to public safety')."

"Accordingly, the record demonstrates that Sergeant Ball's reason for conducting the investigatory traffic stop -- to ascertain the identity of the driver -- was legitimate and that he had reasonable suspicion to believe that [Defendant] was the driver. *... Sergeant Ball had viewed a photograph of [Defendant] in the days leading up to [the] arrest and could recognize [Defendant] on sight.* The record reflects -- and the body camera footage confirms -- that, after stopping the vehicle and exiting his police cruiser, Sergeant Ball immediately approached the driver's side of the vehicle and confirmed his suspicion that the driver was indeed [Defendant], the fugitive he was looking for. Accordingly, the record supports the [trial] court's determination that Sergeant Ball had reasonable suspicion to conduct the initial traffic stop. AFFIRMED."

Lessons Learned:

There is little doubt from the court's recitation of the underlying facts and actions taken by Ball that he did everything correctly and documented those actions. These legal issues are often **fact-specific**. "Bad facts make for bad law – Good facts make good law." It is incumbent on the officer to write a complete and detailed report, as did the Sergeant in this case, setting forth all his observations, and thought processes based upon his experience, knowledge, and training.

The Court commented that "It is undisputed that Sergeant Ball did not confirm [Defendant's] identity until after he had initiated the traffic stop. However, when police 'have been unable to locate a person suspected of involvement in a past crime,' and 'have a reasonable suspicion ... that a person they encounter was involved in or is wanted in connection with a completed felony,' they may 'briefly stop that person, ask questions, or check identification.'."

While not an issue in the present case, it should not be overlooked that in addition to the underlying arrest charge, the officer should also issue a traffic citation for the traffic violation that drew his attention in the first instance. This is critical to the suppression hearing as it documents the reason for the original police contact and thereby authorizes the ordering of the defendant from his vehicle and the felony arrest.

Torres v. Ball
U.S. Court of Appeals, 4th Cir.
(April 17, 2023)

(Continued from page 2)

2nd Amendment

use'). In other words, while historical tradition regarding the regulation of dangerous weapons *supports* a limitation on the scope of the Second Amendment right, *a weapon must be in common use for a lawful purpose to be protected by that right*."

"The question before us is thus whether firearms with obliterated serial numbers are in common use for lawful purposes. On that point, we agree with the Third Circuit that there is 'no compelling reason why a law-abiding citizen' would use a firearm with an obliterated serial number and that such weapons would be preferable only to those seeking to use them for illicit activities. This is the same common-sense reasoning applied by the Supreme Court in *Heller.*"

"Further, there is no evidence before us that law-abiding citizens nonetheless choose these weapons for lawful purposes like self-defense. In fact, the opposite appears to be true, firearms with obliterated serial numbers are not common at all. A 2023 report from the Bureau of Alcohol, Tobacco, and Firearms noted that less than 3% of the firearms submitted by law enforcement agencies to the ATF for tracing between 2017 and 2021 had an obliterated serial number."

"And here, *because we cannot fathom any common-sense reason for a law-abiding citizen to want to use a firearm with an obliterated serial number for self-defense, and there is no evidence before us that they are nonetheless commonly lawfully used,* **we conclude that firearms with obliterated serial numbers are not in common use for a lawful purpose and they therefore fall outside the scope of the Second Amendment's protection**. … Thus, § 922(k)'s regulation of such arms does not violate the Second Amendment. *REVERSED*."

Lessons Learned:

The Court of Appeals expanded on its ruling thusly: "…the [trial] court noted that 'while the law-abiding citizen's possession of the firearm was originally legal, it became illegal only because the serial number was removed,' thus infringing on the citizen's right to possess a firearm. But the illegal conduct is not the possession of the firearm *qua* firearm: it is the possession of a firearm *with an obliterated serial number.* Firearms that are originally lawfully purchased are not somehow imbued with constitutional coverage no matter what happens after they leave the dealer. *Regardless of any originally lawful nature, a shotgun becomes contraband once its barrel is modified to be less than eighteen inches. The fact that such contraband was created using an originally lawful item is irrelevant*."

"Another hypothetical example further illustrates this point. Imagine a handgun has been modified such that the grip is made of illegally imported Ivory. ... Just like an obliterated serial number, a grip made of illegally imported Ivory bears no relationship to the lawful use of the weapon, and produces a weapon that is not in common use for a lawful purpose. The Government does not lose its ability to regulate Ivory, or a serial number, merely because it is affixed to a firearm [handgun]."

United States v. Price
U.S. Court of Appeals, 4th Cir.
(Aug. 6, 2024)