

LEGAL EAGLE

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Marijuana Smell

Officer Zachary Collins walked into a local hotel as part of his routine patrol and smelled marijuana in the front entrance. He then “smelled room doors,” going door to door until he “was able to detect an odor of marijuana emitting from Room #118.” After identifying the scent coming from Room 118, he continued down the hall, smelling a few more doors in the area to confirm the marijuana smell was not coming from a nearby room.

The guest list showed that Room 118 was being rented to Leonard Tate. Collins had investigated Tate before and knew he had a criminal history involving drugs and weapons. *Tate’s name did not appear in the State registry which meant he could not legally possess marijuana.* Collins also learned that Tate had originally booked his room for just one night but had extended his stay an additional night. Finally, hotel staff told Collins that Tate had specifically requested that he be given a room with a safe.

The warrant was issued and officers found 2,879 fentanyl pills and more than \$15,000 in cash in the safe. They also discovered firearm parts and a postal service receipt of a package shipped to Michigan.

Defendant was charged with multiple felonies. He filed a motion

to suppress, arguing that the search warrant was not supported by probable cause. The trial court determined the warrant was supported by sufficient probable cause, its scope was not exceeded during the search. The court denied the motion. On appeal, that ruling was affirmed.

Issue:

Did the odor of marijuana provide probable cause for the search warrant? **Yes.**

Marijuana Smell as Probable Cause:

The more common scenario involves a vehicle stop and the officer detecting the odor of marijuana. Simply put, the “plain smell” of cannabis standing alone is no longer sufficient for probable cause, but rather its odor is “a relevant factor to consider among the totality of the circumstances.” *Williams v. State*, (2DCA 2025).

Under the automobile exception to the general warrant requirement, “police may search a vehicle without a warrant so long as they have probable cause to believe that it contains contraband or evidence of a crime.” “Probable cause exists where the facts and circumstances within (the officers’) knowledge ... [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an

Officers should consult with their agency advisors to confirm the interpretation provided in this publication and to what extent it will affect their actions.

Past issues of the Legal Eagle over three years old should not be relied upon due to change in statutes and case law.

offense has been or is being committed.” *State v. Tigner*, (4DCA 2019) (quoting *State v. Betz*, (Fla. 2002)).

In determining whether probable cause exists to search a vehicle, courts must utilize a “totality of the circumstances” approach. That approach “allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that ‘might well elude an untrained person.’”

Case law, both federal and Florida, has held that the odor of burnt marijuana provides an officer with probable cause that a crime is being committed. “Officer Turner testified that while he was getting Cheeks’ driver’s license, he smelled the odor of burnt marijuana and saw marijuana residue on the inside of the passenger door. Our precedent makes clear that an officer’s level of suspicion rises to the level of probable cause when he detects ‘what he [knows] from his law enforcement experience to be the odor of marijuana.’ Accordingly, the smell of marijuana [provides] reasonable suspicion that additional criminal activity had occurred or was occurring, which justified extending the stop” *United States v. Cheeks*, (11th Cir. 2019).

Owens v. State, (2DCA 2021), concluded, “Finally, we note that even if marijuana was legalized for recreational use, such use while driving would still support the offense of driving while intoxicated; thus, regardless of whether marijuana becomes decriminalized for recreational use, the smell of the burning substance will continue to provide probable cause for a search of a

vehicle. See *Johnson v. State*, (1DCA 2019) (‘Even if smoking marijuana were legal altogether, the officers would have probable cause based on the fact that Johnson was operating a car.’ (citing § 316.193(1) (a), F.S.) ‘The probable cause standard, after all, is a ‘practical and common sensical standard.’ It is enough if there is the ‘the kind of fair probability’ on which ‘reasonable and prudent people, not legal technicians, act.’ See, *Florida v. Harris*, (S.Ct.2013)).”

However, after amendments to the Florida Statutes authorized the use of medical marijuana and authorized the possession of hemp, the principle that the “smell of marijuana alone” provides probable cause to search has come under scrutiny. That is because both medical marijuana and hemp can now be legally possessed in Florida and, arguably, the smell of either is indistinguishable from illegally possessed marijuana. Accordingly, under recently enacted Florida statutes, there may be circumstances where “an occupant of a vehicle may have a legitimate explanation for the presence of the smell of fresh (not burning or burnt) marijuana in the vehicle, such as where the individual has a lawful prescription for it, or that the substance is, in fact, hemp.”

“Just as evidence in the plain view of an officer may be searched without a warrant, evidence in the plain smell may be detected without a warrant.” *State v. Fortin*, (4DCA 2024).

See also, *Aldama v. State*, (3DCA 2024) “The Trooper’s questioning of [the Defendant] eliminated the only lawful explanations for the smell prior to their search.” [In the

Aldama case, the Trooper asked the Defendant if he had a medical marijuana card, and when he replied, ‘No’ the arrest was made.]

Court’s Ruling:

“We first consider Tate’s argument that the search warrant was invalid because it was not supported by probable cause. ... Probable cause exists if, under the totality of the circumstances, a showing of facts can be made ‘sufficient to create a fair probability that evidence of a crime will be found in the place to be searched.’ *United States v. Johnson*, (8th Cir. 2017).”

“Here, the smell alone provided substantial support for the existence of probable cause. We have routinely allowed the scent of marijuana to provide a basis for probable cause in the vehicle context. See, e.g., *United States v. Williams*, (8th Cir. 2020) (determining officers had probable cause to search a defendant’s vehicle ‘because [an officer] smelled marijuana when [the defendant] opened the car door’); *United States v. Walker*, (8th Cir. 2016) (noting that the smell of unburned marijuana in a vehicle ‘provided probable cause to search the car’); *United States v. Beard*, (8th Cir. 2013) (‘The smell of marijuana in a vehicle can establish probable cause’); *United States v. Peltier*, (8th Cir. 2000) (‘The smell of marijuana gave the Deputy probable cause to search Peltier’s truck for drugs.’). And we have applied the same analysis when the odor emits from an apartment. See *Miller v. Sigler*, (8th Cir. 1965) (noting that an officer’s statement that he detected the smell of marijuana coming from a particular room was sufficient to establish probable cause to search the

room). This is consistent with the Supreme Court's longstanding guidance that the presence of odors 'might very well be found to be evidence of most persuasive character.' See *Johnson v. United States*, (S.Ct.1948); see also *Arizona v. Gant*, (S.Ct.2009) (noting that an officer who smelled burnt marijuana and saw an envelope marked 'Supergold,' a name associated with marijuana, had probable cause to conduct a search (citing *New York v. Belton*, (S.Ct.1981))."

"Tate contends that Officer Collins did not have sufficient training to identify the marijuana scent with such specificity. Tate faults the officer's door-to-door smelling process for 'lacking in corroboration or the indicia of reliability that would apply to the same scent tracking if conducted by a certified canine.' But Tate has not pointed to—and we have not found—any case requiring officers be subject to the same training standards as canines for identifying a common scent such as marijuana. We are satisfied that nearly a decade of experience in law enforcement and some drug identification training sufficiently qualified Officer Collins to identify the scent of marijuana."

"Tate further argues that our cases on the odor of marijuana lack persuasive force because identifying the smell of marijuana is different from tracking the smell door to door. This distinction is relevant but not dispositive. Human experience makes clear that a scent is generally strongest from the place it emanates... While pinpointing a smell to a particular room may not always be possible, Officer Collins swore in his affidavit that he successfully

identified which room was emitting the marijuana scent, and no reason is offered to doubt his veracity. ('When an Officer personally states that he detected the odor of marijuana from a particular room in an apartment dwelling, certainly this is sufficient probable cause to issue the requested warrant for a search of the room.')

"Nor does the lack of marijuana in Tate's room during the search disprove probable cause. Officer Collins noticed the marijuana smell at Tate's hotel room door around 4:20 p.m. The officers did not search Tate's room until about 9:35 a.m. the following day. The marijuana may well have been consumed or removed during that time. Moreover, the probable cause determination was not made based on scent alone. Officer Collins further stated in the affidavit that Tate had come from Michigan, had specifically inquired about the safe in his room, had extended his stay day by day, had a criminal history involving drugs, and was not legally allowed to possess marijuana in North Dakota. Under the totality of the circumstances, the issuing judge had a substantial basis for determining that evidence of a crime would be found in Tate's hotel room, and thus the [trial] court did not err in denying Tate's motion to suppress."

"Tate further argues that even if the warrant was valid, the officers exceeded its scope in executing the warrant. Here, the officers' search was within the scope of the warrant. A lawful search warrant 'extends to all areas and containers in which the object of the search may be found.' *United States v. Saddler*, (8th Cir. 2021). Because the search warrant here authorized law

enforcement to search for 'marijuana' and 'paraphernalia to ingest marijuana,' it allowed officers 'to search in any closet, container, or other closed compartment in the [hotel room] large enough to contain' marijuana or such paraphernalia. See *United States v. McManaman*, (8th Cir. 2012). Officer Collins testified that the safe, which was about 12 inches wide, 12 inches long, and 6 inches tall—was large enough to hold marijuana. Once officers were lawfully in Tate's hotel room with lawful access to the items in the safe, the plain view doctrine permitted them to 'seize ... without a warrant' those items in which the 'incriminating character [was] immediately apparent.' See *United States v. Class*, (8th Cir. 2018). The [trial] court therefore did not err in denying the motion to suppress on this basis as well. **AFFIRMED.**"

Lessons Learned:

In a case decided by the 4th D.C.A. the court found no distinction between raw and burnt marijuana. See, *State v. Sarria*, (4DCA 2012). "For the purpose of providing a basis for probable cause, we see no reason to distinguish the odor of burnt marijuana from the odor of raw marijuana."

"In fact, the smell of burnt marijuana coming from a car window is consistent with personal use of marijuana in the passenger compartment, raising the possibility that all of the drug has been consumed by combustion. On the other hand, the overpowering smell of raw marijuana raises a fair probability that the car is being used to transport large quantities of marijuana thereby providing an even stronger basis for

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Emergency Preparedness Checklist

x

BE PREPARED FOR 2 WEEKS!



MEDICATION

Medication and medical supplies. Ask your provider about an emergency supply.



WATER

At least 1 gallon a day per person. Consider water treatment supplies for long outages.



SANITATION

2-buckets: 1 for urine, 1 for feces. Sawdust, coffee grounds, or shredded paper to cover feces. Hand sanitizer, wet wipes, or extra water for washing.



FOOD

Non-perishable (canned, dehydrated, dried) that doesn't need much prep. Replace every 6 to 12 months. Include manual can opener.

CREATE AN EMERGENCY PLAN



HOW WILL YOU RECEIVE EMERGENCY NOTIFICATIONS?



WHAT IS YOUR SHELTER PLAN?



WHAT IS YOUR EVACUATION ROUTE?



HOW WILL YOU COMMUNICATE WITH YOUR HOUSEHOLD?

Source: Public Health Snohomish County, Everett, WA



Recent Case Law

Police Custody for Miranda

While the underlying facts are sparingly set forth in the opinion, it is clear that Joel Scott was apprehended by store security trying to steal approximately \$230 in children's clothing. Scott was confined in the store's locked "holding cell," was not given any *Miranda* warnings prior to being questioned by the police and signing the form in their presence. The State argued that *Miranda* warnings were not required because Scott was neither in police custody nor interrogated by the police when he was in the store's locked holding cell, and the store's loss prevention employee, rather than the police, prepared the form and directed Scott to sign it. Defendant's suppression motion was granted by the trial court. On appeal, that ruling was affirmed.

Issue:

Did the Defendant reasonably believe that he was in police custody when confined by the loss prevention employee in the store's locked "holding cell"? **Yes.**

Police Custody:

The obligation to apprise the suspect of his *Miranda* rights attaches "only where there has been such a restriction on a person's freedom as to render him 'in custody.'" *Oregon v. Mathiason*, (S.Ct.1977).

In determining when a person is in custody for purposes of receiving *Miranda* warnings "the only relevant

inquiry is how a reasonable man in the suspect's position would have understood his situation." *Berkemer v. McCarty*, (S.Ct.1984). "Custody for purposes of *Miranda* encompasses not only formal arrest, but any restraint on freedom of movement of the degree associated with formal arrest. A person is in custody if a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest. *The proper inquiry is not the unarticulated plan of the police, but rather how a reasonable person in the suspect's position would have perceived the situation.*" *Ramirez v. State*, (Fla. 1999).

"Interrogation occurs when a State agent asks questions or engages in actions that a reasonable person would conclude are intended to lead to an incriminating response." *State v. McAdams*, (Fla. 2016).

A suspect is "in custody" if the circumstances of the questioning "present a serious danger of coercion." *Howes v. Fields*, (S.Ct.2012). To determine whether such a danger existed, courts first consider whether a reasonable person in the suspect's position would have felt that "she was not at liberty to terminate the interrogation and leave." Relevant factors in this assessment include the location of the questioning, statements made during the interview, the presence of any physical restraints, and whether the interviewee was released once the interrogation ended.

Ramirez v. State set forth the factors that "provide guidance in making the determination whether a reasonable person in the suspect's position would consider himself in custody: 1. the manner in which police summon the suspect for questioning; 2. the purpose, place, and manner of the interrogation; 3. the extent to which the suspect is confronted with evidence of his or her guilt; 4. whether the suspect is informed that he or she is free to leave the place of questioning."

Court's Ruling:

"The police officer testified that he and a fellow officer, both on-duty and in uniform, were present when Scott was questioned in the store's locked holding cell. The Officer testified that, until Scott signed a promise to appear form, Scott was not free to leave. On our careful review of the live testimony and the *video evidence* introduced at the suppression hearing, we agree with the trial court's findings that, when Scott was confined in the store's locked holding cell, Scott was in police custody and interrogated by the police. Thus, the trial court properly suppressed Scott's statements to the police.

"Further, we agree with the trial court that the police – who, as plainly *reflected in the video evidence*, actively assisted in the interrogation by asking questions, assisted in the loss prevention employee's preparation of the acknowledgment form and oversaw Scott's signing the form – were more than mere observers, such that *Miranda* warnings were

required here. *State v. J.T.D.*, (2DCA 2003) (finding *Miranda* warning not required where the officer was ‘merely present during the [school official’s] interview, in and out of the room, and asked no questions’). The trial court, therefore, properly suppressed the department store’s acknowledgement form. **Affirmed.**”

Lessons Learned:

With regard to the inherent coercive atmosphere in a police department, there are numerous cases that discuss voluntary statements conducted in a police station. The United States Supreme Court has also held that “voluntary” interviews conducted in police stations do not necessarily trigger *Miranda*. See, *Oregon v. Mathiason*, (S.Ct.1977) (Defendant not in custody where: 1. he voluntarily traveled to the police station; 2. the interrogating officer explicitly told him that he was not under arrest; 3. the interview lasted for thirty minutes; and 4. the defendant was free to leave after the interview).

State v. Scott
3rd D.C.A.
(July 22, 2026)

Evidence Nexus

Defendant, Sanjay Johnson, was charged with second-degree murder following the death of his wife. The State charged that Johnson beat his wife with a baseball bat, causing her death. Defendant told responding officers that his wife was in the bathtub, and she told him that she had fallen and hit her head. Defendant helped his wife out of the bathroom into their bedroom and tried to help control the bleeding.

Multiple witnesses, including the Medical Examiner, testified that there were visible injuries to the

victim. The M.E. further testified that the victim’s injuries were “consistent with being caused by a cylindrical object.” He determined that the manner of the victim’s death was homicide, and the cause of the victim’s death was “blunt force injuries.” The emergency room doctor, who attempted to treat the victim when she arrived at the hospital, also testified that the victim’s injuries *were not* consistent with a fall or a car crash.

A Detective testified to locating a black and blue baseball bat behind the television in the bedroom. The Detective also recovered surveillance footage and a receipt indicating that Defendant had purchased the bat ten days before the victim’s death. However, swabs of the bat **were not** tested for the victim’s DNA.

Another Detective made contact with the couple’s child, who provided information about the baseball bat. The child, who was six years old at the time of the incident, was twelve at the time of the trial. He testified he heard Defendant and his mother “yelling and screaming.” The child said he saw Defendant hit the victim with a black and blue baseball bat. The child did not know how many times he hit the victim with the bat, or where the victim was hit. He said his memory of Defendant hitting the victim with a bat “wasn’t a dream” because there was “blood on his shirt.” The child was shown the bat recovered from the bedroom. He said it “kind of looks like” the bat Defendant was using to hit the victim. The child remembered the bat being bigger, but he was six years old and smaller at the time of the incident.

Defendant argued on appeal

that the trial court erred by allowing the State to introduce evidence of the baseball bat because the State failed to establish a sufficient nexus between the bat produced at trial and the crime charged.

Issue:

Did the State establish a sufficient nexus between the bat and the crime charged? **Yes**

Admissibility of Evidence:

Physical evidence must have a sufficient nexus or connection to the crime charged to be admissible at trial. The fundamental requirement is that evidence must be relevant, meaning it tends to prove or disprove a material fact related to the elements of the charged offense. Courts determine relevance by examining the elements of the crime charged and whether the evidence tends to prove or disprove a material fact in issue. *Gartner v. State*, (5DCA 2013).

“Generally, the test for the admissibility of evidence is relevance. § 90.402. Relevant evidence is defined by statute as ‘evidence tending to prove or disprove a material fact.’ § 90.401. ‘Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence.’ ” § 90.403. As such, ‘the prerequisite to admissibility is relevancy.’ ‘In determining relevance, we look to the elements of the crime charged and whether the evidence tends to prove or disprove a material fact.’ ” *Castanon v. State*, (4DCA 2014).

Physical evidence must demonstrate a sufficient connection to the crime charged to be relevant and admissible. Where there is a

sufficient nexus between evidence and the crime with which a Defendant is charged, such evidence is admissible.

Evidence that lacks relevance to the charged crime is inadmissible, as demonstrated in cases where physical evidence had “relevance only to Defendant’s character and propensity to commit crimes.” See, *Pack v. State*, (2DCA 1978).

“Evidence is inextricably intertwined if the evidence is necessary to 1. adequately describe the deed, 2. provide an intelligent account of the crime(s) charged, 3. establish the entire context out of which the charged crime(s) arose, or 4. adequately describe the events leading up to the charged crimes.” *Dorsett v. State*, (3DCA 2006). See also, *Scott v. State*, (1DCA 2007).

Court’s Ruling:

“ ‘It is well-settled that in order for evidence of a [weapon] to be admissible as relevant in a criminal trial, the State must show a sufficient link between the weapon and the crime.’ *Metayer v. State*, (4DCA 2012). ‘Conversely, when the nexus between the weapon or ammunition and the crime is too tenuous, such evidence is generally not relevant.’ *Holloway v. State*, (4DCA 2013). ‘In determining whether a sufficient nexus exists, the trial court can consider testimony identifying distinct similarities between the weapon used in the crime and the weapon proffered at trial. Likewise, the lapse of time between the crime and the discovery of the proffered evidence may be a considerable factor for the court.’ *Gartner v. State*, (5DCA 2013). A sufficient nexus does **not**, however, require testimony that the

proffered weapon is definitively the weapon that was used during the crime.”

“The State established a sufficient nexus between the baseball bat and the crime charged to allow introduction of the bat and the corresponding testimony. The child’s testimony that [Defendant] was using a black and blue bat to hit the victim established ‘distinct similarities between the weapon used in the crime and the weapon proffered at trial.’ The medical examiner’s testimony that the victim’s injuries were ‘consistent with being caused by a cylindrical object,’ also provided ‘distinct similarities’ between the bat and the victim’s injuries. The court could also consider the fact that the bat was located soon after the crime had been committed. Further, the bat was found in close proximity to the victim in the bedroom, and [Defendant] had purchased a bat ten days before, within temporal proximity, to the incident. These factors, taken together, established more than a sufficient link between the bat and the crime charged for the bat to be admitted into evidence.”

“In [two prior cases], even though the weapon was not definitively determined to be the same weapon used in the commission of the crime, there was still sufficient evidence for the jury to properly infer that the weapon could have been used in the crime. Just like those cases, in the present instance, *even though there was no evidence definitively determining that the bat was the weapon, the nexus linking the bat to the crime was certainly sufficient for its admission into evidence.*”

“[Defendant’s] arguments

on appeal go to the **weight** to be afforded to the bat rather than its **admissibility**. (*Gartner v. State*, (5DCA 2013)) (If it is inconclusive that the proffered weapon is the weapon used during the crime, but a sufficient nexus exists, it is the jury’s province to determine the credibility and weight of the evidence.’). For example, while the medical examiner could not ‘say with any more specificity’ what the cylindrical object was, any uncertainty as to the object went to the weight of the evidence, not its admissibility. [Defendant] did in fact attack the weight of the bat as evidence, for example, by pointing out that swabs of the bat were not tested for DNA. The bat was clearly admissible in the instant case, as the State established a sufficient nexus between the bat and the crime charged. **AFFIRMED.**”

Lessons Learned:

Given the importance of the bat to the murder charge, one would have expected a more thorough analysis, including fingerprints, blood type, and DNA comparison. The six-year delay to bring the case to trial placed the testimonial evidence at risk.

Physical evidence must be properly authenticated to be admissible, which often involves establishing a nexus between the evidence and the crime charged. For tangible items lacking distinctive characteristics, such as weapons, narcotics, or recordings, authentication frequently requires demonstrating a chain of custody to avoid reasonable doubt about tampering, substitution, or alteration. The chain of custody involves testimony from each custodian who handled the item from seizure to trial, addressing when and from whom custody was taken and

transferred, and the precautions taken to preserve the evidence in substantially unchanged condition. As the D.C.A. ruled in the present case, minor breaks or gaps generally affect the *weight of the evidence rather than its admissibility* unless bad faith or tampering is shown.

The Florida Supreme Court has made clear the basic legal principle that “relevant physical evidence is admissible unless there is an indication of probable tampering.” *Peek v. State*, (Fla.1980). In seeking to exclude certain evidence, Defendant bears the initial burden of demonstrating the probability of tampering. Once this burden has been met, the burden shifts to the State to submit evidence that tampering did not occur.

As an example of this process, *Murray v. State*, (Fla. 2002), is instructive: “In reviewing the testimony of Officer Laforte and [crime analyst] Warniment, we find that the Defendant carried his burden in demonstrating the probability of evidence tampering. Laforte clearly remembered placing both the bottle of lotion and the nightgown in the same bag and specifically did so in order to keep them together. The analyst who received the sealed bag, however, stated unequivocally that although the bag had not been previously opened, it no longer contained the lotion, and further, she never received the lotion. We find that based on this obvious discrepancy, the Defendant has met his burden of showing the probability of evidence tampering, and hence the burden shifted to the State to explain the discrepancy or to submit evidence that tampering did not occur. As the State failed to meet its burden, the

trial court erred in finding the challenged evidence admissible.”

Johnson v. State
4th D.C.A.
(April 15, 2026)

Firearm Frisk

In this case the State appealed an order suppressing a firearm that Detective Carlos Corvo discovered on Zachery Brandon Lyles during a lawful investigatory stop. On appeal, the D.C.A. found the officer had reasonable suspicion that Lyles was armed and dangerous.

Detective Carlos Corvo was on routine patrol when dispatch reported shots fired aboard a charter vessel near the docks. Dispatch broadcast a BOLO description of the suspected shooter: black male in his thirties wearing a white hat, a blue shirt, and tan shorts. As Detective Corvo responded, he encountered Zachery Lyles walking from the direction of the docks and matching the BOLO description. When Detective Corvo made eye contact, Lyles placed his hand on the waistband of his shorts and adjusted a bulge. Detective Corvo drew his firearm, ordered Lyles to raise his hands, and reached out and touched the bulge before lifting the shirt to reveal a firearm. The stop and the lifting of the shirt occurred simultaneously. Officers detained Lyles and placed him into custody.

Lyles was arrested and charged with multiple felonies including one count of possession of a firearm by a convicted felon. He moved to suppress the firearm, asserting that Detective Corvo lacked the reasonable suspicion and probable cause necessary to seize him and conduct a search. The trial court

granted the motion. On appeal, that ruling was reversed.

Issue:

Did Detective Corvo have a reasonable belief that Lyles was armed and dangerous? **Yes.**

Investigative Stop:

Popple v. State (Fla. 1993) recognized three levels of police citizen encounters: a consensual encounter; an investigatory stop; and an arrest. In order to justify an investigatory stop, police must possess specific, articulable facts that would warrant a man of reasonable caution to believe that a person has committed, is committing, or is about to commit a crime.

In *Terry v. Ohio*, (S.Ct. 1968) the U.S. Supreme Court held: “Where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a *carefully limited search of the outer clothing* of such persons in an attempt to discover weapons which might be used to assault him.”

Further, to justify an investigatory stop, the law enforcement officer must provide “specific and articulable facts,” as well as rational inferences that may be drawn from those facts, in support of the stop. The Supreme Court has subsequently

reiterated that the police may “make a forcible stop of a person when the officer has reasonable, articulable suspicion that the person has been, is, or is about to be engaged in criminal activity.” *U.S. v. Place*, (S.Ct.1983). Factors that may be considered in evaluating whether a reasonable, articulable suspicion exists are the area in which the encounter occurred and whether the person observed engaged in nervous, evasive conduct, such as fleeing from the police. *Illinois v. Wardlow*, (S.Ct.2000).

Court’s Ruling:

“Under Florida’s ‘Stop and Frisk Law’ a law enforcement officer is authorized to temporarily detain an individual whenever he or she ‘encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this State or the criminal ordinances of any municipality or county.’ This investigatory stop (or ‘Terry-stop’) ‘requires that the officer possess a reasonable suspicion that the citizen has committed, is committing, or is about to commit a crime in order to support the detention.’ *State v. Cruse*, (3DCA 2013); see also *Goodman v. State*, (2DCA 2019) (‘The reasonableness of the officer’s suspicion depends upon the totality of the circumstances, including the officer’s training and experience.’). Because an investigatory stop ‘affects the suspect’s Fourth Amendment rights, it invokes constitutional safeguards, and the stop must be supported by an officer’s well-founded, articulable suspicion of criminal activity.’ “

“Here, the trial court

instructed the parties to assume that the BOLO justified the *Terry* stop. The court thereby accepted that Detective Corvo had reasonable suspicion of criminal activity sufficient to detain Lyles temporarily, that the detention itself was lawful. The court nonetheless granted the motion to suppress, reasoning that Detective Corvo lacked reasonable suspicion... to believe that Lyles was armed and dangerous and therefore posed a ‘threat to the safety of [Detective Corvo] or any other person.’ ”

“Any search based on ‘reasonable belief or suspicion’ must be ‘strictly limited to the extent necessary to reveal the weapon and protect the officers.’ ‘During an investigatory stop an officer may conduct a ‘stop and frisk’ or pat-down of the suspect if the officer has a reasonable belief that the suspect ‘is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person’ *D.H. v. State*, (3DCA 2013); (‘Three conditions are necessary to effectuate a lawful pat-down: 1. the suspect’s temporary detainment must be lawful; 2. the officer must have a reasonable suspicion that the suspect is armed; and 3. the pat-down must be strictly limited ‘only to the extent necessary to disclose, and for the purpose of disclosing,’ the weapon.’) **The pat-down search must be based ‘specifically on the reasonable belief that the suspect is armed and dangerous, and not simply on the reasonable suspicion that justified the investigatory stop at the outset.’ ”**

“...As for the bulge, the trial court appears to have credited Detective Corvo’s testimony at the hearing that he saw one, even though

the court could not discern a bulge in the video. The video also corroborates his testimony that Lyles moved his hand to the area of his waistband.”

“To the extent the trial court suppressed the firearm because the stop and the search occurred simultaneously, that rationale finds *no support in the law*. Applying the correct standard to this record, the *totality of the circumstances* gave Detective Corvo a reasonable suspicion that Lyles was armed with a dangerous weapon and therefore posed a threat to the safety of the officers and others. Detective Corvo responded to a report of ‘shots fired’ near the Fontainebleau Hotel. On arriving, he received a fairly detailed BOLO for the suspect—a black male in his thirties wearing a white hat, blue shirt, and tan shorts. He immediately saw that Lyles matched that description. And when he made eye contact with Lyles, he observed a bulge and saw Lyles move his hand to that area to adjust it. *Richardson v. State*, (1DCA 1992) (‘The officer’s description of [Defendant’s] conduct, together with the observation of the bulge, was enough to permit the judge’s approval of the limited pat-down which disclosed the weapon.’); (‘Examples of types of conduct which may constitute articulable facts to support a reasonable suspicion that a suspect is armed and dangerous include: 1. the suspect’s failure to cooperate, 2. the suspect’s furtive movements, and 3. a bulge in the suspect’s clothing.’); *Calhoun v. State*, (1DCA 2020) (finding stop/pat-down lawful where ‘the Deputies saw unusual activity at an unusual hour in a location known for ongoing problems with drugs and loitering’

and one of the deputies ‘saw a bulge’ in the Defendant’s pocket and the Defendant appeared nervous). See also *State v. Hernandez*, (3DCA 1995) (finding reasonable suspicion where officer saw the Defendant run behind a building in an area recently the target of burglaries, noticed a bulge, and lifted the Defendant’s shirt: ‘**An officer’s conduct in reaching the spot where a gun was thought to be hidden without first conducting a pat down, was a limited intrusion designed to insure the officer’s safety and was, therefore, reasonable**’). REVERSED.”

Lessons Learned:

In addition to the *Terry* stop and frisk issue analyzed above, is the fact that possession of a firearm is not illegal in Florida. Even if it is concealed, it is not illegal if the carrier has obtained a concealed weapon permit. In the present case while the Detective observed a bulge in Lyles’s waistband, which based on his experience, knowledge, and training looked like a gun, he was, importantly, also aware *at that moment* of facts and circumstances that provided him with *reasonable suspicion of criminal activity sufficient to detain Lyles temporarily*, and that detention itself was lawful, over and above just the observation of the bulge.

In response to the Florida Supreme Court’s ruling in *Mackey v. State*, (Fla. 2013), that lack of a concealed weapon permit was an affirmative defense to a Carrying a Concealed Firearm charge and not an element of CCF, the Florida Legislature amended section 790.01, **expressly making proof of non-licensure an element to be established by the State**, rather than the possession of one an affirmative

defense of the Defendant. Thus, the State has the burden of proof in that regard. See *Jackson v. State*, (4DCA 2020).

In 2015, the Florida Legislature re-titled section 790.01 as “Unlicensed carrying of concealed weapons or concealed firearms.” Thereby making the lack of a license an element of CCF. And again, in an amendment to 790.01 (2023) the Legislature reverted to the original title, “Carrying of concealed weapons or concealed firearms;” and made *lack of license alone not sufficient to convict*, rather the State must also prove that Defendant **did not meet the criteria for licensure**. See, F.S. 790.01 (4): “In any prosecution for a violation of subsection (2) or subsection (3), the **State bears the burden of proving**, as an element of the offense, both that a person is **not licensed** under s. 790.06 and that he or she is *ineligible to receive and maintain such a license* under the criteria listed in sec. 790.06.”

Interestingly, however, CCF remains a lawful warrantless arrest, see sec. 790.02: “Officer to arrest without warrant and upon probable cause. —The carrying of a concealed weapon is declared a breach of peace, and any Officer authorized to make arrests under the laws of this State may make arrests without warrant of persons violating the provisions of sec.790.01 when said Officer has reasonable grounds or probable cause to believe that the offense of carrying a concealed weapon is being committed.”

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Marijuana Smell

a search than exists when the odor of burnt marijuana is present.”

Despite possessing a medical marijuana card, or not, it is unlawful to consume, smoke, marijuana in a vehicle. See, 381.986 F.S., “Medical use” means the acquisition, possession, use, delivery, transfer, or administration of marijuana authorized by a physician certification. **The term does not include:** (f) In a school bus, **a vehicle**, an aircraft, or a motorboat, except for low-THC cannabis **not in a form for smoking**.

Florida Constitution, Art. X, Sec. 29, Medical marijuana production, possession and use.—

(c) (4) Nothing in this section shall permit the operation of any vehicle, aircraft, train or boat **while under the influence of marijuana**.

Other Authorities:

See *Hatcher v. State*, (Fla. 1st DCA 2022) (determining whether probable cause exists to search a vehicle by utilizing a “totality-of-the-circumstances approach”); *Aldama v. State*, (Fla. 3d DCA 2024) (finding probable cause to search where officers smelled marijuana in the vehicle and Defendant’s answers dispelled a lawful explanation for the scent); *Hoehaver v. State*, (Fla. 5th DCA 2024) (concluding that the odor of burnt marijuana emanating from inside a vehicle supplied probable cause to search). *Ptomy v. State*, (1DCA 2026).

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