LEGAL EAGLE

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Miranda Invoked or Not?

A grand jury indicted James Earl Gafford for first-degree murder. He was interviewed twice concerning the murder, once in April and again in June. The trial court suppressed the statements obtained from Gafford during the June interview, during which he confessed. On that occasion, Gafford was escorted to an interview room in handcuffs. Detective Maganiello read Gafford his *Miranda* rights. He then asked Gafford whether he understood that if he could not afford an attorney, one would be provided for him; Gafford responded, "I understand that. But ... would I be able to get one?" Maganiello responded, "Would you—of course. Everyone has a—everyone has a right to an attorney. Sure." After responding, Maganiello continued, "Has anyone threatened you or promised you anything to get you to talk to me?" Gafford said he felt threatened because he had been arrested for something he did not do.

After some questioning, Gafford stated, "Damn. I want to speak with my lawyer." Directly after that statement, Gafford, without prompting from either officer in the interview room, stated, "How long did it take you to prove this?" Maganiello responded, "I'm sorry?"
Gafford: What about the shoestrings? What about that?
Maganiello: I'm sorry.
Gafford: What about the shoestrings around her neck? You get anything off that, on me?
Maganiello: I have to be clear. I don't know if you said it or not because you kind of said it under your breath. Were you requesting an attorney? I just got to be clear on that because I'm not going to continue. I just heard you say something; I wasn't sure what you said.
Gafford: Nah. I was just saying you wanted uh you said about you can't afford one you can get one.
Maganiello: Ok. So, you're not requesting an attorney.
Gafford: No.
Maganiello: Ok. I just wanted to make sure we're clear because I thought I heard you say something but it wasn't clear. So, what was your question about the shoelaces?

Shortly after that exchange, Gafford confessed to the murder.

The Defendant filed a motion to suppress his statements. The trial court granted his motion on two grounds: 1. Detective did not provide an adequate response to Gafford when he asked, "Will I be able to get an attorney?" and 2. the interview did not stop when Gafford said, "Damn. I want to speak to my lawyer." On appeal, those rulings were reversed.

Issue:

Did the detective provide a fair and direct response to Gafford when he asked, "Will I be able to get an attorney?" **Yes**.

Did the detective stop the interview when Gafford said, "Damn. I want to speak to my lawyer."? **Yes**

Miranda:

In *Miranda v. Arizona*, (1966), the U.S. Supreme Court held that, to safeguard the Fifth Amendment's right against compelled self-incrimination, police must advise suspects of certain rights—including the right to silence and counsel—before subjecting them to custodial interrogation. When a suspect unequivocally invokes the *Miranda* right to counsel, (or silence), the officers must immediately stop questioning the suspect. See, *Edwards v. Arizona*, (S.Ct.1981). "If a suspect clearly and unequivocally requests counsel at any time during a custodial interview, the interrogation must immediately stop until a lawyer is present or the suspect reinitiates conversation."

However, that invocation does not mean that law enforcement may never again question the suspect in a custodial setting. See, *Oregon v. Bradshaw*, (S.Ct.1983), which held that a properly *Mirandized* suspect waives the right to counsel by initiating further conversation about his or her case.

In *State v. Pena*, (Fla. 2024), the Florida Supreme Court noted: "We reiterate that *Bradshaw* provides the proper standard which should be applied in this case. That standard asks two things: 1. Did the suspect reinitiate contact with police, and, if so, 2. did he knowingly and voluntarily waive his earlier-invoked *Miranda* rights? The latter inquiry turns on the totality of the circumstances. We add a final observation. Although we hold that there is no *per se* requirement that an officer remind or readvise a Defendant of his *Miranda* rights, ***evidence of such*** *would certainly be relevant to an overall analysis of whether the defendant* ***voluntarily waived*** *those rights*."

On the other hand, a suspect who has knowingly and voluntarily waived his rights makes an equivocal or ambiguous request for counsel, police officers are not required to stop the interrogation or ask clarifying questions. See, *Walker v. State*, (Fla.2007) (finding that the Defendant did not make an unequivocal request for counsel when he said, "I think I might want to talk to an attorney" and later asked the agent if he needed an attorney). Again, these are instances **after** a suspect has acknowledged his rights and has begun making statements.

In *Almeida v. State* (Fla. 1999), the Florida Supreme Court noted that a suspect who asks questions **while being advised of their rights** must be responded to in a *fair and direct manner*. "If, at any point during custodial interrogation, a suspect asks a clear question concerning his or her rights, the officer must stop the interview and make a good-faith effort to give *a simple and straightforward answer*. To do otherwise—i.e., to give an evasive answer, or to skip over the question, or to override or 'steamroll' the suspect—is to actively promote the very coercion that *Traylor v. State*, (Fla.1992) was intended to dispel."

In *State v. Glatzmayer*, (Fla.2001), the Florida Supreme Court held that where the defendant asked the officers if "they thought he should get a lawyer?" the officers' response that it was the Defendant's decision was a good-faith effort to give a simple and straightforward answer because "their response was simple, reasonable, and true."

"Unlike the situation in *Almeida*, the officers did not engage in 'gamesmanship'; they did not try 'to give an evasive answer, or to skip over the question, or to override or steamroll' the suspect."

Court's Ruling:

"We turn first to determine whether Maganiello properly answered Gafford's prefatory question. 'If, at any point during custodial interrogation, a suspect asks a clear question concerning his or her rights, the officer must stop the interview and make a good-faith effort to give a simple and straightforward answer.' *Almeida v. State*, (Fla. 1999). Once the officer provides an answer, the interview may continue provided that the suspect has not invoked his or her rights in the meantime. Accordingly, to comply with the rule announced in *Almeida*, law enforcement must *make a good-faith effort to give a simple and straightforward answer to a clear question concerning a suspect's rights*; if, after answering, the suspect does not make an invocation, the interview may continue."

"Here, Maganiello complied with *Almeida*. After explaining that if Gafford could not afford an attorney, one would be provided, Gafford responded, 'I understand that. But ... would I be able to get one?' The trial court characterized this question as a prefatory question seeking clarification about his right, not an invocation of Gafford's right to counsel. The trial court, however, then determined

that Maganiello's response, 'Would you—of course. Everyone has a—everyone has a right to an attorney,' was, in effect, a refusal to answer Gafford's question. On this point, the trial court's determination is incorrect. Maganiello did exactly what *Almeida* requires; he provided a straightforward, accurate, and simple response to Gafford's question."

"Instructive is *State v. Glatzmayer*, (Fla. 2001), where under similar circumstances, the Florida Supreme Court found law enforcement officers complied with *Almeida*. In *Glatzmayer*, the suspect asked if the law enforcement officers 'thought he should have an attorney.' In response, the officers responded, 'That's not our decision to make, that's yours, it's up to you.' The *Glatzmayer* court found this response was 'simple, reasonable, and true.' See also, *State v. Parker*, (1DCA 2014) (holding that Detective gave a good faith response, 'simple, straightforward, and honest,' to Defendant's question, 'Can you just tell me if I need to get a lawyer or something?' when Detective said, 'Listen, that's your right. But what I'm interested in is the truth.')

"Having determined that Maganiello sufficiently responded to Gafford's prefatory question, we turn next to determine whether the officers improperly continued their questioning after Gafford stated later in the interview, 'Damn. I want to speak with my lawyer.' "

" 'When a suspect unequivocally invokes [his] right to counsel, the officers must immediately stop questioning the suspect.' *State v. Penna*, (Fla. 2024) (citing *Edwards v. Arizona*, (S.Ct.1981)). That invocation, however, does not mean officers may never again question a suspect in a custodial setting. (Citing *Oregon v. Bradshaw*, (S.Ct.1983))."

"In *Penna*, the Florida Supreme Court established a two-prong analysis to determine whether post-invocation statements violate *Miranda* based on their interpretation of *Edwards* and *Bradshaw*: 1. the Defendant must reinitiate contact with the police; and 2. there must be a valid waiver of the *Miranda* rights already invoked."

"After Gafford said, 'Damn. I want to speak with my lawyer,' the officers did not thereafter question Gafford. Instead, Gafford then reinitiated contact with the officers, asking Maganiello, 'So how long did it take you to prove this?' Maganiello sought to clarify whether Gafford was invoking his right to counsel. Gafford said, 'Nah. I was just saying you wanted uh you said about you can't afford one you can get one.' Maganiello again asked Gafford if he was requesting an attorney. Gafford, without equivocation said, 'No.' The entire exchange —Gafford invoking his right to counsel, reinitiating contact with the officers, and later asserting that he was not requesting an attorney—lasted four minutes. Under the circumstances, the officers complied with the mandate in *Penna*."

"Accordingly, the trial court erred by granting Gafford's motion to suppress statements. Reversed."

Lessons Learned:

While not emphasized by the 6th D.C.A. here, the U.S. Supreme Court has noted a distinction between a suspect who acknowledges that he understands his rights, waives them, and answers questions, and a suspect who asks questions while his rights are being read to him, to understand what his rights are under *Miranda*. As a general rule nothing in *Almeida* requires a law enforcement officer to act as a legal advisor or personal counselor for a suspect. "Such a task is properly left to defense counsel. To require officers to advise and counsel suspects would impinge on the officers' sworn duty to prevent and detect crime and enforce the laws of the State."

An interesting issue was raised in *Taylor v. Sec. Fla. Dept. Corrections*, U.S. Court of Appeals, 11th Cir. (April 11, 2023). The Defendant was arrested and invoked his right to counsel. He was taken to the nurses' station at the county jail so that a blood sample could be taken. Later that day, after the samples were taken, Taylor asked the Detective how long it would take to get the results back. Instead of directly responding to the question, the Detective asked Taylor why he wanted to know. Taylor responded that he was just wondering when they would be back out to pick him up, indicating guilty knowledge.

The issue on appeal was did the officer's response of "Why?" to Defendant's question constitute interrogation reasonably likely to elicit an incriminating response. The 11th Circuit ruled it did not. "A defendant who has invoked his right to counsel, as Taylor did, cannot be 'subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.' *Edwards v. Arizona*, (S.Ct.1981). Interrogation includes 'any words or actions on the

(Continued on page 12)

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Law Enforcement Officers Killed and Assaulted

Officers Killed and Assaulted in the Line of Duty, 2024 Special Report

Executive Summary

In 2024, sixty-four (64) law enforcement officers were feloniously killed, 46 of whom were killed with a firearm. The number of law enforcement officers who were feloniously killed has remained steady since 2022; however, more officers were feloniously killed from 2021 to 2024 (258) than any other consecutive 4-year period in the past 20 years. Cities with a population of less than 10,000 inhabitants show a return to lower counts of officer killings in 2024 after having the highest count of officer deaths from 2021 to 2023 (38) in the past 5 years. The past decade shows the rate of non-fatal assaults against law enforcement officers has been increasing since 2021, with firearms being used in more than 300 assaults against officers each year since 2020.

FIGURE 3

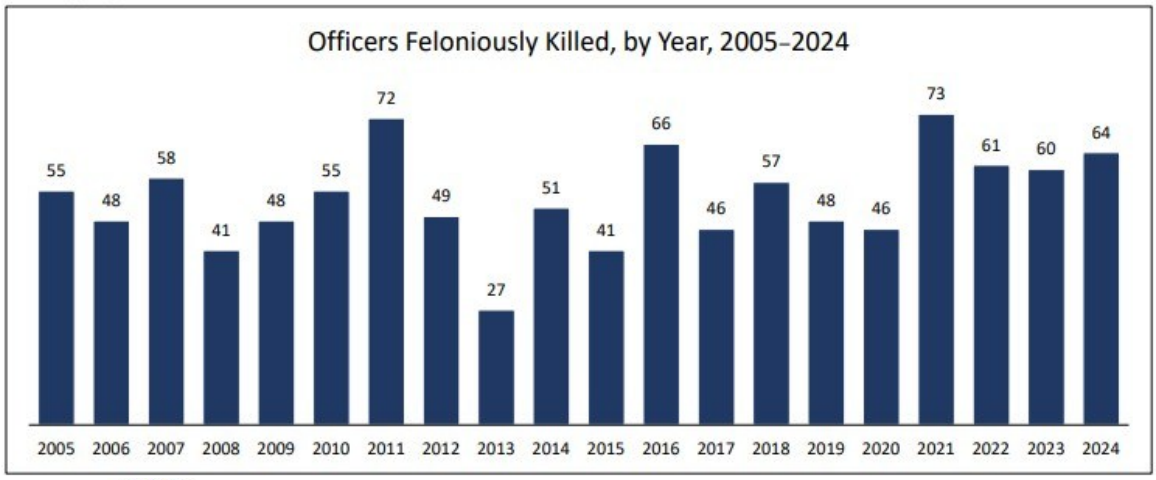
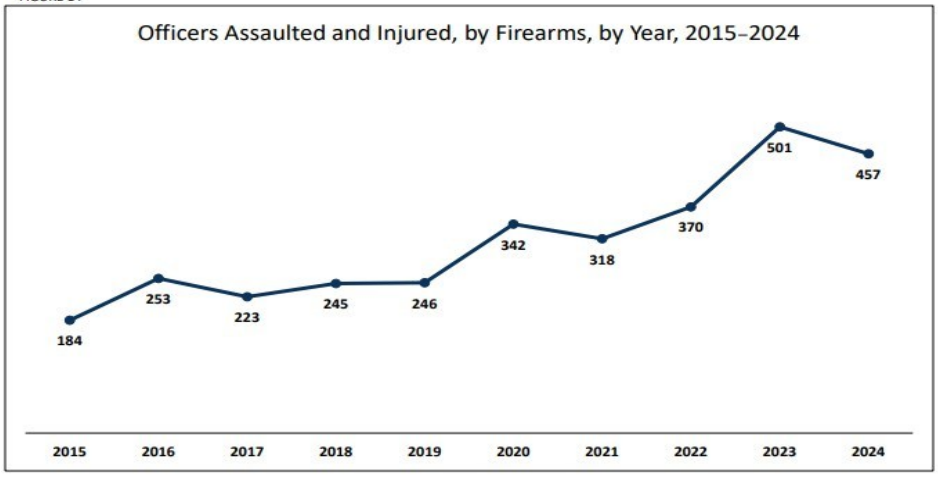


FIGURE 14

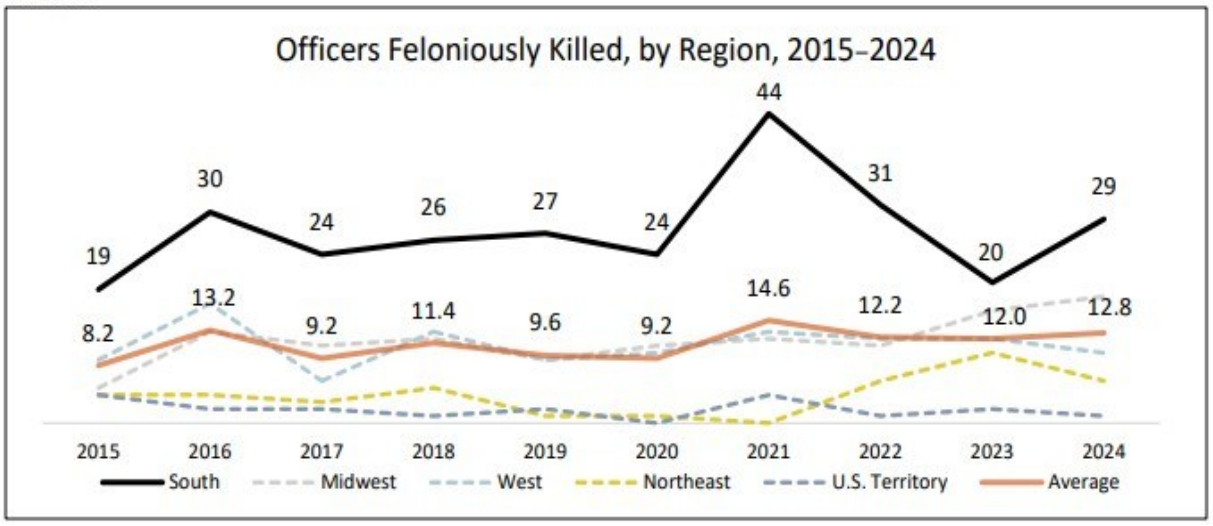


U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Law Enforcement Officers Killed and Assaulted

Officers Killed and Assaulted in the Line of Duty, 2024 Special Report

FIGURE 4



Law Enforcement Officers Feloniously Killed, 2015–2024

From 2015 to 2024, **more officers were feloniously killed in the South (274) than in any other region** (562 total). From 2023 to 2024, the number of officers who were feloniously killed in the South increased by 45.0 percent. The only years that had a higher percent increase in the South were 2016 (57.9 percent) and 2021 (83.3 percent).

However, it should be noted, the South is th e largest region in number of employed officers, law enforcement agencies, and largest population, made from 16 states and the District of Columbia.

Recent Case Law

Basis for a DUI Arrest

Officer Hechavarria was driving home from work and came upon a traffic blockage. Exiting his vehicle, he found a car stopped in the middle of the road and, nearby, found Rene Castillo: lethargic, slurring his speech, stumbling, and having so much difficulty standing that he nearly fell "flat on his face." Bystanders reported that they had found Castillo asleep in his car in the middle of the intersection. They roused Castillo, pulled him from the vehicle, took his car keys from the ignition, and carried him to a safe place. Castillo admitted to Officer that he had driven from several miles away and had been trying to park the vehicle in the driveway of his house, which was nearby. Officer concluded that Castillo was drunk.

However, because Officer was outside his jurisdiction, he radioed for an officer from the County Police Department. Officer Thompson soon arrived, and Hechavarria briefed him on his investigation and conclusions. Thompson himself also noted that Castillo appeared "heavily intoxicated," smelled like alcohol, was sweaty, disheveled, and had bloodshot eyes. Castillo declined field sobriety testing and a breathalyzer. Finding probable cause to do so, Thompson arrested Castillo.

Defendant moved to suppress "all post-seizure observations made by law enforcement" on the grounds that the arrest was unlawful. He argued that neither officer observed him in control of the vehicle. Thus, the misdemeanor was not committed in the officer's presence. The trial court denied the motion. On appeal, that ruling was affirmed.

Issue:

Did the Defendant's admission that he drove his vehicle to the location of the stop to Officer Hechavarria carry over to Officer Thompson's arrest by the fellow officer rule? **Yes**.

DUI Arrest – Basics:

An officer can arrest a person for misdemeanor DUI in three circumstances: 1. "the officer witnesses each element of a prima facie case," 2. the "officer is investigating an 'accident' and develops probable cause to charge DUI," or 3. "one officer calls upon another for assistance and the combined observations of the two or more officers are united to establish the probable cause to the arrest."

"The courts of this state have recognized that a legitimate concern for the safety of the motoring public can warrant a brief investigatory stop to determine whether a driver is ill, tired, or driving under the influence in situations less suspicious than that required for other types of criminal behavior. In *Bailey v. State*, (Fla.1975), the Florida Supreme Court upheld the traffic stop of a driver who was observed driving her vehicle at a slow rate of speed and weaving within her lane of traffic. The Court expressly stated that there were no circumstances that would reasonably have led the officer to believe criminal activity was taking place. The court nevertheless validated the traffic stop, stating that because of the dangers inherent to our vehicular mode of life, there may be justification for the stopping of a vehicle by a patrolman to determine the reason for its unusual operation." *DHSMV v. DeShong*, (2DCA 1992).

Court's Ruling:

"Here, the arresting officer directly witnessed the impairment of Castillo's faculties and several indicia that this impairment arose under the influence of alcoholic beverages. Castillo smelled like alcohol, was unable to stand without falling over, was sweaty, disheveled, and had bloodshot eyes. But Thompson did not directly witness Castillo 'driving or in actual physical control' of the vehicle. Hechavarria did not directly witness Castillo drive or control the vehicle, either. But *Castillo admitted as much by telling Hechavarria that he had come several miles to park the car in his nearby driveway.*"

"So the question becomes, can an admission to one officer act as that officer's 'observation' for purposes of the fellow officer rule? Yes. The Fourth District has held that an element of a misdemeanor driving offense can occur in the constructive presence of an arresting officer 'by virtue of [the Defendant]'s admission.' *Kirby v. State*, (4DCA 1969). The Florida Supreme Court has also recognized an oral admission as 'tantamount to the commission of the offense ... in the presence of the officer,' and concluded that the

officer was authorized under those circumstances to arrest the Defendant without a warrant. *Brown v. State*, (Fla. 1956). Here, Castillo's admission to having been in actual control of the vehicle was constructively equivalent to it having occurred in Hechavarria's presence. And under the fellow officer rule, we can combine the observations of Hechavarria with those of the arresting officer, Thompson, to establish probable cause. Each element of the crime therefore occurred within the presence of deputized law enforcement officers whose 'combined observations ... united to establish the probable cause to the arrest.' *Wagner v. State*, (4DCA 2023). The arrest was lawful."

"Furthermore, in *Lubash v. State*, (3DCA 1974), this court affirmed a misdemeanor conviction for willful obstruction of traffic where the Defendant was seen walking away from a vehicle 'parked about five or ten feet away in such a manner as to obstruct traffic.' We explained:

'[Defendant] argues that the evidence was illegally obtained due to the fact that the arrest for obstructing traffic was not lawful because the offense was not committed in the presence of the officer. We find little merit to this point. The offense of willful obstruction of traffic was continuing in nature and therefore was committed in the officer's presence where the officer could detect the offense by use of his sight and his hearing.'

"Here, the arresting officer could likewise 'detect the offense by use of his sight and his hearing'—and, in this case, by the smell of alcohol—having directly witnessed Castillo's manifest intoxication and the presence of Castillo's car in the road. AFFIRMED."

Lessons Learned:

The fellow officer rule provides a mechanism by which officers can rely on their collective knowledge to act in the field. Under this rule, the knowledge of officers investigating a crime is imputed to each other, thus, one officer may rely on the knowledge and information possessed by another officer to establish probable cause. See, *Whiteley v. Warden, Wyo. State Penitentiary*, (S.Ct.1971); *State v. Maynard*, (Fla.2001). "It can involve direct communications between officers who have sufficient information and the officer who stops the suspect, or it can involve general communications among officers of whom at least one possesses the required level of suspicion."

The fellow officer rule has been applied by the courts only in instances where the officer is testifying as to the details of a search or seizure in which the officer was a direct participant. If an officer relies on a chain of evidence to formulate his or her belief as to the existence of probable cause for a search or seizure, the rule excuses the officer from possessing personal knowledge of each link in the chain of evidence if the collective knowledge of all the officers involved supports a finding of probable cause. In short, the rule allows an officer to testify about a previous link in the chain for the purpose of justifying his, or her, own conduct. See, *State v. Bowers*, (Fla.2012).

However, the Court in *Bowers* did not apply the fellow officer rule to allow an officer who had no firsthand knowledge of the reasons for the stop and was not yet involved in the investigation to testify what the initial officer told him after the fact to establish the validity of the initial stop.

Castillo v. State
3rd D.C.A.
(April 30, 2025)

Loitering and Prowling:

An employee of a local business observed an individual looking into car windows and was later seen attempting to open a car door in the overflow parking lot. The site manager called the police and described the individual.

When law enforcement responded, an officer saw Benny Saintil, who matched the site manager's description, walking from behind a building that was closed. Defendant had his hood pulled up over his head and was standing near the building in an area where *businesses were not open at the time.* Defendant was detained based on his suspicious behavior and presence in a non-public area.

After being stopped, Defendant initially provided a false name and claimed he had no identification. His nervous demeanor and the circumstances of his presence led the officer to arrest him for loitering or prowling, as his actions were deemed unusual and alarming, warranting reasonable suspicion of potential criminal activity.

Defendant appealed his conviction, arguing the trial court erred in denying his motion for judgment of acquittal because the elements of the loitering or prowling offense *were not committed in the arresting officer's presence.*

Defendant also asserted his conviction cannot stand because the officer's personal observations amounted to no more than Defendant appearing vaguely suspicious. On appeal, the conviction was reversed.

Issue:

Were the officer's observations sufficient to prove incipient criminal behavior by the Defendant? **No**.

Loitering or Prowling:

While there have been numerous prior court rulings issued on this issue, the courts' reluctance to sustain arrests for loitering or prowling makes repeating the legal elements advisable. F.S. 856.021 defines loitering or prowling; and case law is legion that the crime has two elements: 1. the defendant loitered or prowled "in a place, at a time, or in a manner not usual for law-abiding individuals," and 2. the loitering occurred under "circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity." Because of its potential for abuse, the loitering statute is applied with special care. As the 4th D.C.A. has counseled in prior cases, it is not to be used as a "catch-all" provision when there is an insufficient basis for another charge.

To satisfy the first element, the State must prove that "the defendant engaged in incipient criminal behavior which law-abiding people do not usually engage in due to the time, place, or manner of the conduct involved." Such behavior comes close to, but falls short of, the actual commission or attempted commission of a substantive crime. A "vaguely suspicious presence" is insufficient. Rather, the Defendant's behavior must point "toward an imminent breach of the peace or threat to public safety." Stated another way, there must be a "threat of immediate, future criminal activity."

To satisfy the second element, the State must demonstrate that the loitering occurred under "circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity." "Among the circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon the appearance of a law enforcement officer, refuses to identify him or herself, or manifestly endeavors to conceal him or herself or any object."

If, after being confronted by an officer, the Defendant "produces credible and reliable identification and complies with the orders of the law enforcement officer necessary to remove the threat to the public safety ... the charge under this statute can no longer properly be made." However, "the *failure to provide identification* or a reasonable explanation for the questioned activity are not elements of the crime."

Lastly, "the offense of loitering and prowling must be completed prior to any police action." And because flight from police comes after the officer's presence is made known, f*light alone is insufficient to satisfy the elements of loitering or prowling*. Moreover, since the charge is a second-degree misdemeanor, "only the officer's own observations may be considered in determining whether probable cause exists." Therefore, both elements of the crime must occur in the officer's presence.

Court's Ruling:

"To establish the crime of loitering or prowling, the State must prove two elements: .1 the defendant loitered or prowled "in a place, at a time or in a manner not usual for law -abiding individuals," and 2. the loitering or prowling was "under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity." Proof of both elements is essential to establishing a violation of the statute, and each element must be proven beyond a reasonable doubt."

"Both elements of loitering or prowling must be committed in a police officer's presence because the offense is a misdemeanor. *Jing v. State*, (4DCA 2021). Behavior that does not occur in the officer's presence may not be considered by the trial court in determining whether the offense of loitering or prowling was committed. *See Madge v. State*, (4DCA 2015) ('While the observations of lay persons leading up to the arrival of law enforcement may provide the factual background, prior wrongdoing cannot establish the basis for a loitering and prowling charge.'). S*ee, E.F. v. State*, (4DCA 2013) (citizen's observations of juvenile looking into vacant house could not be considered by trial court); *Jones v. State*, (4DCA 2013) (witnesses' reports could not be used to support loitering or prowling; only officer's observations could be considered)."

" 'The statute is forward-looking, rather than backward-looking in nature. Its purpose is to punish a certain type of incipient criminal behavior before it ripens

into the commission or attempted commission of a substantive criminal act.' The statute 'is not directed at suspicious after-the-fact criminal behavior which solely indicates involvement in a prior, already completed substantive criminal act.' *D.A. v. State*, 3DCA 1985)."

"The arresting officer must be able to articulate specific facts showing an imminent breach of the peace or threat to public safety. Alarm for public safety is presumed under section 856.021(1) if the defendant flees, conceals himself or any object, or refuses to identify himself when an officer appears. 'Prior to any arrest, the defendant must be afforded an opportunity to dispel any alarm or immediate concern by identifying himself and explaining his presence and conduct.' If the explanation appears true at trial and would have dispelled alarm or immediate concern, a defendant may not be convicted."

"The State must prove more than a vaguely suspicious presence, and the conduct must pose an imminent breach of peace and threat to public safety. Despite section 856.021(1)'s title, loitering or prowling alone is insufficient to constitute a criminal offense."

"Here, Defendant's activity as described by the officer, based upon his personal observations, did not point to the likelihood of the commission of a future crime. Defendant was neither seen by the officer actively attempting to conceal himself nor making suspicious furtive movements. Nor was Defendant observed by police to be engaging in any aberrant conduct which comes close to but falls short of criminal activity."

"We do not question that Defendant's actions and presence behind the building was certainly a situation that justified investigation by law enforcement. However, Defendant's conduct that was observed by the arresting officer was legally insufficient under our case law to support a conviction for loitering or prowling. See, *K.R.R. v. State*, (2DCA 1994) (while stopping Defendant was proper, evidence for a loitering or prowling conviction was legally insufficient because the officer never saw conduct pointing to the commission of a future crime); *A.D. v. State*, (3DCA 2002) (evidence insufficient to support loitering conviction where no conduct pointed to future criminal activity). We therefore reverse the conviction. Reversed."

Lessons Learned:

Loitering or Prowling is not a catch-all charge to sustain an investigative stop. The statute has specific elements that must be observed and proven prior to the stop. Flight after the fact cannot be used to bootstrap insufficient facts. And even when there are sufficient factors present, the suspect must first be given the opportunity to dispel the officer's concerns.

As can be seen, the possibility of effecting a valid arrest for Loitering or Prowling is nigh impossible. As the courts have stated: "We must be cautious that the [L & P] statute not be used as a pretext and thereby interfere with the activities of law-abiding citizens...Instead, the proper application of this statute 'requires a delicate balancing between the protection of the rights of individuals and the protection of individual citizens from imminent criminal danger to their persons or property.' " *State v. Ecker*, Fla.1975).

In that Loitering and Prowling is a misdemeanor, a LEO may only consider *offensive conduct committed in the officer's presence* in determining whether probable cause exists to make a warrantless arrest. Additionally, the statute is "forward-looking with its sole purpose being to prevent imminent future criminal activity, and that it is not directed at suspicious after-the-fact criminal behavior which solely indicates involvement in a prior, already completed substantive criminal act." *Springfield v. State*, (4DCA 1986).

Lastly, keep in mind that prior to making an arrest for Loitering and Prowling, even if all the elements are established by the officer on the street, the suspect must be provided with an opportunity to explain away the suspicious circumstances. F.S. 856.021(2) provides:

"… Unless flight by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct…"

Saintil v. State
4th D.C.A.
(March 26, 2025)

Curtilage and Exigency

While sitting with his six-year-old son in a parked vehicle outside his house Jaylyn McGhee was shot at. His son suffered gunshot wounds to his left hand and right wrist; he drove

him to the hospital for treatment. Pursuant to a "shots-fired" 911 calls, officers responded to the scene to find eight shell casings, "a bag of suspected narcotics" that was later identified as heroin and fentanyl, and a loose $5 and $1 bill on the street outside McGhee's house. Witnesses reported that they heard eight shots fired and then saw both vehicles quickly drive away. The hospital in which the child was treated reported that the child had arrived in a vehicle that had "eight ... spots of damage suspected from being from gunfire." This information led law enforcement to believe the injured child at the hospital might be connected to the shots-fired call at McGhee's house.

Officers walked up the paved path leading to the front door of McGhee's house and knocked. Meanwhile, another officer, noticed a second door on the right side of the house; he stood in the front yard outside a chain-link fence separating the front and side yards and watched the side door "just for perimeter security to ensure nobody tried to sneak out or run or any of that matter." While observing the side door, the officer noticed "several spots of blood spatter as well as an unknown white or brown powdery substance" on the deck. He then walked through the gate and noticed the blood spatter extended up the stairs and onto the door and its handle, along with the side of the house. He further noted the powdery substance looked consistent "in its makeup" with illegal narcotics and with the substance found in the street amongst the shell casings. Based on the blood spatter and reports from witnesses that no one had gotten out of the victim vehicle, he was concerned there could be a victim in the house or in the backyard who was bleeding. To determine whether exigent circumstances such as a medical emergency required entry into the home, Corporal Simms called Detective Farra, who was at the hospital with the victim and McGhee. Detective Farra reported that McGhee had tried to carry his son inside through the side door following the shooting, but the door was locked so he had returned to his vehicle and rushed to the emergency room.

Corporal Simms then sought a search warrant for the home. Upon its execution, law enforcement found a plastic baggie containing 5.48 grams of cocaine base and 17.96 grams of heroin and fentanyl in McGhee's kitchen. The trail of blood extended through the kitchen and into the nearby master bedroom, where two firearms were found. McGhee was later charged with one count of possession with intent to distribute contraband drugs, and one count of being a felon in possession of firearms.

McGhee unsuccessfully moved to suppress the drugs and guns found in his house. He argued that the search warrant application was based on evidence that was illegally obtained. He argued that the only evidence linking his home to the crime was the blood spatter and powdery substance, and the officers would never have seen either the blood or the powder had they not impermissibly entered McGhee's fenced yard and peered through his window in violation of the Fourth Amendment.

The trial court determined that Corporal Simms had not entered the home's curtilage until he walked through the open gate into the side yard. By that time, he had already lawfully seen the blood spatter and white powdery substance from his lawful vantage point outside the fence, which created exigent circumstances, allowing him to investigate further to ensure no one was in need of medical attention. On appeal, that ruling was affirmed.

Issue:

Did the officer's view, from the front yard, of blood spatter and powdery substance on the side porch, which was on the curtilage of the Defendant's home, violate the Fourth Amendment? **No**. Was the officer's entry into the side yard following his observation of blood spatter and powdery substance justified by exigent circumstances? **Yes**.

Curtilage Defined:

"The Fourth Amendment protects the right of people to be secure in their homes against unreasonable searches and seizures." *United States v. Maxwell*, (8th Cir. 2023). "Warrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Brigham City v. Stuart*, (S.Ct.2006). "The area 'immediately surrounding and associated with the home—what our cases call the curtilage—is part of the home itself for Fourth Amendment purposes.' " *Florida v. Jardines*, (S.Ct.2013).

The focus of the court in the present case was whether the officers entered the curtilage of McGhee's home. In 1987 the U.S. Supreme Court, in *United States v. Dunn*,

(S.Ct.1987), set forth a narrow definition of curtilage. The Court opined that curtilage questions should be resolved with particular reference to four factors: 1. the proximity of the area claimed to be curtilage to the home, 2. whether the area is included within an *enclosure* surrounding the home, 3. the nature of the uses to which the area is put, and 4. the steps taken by the resident to protect the area from observation by people passing by. These factors do not "produce a finely tuned formula," but they "are useful analytical tools" because "they bear upon the centrally relevant consideration -- whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection. … The primary focus is whether the area in question harbors those intimate activities associated with domestic life and the privacies of the home."

Subsequently, after *Dunn*, the Florida Supreme Court addressed the inconsistent, common-law definition of curtilage, concluding that Florida's burglary statute, which must be strictly construed in favor of the Defendant, required "*some form of an enclosure* in order for the area surrounding a residence to be considered part of the 'curtilage.' " *State v. Hamilton*, (Fla. 1995).

Court's Ruling:

The Court of Appeals began its review analyzing the physical layout of the Defendant's home. "Here, two distinct areas are at issue: 1. the front yard, and 2. the side yard containing the deck and stairs to the side door. Though the front yard was close in proximity to the home, it *was not protected by a fence or any other enclosure, and no efforts were taken to shield the yard from public observation or entry*—unlike other parts of McGhee's yard. The [front] yard contained a paved walkway to the front door, where the mailbox was located. Considering the *Dunn* factors, we conclude the [trial] court did not err in determining that the front yard was not within the curtilage of McGhee's home. The side yard, however, was directly adjacent to McGhee's home, was enclosed by a fence, contained items like a grill that suggested it was for family use, and was partially obstructed from further view by trees and a back fence. Thus, McGhee's side yard is part of his home's curtilage."

"The second dispute is whether the officers violated the Fourth Amendment by entering McGhee's side yard curtilage. As a threshold matter, simply viewing the blood spatter and powdery substance while standing in the front yard did not violate the Fourth Amendment. Though the blood spatter and powdery substance were in the side yard, which is curtilage, *Corporal Simms first saw it when he was standing in the front yard, which is not part of the home's curtilage.* 'That an area is within the curtilage does not itself bar all police observation.' *California v. Ciraolo*, (S.Ct.1986). Even within the curtilage of a home, there is no reasonable expectation of privacy with respect to police observation of what is plainly visible from a vantage point where the police officer has a right to be. 'The mere fact that an individual has taken measures to restrict some views of his activities [does not] preclude an officer's observations from a public vantage point where he has a right to be and which renders the activities clearly visible.' See, *Ciraolo*. Because the officers first viewed the blood spatter and powdery substance from the front yard, a place where they had the right to be, they did not violate the Fourth Amendment in doing so."

"The officers' entry into the side yard following observation of the blood spatter and powdery substance was then justified by the exigent circumstances exception to the warrant requirement. 'A warrant is not required for a search under the Fourth Amendment when exigent circumstances exist.' *United States v. Chipps*, (8th Cir. 2005). Such 'circumstances exist if a reasonable law enforcement officer could believe that a person 'is in need of immediate aid.' … Here, officers arrived on scene in response to shots-fired calls, they found eight shell casings in front of the house, and they had reason to believe there was at least one victim. Furthermore, Corporal Simms testified that the 'ultimate reason' that they followed that blood trail was 'to see if there were any victims that potentially could have ran into the house or ran to the backyard who were ... obviously bleeding.' The evidence here was sufficient to lead a reasonable officer to believe that a person 'is in need of immediate aid,' thus triggering the exigent circumstances exception. See, *Chipps*, holding that law enforcement's observation of blood on the ground in front of a Defendant's front door provided exigent circumstances because the Officer who observed the blood could reasonably have believed someone's life was in danger."

"Therefore, the [trial] court did not err in denying the motion to

suppress. AFFIRMED."

Lessons Learned:

In the present case, the officers did everything correctly; however, the danger of an officer trespassing on protected curtilage needs to be recognized. Ordinarily, law enforcement officers may enter upon the curtilage and approach the front door like any salesman, postal worker, or FedEx delivery person. The front walk, even with a closed gate, is an invitation to enter upon the property and approach the front door. The backyard of a residence, however, is more private because a passerby cannot generally view this area. Any departure from the front walk to the side porch, any exploration along the side or the rear of the house, is off-base and any evidence discovered as a result will be suppressed.

This finding is in accord with the Florida Supreme Court's decision in *State v. Morsman*, (Fla. 1981), that the officers were entitled to approach the front door of the residence, but the warrantless entry into the backyard was an unlawful search. The circumstance allowed the deputy to do more than knock at the front door.

"The constitutional protection and expectation of privacy in the side and backyard area of the home does not depend on whether someone might be home, or if visitors may sometimes be received at a location other than at the front door. Indeed, the Florida Supreme Court's decision clearly establishes that residents have a constitutionally-protected privacy interest in the side and backyard area of their home."

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part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.' *Rhode Island v. Innis* (1980)."

"A reasonable jurist could interpret Officer Bogers' question—'Why?'—in response to Taylor's question as ordinary, run-of-the-mill conversation rather than the sort of query that a reasonable officer would have known would elicit an incriminating response. And whatever happened here, the likelihood that a suspect would answer a question like Officer Bogers' with incriminating information seems exceedingly small, or so, in any event, a reasonable jurist could conclude. That's especially true if we're also to believe, as Taylor urges, that his question about when the DNA analysis would be complete didn't reinitiate the conversation with Officer Bogers. If Taylor's question was casual enough that it didn't constitute a reinitiation, then a reasonable jurist could certainly conclude that Officer Bogers' follow-up was casual enough that it didn't constitute interrogation."

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(July 18, 2025)

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