

LEGAL EAGLE



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Internet Privacy

Adam Blocker used Dropbox to synchronize child porn files across multiple devices, back up data, and share files with others. Access to Dropbox is contingent on agreement to its terms of service. One of which provides that Dropbox may examine the data to ensure that it is not being used for illegal purposes, or obscenity. A third term adds: "We may disclose your information to third parties if we determine that such disclosure is reasonably necessary to: (a) comply with any applicable law, regulation, legal process, or appropriate government request..."

Dropbox explained that it "has a private business interest in enforcing" its prohibition on child pornography and "keeping its platform safe for account holders and others by voluntarily searching for and removing this content." This private motive makes the search private not government action.

Dropbox informed the National Center for Missing and Exploited Children (Center) that it had found child pornography in files that Adam Blocker was sharing with third persons using their service. The Center then alerted federal authorities. The FBI obtained a search warrant for Blocker's computers and storage, including his data at Dropbox. The search located child porn in addition

to the images that Dropbox had sent to the Center. Blocker pleaded guilty to two counts related to child pornography, reserving his right to appeal the trial court's denial of his motion to suppress the evidence. His appeal was denied.

Issue:

Was the internal search by Dropbox controlled by the Fourth Amendment? **No.** Did Dropbox sharing the pornography files with the National Center make Dropbox's acts attributable to the to the Government and as such governed by the Fourth Amendment? **No.**

Is it Government Action?

The first clause of the Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated...."

"This Court has also consistently construed this protection as proscribing only governmental action," it is wholly inapplicable "to a search or seizure, *even an unreasonable one*, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official." *Walter v. United States*, (S.Ct.1980).

"Whether a private party should be deemed an agent or instrument of the Government for

Fourth Amendment purposes necessarily turns on the degree of the Government's participation in the private party's activities, a question that can only be resolved in light of all the circumstances." In evaluating agency in the Fourth Amendment context, courts have focused on three relevant factors: 1. whether the Government had knowledge of and acquiesced in the intrusive conduct; 2. whether the citizen intended to assist law enforcement or instead acted to further his own purposes; and 3. whether the citizen acted at the Government's request.

The Fourth Amendment is inapplicable "to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any government official." *United States v. Jacobsen*, (S.Ct.1984).

In *U.S. v. Highbull*, (8th Cir. 2018), during an argument with her boyfriend, Terrance Highbull, Janis looked at his cell phone and saw naked pictures of her 13 year-old daughter, who was not related to Highbull. After reporting her find to the police she then provided the officer with the cellphone. The court ruled, "Even when Government officials know of and acquiesce in a warrantless search, we have been unwilling to impute agency where the private actor was not 'motivated solely or even primarily by the intent to aid the officers' and where the Government did not request the challenged search. This is precisely what transpired in the present case. ... While Janis undoubtedly aided Officer Mattson by retrieving the phone, there was no evidence it was at his request suggesting that she 'was

motivated primarily by a desire to help police.' ... The record did indicate a compelling *personal motive* on her part: the protection of her daughter."

Court's Ruling:

"Blocker's main problem is that the Fourth Amendment, on which he relies, applies only to searches and seizures by public officials. *United States v. Jacobsen*, (S.Ct.1984). Private searches and seizures are outside its scope, and Dropbox is a private entity. Blocker observes, however, that the Center holds a charter from the United States, receives public money, and has been designated as the national clearinghouse for reports of child pornography. At least one Court of Appeals has held that this makes the Center part of the Government. *United States v. Ackerman*, (10th Cir. 2016). Our decision in *United States v. Bebris*, (7th Cir. 2021), assumes that *Ackerman* is correct, and we do the same today (without deciding the point). Blocker observes that Dropbox promised to tell the Center when it detects child porn on its servers. The Center agreed in exchange to furnish Dropbox with software that would assist in detection. This means, Blocker insists, that Dropbox's acts are fairly attributable to the United States and so are governed by the Fourth Amendment, and are unconstitutional because it searched his files without probable cause or a warrant."

"It is far from clear to us that an entity's practice of sending information to a Governmental body makes that entity the equivalent of the Government itself. Federal Express routinely tells the DEA when it discovers illegal drugs in parcels, but courts just as routinely

hold that searches by FedEx are a private activity. Why should searches by Dropbox be different?"

"Potentially it matters why Dropbox looked through its users' files and sent child porn images to the Center. Was it to carry out a Governmental program imposing duties on Dropbox? If so, perhaps Dropbox acted as a Governmental agent. Or was it to implement a policy that Dropbox formulated on its own? The prosecutor insists that Dropbox looks at users' data to avoid distributing unlawful files, which would carry both moral and reputational costs. In response to a motion during discovery, Dropbox explained that it "has a private business interest in enforcing" its prohibition on child pornography and "keeping its platform safe for account holders and others by voluntarily searching for and removing this content." That makes business sense: people might elect not to use Dropbox if it distributes child pornography (as Blocker was using it to do). This private motive makes the search look private."

"As it happens, however, this is not the ground on which the [trial] court denied the motion to suppress. Instead, District Judge Lee ruled that Blocker consented to the search. Blocker *assented to Dropbox's terms of service*, which allow Dropbox to review stored data to ensure that its service is being used lawfully. Judge Lee found this enough to reflect Blocker's consent. Blocker replies that Dropbox's terms of service are just so much fine print that he and many other users accept because they want to use the service, and he asks us to hold that the terms are not clear enough to consent to a search in which a public body such

as the Center has an interest.”

“We acknowledge that few people pore over consumer contracts or try to grasp how they might work in practice. Yet the fact that a contract is lengthy and poorly understood does not justify reading it with a thumb on the scale. The language of this contract *unambiguously permits Dropbox to scan all files* at its option and reveal the contents for five specified purposes—and Blocker does not deny that, having discovered child porn, one or more of these purposes applies.”

“The record of this case does not show the probability that any given file on Dropbox will be inspected, or how often. What matters—at least, what ought to matter—is a clear grant of permission to inspect. Similarly, consumers who sign bills of lading permitting FedEx to inspect the contents of their packages do not expect it to open every package in search of liquor or drugs or firearms or poison—inspection is infrequent—but, when FedEx does open a package, it can rely on the consent.”

“This isn’t the first time we have encountered a broadly worded consent found in a consumer contract. *United States v. Adkinson*, (7th Cir. 2019), enforced a consent in a contract between T-Mobile and a user of its telecom services.

T-Mobile supplied some cell-site data to help law enforcement agents determine who had robbed one of its stores. [We ruled] ‘Adkinson’s Fourth Amendment rights were ... not violated because Adkinson consented to T-Mobile collecting and sharing his cell-site information. A Defendant can voluntarily consent in advance to a search

as a condition of receiving contracted services. ... We do not see a material difference between the sort of consent at issue in *Adkinson* and the sort on which Dropbox relied.

T-Mobile’s language, like Dropbox’s, gave it an option to discover and reveal information, not an obligation to do so. ... All we need do today is stand by *Adkinson*, which reflects how the law of contract is ordinarily understood when the terms are not unconscionable. Affirmed.”

Lessons Learned:

Clearly, where a civilian conducts a search which discloses contraband, independent of law enforcement, that discovery can form the basis of a warrant application. However, law enforcement is constrained to the results of the civilian search and may not expand upon it to develop additional probable cause.

The United States Supreme Court discussed this concept in a case involving a package opened by FedEx. “When the wrapped parcel involved in this case was delivered to the private freight carrier, it was unquestionably an ‘effect’ within the meaning of the Fourth Amendment. Letters and other sealed packages are in the general class of effects in which the public at large has a legitimate expectation of privacy; warrantless searches of such effects are presumptively unreasonable. Even when Government agents may lawfully seize such a package to prevent loss or destruction of suspected contraband, the Fourth Amendment requires that they obtain a warrant before examining the contents of such a package.”

“The initial invasions of [Defendant’s] package were occasioned by private action. Those

invasions revealed that the package contained only one significant item, a suspicious looking tape tube. Cutting the end of the tube and extracting its contents revealed a suspicious-looking plastic bag of white powder. Whether those invasions were accidental or deliberate, and whether they were reasonable or unreasonable, they did not violate the Fourth Amendment because of their private character.” *U.S. v. Jacobsen*, (S.Ct.1984).

In a case where the FBI received film from a private person suspected of containing child porn, and then viewed the film without first obtaining a warrant the Supreme Court found that action to have *exceeded the private search and thus unreasonable*. If a lawful search is limited by the terms of the search warrant, “...at least the same kind of strict limitation must be applied to any official use of a private party’s invasion of another person’s privacy. ... Surely the Government may not exceed the scope of the private search unless it has the right to make an independent search. In these cases, the private party had not actually viewed the films. Prior to the Government’s screening one could only draw inferences about what was on the films. The projection of the films was a *significant expansion of the search that had been conducted previously by a private party* and therefore must be characterized as a separate [unlawful] search.” *Walter v. United States*, (S.Ct.1980).

***United States v. Blocker*
U.S. Court of Appeals, 7th Cir.
(May 5, 2026)**

Halloween Safety Tips

Stay in groups
Costumes should be well fitting and flame resistant
Always test makeup
Remember to look both ways when crossing streets
Examine all treats before eating

Stay on sidewalks when possible
Avoid dark houses
Flashlights + glowsticks for visibility
Enjoy with caution!

**American
Safety Council**



Recent Case Law

Custody for Miranda

While the underlying facts are sparingly set forth in the opinion, it is clear that Joel Smith 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)

Prolonged Auto Stop

Nicholas Hudson, was the subject of a traffic stop of the vehicle in which he was riding as a passenger. He argued that the officer impermissibly and unnecessarily prolonged the traffic stop for the purpose of summoning a K-9 to the scene to conduct a drug detection sniff around the exterior of the car. Defendant noted that the officer radioed for the K-9 team approximately four minutes after the stop was initiated, the K-9 arrived very quickly thereafter; however, a total of ten minutes and twenty seconds elapsed post-stop before the K-9 began the sniff of the car.

Issue:

Was the delay of 10 minutes and 20 seconds of the traffic stop awaiting the K-9 improper? **Yes.**

Extension of the Traffic Stop:

The Fourth Amendment guards against “unreasonable searches and seizures.” A traffic stop is a “seizure” within the meaning of the Fourth Amendment and must be reasonable under the circumstances. In assessing the legitimacy of a traffic stop, courts do not attempt to discern an officer’s subjective intent for stopping the vehicle. They simply ask whether “the circumstances, viewed objectively, justify the action.” See *Whren v. United States*, (S.Ct.1996); *United States v. Johnson*, (4th Cir. 2013) (observing that a traffic stop is legitimate “when officers observe a traffic violation, regardless of their true, subjective motives for stopping the vehicle”). A legitimate traffic stop may “become unlawful if it is prolonged beyond the time reasonably required” to complete its initial objectives. See, *Illinois v. Caballes*, (S.Ct.2005).

After initiating a traffic stop an officer is entitled to conduct safety-related checks that do not bear directly on the reasons for the stop, such as requesting a driver’s license and vehicle registration, or checking for criminal records and outstanding arrest warrants. See, *Rodriguez v. United States*, (S.Ct.2015). “An officer’s suspicion of criminal activity may reasonably grow over the course of a traffic stop as the circumstances unfold and more suspicious facts are uncovered.” *United States v. Magallon*, (8th Cir. 2021).

Reasonable suspicion requires “a particularized and objective basis for

suspecting legal wrongdoing based upon [the officer’s] own experience and specialized training.” While a “mere hunch” is insufficient, “the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard.” *United States v. Arvizu*, (S.Ct.2002). The reasonable suspicion analysis is based on the “totality of the circumstances” meaning individual elements of suspicion are not to be viewed in isolation.

Officers cannot unlawfully prolong a stop. In that regard the Supreme Court expanded on unlawfully prolonged traffic stops in *Rodriguez v. U.S.*, (S.Ct.2015). In that case, a K-9 officer after writing a warning ticket and returning the license, registration, and proof of insurance to the driver, made the driver and passenger wait for seven or eight minutes while he conducted a dog sniff. The Supreme Court explained that a traffic stop is analogous to a *Terry* stop. So, the scope of the stop “must be carefully tailored to its underlying justification.” It follows that, in the context of a traffic stop, “the tolerable duration of police inquiries ... is determined by the seizure’s mission.” The mission of a traffic stop is “to address the traffic violation that warranted the stop and attend to related safety concerns.” And the stop may “last no longer than is necessary” to complete its mission. In other words, “authority for the seizure ... ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.”

Finally, although an officer may extend a traffic stop when he

possesses reasonable suspicion, he cannot search the stopped vehicle unless he obtains consent, secures a warrant, or develops probable cause to believe the vehicle contains evidence of criminal activity. *Arizona v. Gant*, (S.Ct. 2009).

Court's Ruling:

"It is well established that the use of a narcotics dog to sniff a vehicle does not constitute a search and may be conducted during a consensual encounter or traffic stop. *Whitfield v. State*, (5DCA 2010) (citing *Illinois v. Caballes*, (2005)). 'However, absent an articulable suspicion of criminal activity, the time an officer takes to issue a citation should last no longer than is necessary to make any required license or registration checks and to write the citation.' 'The canine search of the exterior of the vehicle must be completed within the time required to issue a citation.' (citing *Eldridge v. State*, (5DCA 2002))."

"The State offered no evidence to justify the length of time that expired between the traffic stop and the K-9 walk around. The officer who stopped the vehicle **did not issue a traffic ticket** and couldn't recall whether he issued a written warning to the driver. We agree that the traffic stop was improperly and unnecessarily prolonged."

"With no search warrant to authorize the search, 'the State was obliged at the suppression hearing to demonstrate that the evidence sought to be suppressed was lawfully obtained.' There is no warrant in this case. The State therefore had the burden of proof below."

"As the majority observes, our record contains no evidence establishing what transpired between

the initiation of the traffic stop and the dog sniff. We do not know whether the officer was investigating the traffic infraction, preparing a warning, or simply waiting for the K-9 unit. See *Jones v. State*, (4DCA 2016) (finding a Fourth Amendment violation where 'the officer abandoned his reason for the traffic stop (writing the seatbelt citation) and instead chose to conduct the sniff of Defendant's vehicle'). Because the State failed to establish that the stop remained lawful at the time of the sniff, we must reverse. Reversed."

Lessons Learned:

It is clear from the brief ruling that this case was more about the failure of report writing. Officers write numerous traffic tickets over time and those that are the subject of a court case are not heard for weeks, months, and depending on the collateral crimes (felonies) years, even. It is only through effective report writing, setting out all the underlying facts and their interpretation based on the officer's experience, knowledge, and training that success in court is possible.

As to the underlying legal issue presented here, the Supreme Court's ruling in *Rodriguez* is instructive: "In *Illinois v. Caballes*, (S.Ct.2005), this Court held that a dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment's proscription of unreasonable seizures. This case presents the question which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, 'becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission' of issuing a

ticket for the violation. The Court so recognized in *Caballes*, and we adhere to the line drawn in that decision."

"A dog sniff, by contrast, is a measure aimed at 'detecting evidence of ordinary criminal wrongdoing.' *Indianapolis v. Edmond*, (S.Ct.2000). See also *Florida v. Jardines*, (S.Ct.2013). Candidly, the Government acknowledged at oral argument that a dog sniff, unlike the routine measures just mentioned, is not an ordinary incident of a traffic stop. Lacking the same close connection to roadway safety as the ordinary inquiries, **a dog sniff is not fairly characterized as part of the officer's traffic mission...**"

The 4th D.C.A. explained further, "However, during a valid traffic stop, or even if a valid traffic stop has had its lawful function completed and turns into a citizen encounter, there is no reason a law enforcement officer cannot ask for consent to search."

Advising the motorist that he is free to leave converts the stop into a consensual encounter if he chooses to remain and engage the officer. "If a driver freely and voluntarily consents to a search of himself or the vehicle, the detention may continue." *State v. Boles*, (4DCA 2007).

Hudson v. State
5th D.C.A.
(July 24, 2026)

Resisting Arrest

K.B. was a high school student. Due to a report that she was seen with a vape device, Dean of the school conducted an administrative search of K.B. One of two school resource

officers was on standby for safety concerns while the Dean conducted the search. During the search, K.B. became hostile, snatching the device away from the Dean. The school resource officer intervened to restrain K.B. and retrieve the device. Due to K.B.'s ongoing resistance, the officer arrested her, while calling for backup.

K.B. continued to resist and refused to comply with both officers, even after being placed in handcuffs. Officers then escorted K.B. to their office, for the safety of herself and others, to await transport away from school property. The initial officer exited the office, while the second officer remained with K.B., all the while K.B. continued to resist, refusing to comply with lawful commands. She repeatedly pulled away from the officer and cursed "in a most disrespectful manner." When the first officer returned, K.B., once again, somehow retrieved the vape device *while handcuffed*, blowing the vapor in the second officer's face. K.B. was charged with two counts of resisting arrest without violence.

After a hearing, the Juvenile Court adjudicated K.B. delinquent for two counts of resisting arrest without violence. The trial judge reasoned that two separate acts of resisting arrest without violence occurred, first against the initial officer when he initiated arrest alone, and then against the second officer when K.B. resisted his efforts while his fellow officer was outside of their office. On appeal that ruling was reversed.

Issue:

Can a Defendant be convicted of multiple Resisting an Officer charges for resisting multiple police officers

in a single episode? **No.**

Double Jeopardy:

The Double Jeopardy Clause in both the state and federal constitutions protect criminal defendants from multiple convictions and punishments for the same offense arising from the same act or acts committed *within the same criminal transaction*. The governing law on whether a Defendant should be punished for two crimes within a single criminal episode is found in section 775.021 (4), F.S.

This section provides in part: "(a) Whoever, in the course of one criminal transaction or episode, commits an act or acts which constitute one or more separate criminal offenses, upon conviction and adjudication of guilt, shall be sentenced separately for each criminal offense; and the sentencing judge may order the sentences to be served concurrently or consecutively. For the purposes of this subsection, offenses are separate if each offense requires proof of an element that the other does not, without regard to the accusatory pleading or the proof adduced at trial."

The State argued on appeal that K.B.'s charges were predicated on two distinct criminal acts. However, Florida courts have consistently held that "a continuous resistance to an ongoing attempt to effectuate a person's arrest or detainment constitutes only one single instance of resisting an officer."

Single Transaction Rule:

The Florida Supreme Court in *Wallace v. State*, (Fla. 1998), explained that the statutory description of the offense determined if resisting multiple officers constituted a single act. Specifically, the Court noted that

section 843.01, Resisting officer with violence to his person - read, "Whoever knowingly and willfully resists, obstructs, or opposes **any** officer..." Because section 843.01 prohibits resisting "any" officer, as opposed to "an" officer, and the two counts were predicated on one incident during which the Defendant resisted or opposed two officers, only one conviction was permitted.

Court's Ruling:

"A Defendant may be convicted of multiple counts of resisting arrest without violence if their behavior constitutes two or more separate acts. See *Johnston v. State*, (4DCA 2023). However, a Defendant's continuing resistance to an arrest can amount to a single act of resistance, even if several officers are involved in the effort. See *Bruzzese v. State*, (5DCA 2020); see also *R.J.R. v. State*, (1DCA 2012)."

"When determining if K.B.'s actions constitute a continuous act, this Court must consider whether: 1. separate victims are involved; 2. whether the acts occurred in separate locations; 3. whether there has been a temporal break between the incidents; 4. whether there was an intervening act; and/or 5. a new criminal intent has formed. See *Fleming v. State*, (5DCA 2011) (citing *Vasquez v. State*, (5DCA 2001))."

"K.B.'s actions flowed from a single continuous episode. While both officers did act independently of each other during the incident, the facts reflect a *joint effort by officers to arrest and control her*. The primary location of the incident remained at the school. No intervening act or temporal break occurred during the incident. Finally, K.B.'s intent

remained consistent throughout the incident, to retrieve her vape and resist the officers' efforts."

"Therefore, K.B.'s multiple convictions of resisting arrest without violence arise from the same continuous act and constitute a double jeopardy violation. See *Johnson v. State*, (1DCA 2018). KB's adjudication and sentence for the second count is therefore reversed and remanded to the trial court to vacate the second adjudication of resisting arrest without violence and resentencing her accordingly. Her adjudication and sentence for the first count of resisting arrest without violence are affirmed."

Lessons Learned:

Interestingly, the Florida Supreme Court decided this issue in *Wallace v. State*, (Fla.1998), though that case was not cited above. The Supreme Court held that a Defendant could be convicted of only one count of resisting an officer with violence, based on his altercation with the two police officers arriving at his home in response to report of domestic disturbance.

The United States Supreme Court has reached a similar result in *Ladner v. United States*, (1958). In analyzing the intent of a similar federal statute, the Court found it susceptible to two equally plausible constructions with regard to the purpose the statute was intended to achieve: preventing hindrance of the Government and protection of individual officers. They ruled:

"Clearly one may resist, oppose, or impede the officers or interfere with the performance of their duties without placing them in personal danger. Such a congressional aim would, of course, be served by

considering the act of hindrance as the *unit of prosecution* without regard to the number of federal officers affected by the act. For example, the locking of the door of a building to prevent the entry of officers intending to arrest a person within would be an act of hindrance denounced by the statute. We cannot find clearly from the statute, even when read in the light of its legislative history, that the Congress intended that the person locking the door might commit **as many crimes as there are officers denied entry**. And if we cannot find this meaning in the supposed case, we cannot find that Congress intended that a single act of assault affecting two officers constitutes two offenses under the statute."

K.B. v. State
5th D.C.A.
(Aug. 21, 2026)

Concealed Firearm

Deputy Rafael was in his marked patrol car at the Martin Luther King, Jr. Day parade when he was approached by an unidentified woman who wished to remain anonymous. The two engaged in a brief conversation, the contents of which are not set out in the case. But the woman was ostensibly "desperate" and pointed out E.L. Based on the officer's actions, it is reasonable to believe the citizen informant was reporting that the Defendant had a firearm concealed on his person.

E.L. noticed Deputy Rafael and first began walking, then running in the opposite direction. Deputy caught up with E.L. and ordered him to stop and raise his hands. E.L. turned and faced the Officer, and when he raised his hands, his shirt lifted, exposing a

firearm in his waistband directly below his navel. He then told the officer to "take [the gun], take it, take it." Deputy retrieved the firearm, handcuffed E.L., and effectuated a formal arrest. The gun was then in plain view.

Issue:

Was the firearm recovered from the Defendant concealed as a matter of law? **Yes.**

Gun Tip:

Interestingly, a U.S. Supreme Court case with nearly the same title and similar facts is relevant to this analysis. In *Florida v. J.L.*, (S.Ct. 2000), an anonymous caller reported to the Police that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. Officers went to the bus stop and saw three black males, one of whom, Defendant J. L., was wearing a plaid shirt. Apart from the tip, the officers had no reason to suspect any of them of illegal conduct. The officers did not see a firearm nor observe any unusual movements. One of the officers frisked J.L. and seized a gun from his pocket. The Supreme Court held the search invalid under the Fourth Amendment.

The U.S. Supreme Court ruled that an anonymous tip, "standing alone, would not warrant a man of reasonable caution in the belief that [a stop] was appropriate." *Alabama v. White* (S.Ct. 1990). "The tip lacked sufficient indicia of reliability to provide reasonable suspicion to make a *Terry* stop: It provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility."

In the past, the Supreme Court had suggested that only an

anonymous tipster's ability to "predict [a defendant's] future behavior" could sufficiently indicate his or her reliability. See, *White*. However, the Supreme Court has since backed away from this approach. In *Navarette v. California*, (S.Ct. 2014), the Supreme Court held that a detailed, contemporaneous report of suspicious activity to a 911 emergency dispatcher carried with it sufficient indicia of reliability when the details and location of the described events turned out to be correct.

Stop and Frisk has been codified by F.S. 901.151. And while sec. 901.151(5) provides that when an officer has "probable cause "to believe the suspect he is detaining is armed with a dangerous weapon, the Florida Supreme Court in *Mackey v. State*, (Fla. 2013) emphasized that "probable cause" is not the touchstone. "Contrary to the decision below, Officer May did not need probable cause to frisk Mackey. Only *reasonable, articulable suspicion* is required before an officer may conduct a protective frisk pursuant to the decision of the United States Supreme Court in *Terry*."

See also, *State v. Webb*, (Fla.1981), "Viewing section 901.151 in the context of its stated purpose to permit officers to temporarily detain and question persons under circumstances reasonably indicating criminal activity, past, present, or imminent, and to frisk where they have reasonable belief that the person detained is armed, it would be unreasonable and contrary to the legislature's intent to require an officer, before he may frisk a person whom he reasonably believes is armed with a dangerous weapon, to

have the same probable cause that would be required for an arrest or for a search warrant."

The legal basis for a frisk usually depends on the observation of a bulge under an individual's clothing. However, an officer's experience, knowledge, and training can provide other indicators.

Court's Ruling:

"To prove the offense of carrying a concealed firearm, the State must establish that the accused carried a firearm 'on or about [his] person in such a manner as to conceal [it] from the ordinary sight of another person.' See § 790.001(3) F.S. The term 'ordinary sight of another person' means the casual and ordinary observation of another in the normal associations of life. *Ensor v. State*, (Fla. 1981); see also *State v. Riocabo*, (3DCA 1979) (holding 'a concealed firearm may be accidentally, partially exposed so that an arresting officer may see a portion of the firearm' but that the firearm may still be concealed under the statute); *State v. Joseph*, (5DCA 1987) ('*The fact that [the weapon] is revealed to the arresting officer when the person turns and his coat swings away sufficiently for the officer to identify it as a pistol does not keep it from being a 'concealed weapon' under the law.*')."

"E.L. correctly posits that just because a portion of the weapon cannot be seen upon casual observation does not automatically create a triable issue of fact. The Florida Supreme Court has instead focused on the 'manner' in which the weapon is carried. *Dorelus v. State*, (Fla. 1999). As the court has recognized, 'a statement by the observing officer that he or she was able to

'immediately recognize' the questioned object as a weapon may conclusively demonstrate that the weapon was not concealed as a matter of law because it was not hidden from ordinary observation.' See, *State v. Hardy*, (5DCA 1992); *Cope v. State*, (5DCA 1988)."

"But in this case, the converse was true. Deputy Rafael testified on direct examination that the firearm was 'concealed out of ordinary sight' until E.L. raised his shirt and requested to be disarmed. That testimony was sufficient to sustain the trial court's denial of both dismissal motions and the finding of delinquency. Affirmed."

Lessons Learned:

In *Regalado v. State*, (4DCA 2009), under similar circumstances, the 4th D.C.A. ruled that carrying a concealed firearm is not illegal in Florida if one has a concealed weapons permit. The 3rd D.C.A. in *Mackey v. State*, (3DCA 2012), when reviewing Mackey's conviction, refused to be bound by the 4th D.C.A.'s ruling and upheld Mackey's CCF conviction.

On appeal to the Florida Supreme Court, the Court agreed with the 3rd D.C.A., finding that **whether a suspect has a concealed weapons permit is an affirmative defense and not an element of the criminal offense** of CCF. *Mackey v. State*, (Fla.2013).

"Florida's legislative scheme causes us to hold that licensure is an affirmative defense to a charged crime of carrying a concealed weapon, as codified at section 790.01, F.S., and the *lack of a license is not an element of the crime.*"

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3rd D.C.A.
(April 15, 2026)**