LEGAL EAGLE

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DUI Checkpoint

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B. Krischer, Editor

Broward County law enforcement agencies formed a DUI task force pursuant to a Mutual Aid Agreement. Officers set up the roadblock, using cones, signs, and flashing lights to alert the public, and created a deceleration area for vehicles to flow from multiple traffic lanes into one lane of traffic. The trial court later found the checkpoint to have been lawfully constituted having complied with the requirements of *State v. Jones*, (Fla.1986), and *Campbell v. State*, (Fla.1996).

David Rinaldo entered the checkpoint area and refused to stop or comply with the officers' on scene commands. When he refused to exit his vehicle an officer forcibly opened the door himself. He then asked Rinaldo for his driver's license, registration, and proof of insurance. After some delay, defendant provided his driver's license, while placing a small hand-held tape recorder near the officer's face. He produced his registration and insurance after a second request for those documents. When told to exit the vehicle Rinaldo had difficulty staying on his feet, and used the vehicle as support as he walked to the rear of his truck. The officer attempted to question defendant but he refused to respond. While standing near Rinaldo at the back of the truck, the officer detected that he had an odor of alcohol on his breath and that his eyes were bloodshot, his face was flushed, and his speech was slurred. Based on these observations, Rinaldo was arrested for driving under the influence. After arrest, a concealed firearm was found in Rinaldo's back pocket. He had no concealed weapons permit.

Rinaldo was arrested for carrying a concealed firearm, DUI, resisting arrest without violence, and no proof of insurance. At trial he filed a motion to suppress arguing the roadblock was unlawfully constituted and that his removal from his vehicle violated his Fourth Amendment rights. The trial court denied his motion. The 4th D.C.A. agreed.

Issue:

Was the checkpoint lawfully constituted? **Yes**. Was the removal of the defendant from his vehicle a violation of his Fourth Amendment rights? **No**.

Lawful Basis of a DUI Roadblock:

The defendant's argument in his motion to suppress was that the roadblock guidelines were defective in that they failed to address the procedure for handling a motorist, as himself, who refused to fully cooperate and comply with the roadblock commands. Correctly stated, *State v. Jones* does require that a written set

of uniform guidelines be issued before a roadblock can be utilized. The Florida Supreme Court explained that "because DUI roadblocks involve seizures made without any articulable suspicion of illegal activity," an advance plan with neutral and specific criteria is necessary *to limit the amount of police officer discretion and reduce the risk of abuse*. The court noted that "ideally, these guidelines should set out with reasonable specificity procedures regarding the selection of vehicles, detention techniques, duty assignments, and the disposition of vehicles." However, the Court went on to say that "if the guidelines fail to cover each of these matters they need not necessarily fail. Rather, courts should view each set of guidelines as a whole when determining the plan's sufficiency."

The 4th D.C.A. noted, "Although, as defendant points out, the guidelines were silent on directions for dealing with an encounter like the one between Officer Williams and defendant, we do not consider this deficiency a fatal flaw. The written instructions, which focused on procedures to be followed during the initial stop and detention of motorists, were clear and reasonable and did not permit random or arbitrary vehicle stops or allow officers to discriminately target particular persons. Every encounter with a stopped vehicle included a request for documentation and some preliminary questioning and observation for signs of alcohol impairment. Although an 'ideal' set of guidelines would anticipate that a motorist might refuse to cooperate with police during a roadblock operation, a plan that does not cover such an occurrence is not *per se* constitutionally invalid. *Motorists are neither expected nor privileged to refuse to obey these minimal necessary and legitimate demands at a valid roadblock*."

"Moreover, a driver who is lawfully stopped for a DUI checkpoint is under a legal obligation to respond to an officer's requests for certain information and documents, and *the driver's refusal to respond to these requests may constitute the misdemeanor offense of obstructing or opposing an officer*. If a driver engages in obstructive conduct, in violation of section 843.02, then standard police detention and arrest procedures, rather than checkpoint guidelines, would govern the officer's handling of the situation."

Court's Ruling:

After considering the case law and the facts of the case the 4th D.C.A. ruled the stop and detention of Rinaldo to have been lawful. "Thus, viewing these guidelines 'as a whole' in determining the plan's sufficiency, we conclude that the guidelines set out the detention techniques with reasonable specificity and limited the discretion of police officers at the scene in a manner consistent with *Jones* and *Campbell*."

"The United States Supreme Court acknowledged in *Michigan Dep't of State Police v. Sitz*, (S.Ct.1990), 'a Fourth Amendment seizure occurs when a vehicle is stopped at a checkpoint.' A roadblock stop, just like a *Terry* stop, is a seizure imposing a greater intrusion upon a citizen than a consensual encounter. Unlike a *Terry* stop, however, its validity turns not upon a reasonable suspicion but upon 'a showing that officers carry out the search pursuant to a plan embodying specific neutral criteria which limits the conduct of the individual officers.' As we stated above, the guidelines and operational plan used for conducting this DUI checkpoint met the required showing. Accordingly, defendant enjoyed no [consensual encounter] privilege to ignore the officer's request for documents or *to thwart the officer's ability to observe him for signs of impairment*."

> "Motorists are neither expected nor privileged to refuse to obey these minimal necessary and legitimate demands at a valid roadblock."

As to the defendant's argument that his removal from his vehicle and detention at the rear of the vehicle was unlawful, and violated his Fourth Amendment rights, the D.C.A. stated, "We do not agree that the circumstances surrounding the roadblock stop in this case were insufficient to provide the officer with reasonable suspicion that defendant was engaged in criminal activity. As we stated earlier, motorists are obligated to comply with an officer's reasonable requests at a valid roadblock and must 'accept the minor inconvenience which they may endure.' *Refusing to interact with an officer and allow the officer an opportunity to observe the driver for signs of impairment defeats or frus-*

trates the very purpose of the roadblock, i.e., to detect impaired drivers. Here, defendant's conduct both before and during the roadblock was sufficient to raise reasonable suspicion that he was engaged in criminal activity, i.e., obstructing or attempting to obstruct or oppose an officer during the lawful execution a duty… These circumstances gave the officer reason to believe that defendant was engaged in obstructive conduct. They additionally gave the officer reason to fear for his safety and to order defendant out of his vehicle."

"In *Pennsylvania v. Mimms*, (S.Ct.1977), the Supreme Court held that a police officer may as a matter of course order the driver of a lawfully stopped car to exit his vehicle… *Mimms*, however, is distinguishable from this case in that it involved a traffic stop that was based on a traffic violation, rather than a DUI checkpoint. Reasonable suspicion, according to *Popple v. State,* (Fla.1993), is necessary for a police officer to order an occupant to exit his vehicle. Thus, while we do not conclude that the bright line rule in *Mimms* applies to a routine roadblock stop, we hold that *where an officer, after conducting a valid roadblock stop, develops reasonable suspicion that the driver has committed or is committing a criminal or traffic violation, the officer may lawfully order the driver to get out of the vehicle*."

"Based on the foregoing, we find no error in the trial court's denial of appellant's motion to suppress. AFFIRMED."

Lessons Learned:

This case makes it crystal clear that individuals that approach a DUI checkpoint and refuse to interact with the officers present by merely providing their documents, (license, registration, proof of insurance), through a minimally lowered window, misconstrue the purpose of the roadblock. It is not a safety check to verify the operator's paperwork, but it is rather a sobriety checkpoint.

As the Florida Supreme Court stated in *State v. Jones*, "The public, however, must keep in mind that the privilege of driving an automobile over public highways does not amount to an absolute organic right. Our government provides the roadways of Florida as a benefit to the public at large. Accordingly, this State retains extensive authority to safeguard the driving public via its police power. If the holder of a driver's license cannot utilize the privilege of driving on our public streets and highways in a careful manner and respect the rights of others to do likewise, that driver becomes a public nuisance and should be either temporarily or permanently excluded from those roads. In order to safeguard Floridians against such drivers, *motorists should reasonably accept the minor inconvenience which they may endure at a properly run DUI roadblock*."

To reiterate the 4th D.C.A.'s holding above, "Moreover, a driver who is lawfully stopped for a DUI checkpoint is under a legal obligation to respond to an officer's requests for certain information and documents, and *the driver's refusal to respond to these requests may constitute the misdemeanor offense of obstructing or opposing an officer*."

Rinaldo v. State
4th D.C.A. (May 16, 2001)

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This month:

1. DoJ Guidance for federal law enforcement agencies regarding the use of race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity (Dec. 2014) .
2. New AELE Monthly Law Journal article: Civil Liability for Use of Distraction Devices

Part 1 focuses on home and building entries, and use in correctional settings.

We also have four menus for the more than 35,000 case summaries:

1. Law enforcement civil liability at http://www.aele.org/law/Digests/civilmenu.html
2. Employment law and discipline at http://www.aele.org/law/Digests/emplmenu.html
3. Jail and prisoner legal issues at http://www.aele.org/law/Digests/jailmenu.html
4. Electronic control weapons case summaries at http://www.aele.org/law/Digests/ECWcases.html

FLORIDA CASE LAW UPDATE 15-01

Case: **Curry-Pennamon v. State, 40 FLW D110g (Fla. 1st DCA)**

Date: **January 2, 2015**

Subject: **On-duty employee was not guilty of carrying a concealed firearm when he was in his employer's parking lot at the time of the offense**

FACTS: The defendant, who was an on-duty Wal-Mart employee at the time of the offense, was arrested for carrying a concealed firearm, in addition to other charges, arising from a shooting incident which occurred in the store's parking lot. At trial, the defense moved for a judgment of acquittal on the concealed firearms charge, arguing that Florida law permits a person to lawfully possess a concealed firearm at their place of business, and in the defendant's case, the Wal-Mart parking lot constituted his place of business. The trial judge denied the motion, and Curry-Pennamon was convicted. This appeal ensued.

RULING: The First District Court of Appeal reversed the trial court, holding that as an on-duty employee, the defendant was lawfully possessing a firearm at his "place of business" at the time of his arrest. Judgment of Acquittal on the firearms charge was ordered.

DISCUSSION: The court noted that Section 790.01(2), Florida Statutes, generally holds that "a person who carries a concealed forearm on or about his or her person commits a felony of the third degree." However, Section 790.25(3) provides an exception for persons "possessing arms at his or her home or place of business." The Florida Supreme Court addressed a similar issue in *Peoples v. State*, 287 So.2d 63 (Fla. 1973), holding that the exception in 790.25(3) applies not only to owners of a business, but also to its employees. Additionally, other Florida courts have held that the "place of business" exception also applies to property surrounding the business, including parking lots. *See State v. Anton*, 700 So.2d 743 (Fla. 2d DCA 1997); *State v. Little*, 104 So.3d 1263 (Fla. 4th DCA 2013). Finally, pursuant to Section 790.25(4), courts are directed to liberally construe the provisions of Section 790.25 "in favor of the constitutional right to keep and bear arms for lawful purposes." *Florida Carry, Inc. v. University of North Florida*, 133 So.3d 966 (Fla. 1st DCA 2013). Because of the statutory and case law addressing the issue, the trial court should have found that the defendant's possession of the firearm in his employer's parking lot, while he was in an "on-duty" status, fell within the legal exemption.

COMMENTS: In evaluating concealed firearms charges, officers should consider the above factors and determine whether the "place of business" exception might apply in those individual cases. Also, note that the court did not specifically address whether the result would have been different had the defendant simply been visiting the Wal-Mart in an off-duty status at the time of the offense, though it did emphasize his "on-duty" status in this opinion.

John E. Kemner
Regional Legal Advisor
Florida Department of Law Enforcement
Jacksonville Regional Operations Center

Recent Case Law

Deadly Force and Vehicle Flight

Officers of the Drug Unit set up a buy-bust through one of their confidential informants. The operation was based on information received from the C.I., who was to purchase an ounce of crack cocaine from Robert Moore. The deal was set to occur inside Moore's vehicle, a blue Ford Taurus, parked outside of an Econo Lodge. After giving the signal the C.I. left the vehicle ostensibly to get the buy money. The officers moved in to effect the arrest, but the Taurus did not remain parked outside the motel, it began to drive away. After partially blocking the parking lot exit with his vehicle, Det. House got out of his vehicle and walked toward the Taurus. Other officers attempted to block the Taurus with their vehicles. The Taurus came to a stop approximately 30 feet from Det. House's vehicle, giving both the driver and the officer a clear view of each other. House, wearing his badge and his vest with "Police" written in reflective lettering, approached the Taurus from the front with his gun drawn, yelling "Dayton Police. Stop the car." A second officer did the same. When House was approximately ten feet from the stopped vehicle, the driver of the car, later identified as Charles Stargell, "punched the gas" and accelerated. The vehicle struck House in the right leg as he rolled across the hood to the passenger side of the vehicle. The vehicle continued to accelerate. Almost immediately after the car struck House, it struck Det. St. Clair in the hand, prompting him to discharge his weapon. At that point, House did not know where St. Clair was or even that St. Clair had been the one to fire the shot. Nevertheless, based on the fact that House had last seen St. Clair behind him, House believed that St. Clair had fired the shot and had done so in self -defense. Within a matter of seconds after being hit, House turned to the left, in close proximity to the passenger-side front window, looked through the sight on his gun at the driver and fired a single shot. House testified that the only person he could see through the sight was the driver, Stargell, he did not see the person in the front passenger seat. He testified that he took the shot in the belief that he was protecting himself and the other officers surrounding the vehicle for the take-down; as well as officers and civilians who might have been seriously injured had the car continued on. The bullet struck and killed Derrick Jordan, the front-seat passenger. The vehicle continued on between House's and St. Clair's cars, eventually crashing into a tree.

The police department charged House and St. Clair with violations of the department's firearms policy. "An officer will not discharge firearms from or at a moving vehicle unless they reasonably believe that such an action is in defense of human life." "Officers must use tactical positioning of their vehicles and tactical vehicle approaches in order to minimize the danger presented by occupied vehicles." "Officers must not deliberately place themselves in the path of a moving vehicle. An officer will attempt to move from the path of the motor vehicle and/or seek cover when possible."

William Cass representing the estate of Derrick Jordan sued the department and the officers for violating Jordan's constitutional rights. The trial court granted the officers qualified immunity. Cass appealed. The U.S. Court of Appeals affirmed the trial court action.

Issue:

Was the officers' use of deadly force when confronted by a fleeing vehicle reasonable under the Fourth Amendment? **Yes**.

Objective Reasonableness:

The Fourth Amendment's prohibition against unreasonable seizures prohibits the use of excessive force against free citizens. (*Graham v. Connor*, (S.Ct.1989). The test is one of objective reasonableness: "The question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." The court will assess "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight," (*Tennessee v. Garner*, (S.Ct.1985)), among other

case-specific factors. In short, the court asks whether the officer's use of force was objectively reasonable in light of the totality of the circumstances as they would have appeared to a "reasonable officer on the scene, rather than with the 20/20 vision of hindsight."

Tennessee v. Garner provides the starting point for assessing the use of deadly force against fleeing felony suspects. There, the Supreme Court held that the Fourth Amendment does not permit a police officer to "seize an unarmed, non-dangerous suspect by shooting him dead." At the same time, "where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force."

Court's Ruling:

The U.S. Court of Appeals found the officers' actions here objectively reasonable. "Since *Garner*, we have applied a consistent framework in assessing deadly-force claims involving vehicular flight. Although each case is tethered to its specific factual context, the critical question is typically whether the officer has 'reason to believe that the [fleeing] car presents an imminent danger' to 'officers and members of the public in the area.' An officer is justified in using deadly force against 'a driver who *objectively appears ready to drive into an officer or bystander with his car*.' (*Brosseau v. Haugen*, (S.Ct.2004)). But, as a general matter, an officer may not use deadly force 'once the car moves away, leaving the officer and bystanders in a position of safety.' An officer may, however, continue to fire at a fleeing vehicle even when no one is in the vehicle's direct path when 'the officer's prior interactions with the driver suggest that the driver will continue to endanger others with his car.'"

"Finally, because the 'calculus of reasonableness' allows for the fact that police officers must often 'make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving,' an officer does not violate the Fourth Amendment where, although ultimately wrong in his or her assessment of the circumstances, '*a dangerous situation evolved quickly to a safe one before the police officer had a chance to realize the change*.' See, *Smith v. Cupp*, (6th Cir. 2005)."

"Applying this framework, and cognizant that the ultimate question is one of objective reasonableness, we find that House did not use excessive force… Based on the fact that Stargell had demonstrated that 'he either was willing to injure an officer that got in the way of escape or was willing to persist in extremely reckless behavior that threatened the lives of all those around,' and based on House's professional assessment of what can only be described as a 'tense, uncertain, and rapidly evolving' situation, House's use of deadly force was objectively reasonable."

Cass disagreed and argued that at the time the shots were fired the officers were no longer in the Taurus's direct path and hence not in any danger. The Court of Appeals disagreed. "Although the Taurus had struck two officers, Cass suggests that the coast was clear for the car to proceed unmolested despite the presence of other officers to effect the arrest. This, of course, was not how the situation appeared in real time. Informed by his knowledge of the circumstances and of police tactics, House reasonably understood that Stargell, in his quest to escape, *posed a continuing risk to the other officers present in the immediate vicinity*... Moreover, those officers were not required to step aside and let the Taurus escape, particularly after it had struck two of their fellow officers. In short, 'while it may be easy for [Cass] to say that each officer was safe once the officer was no longer in the direct path of [the Taurus], no reasonable officer would say that the night's peril had ended at that point.' Stargell remained behind the wheel, other officers were on the scene, and Stargell had demonstrated a willingness to injure officers trying to prevent him from fleeing." AFFIRMED.

Lessons Learned:

Of interest here is the issue of the police department finding the officers involved violated their department policy by placing themselves in the path of the Taurus. To which the Court of Appeals noted, "the Supreme Court has been cautious to draw a distinction between behavior that violates a statutory or constitutional right and behavior that violates an administrative procedure of the agency for which the officials work. House's alleged violations of City policy do not change our conclusion that he did not act objectively unreasonably under the circumstances."

Departmental policy on use of force is not admissible in a criminal trial. See, *Lozano v. State*, 584 So.2d 19 (3DCA 1991), (SOP is relevant in a civil action, but not in a criminal prosecution). "We find error in the admission of the police manuals.

Although introduction of police manuals is permitted in civil negligence cases, the rule regarding the admissibility of custom in civil cases is not applicable in a criminal case"

Thus, although officers answer to two masters, Florida Statute and department policy, individual department's general orders do not impact "objective reasonableness."

Cass v. Dayton Police Department
U.S. Court of Appeals – 6th Cir.
(October 16, 2014)

Request for an Attorney and Continued Police Questioning

The defendant was implicated in a home invasion robbery – murder. A 10mm bullet casing found at the scene led investigators to a gun shop that provided a video tape of the defendant purchasing similar ammunition. He was subsequently captured 8 days later after a high speed chase.

While in pretrial custody, defendant was told that the investigators could not speak with him unless he waived his rights. To which the defendant responded, "Well could I—Could I call my mother? I got a lawyer. Could I call them?" No one responded to that question instead there was further conversation and then a detective read the defendant his *Miranda* rights. The defendant agreed to speak with the officers and signed a waiver form. Defendant continued talking to the investigators before again asking, "Can't I call my lawyer?" Questioning nonetheless continued, and defendant eventually told officers he was involved in the robbery and murder. Following the interrogation, detectives obtained a search warrant and executed a search of the residence of defendant's girlfriend. Additional items removed from the victim's home were found in the girlfriend's residence.

At trial the defendant filed a motion to suppress his conversation with the officers as they had not respected his request for access to his lawyer. The trial court suppressed all matters discussed prior to advising the defendant of his *Miranda* rights, and all comments made after he asked, "Can't I call my lawyer?" That left a few minutes of questions and answers that were presented to the jury. Some of the suppressed information had been used for the search warrant application.

Issue:

Did the defendant's statements to the officers, both before and after *Miranda*, effectively and unequivocally request the assistance of an attorney? **Yes**.

Request for Counsel:

Both the United States and Florida Constitutions protect criminal defendants from compelled self-incrimination. The United States Supreme Court has held that law enforcement officers are required to inform suspects of their right to have counsel present during custodial interrogations. "*If the individual states that he wants an attorney, the interrogation must cease until an attorney is present*." "After such warnings have been given, ... the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement." In order for a suspect to invoke his right to counsel, he must make, "at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney." However, "if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning."

"Under the well-settled principles of *Miranda,* once a suspect unequivocally invokes the right to counsel, all interrogation must cease." "If the accused invoked his right to counsel, courts may admit his responses to further questioning only on finding that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked."

When an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that the accused responded to further police-initiated custodial interrogation even if he has been advised of his rights. The courts have held "that an accused, ... having expressed his desire to deal with the police only through counsel, is not 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."

Court's Ruling:

The 4th D.C.A. noted, "While courts have not always been clear on what constitutes an 'unequivocal invocation' of one's right to counsel, defendant's initial request for an attorney in this case seems to qualify. Although he also references a desire to speak to his mother, defendant's initial statement, 'Well, could I—could I call my mother? I got a law-

yer. Could I call them?' is a sufficiently clear expression of his desire for the assistance of an attorney."

Having found that the defendant effectively expressed his desire to deal with the police only through an attorney, the D.C.A. proceeded to find the police questioning improper. "Since questioning never ceased, defendant never reinitiated the conversation with the officers, and he did not appear to 'knowingly and intelligently' waive the right he had invoked. Accordingly, there is insufficient evidence of a valid waiver."

Miranda Violation and Search Warrant:

Some of the physical evidence used to convict defendant was seized pursuant to a warrant to search the home of his girlfriend. Florida statute is clear that search warrants must be based on "probable cause supported by affidavit or affidavits, naming or describing the person, place, or thing to be searched and particularly describing the property or thing to be seized." Clearly, the affidavit in this case included information obtained from defendant in violation of *Miranda* and his Constitutional rights. However, the inclusion of illegally obtained evidence in the supporting affidavit, where the affidavit contains other valid allegations sufficient to establish probable cause, does not invalidate a search warrant. The trial court's duty is to evaluate the probable cause setting aside the invalid allegations and determining whether the independent and lawfully obtained information remaining supported probable cause.

In this case the 4th D.C.A. ruled, "When defendant's statements are removed from the affidavit, there are no facts to support probable cause to search his girlfriend's home." That, however, is not the end of the legal analysis. If despite the challenged police conduct, the State can still establish the information "ultimately or inevitably would have been discovered by lawful means." See, *Craig v. State*, (Fla.1987) (quoting *Nix v. Williams*, (S.Ct.1984). Thus, for the "inevitable discovery doctrine" to apply, the State must establish that the evidence would have been discovered "by means of normal investigative measures that inevitably would have been set in motion as a matter of routine police procedure." In that regard the 4th D.C.A. found:

"Here, investigators had already discovered sufficient evidence to create probable cause for a search of defendant's girlfriend's residence prior to his interrogation. Officers linked the stolen item found in defendant's car to the murder scene before talking to defendant. Likewise, investigators obtained a recording of the phone call from defendant to his girlfriend, asking her to find the gun he had hidden, two days before he was interrogated. This recording would give investigators reason to believe his girlfriend might know of or possess evidence relevant to their ongoing investigation. From this information, routine investigative measures would have inevitably discovered the evidence presented at trial, making that evidence admissible. Therefore, there was no error in admitting the evidence obtained from the search warrant." AFFIRMED.

Lessons Learned:

Once again, it cannot be over emphasized that a request to call an attorney must be respected, and failure to do so will result in suppression of any subsequent statements.

Playing fast and loose with *Miranda* is a no-win situation for law enforcement and any subsequent attempt at a prosecution.

Davis v. State
4th D.C.A. (Dec. 17, 2014)

High Crime Area Pat-Down

Without being able to testify as to any reason to suspect criminal activity, an officer approached Jerry Griffin in a high-crime area, standing in a driveway, and immediately demanded he remove his hands from his pockets. When he refused the officer frisked him and found cocaine. The D.C.A. suppressed the drugs.

"In sum, the officer's description of the area as a 'high crime area' was used to justify his invasion of Mr. Griffin's personal liberty. *A 'high crime' designation is not synonymous with reasonable suspicion of illegality.* Nor are hands in pockets synonymous with reasonable suspicion of illegality. Even combined, the two facts are wholly insufficient to have provided the officer with reasonable suspicion Mr. Griffin was armed and potentially dangerous.

"If one's mere presence in a 'high crime' area can justify a reasonable suspicion for a weapons pat-down, then everyone who resides in, works in, visits, conducts business in, attends school in, or traverses through the area can be considered armed and potentially dangerous. This presumption could lead to a blanket suspension of constitutional rights for certain communities. Fourth Amendment constitutional protections do not stop at the entryway to selected neighborhoods."

Griffin v. State
1st D.C.A. (Nov. 20, 2014)

8 Tactical Tips to Prevent an Ambush Attack on Police

The Officer Down Memorial Page indicates that gunfire deaths against cops is up 56 percent in 2014. Men and women in blue, take notice as this spike may continue into 2015. In fact, this deadly trend may actually worsen if we don't get control of the problem.

….

The following eight tactical tips can help ensure your safety both on duty and off:

1. **Heighten situational awareness:** No matter what you are doing or who you 're talking with, your situational awareness needs to be highly acute so you can respond in a moment's notice. Don't place yourself in a vulnerable spot, whether you're parked in your patrol car, speaking with a citizen or stopped at an intersection. Watch the person you are speaking with, scan the area, formulate a tactical response if attacked, recognize an escape route, recognize ambush points and repeat this cycle. This should be a loop cycled through your brain as you conduct everything you do while on duty.

2. **Don't be a sitting target:** While in your cruiser, don't sit in an open public area. If you have reports to type on your cruiser computer or notes to add to a ticket or accident report, seek a safer environment such as your police station or precinct. If that's not practical, meet a sector partner, park in a secluded spot that is vast so you can see approaching persons and do your follow up work as your partner keeps a watchful eye.

3. **Taking breaks:** Don't sit in donut shops, and avoid eating in restaurants. Meet with other officers at the police station or precinct to eat. Park in a position in the parking lot that allows the best tactical advantage — preferably with another patrol partner.

4. **Tactical edge:** As you speak with the public, no matter how insignificant the call is, have a tactical response ready to deploy. Keep a safe gap between you and the person you're dealing with. Position yourself in the best stance that will allow for a quick response to a physical confrontation of a gun threat. Too many officers stand nose to nose with the subject they are dealing with and both their hands on their gun belt.

5. **Read the public:** While in uniform watch the public, read their intentions and anticipate threats. This may sound like paranoia but good cops do this all day long even while off-duty. Don't overreact to situations that may seem like a threat, just be ready to react. This tactic may give you the split second needed to respond to a threat instead of missing the verbal queues and physical movements that telegraph a possible attack.

6. **Don't hesitate:** Don't allow the threat of being an accused slow your response to a threat. If you're conducting yourself lawfully during the course of your duties, the Brown and Garner cases prove that the system works. When met with any threat, be quick to react in a lawful and appropriate manner.

7. **Proper force:** When a threat has presented itself, apply the legal force allowed – however -- never try to meet a deadly threat with non-lethal force. In other words don't allow the current climate to scare you into meeting a deadly threat with an electronic control device or pepper spray. If your life is in danger and there isn't a way to neutralize the threat, don't hesitate to deploy lethal force when warranted. Deploying non-lethal force options in a lethal force threat situation may get you killed.

8. **Live another day:** During the coming months, attacks on law enforcement like that in NYC may occur in any town, USA. Don't be complacent and think it can't happen to you. The fact is, the majority of cops killed in the line of duty in America are suburban or small town cops.

Conclusion:

As 2014 we roll into 2015, we need to strive to maintain our professionalism, and demonstrate calm and rational law enforcement. Don't be baited into a confrontation because you're ready for a quick tactical response. Awareness on our part can help resolve this alarming trend in law enforcement gun deaths.

Make a pledge to keep yourself safe in honor of those men and women who sacrificed their lives in 2014.

Editor's Note: This article adapted from PoliceOne.com, Jan.7, 2015, by SWAT Operator, Sgt. Glenn French.