Stops

Pedestrians

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Introduction

The following editions are divided into two parts: Police stops of vehicles and police stops of pedestrians. The issue of state action is presumed in the cases so that the Fourth Amendment issue (in Florida) attaches.

There is no suggestion that every Florida case is presented, so there is a subjective choice as to which cases present the more compelling issues. Furthermore, although these editions were written from a defense perspective, I would hope that the judiciary (and the State) would find these cases helpful. Most cases have the facts and opinions quoted, and, in some, the dissent is included. Since minimal factual distinctions often can determine the opinion, cases will include extensive fact patterns if necessary.

Dedication

This edition is dedicated to the Honorable Milton Hirsch of the Eleventh Judicial Circuit, who has spent a professional career examining the intricacies of our Constitution. This edition is also dedicated to the Honorable Kevin Emas of the Third District Court of Appeal, who has served with unique distinction on the Third District Court of Appeals. I have known them for three decades and have had the utmost respect and admiration for their dedication and integrity.

Acknowledgment

My sincerest thanks to Kristen Kawass, Helem Rivera, and Stephen Caines. Helem spent time organizing the finished editions. Stephen spent time analyzing caselaw. Kristen spent many hours placing the proper headings and chapters with each case. It was a major task and Kristen has my sincere appreciation.

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PROCEDURAL

STOP OF PERSONS

(1) INVESTIGATORY STOP / TEMPORARY DETENTION

I. REASONABLE SUSPICION

A. TOTALITY OF CIRCUMSTANCES: FLIGHT FACTOR

1. High crime area

***State v. Lewis*, 09 So. 3d 89 (Fla. 4th DCA 2012)**

Where a suspect flees the back of a house moments after LEOs witness a drug transaction in the front of the house, an investigatory stop of said person is justified.

The state appeals from the circuit court's order granting the defendant's motion to suppress cocaine found on the defendant. The state argues that the defendant's flight from the back of a house, immediately after a drug transaction occurred in the front of the house, along with the arresting officer's concern that the defendant was the person who engaged in the drug transaction, established reasonable suspicion to warrant an investigatory stop. We agree and reverse.

Two detectives testified at the suppression hearing. The first detective testified that he and a confidential informant drove up to a man in a convenience store parking lot. They asked the man where they could buy drugs. The man said he would take them someplace. The man jumped in the back of their vehicle and directed them to a house. They parked across the street from the house and gave money to the man. The man got out of the vehicle and appeared to buy cocaine from a woman sitting on the house's front porch. As the man conducted the buy, the first detective, speaking over the radio to backup officers, including the second detective, described the man and the woman. The first detective described the man as "an older guy, skinny," wearing a T-shirt and jeans. After the man completed the buy and was walking back to the vehicle, the first detective told the backup officers that they should move in to arrest him.

SECOND DETECTIVE: My [sheriff's office] tactical uniform, says "Sheriff" written in big letters on the front of my vest.

STATE: So you see a door burst open and someone runs out back?

SECOND DETECTIVE: Yes.

STATE: And what do you do?

SECOND DETECTIVE: He comes out back, sees me, tries to get back inside. At this point, he is about two feet from me. I grab the arm and that point, I was trying to find out what his reason was for coming out the back door.

STATE: So what do you do?

SECOND DETECTIVE: Start conversation with him, very cooperative. Wasn't being rude or anything. Told me he saw raiders in the front of the house.

STATE: What does raiders mean?

SECOND DETECTIVE: Raiders is just street language for the street narcotics crime unit.

STATE: So at this point, what do you say?

SECOND DETECTIVE: Start talking to him, like I said, asked if he had anything on him, something to that effect. He said, you can check. I got nothing on me.

....

STATE: What do you do at that point?

SECOND DETECTIVE: Went ahead, searched him for weapons, narcotics, anything like that based on the fact he gave consent. I found a small baggie of cocaine.

The defendant argued that the circuit court should suppress the cocaine because the second detective did not observe circumstances sufficient to form a reasonable suspicion that the defendant committed a crime. The defendant also argued that his consent to the search was mere acquiescence to the exercise of police authority

We conclude that the second detective had reasonable suspicion to justify an investigatory stop. When reviewing courts make reasonable suspicion determinations, they must look at the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing.

In *Wardlow,* the United States Supreme Court held that a defendant's flight upon seeing the police patrolling an area known for heavy narcotics trafficking supported reasonable

suspicion that the defendant was involved in criminal activity and justified an investigatory stop.

Allowing officers confronted with such flight to stop the [individual] and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning." *Id.* at 125, 120 S.Ct. 673.

Even so, flight is still merely one factor that may be considered in such a determination and is not sufficient in itself to justify an investigatory stop. There must be some additional factor or factors, which, when combined with flight, would give rise to a reasonable suspicion that criminal activity is afoot."

We also conclude that the defendant's consent to the search was not simply an acquiescence to police authority. According to the second detective, he asked the defendant "if he had anything on him."

In other words, the second detective did not request to search the defendant; the defendant volunteered to be searched. Because the circuit court did not question the second detective's credibility in its factual findings, and because the court's factual findings only mentioned the circumstances surrounding the investigatory stop, the court erred in its legal conclusion that the defendant's consent was simply an acquiescence to the exercise of police authority.

In sum, the totality of the circumstances presented to the second detective gave him reasonable suspicion to stop and investigate the defendant.

To paraphrase the United States Supreme Court, as stated in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968): "It would have been poor police work indeed for [the] officer ... to have failed to investigate this behavior further." *Id.* at 23. We reverse and remand for further proceedings consistent with this opinion.

Grayson v. State 212 So.3d 481 (Fla. 5th DCA 2017)

Under the totality of the circumstances, an investigatory stop is justified through reasonable suspicion where a suspect: 1) is present in a neighborhood that had a recent rash of burglaries; 2) present there at 3:00AM; 3) was roaming in and out of

the woodline; and 4) flees from police and runs back into the woods when officers identify themselves.

The trial judge denied the motion to suppress, noting that a nearby home was burglarized thirty minutes earlier and that Appellant was roaming in and out of the wood line at 3:00 a.m. near a neighborhood that experienced a recent rash of burglaries. According to the police, no other suspects were encountered, and it was unusual to encounter anyone walking through the ball field at that time of night. The fact that Appellant ran back into the woods as soon as the officers identified themselves also contributed to the officers' suspicion.

The issue presented on the motion to suppress is whether the events, circumstances, and police observations created an articulable, well-founded suspicion of Appellant's involvement in criminal activity or whether the seizure was simply a well-played hunch. *Turner v. State*, 552 So.2d 1181, 1182 (Fla. 4th DCA 1989). "In determining whether an officer had a reasonable suspicion of criminal activity, courts consider the totality of the circumstances." *Parker v. State*, 18 So.3d 555, 558 (Fla. 1st DCA 2008)

Many cases have discussed what consideration should be given to a defendant running from the police when determining the legality of an investigatory stop. In *Illinois v. Wardlow*, 528 U.S. 119, 123–25, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000), the United States Supreme Court held that unprovoked flight in a high crime area can provide grounds for reasonable suspicion to justify an investigatory *Terry* stop. While flight is "not necessarily indicative of wrongdoing ... it is certainly suggestive of such." *Wardlow*, 528 U.S. at 124, 120 S.Ct. 673. "[U]nprovoked flight is simply not a mere refusal to cooperate. Flight, by its very nature is not 'going about one's business'; in fact it is just the opposite." *Id.* at 125, 120 S.Ct. 673.

"Flight, in itself, is insufficient to support a reasonable suspicion of criminal activity." *Id.* at 558 (citing *S.G.K. v.* State, 657 So.2d 1246, 1248 (Fla. 1st DCA 1995)). "Nonetheless, flight can be one factor, among others, that contributes to an officer's reasonable suspicion of criminal activity." *Id.*(citing *Blue v.* State, 837 So.2d 541, 546 (Fla. 4th DCA 2003)). "Flight can support a resisting [arrest without violence] charge if the [S]tate proves that (1) the officer had an articulable well-founded suspicion of criminal activity that justifies the officer's detention of the defendant, and (2) the defendant fled with knowledge that the

officer intended to detain him or her." *V.L. v.* State, 790 So.2d 1140, 1142–43 (Fla. 5th DCA 2001) (citations omitted).

Similarly, in *Sinclair v.* State, 816 So.2d 149, 150–51 (Fla. 1st DCA 2002), with two judges concurring and one dissenting, the First District held that an articulable well-founded suspicion existed for a *Terry* stop when the defendant was spotted in the area of the crime around the time the crime was committed, the defendant changed his direction of travel when he first saw the police and again when one of the officers indicated that he wanted to speak with the defendant, and the responding officers did not observe any other individuals in the area. Although the facts of this case present a close call, we agree with the trial court that there was a reasonable suspicion to justify an investigative stop. Thus, the motion to suppress was properly denied.

A.R. v. State, 127 So. 3d 650 (Fla. 4th DCA 2013)

Flight alone is insufficient to initiate an investigatory stop, where a juvenile is present in park (not a high crime area) where an officer is investigating a "possible crime" in the area without any other circumstances.

Appellant was charged by juvenile delinquency petition with attempted robbery (Count I) and resisting an officer without violence (Count II). The evidence at trial established that at about 4:00 p.m. on February 1, 2012, two Boynton Beach police officers were "investigating a possible crime that had taken place" in a public park. Officer Haugh, who was in the area of the park, testified that he spoke with someone about a possible crime that was committed. He then spoke with Officer Medeiros over the radio, prompting Officer Medeiros to pull into the parking lot of the playground area and approach appellant.

Officer Medeiros, who was dressed in full police gear, stepped out of his marked car. Appellant looked at Officer Medeiros, turned away, and started running. Officer Medeiros identified himself as a police officer and yelled for appellant to stop. Officer Medeiros ran parallel to appellant, maintaining a distance of "twenty yards or so." He yelled a total of about three times for appellant to stop. Meanwhile, Officer Haugh, who was about 50 to 70 yards away, could "clearly hear" Officer Medeiros yelling.

Appellant gave up and surrendered after he entered an enclosed area of the park. He was then taken into custody without further incident.

Moreover, appellant maintains that the assertion that the officers "were investigating a possible crime" was so broad that the lower court lacked any basis for determining whether the attempt to detain appellant was based on reasonable suspicion or probable cause.
Finally, appellant argues that his mere flight did not give rise to a reasonable suspicion that he was engaged in criminal activity where there was no evidence that he was in a high crime area.

The state argues in response that the police were engaged in the lawful execution of a legal duty by conducting a criminal investigation and that appellant resisted them by running away. The state further argues that "the police were clearly engaged in the lawful execution of a legal duty because they had reasonable suspicion to stop appellant."

To justify an investigatory stop, there must be a well-founded, articulable suspicion of criminal activity. *Popple v. State,* 626 So.2d 185, 186 (Fla.1993). Headlong flight in a high crime area is sufficient to provide an officer with reasonable suspicion. *See Illinois v. Wardlow,* 528 U.S. 119, 124–25, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). Applying *Wardlow,* the Florida Supreme Court has held that a suspect's continued flight, within a high crime area, in defiance of a police officer's verbal order to stop, constitutes the offense of resisting without violence under section 843.02, Florida Statutes. *See C.E.L. v. State,* 24 So.3d 1181, 1185–89 (Fla.2009).

But flight, standing alone, is not sufficient to establish reasonable suspicion where there is no evidence to demonstrate that the flight took place in a high crime area. *R.J.C. v. State,* 84 So.3d 1250, 1256 (Fla. 4th DCA 2012); *O.B. v. State,* 36 So.3d 784, 788 (Fla. 3d DCA 2010); *D.R. v. State,* 941 So.2d 536, 537–38 (Fla. 2d DCA 2006).

The state's evidence that the officers were investigating a "possible crime" was insufficient to establish that the officers had a reasonable suspicion that appellant had committed or was about to commit a crime. Without information regarding the nature of the incident and how

appellant may have been involved, there was no way to determine whether the officers were engaged in the lawful execution of a legal duty when they detained him.

Furthermore, because the state offered no evidence that appellant was stopped in a high crime area, appellant's flight alone was insufficient to establish that the officers had a reasonable suspicion of criminal activity. Testimony that a defendant fled in the area where a "possible" crime occurred is simply too vague to allow for a determination that there was reasonable suspicion under the totality of the circumstances. The state failed to present any specific evidence of an additional factor which, when combined with flight, would give rise to a reasonable suspicion in this case.

Reversed and Remanded.

State v. Garcia, 126 So. 3d 419 (Fla. 2d DCA 2013)

Flight and refusal to stop following police commands in a high crime area coupled with officer observation of a suspected drug transaction yields probable cause to arrest for resisting an officer without violence.

State appealed from order of the Circuit Court, Hillsborough County, Ronald Ficarrotta, J., dismissing an affidavit of violation of probation which was entered after the trial court granted defendant's motion to suppress.

The State seeks review of the order dismissing an affidavit of violation of probation which was entered after the trial court granted Roy A. Garcia's motion to suppress. The State argues that the court erred in granting the motion to suppress because Garcia's act of engaging in headlong flight in a high-crime area gave the police a valid basis for stopping him. We agree and reverse.

The evidence established that the police went to an address in a high-crime area to pick up a man named Levens based on a probable cause pick-up order. Before the Sheriff's van arrived at the address, a deputy conducted surveillance there. He observed Levens and Garcia approach a vehicle and exchange indiscernible objects in a hand-to-hand transaction. The Sheriff's van arrived at the address shortly thereafter. At this time, Levens was standing in the driveway talking to Garcia.

The police exited the van wearing "Sheriff" vests and yelled "Sheriff's Office." Levens immediately surrendered, but Garcia turned tail and ran. The officers gave chase, yelling for Garcia to stop, but he kept "running just as fast as he could." As he was running, Garcia discarded an object. Garcia was tackled, and another object fell from his pocket during the struggle. Police thereafter located several baggies containing cocaine in the immediate area.

In granting the motion to suppress, the trial court concluded that the police did not have a valid basis for stopping Garcia. However, the police were justified in stopping Garcia because his unprovoked, headlong flight in a high-crime area provided a reasonable suspicion of criminal activity. *See C.E.L. v. State*, 24 So.3d 1181, 1185 (Fla.2009) (citing *Illinois v. Wardlow*, 528 U.S. 119, 124–25, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000)). In fact, the police had probable cause to arrest Garcia for resisting or obstructing an officer without violence based on his failure to cease his headlong flight in response to the officers' directions for him to do so. *See C.E.L.*, 24 So.3d at 1189 (holding that a defendant's "continued flight in knowing defiance of the officer's lawful order to stop constituted the offense of obstructing without violence").

Reversed and remanded.

2. **Unprovoked flight + defendant looking into the windows of parked cars in parking lot during the holiday season create sufficient reasonable suspicion**

R.R. v. State, 137 So. 3d 535 (Fla. 4th DCA 2014)

Even though officer lacked reasonable suspicion to conduct investigatory stop of juvenile at first, the juvenile's unprovoked flight coupled with his actions of looking into parked cars then created the necessary reasonable suspicion to conduct the stop.

R.R. appeals the order adjudicating him guilty of resisting an officer without violence, contending that his motion for judgment of dismissal at trial should have been granted because the arresting officer was not performing a legal duty when R.R. continued to run, even after the officer commanded him to stop. We affirm the adjudication of delinquency.

On December 29, 2011 around 3:00 p.m., a Miami police officer on "Grinch patrol" (working to deter crime around the holidays) observed R.R. walking with another juvenile male in a

parking lot between a McDonald's and a Payless Shoe Store. The officer saw R.R. and his companion look into one vehicle, then into a second vehicle. The officer began to drive toward the two juveniles and intercepted them as they were walking toward his vehicle. In anticipation that the juveniles were going to commit or attempt to commit a burglary on one of the vehicles, the officer turned on his lights, exited his vehicle, made eye contact, and identified himself by stating, "police, I need you guys to come over here." Instead, R.R. and his companion ran away. The officer yelled "stop, police" and chased the juveniles in his vehicle. Eventually, the two juveniles split up, and the officer followed R.R. until he was able to apprehend R.R.

R.R. was charged with resisting an officer without violence, pursuant to section 843.02, Florida Statutes (2011). An adjudicatory hearing was conducted by the circuit court in Miami–Dade County. At the close of the State's case, R.R. moved for a judgment of dismissal. Defense counsel argued that walking through a parking lot and simply looking into two car windows, without touching the car doors, did not give rise to a reasonable suspicion that R.R. had committed a crime. Without reasonable suspicion, the officer was therefore not engaged in the lawful execution of a legal duty when he ordered R.R. to stop. Defense counsel also argued that flight alone is insufficient to form the basis for resisting an officer without violence.

To prove the crime of resisting an officer without violence, "the State must prove: (1) the officer was engaged in the lawful execution of a legal duty; and (2) the defendant's action, by his words, conduct, or a combination thereof, constituted obstruction or resistance of that lawful duty."

Here, R.R. fled *before* the officer commanded him to stop, but *after* the officer initially drove toward the juveniles to intercept them, stopped his patrol car, turned on his overhead lights, stepped out of his vehicle, made eye contact, and identified himself by stating, "police, I need you guys to come over here." We are satisfied that prior to issuing the command to stop, the officer engaged in an investigatory stop, rather than a consensual encounter.

The only reasons articulated by the officer for initially detaining R.R. were his observations,

around 3:00 p.m., four days after Christmas, that R.R. and his companion were walking around vehicles in a parking lot and looking into one vehicle and then a second vehicle. The officer did not testify that he saw the juveniles attempting to enter any vehicle, or that the location was a "high crime" area. Based on the facts articulated by the officer, there was no reasonable suspicion of criminal activity to initially justify an investigatory stop.

In the context of loitering and prowling prosecutions, our sister courts have held that looking into windows, without more, is insufficient to raise a reasonable suspicion of criminal activity. *See A.L. v. State,* 84 So.3d 1272, 1273–74 (Fla. 3d DCA 2012) (holding that two individuals between two apartment buildings pulling themselves up to look into windows at 7:15 p.m. in December was insufficient to establish that the individuals were loitering at a time, in a place, or in a manner unusual for law-abiding individuals); *K.H. v. State,* 8 So.3d 1155, 1156 (Fla. 3d DCA 2009) (finding that two individuals walking around a parked running pickup truck at 11:00 p.m., putting their hands on the windows, peering in, and walking rapidly away upon observing an officer exiting his vehicle was not a founded suspicion for loitering and prowling); *Bowser v. State,* 937 So.2d 1270, 1271 (Fla. 2d DCA 2006) (holding that four individuals observed for twenty minutes walking the street at 2:00 a.m. looking into unoccupied vehicles in a very dark area was not sufficient to raise justifiable alarm of an immediate threat); *Addis v. State,* 557 So.2d 84, 84 (Fla. 3d DCA 1990) (determining that defendant, who looked like a drifter, observed by an officer walking down an alley at 2:40 a.m., looking into parked vehicles, did not justify an arrest for loitering and prowling). If looking into windows in the dark of night, standing alone, is insufficient to establish that a suspect is engaged in behavior unusual for law-abiding citizens and insufficient to raise a justifiable alarm of an immediate threat, it is difficult to discern how such behavior in a parking lot, in the middle of the afternoon, even during the holiday season, can raise a reasonable suspicion justifying an investigatory stop.

The State argues, however, that flight from the police after an officer observes activity consistent with potential auto burglary is, by itself, sufficient to establish reasonable suspicion to conduct a stop, based on *C.E.L.* In *C.E.L.*, the defendant was arrested after fleeing from officers in a high-crime area and failing to obey their commands to stop. The defendant engaged in no suspicious behavior prior to fleeing from the officer. Concluding it

was bound by the U.S. Supreme Court's opinion in *Illinois v. Wardlow,* 528 U.S. 119, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000)

Although the officer in this case may not initially have had sufficient grounds for an investigatory stop when he exited his vehicle and instructed R.R. and his companion to come to him, once R.R. engaged in an unprovoked, headlong flight from the officer, that behavior, coupled with the officer's prior observations of R.R. looking into the windows of two parked cars in a parking lot during the holiday season, supplied the officer with sufficient reason to conduct an investigatory stop. When the officer then commanded R.R. to stop, and the flight continued, R.R. committed the offense of resisting an officer without violence.

B. CRIME OF TRESPASS

1. Determination of reasonable suspicion must be based on officer's commonsense judgments and inferences about human behavior

State v. Champers, 125 So. 3d 337 (Fla. 5th DCA 2013)

The totality of the circumstances for reasonable suspicion of a trespassing charge are fulfilled under the following conditions: An area that has experienced a large amount of burglaries, a man with the description who under officer observation attempts to conceal himself with a hood, who walks by multiple entrances of the property and chooses to enter by the side gate, and who subsequently exits a few minutes later.

Champers was charged by information with burglary of a dwelling. The information alleged that on November 7, 2012, Champers entered or remained in a dwelling on Hiawassee Road, in Orange County, Florida, without being licensed or invited to enter, and with the intent to commit an offense therein. Champers filed a motion to suppress all evidence against him—his statements, a pair of gloves, a screwdriver, and a knife—on grounds that he was detained without reasonable suspicion that a crime was being committed or was about to be committed.

At the suppression hearing, veteran[1] Orange County Sheriff's Deputy Scott Sturrup testified that he was heading North on Hiawassee Road to assist other units with an unrelated call when he observed an adult male in a gray hooded sweatshirt near the front door of a residence on Hiawassee Road. This occurred mid-day, close to 1:00 p.m. The house sat just off the east side of the road in an all-residential area that had been experiencing a high

number of daytime crimes, including burglaries and robberies. In response, the police had been conducting proactive patrols in that area to reduce the number of these crimes.

The man, later identified as Champers, was standing "[u]p towards the front door on the steps" with the hood on his sweatshirt down. Then Deputy Sturrup observed Champers step off the front steps and start walking north in the grass along the front of the house toward a gate in the side yard. The deputy observed that at that point "[i]t just didn't seem like [Champers] belonged there," so he "turned around to come back and see if he was there—still there or moving on." When Deputy Sturrup circled back to the house, he observed Champers opening and entering the side gate while pulling the hood of his sweatshirt onto his head and looking down, as if attempting to conceal his face from potential onlookers. Champers continued walking toward the back of the residence in this fashion. Deputy Sturrup called for additional units to respond and waited.

About four minutes later, Champers re-emerged from the side gate and began walking back in front of the house toward Deputy Sturrup. Deputy Sturrup told him to stop and asked Champers if he belonged at the residence. Champers responded that he was there to see Eugene Wilder, who was hard of hearing and could not hear the doorbell. Champers' body language seemed suspicious and Deputy Sturrup noticed a pair of gloves in Champers' sweatshirt pocket. Upon investigation, Deputy Sturrup learned that the owner of the residence did not know Champers, the owner had not authorized Champers to enter the property, and no one named Eugene Wilder lived at the house. Deputy Sturrup then arrested Champers and located the other physical evidence in his search incident to the arrest.

In this case, the issue is whether Deputy Sturrup had a reasonable suspicion that Champers was trespassing. Section 810.09(1)(a), Florida Statutes (2012), defines a criminal trespasser on property other than a structure or conveyance.

Objectively viewing the totality of the circumstances from the perspective of this experienced deputy, we readily conclude that the deputy had reasonable suspicion to investigate Champers for trespassing. While it is certainly possible that a homeowner could be observed standing at the front door of his home one minute and walking through a side gate while

putting his hood on for warmth the next minute, the stronger inference, more consistent with common sense and human behavior, as viewed through the lens of Deputy Sturrup's experience and knowledge of recent daytime burglaries in the area.

Deputy Sturrup did not violate Champers' Fourth Amendment rights by briefly detaining him to investigate his presence on the property. Accordingly, we reverse the suppression order and remand for further proceedings.

REVERSED AND REMANDED.

2. Mere presence in front of property with "no trespassing sign" not sufficient

Williams v. State, 136 So. 3d 1283 (Fla. 1st DCA 2014)

Where individuals are merely standing in the front yard of a property with a no "trespassing sign", their simple presence does not fulfill the reasonable suspicion element of an investigatory stop; thus, police action such as four plain clothed officers simultaneously exiting their vehicle to make contact and subsequently chasing the individuals cannot be executed without valid reasonable suspicion.

The consistent testimony of the three police officers at the suppression hearing established that four officers in plain clothes were patrolling in an unmarked vehicle in the neighborhood on the day of the incident. The officers were not responding to a call, any particular complaint, or tip, but were "just riding around." They observed three men standing in the front yard, near the front porch and driveway, of a townhome. The front window of the townhome displayed a prominent "No Trespassing" sign which the officers observed. The officers stopped their vehicle and all four exited the vehicle ("jumped out," according to counsel and agreed to by one of the officers) at approximately the same time, in order to make contact with the men and determine if they were trespassing. Before the officers asked any questions, one of the men fled over a fence to a neighboring property and another of the men retreated inside the townhome. Two of the police officers immediately chased the fleeing man and engaged in a physical altercation with him. Appellant was the only one of the group who remained where he was upon seeing the officers emerge from their vehicle. The two officers who approached him testified consistently that Appellant posed no threat and did

not make any suspicious movements. There was no evidence that any of the officers recognized any of the men as previous trespassers.

At this point in the encounter, one of the officers inquired of Appellant whether he lived on the premises, to which Appellant responded "my people do" or something similar. Appellant then informed the officer that his own address was several streets away. The officer then directed Appellant to accompany him to the unmarked vehicle to verify Appellant's identity. Meanwhile, as the other officers continued to struggle with Appellant's companion who had fled next door, a weapon was found on the companion's person. Observing this, Officer Gillespie handcuffed Appellant for officer safety. As he was handcuffing Appellant, he visually observed the evidence in question on Appellant's person.

"When determining whether a particular encounter is consensual, the Court must look to the 'totality of the circumstances' surrounding the encounter to decide 'if the police conduct would have communicated to a reasonable person that the person was free to leave or terminate the encounter.' " *Collins v. State,* 115 So.3d 1040, 1042 (Fla. 4th DCA 2013) (quoting *Taylor v. State,* 855 So.2d 1, 15 (Fla.2003)). The officers' description of their sudden, collective exit from their vehicle and immediate pursuit of the fleeing man does not describe a casual encounter where officers merely approach an individual and initiate a conversation.

Because a reasonable person would not feel free to leave in Appellant's situation, Appellant's initial encounter with the officers constituted the second level of police-citizen encounter, an investigatory stop or temporary detention. As such, the officers in this case needed "a reasonable suspicion that a person has committed, is committing, or is about to commit a crime." *Popple v. State,* 626 So.2d 185, 186 (Fla.1993). The elements of trespass on property are set out in section 810.09(1), Florida Statutes. The element of lack of authorization, invitation, etc. may not be presumed upon a person's mere presence on the property because "mere presence on a property is not sufficient to give rise to a reasonable suspicion that the crime of trespass is being committed and cannot be the basis for an investigatory stop." *Collins v. State,* 115 So.3d at 1043. The fact that the property is posted with "no trespassing" signs does not make one's mere presence sufficient. *Leroy,* 982 So.2d 1250.

Appellant's initial encounter with the police was not a consensual encounter, but was an investigatory stop, requiring a reasonable suspicion that Appellant had committed, was committing, or was about to commit a crime. Because the officers lacked reasonable suspicion that Appellant was trespassing at the time they first observed his presence on the property, the investigatory stop of Appellant did not comport with the Fourth Amendment. Accordingly, the eventual evidentiary product of this initial encounter should have been suppressed. The trial court's denial of the motion to suppress is REVERSED and the judgment and sentence based on the plea entered after denial of the motion to suppress are likewise REVERSED.

3. Defendant exiting the back door of "Board & Secure" building with "no trespass" sign in an area known for criminal activity is sufficient

D.T. v. State, 178 So. 3d 949 (Fla. 4th DCA 2015)

Reasonable suspicion for an investigatory stop is established where an individual is seen leaving a "board and secure" building (with a "no trespassing" sign) with a known drug dealer; furthermore, any evidence that falls out of the individual's pocket following a police request to show their hands is admissible.

Appellant D.T., a child, appeals the denial of his motion to suppress before being adjudicated delinquent for possession of cocaine.

Appellant was observed meeting with a known prostitute and drug user by two Palm Beach County Sheriff's officers.The officers saw the two proceed together into the area of three abandoned homes. The officers then saw Appellant walking out of the back door of an abandoned home which they knew to be part of the "Board and Secure" program.[1]The officers testified that they were familiar with the area as a suspected high-crime area. The property was tagged by the Lake Worth City Code Inspector with an orange sign on the front of the building that said, "Pursuant to the City of Lake Worth Code section 2–75.2.5 ..., it is unlawful for any person to enter or occupy this building and violators are subject to arrest."

When the officers encountered Appellant, the latter made eye contact with one of the officers, "jolted back, [and] immediately started reaching his hands into his pockets and fidgeting

around." The officer then ordered Appellant to take his hands out of his pockets. Appellant obeyed, and as he took his hands out of his pockets, the officer saw a small object drop to the ground. After Appellant was handcuffed, a twenty-dollar bill and a bag of cocaine were found on the ground where he was standing. Consequently, Appellant was charged with one count of possession of cocaine.

In response to Appellant's motion to suppress, the State argued that reasonable suspicion existed to support the investigatory stop because Appellant was seen walking to and coming out of an abandoned property that was part of the "Board and Secure" program and where there was suspected criminal activity, accompanied by a woman with a prior criminal history. The trial court denied Appellant's motion and he was found guilty.

By contrast, both of the officers in the instant case actually observed Appellant *exiting* the back door of an abandoned home that the officers were aware was part of the "Board and Secure" program. The building was in an area known for criminal activity and was specifically marked with a sign which contained a warning that trespassers would be arrested for violating a city code. Because Appellant was seen exiting the dwelling, there is no doubt that he entered it. He was not merely "near" this abandoned building in a high crime area; *he had been in it.* Thus, it was reasonable for the officers to stop Appellant regarding an investigation of a trespass offense,[2] regardless of whether he ultimately could have been convicted of that offense. *See Ward v. State,* 21 So.3d 896, 900 (Fla. 5th DCA 2009) ("A police officer is not required to determine conclusively that a crime has occurred prior to detaining an individual.").

The officers had reasonable suspicion under the totality of the circumstances that Appellant had committed, was committing, or was about to commit a crime, namely that Appellant had trespassed by entering a building in the "Board and Secure" program that had displayed a "No Trespassing" sign. As the investigatory stop was not unlawful, we affirm the trial court's denial of Appellant's motion to suppress and the adjudication of delinquency for possession of cocaine.

C. CRIME OF RESISTING OFFICER WITHOUT VIOLENCE

1. Failure to show continued flight for crime of resisting officer without violence

McClain v. State, 202 So. 3d 140 (Fla. 2d DCA 2016)

Resisting an officer without violence: Insufficient evidence of officer lawfully executing a legal duty where police officer responds to report of an incident/disturbance and defendant runs from officer upon seeing him.

At trial, the arresting officer testified that he was patrolling in his unmarked car around eight o'clock at night in a predominantly black neighborhood. He heard a radio dispatch call about a disturbance nearby. He drove toward the site, looking for someone who fit the general description of the suspect, a black male. About a block from the area of the reported disturbance, the officer saw Mr. McClain, a black male, outside a duplex. The officer pulled over to the curb, opened the car door, and started getting out of the vehicle. When Mr. McClain saw him, he ran a few feet from the side of the building into the duplex that belonged to his grandmother. The officer did not order Mr. McClain to stop. He testified that "[b]y the time [he] was getting out of the vehicle [Mr. McClain] was already inside the house closing the door."

The officer went to the front door and called for backup. Responding officers surrounded the house, knocked on doors and windows, identified themselves as police officers, and asked the occupants to exit. Mr. McClain came out several minutes later. The officer arrested Mr. McClain because the officer was conducting an investigation and Mr. McClain "took flight" upon the officer's presence. *See* § 843.02, Fla. Stat. (2010).

The facts, here, are like those in *Davis* and *A.R.* The circuit court concluded that although there was no evidence that the neighborhood was a high-crime area, Mr. McClain's "flight" from the officer when the officer arrived provided reasonable suspicion to conduct an investigatory stop. Like the "possible crime" police were investigating in *A.R.*, the officer, here, was investigating a reported "incident" or "disturbance." The State failed to produce information regarding the incident and how Mr. McClain might have been involved. Therefore, the State failed to prove that the officer was lawfully executing a legal duty when Mr. McClain ran into his grandmother's duplex.

Even if the State had introduced some link between the reported disturbance and Mr. McClain, to establish obstruction, the State still would have to show "continued flight in knowing defiance of the officer's lawful order to stop...." *C.E.L.*, 24 So.3d at 1189 (Fla.2009); *see Garcia,* 126 So.3d at 419–20. The circuit court recognized that the officer did not have time to tell Mr. McClain to stop. Yet, the circuit court concluded that Mr. McClain's "refusal to exit the house is the functional equivalent of leading the police on a foot chase."

The circuit court attempted, post hoc, to create an unlawful flight after Mr. McClain retreated, as was his right, to the sanctuary of his grandmother's duplex. *See A.R.*, 127 So.3d at 654–55 ("When an individual runs away from officers who lack the authority to stop and detain him, that individual is not unlawfully opposing or obstructing officers in the lawful execution of a legal duty."). By finding that "[McClain's] delay in answering the door was unreasonable," the circuit court seemingly concluded that Mr. McClain was fleeing by remaining in the duplex. Mr. McClain never engaged in flight that would give rise to a resisting without violence charge. There was no command to stop. The circuit court too easily concluded that Mr. McClain "continued flight in knowing defiance of the officer's lawful order to stop." *See C.E.L.*, 24 So.3d at 1189; *Garcia,* 126 So.3d at 419–20.

2. <u>Failure to establish reasonable suspicion of criminal activity</u>

M.R. v. State, 190 So. 3d 1023 (Fla. 2d DCA 2016)

<u>Resisting an officer without violence: Insufficient evidence of officer lawfully executing a legal duty when he told juvenile to stop where officer found juveniles' actions "suspicious"</u>.

At the adjudication hearing, the arresting officer testified that he was completing his usual patrol through an apartment complex when he saw four juveniles on bicycles. The juveniles apparently saw the officer's vehicle and rode behind one of the buildings. The officer testified that he found the juveniles' actions suspicious and wanted to know why they went from riding in the street to riding behind a building. He radioed that he was exiting his vehicle and went behind the building on foot, but the juveniles were not there. As the officer was returning to his vehicle, he saw M.R. riding away and directed him to stop in order to make contact with him. M.R. did not stop.

The officer's testimony failed to establish that he had a reasonable suspicion of criminal activity when he ordered M.R. to stop. Therefore, the evidence was insufficient to establish that the officer was executing a lawful duty at that time. *Cf. C.E.L.*, 995 So.2d at 564 (Altenbernd, J., concurring) ("If these teenagers lived on Bayshore Boulevard in Tampa, or in Carrollwood or Temple Terrace, they would have been free to run when they saw the deputies. Running would not have created a basis for a *Terry* stop or the foundation for a misdemeanor."). As a result, M.R.'s adjudication for resisting an officer without violence must be reversed.

D. OFFICER SAFETY

1. Officer must have specific concern for his safety before ordering person out of car

Santiago v. State, 133 So. 3d 1159 (Fla. 4th DCA 2014)

An officer cannot order a person out of a parked car due to the lateness of the hour with no other suspicious activity and state that is was for the purposes of "officer safety."

In the instant case, in addition to his statement to the officers that he was simply "hanging out," Defendant also told them that he lived nearby and pointed to his residence "somewhere towards the middle of the street." The testimony also showed that the Defendant was observed listening to music in his car along with the female passenger when the officers arrived on scene. No other facts were presented at the hearing to support a well-founded suspicion that Defendant was not "just hanging out," nor did the trial court elaborate on why it found Defendant's explanation suspicious. Viewed in their entirety, these facts are insufficient to form a particularized and objective basis for reasonable suspicion of criminal activity.

Second, the officer testified that he ordered the Defendant out of the car for "officer safety purposes." In *Terry v. Ohio*, 392 U.S. 1, 30–31, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the United States Supreme Court found that temporary detention of an individual may be justified by an officer's specific concern for his own safety. The Court noted that, in determining whether an officer acted reasonably under the circumstances, courts must give

due weight to the specific reasonable inferences which officers are entitled to draw from the facts in light of their experience and ask whether a "reasonably prudent [person] in the circumstances would [have been] warranted in the belief that his safety or that of others was in danger." *Id.* at 27, 88 S.Ct. 1868. According to the officer's testimony, "when I interact with people that are in a vehicle ... I always ask them to step out of the vehicle most of the time." Absent a reasonable suspicion that a crime has occurred, is occurring, or is about to occur, an officer may not convert a consensual encounter into an investigatory stop by ordering a citizen out of a parked car.

Here, there was no indication that Defendant was involved in any criminal activity, nor was there any objective basis for the officer to conclude that his safety or that of the public was endangered.

Other than a comment on the lateness of the hour, the officer never testified about a specific concern for his own safety; to the contrary, the testimony suggested he had no specific reason to believe his safety was at risk and ordered him from the car based in part on his own standard practice.

Therefore, the court's finding that "officer safety" was the reason for the instruction to Defendant to exit the vehicle was not supported by competent, substantial evidence. *Peraza v. State,* 69 So.3d 338, 340 (Fla. 4th DCA 2011).

Therefore, viewing the circumstances in their totality, the officer did not possess the requisite reasonable suspicion of criminal activity to order Defendant out of his parked car to conduct an investigatory stop. Because the detention of Defendant was improper, all the evidence resulting from this seizure should have been suppressed. *Popple,* 626 So.2d at 188. This exclusionary rule applies in probation revocation proceedings so that suppression of the fruit of the search in this case, i.e., the cocaine and paraphernalia, also prohibits that evidence from being considered on the issue of Defendant's probation violation. *See State v. Cross,* 487 So.2d 1056 (Fla.1986); *Lee v. State,* 868 So.2d 577 (Fla. 4th DCA 2004); *Morse v. State,* 604 So.2d 496, 504 (Fla. 1st DCA 1992); *Robinson v. State,* 547 So.2d 321 (Fla. 5th DCA 1989); *Kelly v. State,* 536 So.2d 1113, 1114 (Fla. 1st DCA 1988).

E. MISCELLANEOUS FACTUAL SCENARIOS OF *SUFFICIENT* REASONABLE SUSPICION

May v. State, 77 So.3d 831 (Fla. 4th DCA 2012)

Reasonable suspicion to perform an investigatory stop may arise when seasoned DEA agent observes a suspect leave a cash-only plain clinic that is already under investigation, get into a parked car driven by a third person, and pass a prescription pill bottle to a passenger in the back.

A detective of the Hollywood Police Department assigned to work with a DEA unit was conducting surveillance in the parking lot of a pain clinic under investigation by the DEA. At that time the detective had at least three and a half years of training and experience conducting investigations of "pharmaceutical crimes." The detective observed May along with a co-defendant exit the front door of the clinic. She did not see either person carrying anything at that time.

The co-defendant got into the front passenger seat and May got into the rear passenger seat of a waiting vehicle driven by a third person. The vehicle pulled out of the parking lot and drove away, and the detective followed. Eventually, the detective pulled alongside the vehicle and observed an amber prescription bottle being passed from the front center console area to the rear where May was seated.[1] The detective then made contact with another officer, who effectuated a traffic stop for a brake light violation.

The State stipulated at the suppression hearing that the traffic stop for a brake light violation was not valid. Although the vehicle was stopped for a brake light violation, the violation was not technically sufficient for a ticket to be issued. Thus, the State agreed the issue to be litigated at the suppression hearing was the validity of an investigatory stop.

The detective was the only witness to testify at the suppression hearing. The trial court found that the detective's testimony was credible and the officer had reasonable suspicion to make an investigatory stop. The motion to suppress was denied.
(quoting *State v. Stevens*, 354 So.2d 1244, 1247 (Fla. 4th DCA 1978)). In *Santiago* we went on to say that it was not necessary that an officer actually observe drugs change hands to establish reasonable suspicion. Instead, an officer may rely on other circumstances, such as

"whether the officer can see either drugs or money being transferred, the officer's narcotics experience, the reputation of the location for drug transactions, the extent of the period of surveillance, and the history of previous multiple arrests from that site." *Id.* at 1279.

A police officer may stop a person for the purpose of investigating possible criminal behavior if the officer has reasonable suspicion that the person has committed, is committing, or is about to commit a crime. *State v. Davis,* 849 So.2d 398 (Fla. 4th DCA 2003). "In order not to violate a citizen's Fourth Amendment rights, an investigatory stop requires a well-founded, articulable suspicion of criminal activity."

The fact that May emerged from a cash-only pain clinic already under DEA surveillance, got into a parked car being driven by a third person, and was then handed a prescription pill bottle constituted reasonable suspicion in the mind of an experienced detective, who had witnessed other drug transactions many times at pain clinic locations. Although an isolated incident of someone passing a pill bottle around while leaving a pain clinic may be considered innocent activity by the average citizen, the totality of the circumstances, observed in light of the detective's experience, established reasonable suspicion needed to justify the traffic stop.

Affirmed.

State v. Leach, 170 So. 3d 56 (Fla. 2d DCA 2015)

Totality of circumstances created sufficient reasonable suspicion of criminal activity necessary to justify stop of defendant even though description of the perpetrator was vague; furthermore, officers were justified in holding defendant for a few minutes to allow eyewitness to come to scene to ID defendant where officers had a well-founded suspicion that defendant was involved in the crime.

The State of Florida appeals a circuit court order granting James Leach's motion to suppress statements and physical evidence based on an alleged improper detention. Because the law enforcement officers involved had a reasonable suspicion sufficient to justify Mr. Leach's detention, which did not become a premature arrest when he was handcuffed briefly while waiting for an eyewitness to arrive at the scene, we reverse the circuit court's order.'

On April 5, 2013, at approximately 10:30 p.m., a citizen saw a man break into a work truck parked at a business near the intersection of Warfield Avenue and Cypress Avenue in Venice, Florida. Gregory Liedke owned the business, and the truck was assigned to his employee, Donald Coup. Upon witnessing the man break into the truck, the citizen called 911, reported the break-in while it was still in progress, and informed the 911 operator that the perpetrator was carrying a white bucket and was leaving the scene in a newer-model, "fancy," white automobile. The citizen informant also described the perpetrator as a white male, fifty to sixty years old, and slightly overweight. Based on this report, the 911 operator arranged for the issuance of a BOLO ("be-on-the-lookout" alert) with the pertinent information.

Officer Alec Gregoire of the Venice Police Department was patrolling the area with Officer Walker. The two officers responded to the BOLO and immediately went to the location of the business where the break-in had been reported. Finding no one, the officers circled the block. A few minutes after the initial report, about one-quarter of a mile from the scene of the break-in, the officers saw a 2005 white Chrysler 300[1] at an auto repair business located in an industrial area. The Chrysler was parked "on the easement" and "in the driveway," perpendicular to the other cars parked at the business. The auto repair business and other nearby businesses were closed for the evening; there were no people around, and there was very little traffic. The officers' attention was drawn to the Chrysler because of the odd manner in which it was parked and its resemblance to the car described in the BOLO.

The officers stopped to investigate. Immediately, they saw Mr. Leach crouching behind the Chrysler. Both officers drew their pistols; Officer Gregoire repeatedly commanded Mr. Leach to stand up and show his hands. Mr. Leach did not move from his crouching position until after Officer Gregoire had warned him approximately seven times. Finally, Mr. Leach stood up, and the officers could see that he—like his automobile—matched the description given in the BOLO. The officers handcuffed Mr. Leach for their safety and detained him pending a further investigation.

Through the open windows, the officers could see a white bucket and several tools in the back seat area of the car. A few minutes after Mr. Leach had been detained, the witness arrived and immediately identified Mr. Leach as the man he had seen breaking into the truck

at Mr. Liedke's business.

Granted, the description of the perpetrator of the break-in was sketchy and amounts to a vague description that would fit many individuals. Nevertheless, the other pertinent circumstances known to the officers when they decided to make the initial investigative stop of Mr. Leach provided a much more complete picture. First, the time elapsed between the incident under investigation and the officers' response was very brief. Second, the incident occurred after normal hours in a business or industrial area where there were no other people around and very little traffic. Third, the officers encountered Mr. Leach within approximately one-quarter mile of the site of the reported break-in. Fourth, when the officers saw Mr. Leach, he was trying to conceal himself behind a car. Fifth, Mr. Leach's car matched the description of the car in the BOLO. Sixth, Mr. Leach's car was parked at an odd angle in the parking lot of an auto repair business that was closed for the day. Finally, Mr. Leach initially refused the officers' repeated commands to stand up and show his hands. Clearly, the totality of the foregoing circumstances gave Officer Gregoire and Officer Walker reasonable suspicion to believe that Mr. Leach was engaged in illegal activity.

We note the trial judge's comments about the officers' actions in drawing their pistols when they initially confronted Mr. Leach. Under the particular circumstances present here, we believe that it was reasonable—if not required by police procedures—for the officers to draw their weapons. The officers were facing a felony suspect who was hiding behind a car at night in the parking lot of a closed business. The officers could not determine whether or not the suspect was armed. Leaving their weapons holstered while they reiterated their commands that Mr. Leach stand up and show his hands would have put the officers at an unnecessary risk.

Here, Officer Gregoire and Officer Walker had a well-founded suspicion that Mr. Leach was involved in the break-in of the truck at the remodeling business a short distance from their location. Mr. Leach's explanation for his presence in the parking lot of the closed business was doubtful at best and could not be verified. Under these circumstances, holding Mr. Leach for a few minutes to allow an eyewitness to come to the scene and confirm whether or not Mr. Leach was the perpetrator of the vehicle break-in was entirely reasonable.

Moreover, the officers' decision to handcuff Mr. Leach while they waited for the witness to arrive did not convert a valid investigatory detention into a custodial arrest.

1. **Defendant approaches woman in car under investigation for drug crime and walks away upon command with clenched fist**

***Williams v. State*, 127 So. 3d 643 (Fla. 4th DCA 2013)**

Reasonable suspicion for a stop is established where an officer observes a vehicle with a crack pipe in plain view, another individual approaches the vehicle and interacts with the occupant, and when the individual is approached by uniformed officers, he walks away with a clenched fist.

The arresting officer, a St. Lucie County deputy, was an experienced narcotics law enforcement officer. On the day of Williams' arrest, at approximately 1:00 a.m., the deputy and his partner approached a vehicle with a female occupant in a parking lot near a night club. The deputy was clothed in apparel identifying him as a law enforcement officer. Upon approaching the vehicle, the deputy looked inside the vehicle and noticed a crack cocaine pipe in plain view. A criminal investigation ensued. The deputy returned to his vehicle to continue his investigation when he noticed Williams approach the driver's side of the vehicle, lean in toward the driver's side window, and begin speaking with the female occupant. Upon seeing Williams, the deputy asked Williams: "Hey man, what's going on? What are you doing?" Williams became startled and took a step back at which point, the deputy noticed Williams' clenched fist. The deputy could not recognize anything in Williams' hand, but "it was very suspicious" to him and he feared the possibility that Williams was clenching a weapon or drugs. The deputy provided an example in which a weapon could be concealed in a clenched hand. Williams started to walk away and the deputy attempted to stop Williams by saying: "Hey man, where are you going? Come here, let me talk to you." Williams turned around, unclenched his fist, and dropped what turned out to be cocaine. The trial court denied the motion to suppress, reasoning that the deputy had reasonable suspicion to stop Williams based on the totality of the circumstances.

When considered in light of the deputy's extensive training and field experience, including both narcotics investigations and experience with small weapons that could be concealed

within a fist, these facts provide justifiable reasons to suspect that Williams possessed either drugs or a weapon within his clenched fist.

2. **Police arrive at robbery scene, victim gives particularized description of perpetrator and location, and defendant fits the description and is in the precise location**

***Brown v. State*, 49 So. 3d 336 (Fla. 4th DCA 2010)**

Reasonable suspicion to stop defendant established where police respond to an active burglary call, victim described suspect with enough particularity and directed police to the precise place where the intruder headed, and police seized the only person fitting that description at the precise place and time.

As the event was still in progress, the resident of the unit where the burglary was taking place called police. While speaking to police on the phone, a police unit near the area responded immediately and seized defendant, the only person around, as the resident told police the intruder was leaving the rear area of the condominium. They took him to the unit, where the resident identified him as the person burglarizing the residence. Police also saw fresh pry marks near the lock mechanism on the sliding glass door at the rear of the house. They arrested him at that point. During a routine search of his person, police found a "rigged" screwdriver hidden in his underwear.

The resident testified to hearing a sound at his door as he looked through the peephole and saw an unfamiliar black male. Seconds later, he saw the same man jump over the fence in the backyard, landing close to the sliding door. Because he was then on the phone with 911, he did not see what the man was doing but he did hear banging on his sliding door sounding like someone was trying to break the lock. When he finally looked outside, he noticed the man leaving the backyard of the unit just as a police officer arrived. He described the man as 5 § 8 and 180 pounds. Police confirmed this description with testimony that the suspect was 5 § 9 and 180 pounds. The resident was certain the man stopped by police was the same man he saw at his home and in the backyard.

Defendant argues that, as in *Woodson*, a mere hunch is insufficient on which to ground an investigatory seizure. *See Moore v. State*, 584 So.2d 1122 (Fla. 4th DCA 1991) (holding that bike rider in early morning hours, just blocks from apartment where burglary reported in

progress, was insufficient to support reasonable suspicion); *Phillips v. State,* 781 So.2d 477 (Fla. 3d DCA 2001) (holding that man in torn clothes with grass stains walking on street near burglarized home insufficient to justify investigatory stop). We have no quarrel with those holdings.

Defendant also appeals his sentence as a prison releasee reoffender. To prove the required release date, the State relied on a records custodian's sealed *Certification of Records* complying with § 90.902(11).[1] A computer printout detailing Defendant's overall inmate record was attached. Although the ending date stated on the records was not explicitly labeled *release date,* in context that can be its only meaning. There is nothing about this evidence bringing it within the holding in *Yisrael v. State,* 993 So.2d 952 (Fla.2008).

3. Officer locates car and defendant matching 911 descriptions in neighborhood known for burglaries in early hours of the morning; and car begins to move after spotlight is shined on car

State v. K.N., 66 So. 3d 380 (Fla. 5th DCA 2011)

Reasonable suspicion for an investigatory stop is established where in a neighborhood that has recently been experiencing burglaries, a resident reports a description of a car and occupant, and an officer locates such car and such an occupant in the early hours of the morning.

The facts are undisputed. Around 2:00 a.m. on a Monday morning, the Orange County Sheriff's Office received a 911 call from an identified resident of Courtleigh Drive. The resident reported a suspicious incident involving a white Toyota and its passenger: a tall, white male with long hair and a thin build running from house to house, peering into vehicles and checking door handles. This behavior was consistent with an increased number of burglaries involving unlocked vehicles in the Dr. Phillips area; handguns were stolen from some of the vehicles. The Orange County Sheriff's Office formed a specialty unit to combat the increased vehicle burglaries. Officer Adams was assigned to this task force and responded quickly to the resident's report.'

As Adams came around a bend on Courtleigh Drive, he spotted a white Toyota stopped in the road, facing him. Adams' spotlight allowed him to observe two males in the car; the passenger met the resident's description. Upon activating the spotlight, the Toyota began to

move towards the patrol car and the neighborhood's exit. Adams decided to investigate and activated his overhead lights. Because he was aware that handguns had been stolen in the rash of vehicle burglaries and, in his experience, burglars often carry weapons for defense, he decided to execute a high-risk traffic stop while awaiting backup units. After the vehicle stopped, Adams exited his patrol vehicle with gun drawn and waited for backup.

Once backup arrived, Adams asked Appellee to exit the vehicle first. Adams handcuffed him, patted him down for weapons, and secured him in the patrol car. He executed the same procedure with the driver, later identified as Appellee's cousin. As Appellee exited the car, Adams swept the car's interior with his flashlight and noticed, in plain view, a flashlight and small multi-tool on the front passenger seat and an iPod on the rear seat. Adams often saw multi-tools used in the commission of burglaries. After securing the pair, Adams returned to the car to perform a protective sweep of the trunk to make sure no one was hiding there.

Officer Adams proceeded according to the then-prevailing interpretation of *New York v. Belton*, 453 U.S. 454, 460, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981), which held that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." (Footnotes omitted.) When he turned on the laptop, the warning screen popped up indicating it was the property of the Orange County Sheriff's Office. Before having the vehicle towed for safekeeping, an inventory of the vehicle was conducted and several items collected. Appellee and his cousin were transported to the West Orange substation for questioning where Detective Thompson and Deputy Shellenberger took over the investigation.

At the suppression hearing, Appellee's argument was three-pronged: there was no probable cause to arrest him for loitering and prowling and any statements he made while in custody should be suppressed; the search of the car was illegal under *Arizona v. Gant*,556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009); and any confession or consent to search subsequent to his unlawful detention and arrest should be suppressed as "fruit of the poisonous tree." The State countered that Appellee, as a passenger, lacked standing to challenge the seizure of evidence from the vehicle under *Gant* or any other theory. In the alternative, the State

argued the good faith exception to the exclusionary rule applied to any evidence seized because the police acted in accordance with *Belton,* the prevailing law at the time, and noted that *Gant* was decided a few weeks after the seizure. Further, even if *Gant* applied, the State argued the search was lawful under the second prong of *Gant,*which authorizes a search of the passenger compartment when it is reasonable to believe the vehicle contains evidence of the offense of arrest—in this case, possession of burglary tools.

Although the trial court ruled the investigatory stop and questioning were lawful, it applied *Gant,* 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485, and ruled that the seizure of the items from the vehicle's passenger compartment was unlawful and subject to suppression. We agree with the trial court's conclusion that the totality of the circumstances warranted Adams' reasonable suspicion that Appellee had attempted to commit burglary of a conveyance, thus warranting an investigatory stop. The reasonable suspicion needed to justify an investigatory stop is a case-specific determination based upon the totality of the circumstances as viewed by an experienced police officer.

In this case, a resident's 911 call reported a white male, the passenger of a white Toyota, running from car to car checking car doors. The officer found a vehicle and Appellee, located in close proximity to the caller's residence, which matched the description. It was 2:00 a.m. on a weeknight. Courtleigh Drive, a very quiet neighborhood, fit the profile of an ungated community in the Dr. Phillips area that was the focus of law enforcement's efforts to curb the ongoing rash of vehicle burglaries. When first observed minutes later, the Toyota was stopped in the street. The vehicle began to move after Adams shone his spotlight on the vehicle, which he interpreted as an attempt to flee. The investigatory stop was lawful in this case.

4. **<u>Encounter with defendant at night in vacant lot located in high crime area where officer testified that defendant and others appeared to be looking into a house</u>**

State v. Cruse, 121 So. 3d 91 (Fla. 3d DCA 2013)

<u>Totality of circumstances created sufficient reasonable suspicion of criminal activity necessary to stop defendant in high crime area at night where the men were standing</u>

close to a chain link fence separating the field from a house, they appeared to be looking into the house and the officers testified that, based on experience and training, they believed the men were preparing for a burglary.

The defendant, Saivon K. Cruse, was charged with carrying a concealed firearm and with possession of cannabis. The issue on appeal is whether the trial court erred in granting the defendant's motion to suppress the firearm found in his possession by finding that the firearm was the product of an illegal search. The State claims that the search was legal because the officer's initial investigative stop of the defendant was supported by reasonable suspicion, and the resulting pat-down was supported by the officer's concern for his safety. In support of its position that the evidence was legally obtained and in opposition of the defendant's motion to suppress its introduction, the State presented the testimony of Officer Dunaske and Officer Sanchez, the two officers who effectuated the investigative stop and subsequent "pat-down" of the defendant leading to discovery of the firearm at issue.

Officer Sanchez testified that he and Officer Dunaske were patrolling a high-crime area, known for guns, shootings, and illegal drugs, at ten o'clock in the evening, when they observed three males standing in a poorly-lit vacant lot. Although the lot was quite large, the officers noted that the men were standing next to a chain link fence and appeared to be looking into the house on the other side of the fence. The officers testified that, based on their experience and training, they believed that this conduct was consistent with the men "casing" the house in preparation of a burglary. This aroused the officers' suspicion and they turned their marked police vehicle around in order to better observe the men. Upon seeing the marked patrol car, however, the men immediately dispersed and began to walk away in three different directions.

At that point, the officers shone a spotlight on the lot and Officer Dunaske advised Officer Sanchez that the defendant was "holding his waistband and manipulating something in his waistband" as if the defendant was attempting to conceal a weapon. Officer Dunaske testified that, based on his training from recruit school, SWAT school, and Special Tactic school, this gesture was "one of the known indicators" that someone was carrying a gun. Officer Sanchez further explained that the officers were particularly concerned by the defendant's movements, which indicated that he may be concealing a weapon, because the police had

received reports of an incident involving the firing of assault weapons in the area the previous night.

The officers testified that because of the high-crime nature of the neighborhood, and its history of incidents involving guns, the officers generally avoided one-on-one confrontations in that area. Because of the defendant's movements witnessed by Officer Sanchez, the fact that the men dispersed in different directions, and the officers' concern for their safety, the two officers decided to approach the defendant as a team. Officer Sanchez made contact with the defendant and Officer Dunaske provided cover.

When Officer Sanchez approached the defendant and asked if he would mind answering a few questions, the defendant stopped and faced the officer. Officer Sanchez then asked the defendant if he had any weapons or illegal items on him. The defendant responded by raising both of his hands in the air. At that point, Officer Sanchez asked the defendant for permission to conduct a pat-down for officer safety purposes. The defendant cooperated by moving towards the front of the police car, where Officer Sanchez conducted the pat-down and found the firearm at issue in the defendant's right waistband. The defendant was then handcuffed and placed in the back of the police vehicle. Officer Sanchez testified that at one point he asked the defendant if the defendant had a concealed weapons permit and the defendant replied that he did not.

Because of its history of high-crime and frequent incidents involving the use of guns, Officer Dunaske explained that the officers avoided one-on-one engagement of suspects in that area. Accordingly, he and Officer Sanchez decided to pursue only one of the three men when the men dispersed and started walking away from the officers. Officer Dunaske further testified that because he had noticed the defendant manipulate his right side in a manner consistent with trying to keep an un-holstered gun from slipping, Officer Dunaske and Officer Sanchez had elected to pursue the defendant.

The State argued, that based on the totality of the circumstances: the men were in a poorly-lit, high-crime area late at night, engaging in conduct consistent with casing a house; the men dispersed immediately upon seeing the police; and Officer Dunaske observed the defendant

manipulating what he believed was a firearm in the defendant's waistband, there existed a reasonable suspicion justifying the approach, detainment and pat-down of the defendant. The trial court, however, held that while the facts may have supported a consensual encounter, they did not give rise to the level necessary to support detainment and the pat-down of the defendant, and it therefore granted the defendant's motion to suppress the evidence.

The trial court found that while the circumstances supported an initial consensual encounter with the defendant, they did not give rise to a level that would support his detention. We disagree with the trial court's analysis, and find that the totality of the circumstances provided the officers with sufficient cause to believe that a crime was being, or was about to be, committed. Accordingly, the defendant's detention was lawfully supported by the officers' reasonable and particularized suspicion, which the officers were able to, and did, adequately articulate at the hearing on the defendant's motion to suppress.

Florida courts have emphasized that no single factor is dispositive to establish that an officer's suspicion leading to a *Terry*-stop is reasonable. Instead, the circumstances, as they are known to the officer at the time of the investigative stop, are viewed in their totality.
In the instant case, although the initial consensual contact between Officer Sanchez and the defendant did not require Officer Sanchez to have a reasonable suspicion, once Officer Sanchez stopped the defendant and asked whether he had any weapons in his possession, the encounter became an investigative stop.

At that point, Officer Sanchez needed to possess a reasonable, articulable, and particularized suspicion of criminal activity in order to justify his stop of the defendant.

We find that the information known to Officer Sanchez and Officer Dunaske at the time they seized the defendant was sufficient to create a reasonable suspicion that criminal activity was taking place. The undisputed facts show that the encounter with the defendant took place (1) at ten o'clock in the evening, (2) in a dark and poorly-lit area, (3) in a high crime neighborhood known for shootings and narcotics.

In addition to these facts, the men were standing close to a chain link fence separating the

field from a house and they appeared to be looking into the house. While this conduct may arguably be consistent with innocent activity, the officers testified that, based on their training and experience, they believed that the men were casing the house in preparation for a burglary.

F. MISCELLANEOUS FACTUAL SCENARIOS OF *INSUFFICIENT* REASONABLE SUSPICION

B.M. v. State, 212 So. 3d 526 (Fla. 2d DCA 2017)

No reasonable suspicion that criminal activity was afoot prior to stopping juvenile where the only articulated basis for the stop was juvenile's proximity to the suspects' known direction of travel and juvenile's unprovoked flight.

At B.M.'s delinquency hearing, the State's first witness was Kristi Sofroni. Mr. Sofroni testified that on January 28, 2015, he was driving his car on the University of South Florida campus when he observed "two kids," a male (the suspect) and a female (the victim). According to Mr. Sofroni, the suspect and the victim were "fighting or ... grabbing onto each other." Mr. Sofroni described the suspect as being tall and slender, wearing a white tank top with jeans, and riding a bike. Mr. Sofroni observed the victim trying to pull on the suspect's tank top to keep him from riding away on the bike. The suspect was "swinging his arms trying to get [the victim] off him" and managed to "catch her on the jaw," which allowed the suspect to break free and flee on foot. Mr. Sofroni heard the victim yelling, "He stole my phone." Mr. Sofroni attempted to chase down the suspect but could not catch him. He only observed the suspect from behind and thus never saw the suspect's face.

The State's next witness, a detective from the University of South Florida Police Department (USFPD), testified that on the afternoon of that same day, she "responded to an area where individuals had known direction of travel after they committed ... a strong-arm robbery." The detective explained that she was "able to identify people within the area" who she "believed to be the suspects." One of these suspects, later identified as B.M., was riding a bike in the company of two other individuals riding bikes. The detective testified that B.M. was wearing a white, sleeveless tank top and shorts. The detective activated her police vehicle's lights and attempted to detain B.M. by twice yelling, "Stop, police." The other individuals accompanying B.M. stopped, but B.M. fled on his bike. An officer from the

Tampa Police Department apprehended B.M. later that day in a shed located in a fenced residential backyard. B.M. did not have the owner's permission to enter the shed.

The State did not present sufficient evidence to establish the detective had a reasonable suspicion to detain B.M. There is no indication that the detective received a description of B.M. before she ordered him to stop. There was no testimony that B.M. was detained in a high crime area. Although Mr. Sofroni testified to a description of the suspect, the State neglected to produce any record evidence to demonstrate that his description of the suspect was conveyed to the detective before she ordered B.M. to stop.[2] According to the detective's testimony, the only information she knew was the time of the robbery and the suspect's known direction of travel. This was not enough for the detective to form a reasonable suspicion that criminal activity was afoot before she ordered B.M. to stop.

Similar to M.M.H., the detective's only articulated basis to order B.M. to stop was B.M.'s proximity to the robbery suspects' "known direction of travel," coupled with B.M.'s unprovoked flight after the detective ordered him to stop. There were no additional facts articulated by the detective to support her basis to detain B.M. at the time she ordered him to stop. If the detective had additional information to form a reasonable and well-founded suspicion to order B.M. to stop, she did not convey that information in her testimony. With the detective's limited and conclusory testimony as to what she knew at the time she attempted to execute an investigatory stop of B.M., it is difficult to conclude how B.M., along with two other bicyclists, in the afternoon near a college campus and in the proximity of a reported robbery, was suspicious enough to justify an investigatory stop. Without additional record evidence as to what the detective knew at that time, we are left with what appears to be little more than the detective's hunch that B.M. was one of the suspects, which certainly amounts to less than a reasonable and well-founded suspicion that B.M. had committed the reported robbery.

1. **Standing in driveway with hand in one's pocket in high crime area**

Griffin v. State, 150 So. 3d 288 (Fla. 1st DCA 2014)

Where an officer approaches a man standing in a driveway in a high crime area with his hand in this pocket, a subsequent patdown is not justified on the basis that the man is potentially armed and dangerous.

The facts here are simple and straight-forward: with no reason to suspect criminal activity, an officer approached a man in a high-crime area standing in a driveway and immediately demanded he remove his hand from his pocket. When the man did nothing in response and refused to consent to a search, the officer conducted a weapons pat-down. During the weapons pat-down, the officer grabbed the man's pocket, felt a "squishy bag" with a small knot, and believed, immediately, he was "almost certain" the item was cocaine.

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Accordingly, when the officer here—immediately upon contact—demanded Mr. Griffin remove his hand from his pocket, the officer seized Mr. Griffin. *See id.* Anything consensual or voluntary about the contact ceased the moment the officer demanded Mr. Griffin remove his hand from his pocket. It is at the moment of the almost-immediate demand, then, that the officer must have had a reasonable suspicion that Mr. Griffin was "armed and potentially dangerous to justify the pat-down." *See id.*

Standing in a driveway with a hand in one's pocket neither provides reasonable suspicion one is armed and potentially dangerous nor justifies an invasion of one's personal liberty.

Again, it is the moment the officer demanded Mr. Griffin remove his hand (i.e., almost immediately) at which we stop the clock and observe the facts known to the officer. Testimony that Mr. Griffin repeatedly refused to remove his hand from his pocket and

exhibited several signs of increasing anxiety and nervousness during the stop are observations that occurred after the seizure; they cannot be considered when evaluating whether the officer had reasonable suspicion for the seizure. *See Baptiste v. State,* 995 So.2d 285, 294 (Fla.2008)

The additional fact that the area was "high crime" does not change this determination. A "high crime area," in and of itself, does not translate to reasonable suspicion one is armed and dangerous or that criminal activity must be afoot.

It is even well settled that placing one's hands inside a jacket or behind one's back upon seeing officers—in a high crime area—does not justify a reasonable suspicion sufficient for a weapons pat-down.

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.

Merely stating that "training and experience" led an officer to "know" an item was contraband is simply not enough. *See Thomas v. State,* 644 So.2d 597, 597–98 (Fla. 5th DCA 1994)

The law requires more than a "naked subjective statement of a police officer who has a 'feeling' based on 'experience.' " *State v. J.D.*, 796 So.2d 1217, 1219–20 (Fla. 4th DCA

2001) (quoting *Doctor v. State,* 596 So.2d 442, 445 (Fla.1992)); *C.A.M. v. State,* 819 So.2d 802, 804–05 (Fla. 4th DCA 2001)

As for the search here, the officer "grabbed a handful of the pocket" and the "bag" inside to then feel "like, kind of a little squishy" and "a small knot." This exceeded the scope of a "pat-down." Grabbing a handful and recognizing a squishy feel and small knot takes squeezing or manipulation. This is not the case of "lightly patting"—or patting at all, in fact. Thus, the "pat-down" was overreaching and impermissible.

2. <u>Passenger who makes furtive movements in a legally parked car</u>

Forman v. State, 128 So. 3d 817 (Fla. 2d DCA 2013)

<u>Where a person is a passenger in a vehicle involved in an auto accident (that specific vehicle driver is not at fault), responding officers need objectionable circumstances to support a belief the individual presents a danger to the safety of officers in order to order the individual and subsequently pat down the individual. Here, officers witnessed the passenger nervous sitting in the vehicle rocking back and forth putting something under the seat with "furtive movements.</u>"

The undisputed facts before the trial court at the hearing on the motion to suppress were that Forman was the passenger in a vehicle that was involved in an auto accident at the intersection of 34th Street North and 1st Avenue North in St. Petersburg. The driver of the car Forman was riding in was not at fault in the accident. Officer Karayianes responded to the scene to investigate the accident. Officer Mangiaracina arrived on the scene as back-up.

When Mangiaracina first arrived, he began speaking with the driver of the car in which Forman was riding. At that point, the driver was standing by the hood of his damaged car. As Mangiaracina was speaking with the driver, he could see Forman, who was still sitting in the passenger seat of the damaged car. Mangiaracina testified that Forman was repeatedly leaning forward and back, as if he was reaching under the seat and then sitting back up. Mangiaracina described this activity as "furtive movements," although he admitted that he could not actually see what Forman was doing. Based on these "furtive movements," Mangiaracina became concerned for officer safety, although he articulated no objective facts—other than the aforementioned "furtive movements"—that would establish a

reasonable fear for his safety or that of others at the scene. In an effort to allay his asserted concerns for officer safety, Mangiaracina went to the passenger door, opened it, and requested that Forman step out of the car. Forman did not want to get out of the car, but Mangiaracina insisted. Once Forman was out of the car, Mangiaracina saw a bulge in Forman's waistband, and he conducted a pat-down search that revealed cocaine. Forman challenged the legality of this search in his motion to suppress, which the trial court denied.

However, the critical distinguishing fact here is that Forman was not the passenger in a car that was lawfully stopped. Instead, he was the passenger in a vehicle that was involved in an auto accident. His presence at the accident scene was merely fortuitous and not due to his lawful detention or that of the driver. Thus, at most, Forman's initial interaction with Mangiaracina was in the nature of a consensual encounter, and a legal standard different than that applicable to lawfully detained individuals applies to his case.

In doing so, it held that while "a police officer may approach a citizen in a parked car to ask questions without a founded suspicion of criminal activity, ... he cannot order a citizen out [of] that car absent reasonable suspicion that a crime has occurred, is occurring, or is about to occur." *Id.* at 134–35 (citing *Popple v. State,* 626 So.2d 185 (Fla.1993)).

Here, like the defendants in *Popple, Miranda, Horton,* and *Bowen,* Forman was simply sitting in a car that was, for all intents and purposes, legally parked. Mangiaracina testified that he saw Forman making "furtive movements" while sitting in the parked car. However, even if we accept Mangiaracina's characterization of Forman's activities as "furtive," such furtive movements in a legally parked car could not give rise to a reasonable suspicion that Forman had committed, was committing, or was about to commit a crime. And, in fact, Mangiaracina admitted as much, testifying only that he was concerned for officer safety when he ordered Forman out of the car. However, Mangiaracina failed to testify to any objective circumstances that would support a finding that he had a reasonable belief that Forman posed a threat to the officers at the scene. *Cf. F.J.R. v. State,* 922 So.2d 308, 311 (Fla. 5th DCA 2006) (noting that an officer may detain a vehicle's passenger for officer safety reasons when the officer can "identify objective circumstances that support the reasonableness" of his concern); *Wilson v. State,* 734 So.2d 1107, 1113 (Fla. 4th DCA 1999).

Reversed and remanded with directions.

3. Merely walking out of a house where arrest warrant is being executed

Scott v. State, 150 So. 3d 1273 (Fla. 4th DCA 2014)

No reasonable suspicion of criminal activity to justify investigatory stop where defendant was merely walking out of the house where the person officers were seeking to arrest was known to live.

At Appellant's trial, the state presented the following evidence. On the day of Appellant's arrest, two officers were conducting surveillance on a residence for the purpose of executing an arrest warrant on a man by the name of R.Q. During the course of their surveillance, the officers saw Appellant exit the house wearing a full-face motorcycle helmet. The officers approached Appellant to determine whether he was the man they were looking for, at which point Appellant took off his helmet and gave the officers his name. The officers were unable to confirm Appellant's identity in their system so Appellant invited them inside the residence while he looked for his driver's license. Appellant could not find his license, so he and the officers went back outside. The officers then asked Appellant to have a seat on the porch while they tried to confirm his identity. A few minutes later, Appellant walked back into the house and locked the door.

Fearing that Appellant was trying to run, the officers went around the house where they saw Appellant exit, jump the fence, and flee. The officers pursued, caught, and arrested Appellant. The officers later determined that they were unable to immediately verify Appellant's identity because the date of birth Appellant provided was off by one year.

The State concedes that the officers were performing an investigative stop of Appellant when he fled and thus this case comes down to whether the stop was legal. Under Florida's "Stop and Frisk Law," a law enforcement officer may perform an investigative stop "under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a [criminal] violation."

T]here was no testimony as to present criminal activity in which [defendant] might have been engaged or potential future criminal activity; indeed, criminal activity during these

timeframes was not an issue at all. Moreover, the only potential source of reasonable suspicion as to past criminal acts in which [defendant] might have engaged was the activity for which his half-brother [ ] was to be arrested pursuant to the arrest warrant. However, "[t]he existence of an arrest warrant is of no moment on the question whether a particular person police officers come across is in fact the subject of the warrant. The warrant supplies the officers with probable cause to arrest the person it names and describes, not a license to duck the reasonable suspicion requirement and stop someone they only have a subjective hunch is that person."

Here, like in *Rios,* there was no testimony that the officers suspected Appellant was engaging in or was going to engage in criminal activity. There was not even testimony that Appellant looked like R.Q. or that the officers believed he was R.Q. for any objective reason. Rather, as the State concedes, the officers' entire basis for stopping Appellant was that he "was walking out of a residence where the person they were seeking to arrest was known to reside." As established by *Rios,* the mere fact that a person is at the residence associated with a suspect with a pending arrest warrant does not in itself justify an investigative stop.

Reversed.

4. **Juvenile who is standing in group of 30 men and is sweating, out of breath, appears nervous and is wearing clothing that matches uncorroborated tip that fight was taking place not sufficient**

J.H. v. State, 106 So. 3d 1001 (Fla. 3d DCA 2013)

Where officers are responding to an anonymous tip of several males fighting and one of those males was wearing black and carrying a taser, and the responding officers actually encounter a group of 30 people around but witness no fight, the simple presence and out of breath appearance of an individual in all black does not yield reasonable suspicion for a stop and frisk.

J.H. was charged with carrying a concealed firearm (Count 1), possession of a firearm by a minor (Count 2), battery on a police officer (Count 3), and resisting an officer with violence (Count 4). J.H. filed a motion to suppress the firearm on grounds that it was obtained as the result of an unlawful search and seizure. The trial court denied the motion. The court withheld adjudication of delinquency and placed J.H. on probation for one year.

The record shows that the arresting police officer received a dispatch to an address based on an anonymous tip that there was a fight between several males, one of whom was wearing black clothing and carrying a taser. When the Officer arrived at the location, there were about thirty people milling around. She did not observe a fight. She did not see anyone except J.H. wearing black clothing. The Officer testified at the suppression hearing that J.H. was "sweating and attempting to catch his breath" and appeared "nervous." Because J.H. was wearing clothing that matched the anonymous tip description and appeared to be anxious, she ordered him to come towards her and to place his hands on a car, where she proceeded to pat him down. The Officer testified that she conducted the pat down for safety reasons because the dispatch indicated the male had a taser. The officer did not, however, see any suspicious bulge on J.H. that might indicate a weapon. As the Officer patted J.H. down, she felt a cylindrical object in his pocket. Believing it to be a revolver, she stuck her hand in J.H.'s pocket to retrieve the object, then J.H. grabbed her arm, pushed her, and ran. Another officer ultimately stopped and arrested J.H.

He arresting officer did not observe any criminal or suspicious activity prior to stopping and frisking J.H. We cannot find a single case that supports sweating or appearing out of breath as an evasive or suspicious activity. The dispatch also lacked any predictive information and thus, the Officer could not test the informant's knowledge or credibility. Moreover, the Florida Supreme Court further clarified reasonable suspicion in accordance with *J.L.* in *Baptiste v. State,* 995 So.2d 285, 298 (Fla.2008).

Here, the arresting officer only saw J.H. walking away from a gathering of people. She merely observed him sweating and catching his breath. She did not see any bulge in his clothing indicative of a weapon, or observe any illegal, suspicious or furtive behavior. The sole basis for the Officer's search and seizure of J.H. was the anonymous tip, which the Officer failed to corroborate. This is insufficient to generate reasonable suspicion to believe J.H. was armed and dangerous. We reverse the trial court's denial of the motion to suppress the gun and remand for the trial court to reverse the withheld adjudication of delinquency as to the counts of carrying a concealed weapon and possession of a firearm by a minor and discharge J.H. as to those counts.

5. Group of Juveniles

a. Non-defendant juvenile holding empty liquor bottle in a group of juveniles talking loudly was insufficient basis to suspect defendant was engaged in criminal activity

G.T. v. State, 120 So. 3d 141 (Fla. 4th DCA 2013)

Where an officer observes a group of juveniles talking loudly and sees one juvenile (who is not the defendant) with an empty liquor bottle, there is no objective basis to suspect that the defendant was engaged in criminal activity.

A conviction for resisting an officer without violence requires that the officer was engaged in the lawful execution of a legal duty. G.T. was adjudicated delinquent for resisting an officer without violence when she refused to give the arresting officer her name and personal information after the officer detained her and other juveniles under suspicion of underage drinking and disorderly intoxication. We reverse, holding that the State's evidence was not legally sufficient to establish that the officer was engaged in the lawful execution of a legal duty when he detained G.T. without reasonable suspicion.

The officer was dispatched to an apartment complex in response to a call about a "disturbance of juveniles drinking and smoking." He heard loud talking upon arriving at the apartment complex, walked to the rear of the complex near an alley, and approached six juveniles, who appeared to be "fairly young" teenagers. One of the juveniles other than G.T. was holding an empty bottle marked "Bacardi Silver." As the juveniles attempted to walk away upon seeing the officer, he said to them, "Stop. Hollywood Police." After they stopped, the officer observed that the juveniles had red, glossy eyes and slurred speech, which indicated to him that they were intoxicated.

The officer asked the juveniles for their names, dates of birth, and parents' or guardians' telephone numbers. Every juvenile except G.T. gave the officer the information he requested. G.T. repeatedly responded to the officer's questioning with, "I have the right to remain silent," and stated that "[my] brother is in the Air Force, and [I know my] rights." The officer then arrested G.T. for resisting an officer without violence and disorderly intoxication in a public place.

Because the officer merely heard loud talking and observed that only one of the juveniles who was not G.T. was holding the empty liquor bottle, he lacked a particularized and objective basis for suspecting that G.T. herself was engaged in criminal activity. The State was unable to articulate specific facts to connect G.T. to the empty liquor bottle or to demonstrate that the officer had more than an inchoate hunch that this group of juveniles was the one he had been dispatched to investigate. Similar to *A.T.*, where the smell of marijuana in the general area did not imply a connection between the appellant and marijuana, here, the fact that one of the other juveniles was holding the empty liquor bottle did not imply a connection between G.T. and the alcohol. *See* 93 So.3d at 1161.

Furthermore, the totality of the circumstances, based solely on facts known to the officer before the stop, did not indicate any suspect behavior on the part of G.T. The State argues that the juveniles' red, glossy eyes and slurred speech indicated to the officer that they were intoxicated. The officer made this observation, however, *after* he detained them. Therefore, that observation cannot form any part of the basis for the officer's reasonable suspicion justifying the detention.

Because the officer lacked reasonable suspicion and was therefore not engaged in the lawful execution of a legal duty, G.T.'s refusal to answer the officer's questions did not constitute obstruction. Therefore, we reverse the trial court's denial of judgment of dismissal and remanded for discharge.

b. No lawful basis to detain any member of group where odor of marijuana emanates from group

B.G. v. State, 213 So. 3d 1016 (Fla. 2d DCA 2017)

Odor of marijuana emanating from group is insufficient of itself to form basis for lawful detention of any group member.

The evidence at trial showed that B.G. was standing with a group of four other juveniles on a sidewalk in a park. An officer on routine patrol saw smoke emanating from the group and smelled the odor of burning marijuana. He testified that he saw a male throw a lit cigarette into the grass nearby, but he could not identify who in the group had discarded the cigarette. Based on these observations, the officer detained all of the members of the group and

informed them that he was going to search each of them. The officer testified that each member of the group "smelled equally" like marijuana.

As the officer began to search group members, B.G. repeatedly told the officer that he was not consenting to be searched. In response, the officer told B.G. that he would either consent to be searched or be arrested for obstructing an officer without violence. When B.G. continued to refuse to be searched, the officer arrested him for obstructing without violence. After his arrest, and when it was clear that he was going to be searched, B.G. told the officer that he had marijuana in his pocket. The officer then added charges against B.G. for possession of that marijuana and possession of paraphernalia.

Here, the officer detained the entire group based on the smell of marijuana coming from the group. However, on facts similar to these, this court has held that "[t]he fact that appellant 'was standing with a group of [individuals] surrounded by the odor of burned marijuana was insufficient to supply more than a "mere suspicion" that [appellant] was in possession of marijuana.' "

Simply put, the odor of marijuana emanating from a group cannot, by itself, form the basis of a lawful detention of any particular member of that group. Nor can the fact that each member of the group engulfed in "billowing smoke," as the officer testified, smelled equally of marijuana. Therefore, when the officer detained the entire group, including B.G., based on the odor of marijuana coming from the group, the officer was not engaged in the lawful execution of a legal duty, and that detention was illegal. And because the detention was illegal, B.G.'s refusal to be searched could not support a charge of obstructing an officer without violence.

G. EXCEPTION TO INSUFFICIENT REASONABLE SUSPICION

1. Good Faith Reliance: Knowledge of dispatcher must be imputed

Grant v. State, 139 So. 3d 415 (Fla. 5th DCA 2014)

For a stop based upon an emergency dispatch to be valid, knowledge of the dispatcher must be imputed to the officers in the field.

Thaddeus Grant appeals his conviction and sentence for possession of a firearm by a

convicted felon. He pled no contest to the charge after the denial of his dispositive motion to suppress. Because the trial court erroneously prevented Grant from introducing a recording of a 9–1–1 call into evidence, the contents of which purportedly provided the legal basis for his stop, we reverse.

On the afternoon in question, Officers Hernandez and Payne of the Eatonville Police Department stopped and detained Grant after responding to an emergency dispatch regarding a black male armed with a handgun in the vicinity of 230 Johnson Street. During the detention, the officers seized a firearm from Grant.

Grant filed a motion to suppress, alleging that the officers had illegally stopped and detained him. Grant argues that the stop resulted from an anonymous tip and that the tip and the arresting officers' follow-up observations were insufficient to establish a reasonable or founded suspicion of criminal activity on Grant's part.

The State's only witness at the motion to suppress hearing was Officer Hernandez. On direct examination, Officer Hernandez testified that she and Officer Payne had received "an emergency tone out in reference to a black male armed with a handgun." According to Officer Hernandez, additional information received from dispatch indicated that the suspect had threatened an individual inside the residence at 230 Johnson Street. The suspect was described as a black male dressed all in black accompanied by a black female in a red shirt and blue denim shorts. The suspect and the accompanying female were reported to have been last observed walking on Johnson Street towards Kennedy Boulevard.

The officers responded immediately and when they turned off Kennedy Boulevard onto Johnson Street, they observed two individuals fitting the aforesaid description. Officer Hernandez further testified that she exited the vehicle and told the suspect, later identified as Grant, to "come over and talk to us." She further advised Grant to keep his hands where she could see them. At that point, Grant turned and Officer Hernandez observed a "bulge" on Grant's right side beneath his shirt "that looked like what could possibly be a handle of a weapon." Both officers then drew their weapons and Grant proceeded to try to run away. Officer Hernandez testified that Grant did not run very far and then "laid on the ground."

Grant was handcuffed and a handgun was found "down on the bottom part of his [right] pant leg."

On appeal, Grant argues that the stop was based solely on an anonymous call, the contents of which failed to establish a reasonable suspicion of criminal activity.

In response, the State argues that the totality of evidence established reasonable suspicion that Grant committed or was committing a crime.

The State further contends that the 9–1–1 call was not "totally anonymous" because the CAD report shows that the caller provided an address and the telephone number. Notably, the State does not argue that the detention of Grant was valid based on a good faith reliance by the arresting officers on information received from dispatch. Instead, the State suggests that pursuant to the "tipsy coachman" doctrine, the trial court should be upheld because it reached the right result, albeit for the wrong reasons.

The trial court's basis for upholding the validity of the stop—the officers' purported good faith reliance on the information received from dispatch—was incorrect. The knowledge of the dispatcher must be imputed to the officers in the field. *United States v. Torres,* 534 F.3d 207, 210 (3d Cir.2008); *see also J.L.*; *Baptiste.*

Additionally, the State's "tipsy coachman" argument fails for several reasons. First, the trial court indicated that it would not give weight to Officer Hernandez' statement regarding the "bulge" beneath Grant's shirt. Second, the State cannot rely on the CAD report regarding the nature and contents of the 9–1–1 call because the report was never admitted into evidence. Third, the defense was denied the opportunity to challenge Officer Hernandez' contention that the dispatch information involved a report of an aggravated assault with a firearm given the trial court's refusal to listen to a recording of the 9–1–1 call.

On the other hand, we cannot accept Grant's argument that the evidence established that the arresting officers lacked a reasonable or founded suspicion of criminal activity to justify his detention. Indeed, because of the trial court's erroneous conclusion that the CAD report and 9–1–1 recording were irrelevant, it is not even clear from the record that the information

provided by dispatch to Officers Hernandez and Payne originated from a 9–1–1 call. Accordingly, we conclude that the trial court's denial of Grant's motion to suppress must be reversed and remanded for a new evidentiary hearing.

REVERSED and REMANDED.

H. SCOPE OF STOP

1. Scope not exceeded if defendant is transported to crime scene within immediate vicinity

State v. Hannah, 98 So. 3d 226 (Fla. 1st DCA 2012)

Where a suspect is being questioned by police and new information creates reasonable suspicion that they were involved in a recent crime, the scope of an investigatory stop is not exceeded if the person is then transported half a block away to the crime scene.

The state appeals the trial court's order suppressing evidence seized by police from Christopher Hannah at the crime scene. The trial court ruled that the officers exceeded the proper scope of the investigatory detention by transporting Hannah from the place where he was first detained by police to the scene of the crime. The state argues that the scope of the investigatory detention was not exceeded because the crime scene was within the immediate vicinity of the place where Hannah was initially detained.

The state also argues that the evidence seized from Hannah at the crime scene would have been admissible under the doctrine of inevitable discovery. We agree, and for the reasons set forth below, we reverse the order on appeal.

During the hearing on the motion to suppress, two police officers testified that they responded to a report of a vehicular burglary at 1961 West Sharon Street in Quincy. As one of the officers approached the crime scene, he encountered Hannah, who had emerged from behind a vacant house at 1923 West Sharon Street. The officer asked for and received Hannah's name. The officer also asked Hannah why he was present at the location. Hannah provided evasive responses. While continuing to question Hannah, the police learned from a radio transmission that Hannah was a suspect in other burglary cases under investigation by the police department. After receiving this information, Hannah was

placed in the back of the patrol car, without handcuffs, and transported two houses down to the crime scene. One of the officers testified that the distance between the place where Hannah was stopped and the crime scene was less than half a block.

When Hannah arrived at the scene, an officer observed that Hannah's shoes appeared to match the shoe prints on the ground at the scene. After determining that they matched, the officers placed Hannah under arrest for the burglary. Next, the officers performed a check for any outstanding warrants, and learned that there were outstanding warrants for Hannah's arrest. At the motion hearing, one of the officers testified that even if Hannah had not been a suspect in the 1961 West Sharon Street burglary, it would have been normal operating procedure to have checked for outstanding warrants before breaking contact with a person who had been stopped, especially once it was discovered that the person was a suspect in other burglaries.

Because the police had reasonable suspicion to stop Hannah, the lawfulness of the stop itself is not in question. Rather, the question presented in this case is whether the police officers exceeded the lawful scope of the investigatory stop by moving Hannah from the place where he was initially detained to the crime scene, half a block away.

***Kollmer v. State*, 977 So.2d 712 (Fla. 1st DCA 2008). In *Kollmer*, this court held that police officers exceeded the scope of a lawful investigatory stop by transporting the detainee away from the place where he was initially detained to the crime scene. There, an officer testified he saw a white male fleeing into a wooded area; a police dog tracked this individual through the woods and located the man lying on his back in a yard. *Id.* at 713–14. That person was transported to the scene of the crime in a police car, wearing handcuffs, for the victim to identify. *Id.* at 714. Citing section 901.151(3), Florida Statutes, as well as federal cases involving movement of a detainee from the place of the initial detention to a police station, the *Kollmer* court concluded that the officers exceeded the scope of a lawful investigatory stop by placing the detainee in the police car and transporting him from the place where he was initially stopped to the location where he was identified by the victim. *Id.* at 715. While the *Kollmer* court did not provide specific details regarding the distance from the place where the detainee was first stopped to the place that the detainee was transported, implicit**

in the *Kollmer* court's holding is that the movement of the detainee was beyond the "immediate vicinity" of the place where the detainee was initially stopped. *Id.*

In this case, Hannah was transported just half a block from where he was initially stopped by the police. Based upon these facts, we conclude that Hannah's detention did not extend beyond the immediate vicinity of the place where he was initially stopped. Accordingly, we reverse the trial court's order and remand for further proceedings.

II. SEIZURE / NOT FREE TO LEAVE

1. Demanding to remove hand from pocket immediately upon contact amounts to seizure

Griffin v. State, 150 So. 3d 288 (Fla. 1st DCA 2014)

Where an officer approaches a man standing in a driveway in a high crime area with his hand in this pocket, a subsequent patdown is not justified on the basis that the man is potentially armed and dangerous.

***See supra* at 35.**

2. Defendant seized where officer who parked "catty corner" to defendant's car, activated emergency lights and used spotlight to illuminate interior of car

Smith v. State, 87 So.3d 84 (Fla. 4th DCA 2012)

Where a car is legally parked and approached by an officer, the occupant is seized for fourth amendment purposes if the officer blocks their vehicle, activates emergency lights, and shines a spotlight on the person's car

Anthony Smith appeals the trial court's denial of his motion to suppress. We reverse. Because appellant was legally parked on a residential street and did not give any indication that he might be in need of police assistance, we conclude that under the totality of the circumstances appellant was seized for Fourth Amendment purposes when the law enforcement officer parked "catty corner" to appellant's vehicle, activated his emergency police lights, and used a spotlight to illuminate appellant's vehicle.

Appellant was charged by information with possession of cocaine and misdemeanor possession of cannabis. He filed a motion to suppress, arguing that he was subject to an illegal search and seizure.

At the suppression hearing, a deputy of the Broward County Sheriff's Office testified that he was on duty in the early morning hours of April 11, 2010. At around 2:30 a.m., the deputy was driving on a residential street when he noticed an occupied SUV parked in front of a vacant open field. The SUV was legally parked, and its interior lights, headlights, and tail lights were all turned off. The deputy saw one individual in the vehicle, seated in the driver's seat. The deputy testified that he became suspicious once he saw that the vehicle had no lights on.

The deputy pulled in front of the SUV and parked "almost catty corner" to where the SUV was parked. Although the deputy did not recall exactly how his police vehicle was positioned, he denied that he blocked in the SUV. The deputy activated his overhead emergency lights. He said he did this so that he would not be hit by oncoming traffic. The deputy also illuminated his spotlight to see the occupant of the vehicle. He testified that the area was known for drugs and prostitution, but he acknowledged that he had not observed any illegal activity occurring in the vicinity of the SUV before he approached.

The deputy got out of his car "to go and investigate" why the person was sitting in the car. When the deputy was sitting in his vehicle, he did not notice that the SUV was running. The deputy did not know if appellant was hurt or injured. As the deputy approached the vehicle, he detected the odor of marijuana. The deputy asked to see appellant's driver's license. The deputy, while talking to appellant, noticed a partially smoked marijuana cigarette in the ashtray. The deputy then arrested appellant. While conducting a search incident to the arrest, the deputy found a small bag of marijuana and a bag of cocaine.

On appeal, appellant argues that the trial court erred in denying his motion to suppress, claiming that the officer illegally seized him without any suspicion of criminal activity. The state responds that the trial court properly denied the motion to suppress, arguing that the officer's initial approach of appellant was a consensual encounter and that

the officer immediately had a basis to detain appellant when the officer smelled marijuana and saw a marijuana cigarette in plain view.

In distinguishing between a consensual encounter and a seizure, courts review whether, under the totality of the circumstances, a "reasonable person would feel free to disregard the police and go about his business." *State v. R.H.*, 900 So.2d 689, 692 (Fla. 4th DCA 2005) (internal quotations omitted).

In this case, the question is whether appellant was seized *before* the officer approached his vehicle and smelled the marijuana. Activation of emergency police lights is one factor to be considered in a totality-of-the-circumstances analysis of whether a seizure has occurred. *G.M.*, 19 So.3d at 974. Likewise, use of a spotlight or flashlight is another factor to be considered in evaluating whether a person would reasonably believe he was free to leave, but the use of a spotlight, without more, does not transform a consensual encounter into an investigatory stop. *See State v. Goodwin*, 36 So.3d 925, 927 (Fla. 4th DCA 2010) (holding that the officer's mere use of her spotlight and flashlight did not transform the consensual encounter into an investigatory stop).

Here, the officer activated his emergency lights, parked "catty corner" to appellant's vehicle—which according to the officer was legally parked on the side of a residential street—and used his spotlight to illuminate the interior of appellant's vehicle. Although the deputy testified that he activated his emergency lights to warn traffic of his presence and that he did not know whether appellant was hurt or injured, we do not view these factors as dispositive. Notably, appellant was not parked in an emergency lane of a highway or some other place that would give an objective indication that appellant needed assistance. Rather, appellant was legally parked on the side of a residential street. We acknowledge that if a person is parked on the shoulder of a highway, or otherwise gives some indication to a police officer that he might be in need of assistance on the roadway, a reasonable person in such circumstances would not necessarily perceive the officer's use of emergency lights as a show of authority.

Under the totality of the circumstances, where, as here, appellant was legally parked on a residential street and did not give any indication that he might be in need of police assistance, no reasonable person would have felt free to drive away after an officer activated his emergency lights and used a spotlight to illuminate the person's parked vehicle. *See G.M.*, 19 So.3d at 980 ("Moreover, it would be both dangerous and irresponsible for this Court to advise Florida citizens that they should feel free to simply ignore the officers, walk away, and refuse to interact with these officers under such circumstances.")

Because the deputy seized appellant before detecting the odor of marijuana, and because the seizure was not founded upon reasonable suspicion, we reverse the denial of the motion to suppress and remand with directions for the trial court to vacate appellant's convictions in this case.

Reversed and Remanded.

3. **Officer who makes repeated requests for defendant to remove hands from his pockets made show of authority and seized defendant**

R.J.C. v. State, 84 So.3d 1250 (Fla. 4th DCA 2012)

Where an officer makes repeated requests (for a suspect to remove their hands from their pockets), the stop has now become a Fourth Amendment seizure. As such the officer must have had a well-founded articulable suspicion of criminal activity to begin the encounter; otherwise any contraband retrieved should be suppressed.

The issue in this appeal from the denial of a motion to suppress evidence is whether a seizure occurred when appellant complied with an officer's repeated requests to remove his hands from his pockets. We conclude that a seizure did occur, and we reverse the denial of the motion to suppress because the officer lacked a well-founded articulable suspicion of criminal activity to justify the seizure.

Appellant, a juvenile, pled no contest to possession of less than 20 grams of cannabis, reserving the right to appeal the denial of his motion to suppress evidence. At the hearing on the motion to suppress, a deputy of the Broward County Sheriff's Office testified that late in the evening, while on duty, he received an anonymous report of "suspicious persons" in an area within the City of Lauderdale Lakes. The anonymous caller advised that there were

“two black males in the area wearing all black.” The deputy was dispatched as a result of the call but was not able to find anybody in the immediate area reported by the caller. While circling the area, however, the deputy observed appellant and another juvenile, who were both wearing black.

When the juveniles made eye contact with the deputy, they immediately went into a food store “in a rush.” The deputy was suspicious as to why they would run into the store for no apparent reason. The deputy then pulled into the store parking lot and entered the store at a normal pace.

The deputy approached appellant and said, “Can I talk to you for a minute?” Appellant replied, “Yeah. What do you want?” The deputy noticed that appellant kept his hands in his pockets and asked appellant to remove his hands from his pockets. The deputy testified that he did this for officer safety issues. Appellant kept his right hand in his pocket while gesturing with his left hand as he spoke to the deputy. The deputy thought appellant was hiding something in his pocket.

The deputy again asked appellant to remove his hands from his pockets. At that point, appellant put his left hand back in his pocket, so that he then had both hands in his pockets. The deputy then asked appellant where he was coming from. Appellant responded, “Man, we're just coming from down the street.” The deputy asked appellant yet another time to remove his hands from his pockets and said to appellant, “What do you have in your pockets? Do you have any guns, knives, weapons; anything you [think] I need to ... know about?”

In compliance with the deputy's last request, appellant removed his hands from his pockets. A marijuana cigarette fell to the ground. The deputy picked up the cigarette, took appellant outside the store, and handcuffed him. The cigarette tested positive for THC. Before the marijuana cigarette fell to the ground, the deputy stood at arm's length while speaking to appellant and did not touch him.

On cross-examination, the deputy admitted that the dispatcher only said that there were suspicious persons walking in the area; he did not give any details of what they were doing to arouse suspicion other than to report that they were walking there. He further

acknowledged that the anonymous caller only said that the suspicious persons were black and wearing black clothing; he never gave a height or weight or any other information when describing them. When the officer encountered appellant and his companion, he observed that appellant was wearing a black shirt with blue jeans, not black pants. The other male was wearing a black shirt, but the officer could not recall the color of the other male's pants. The officer conceded that he did not see any bulges from appellant's pants that appeared to be weapons.

In *United States v. Mendenhall,* 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980), the Supreme Court adopted a "totality of the circumstances" approach to determining whether a person has been seized within the meaning of the Fourth Amendment.

The *Mendenhall* test is flexible and imprecise, and the Florida Supreme Court has pointed out that "per se rules are inappropriate in the context of Fourth Amendment seizure analyses." *See G.M. v. State,* 19 So.3d973, 979 (Fla.2009).

The deputy's request, which was repeated several times, constituted a show of authority which would have conveyed to a reasonable person that his movement was being restricted and that he was not free to disregard the officer and go about his business. A reasonable person would have interpreted the deputy's *repeated* requests as a command, not a suggestion. We thus adhere to the traditional contextual approach to Fourth Amendment jurisprudence and hold only that, in this particular case—where the deputy repeatedly requested that appellant remove his hands from his pockets so as to convey a message that compliance with the request would be compelled—a seizure occurred when appellant submitted to the deputy's show of authority.

Finally, appellant's act of keeping his hands in his pockets did not give the police officer reasonable suspicion to believe that appellant was involved in criminal activity.

In sum, when appellant complied with the deputy's repeated requests to take his hands out of his pockets, the consensual encounter in the store turned into a stop. At that point, the deputy did not have a well-founded, articulable suspicion that appellant was involved in any

criminal activity so as to justify the stop. We therefore reverse the order denying appellant's motion to suppress and remand with directions to vacate the adjudication of delinquency.

GERBER, J., dissents with opinion.

The majority attempts to reconcile its reasoning with *Mendenhall's* "totality of the circumstances" approach by referring to the fact that "the deputy *repeatedly* asked appellant to take his hands out of his pockets." However, I think it is reasonable for an officer to be able to request a person to remove their hands from their pockets during a consensual encounter to ensure the officer's safety. *Woodard*, 681 So.2d at 735. I also think that reasonable persons requested to remove their hands from their pockets, without more, would understand an officer's request to be just that—a request to ensure the officer's safety, and not a restriction on their freedom to leave. In my opinion, such a request falls within the category of "inoffensive contact" to which the Court referred in *Mendenhall*, so long as the other circumstances which might indicate a seizure are not present.

This result is not changed by the fact that the deputy ultimately said to appellant, "What do you have in your pockets? Do you have any guns, knives, weapons; anything you [think] I need to ... know about?" *See State v. Baldwin*, 686 So.2d 682, 685–86 (Fla. 1st DCA 1996) (two officers' initial contact with the defendant and his companion was nothing more than a routine and proper consensual encounter, not a seizure, where the officers politely asked for the two men's names and addresses, asked whether either one had anything on him that could get him into trouble, and for personal safety reasons asked the defendant if he would mind removing his hands from his pockets).

4. **Four plain clothed officers simultaneously exiting police car and immediately chasing persons would not make person feel free to leave**

Williams v. State, 136 So. 3d 1283 (Fla. 1st DCA 2014)

Where individuals are merely standing in the front yard of a property with a no "trespassing sign", their simple presence does not fulfill the reasonable suspicion element of an investigatory stop; thus, police action such as four plain clothed officers simultaneously exiting their vehicle to make contact and subsequently chasing the individuals cannot be executed without valid reasonable suspicion.

***See supra* at 13.**

5. **<u>Ordering defendant to get off his bike and to sit on the curb amounts would not make person feel free to leave</u>**

A.L. v. State, 133 So. 3d 1239 (Fla. 4th DCA 2014)

<u>A consensual encounter becomes a stop when the officer transitions from simple questioning to ordering or instructing the person; a reasonable person would not feel free to leave when ordered off their bike and to sit on the sidewalk</u>.

A.L. pled no contest to carrying a concealed firearm, reserving his right to appeal the denial of his earlier-filed motion to suppress. In his motion to suppress, the defendant argued that the gun and any incriminating statements were the product of a stop, not a consensual encounter, and that the stop was not supported by the requisite reasonable suspicion. We agree and reverse.

Evidence at the suppression hearing established that, on June 26, 2012, a gun fell from A.L.'s pants during an encounter with a City of Miramar police officer. At around 9:00–9:30 a.m., the officer was patrolling an area where a burglary had been reported several days earlier. The officer spotted the defendant riding his bicycle. She stopped her patrol car and approached. She inquired why the defendant was in the area. The defendant stated he was visiting a friend, but was unable to tell the officer where the friend lived. The officer told the defendant there had been burglaries in the area and he should stay out of the area if he had no legitimate reason to be there. The defendant said he would and rode away.

Fifteen to twenty minutes later, in the same area, the officer again saw the defendant riding his bike. The officer pulled her car over and the defendant stopped his bike. The officer approached and asked the defendant what he was doing in the area. The defendant told the officer he had gone to his friend's home to retrieve his wallet. The officer instructed the defendant to get off his bike and to sit on the curb. After the defendant reiterated that he had gone to get his wallet, the officer asked the defendant for identification. The officer assisted the defendant to a standing position and, as the defendant was adjusting his pants, a gun fell. The defendant indicated the gun was his and was arrested.

"During a consensual encounter a citizen may either voluntarily comply with a police officer's requests or choose to ignore them" and, since the citizen is free to leave during a consensual encounter, no reasonable suspicion is required. *Popple v. State,* 626 So.2d 185, 186 (Fla.1993). There is no bright-line test for distinguishing a consensual encounter from a stop; whether an encounter is consensual requires consideration of the totality of the circumstances.

An officer may approach a defendant on a public street and ask questions of the defendant and such contact is nothing more than a consensual encounter. *See, e.g., D.T. v. State,* 87 So.3d 1235, 1238 (Fla. 4th DCA 2012). This is true even where the defendant is on a bike and stops to speak with the officer.

Here, during the defendant's first encounter with the officer, she instructed the defendant to leave the area. During the second encounter, only fifteen to twenty minutes later, the officer ordered the defendant to get off his bike and to sit on the curb. Under these circumstances, a reasonable person would not have felt free to end the encounter and walk away and the officer's orders thus converted the consensual encounter into a stop. Since the stop was not supported by reasonable suspicion, the incriminating evidence was subject to suppression. *See, e.g., Harrison v. State,* 627 So.2d 583, 584–85 (Fla. 5th DCA 1993) (holding officer's request that defendant remove hands from pockets converted consensual encounter into a stop; stop not supported by reasonable suspicion; and cocaine that fell from the pocket should be suppressed as seizure occurred before cocaine dropped).

Reversed.

6. **Officer who directs defendant to the front of his patrol car while issuing trespass warning and tells defendant he has could leave until the warning was issued**

Moore v. State, 200 So. 3d 1290 (Fla. 2d DCA 2016)

No consensual encounter with officer who issued written trespass warning where officer directed defendant to the front of the police car while issuing warning; defendant was told he had no choice and that he could not leave until warning had been issued.

Deputy Nicholas Hammack of the Pinellas County Sheriff's Department encountered Mr. Moore at a coin laundry and convenience store in Safety Harbor on October 31, 2014. Deputy Hammack spoke with Mr. Moore. During this initial encounter, the store owner approached Deputy Hammack and asked him to issue a trespass warning to Mr. Moore because Mr. Moore had been loitering on the store premises for some time that day. Deputy Hammack asked Mr. Moore to step to the front of the deputy's patrol car so that he could issue the written trespass warning. Deputy Hammack informed Mr. Moore that he would be "issued a trespass and that he needed to walk to the front of [the deputy's] vehicle." Mr. Moore hesitated and asked Deputy Hammack why the trespass warning was going to be issued. Deputy Hammack responded "that it was the property owner's right to trespass him from his property and that he didn't have a choice in the matter, and that this was something that we needed to complete so that he could be on his way."

After Deputy Hammack began the process of issuing a written trespass warning to Mr. Moore, he developed probable cause to believe that Mr. Moore was in possession of cocaine. Upon searching Mr. Moore, Deputy Hammack discovered a glass pipe containing a significant amount of cocaine residue and two razor blades with cocaine residue. Mr. Moore's arrest for possession of cocaine and paraphernalia followed.

In this case, the trial court correctly observed that its ruling hinged upon whether Deputy Hammack had detained Mr. Moore to give him the written trespass warning or whether the encounter was consensual. However, we disagree with the trial court's conclusion that the encounter remained consensual after the deputy ordered Mr. Moore to the front of his vehicle for the purpose of issuing a written trespass warning and telling him that he had no choice in the matter. *See id.* (observing that officers illegally detained a defendant when they told him that he was not free to leave until they processed his trespass warning); *see also Rios v. State*, 975 So.2d 488, 490 (Fla. 2d DCA 2007) ("[A] 'citizen encounter becomes an investigatory ... stop[ ] once an officer shows authority in a manner that restrains the defendant's freedom of movement such that a reasonable person would feel compelled to comply.' " (all alterations except first in original) (quoting *Parsons v. State*, 825 So.2d 406, 408 (Fla. 2d DCA 2002))). Deputy Hammack made statements constituting a show of authority that—considered in combination—would have caused a reasonable person to feel

compelled to comply. First, Deputy Hammack directed Mr. Moore to go to the front of the patrol car while the deputy issued the written trespass warning. Second, Deputy Hammack told Mr. Moore that he had no choice in the matter. Third, Deputy Hammack effectively advised Mr. Moore that he could not "be on his way" until the trespass warning was issued. It follows that Deputy Hammack detained Mr. Moore and that detention was illegal. Therefore, the trial court should have suppressed the tangible evidence discovered and the inculpatory statements made by Mr. Moore after his illegal detention.

For the foregoing reasons, we reverse the judgment and sentences imposed on Mr. Moore and remand with instructions that he be discharged.

7. Officer tells juvenile to stop as a command, not as a request

N.S. v. State, No. 4D16-0514, 2017 WL 2265374 (Fla. 2d DCA, May 24, 2017)

Investigatory stop of juvenile, rather than consensual encounter, where officer commanded juvenile to stop and made it clear that he was not free to leave

A detective responded to a call regarding a suspicious vehicle around apartments. Upon arriving in the area, the detective heard voices coming from the adjacent city park and, given the time of day—9:00 pm—he decided to investigate. He saw a group of people walk away as he approached, and requested a fellow officer to assist.

When the officer arrived, he instructed the group to stop but only the Child complied. The officer testified that "upon his arrival ... he stopped the Child ... as he was exiting the park area of the apartment complex." After a discussion, the officer patted down the Child and discovered a bag of marijuana in his pocket.

The Child moved to suppress this evidence, arguing that the officer lacked the legal authority to detain him. He argued the evidence was found as a result of a detention without probable cause or other legal basis. Therefore, he argued it must be suppressed.

The State also offers an alternate theory and argues that, because all of the Child's purported friends freely and voluntarily walked away when the officer approached, a reasonable person would have felt free to leave. In other words, the State argues that the encounter was

consensual, and the Child is not entitled to the protections of the Fourth Amendment, because he chose to stay and obey the commands of a uniformed officer.

The officer's testimony, however, refutes this argument. The officer testified that the Child's friends were "not free to leave." He did not pursue the others because he "could only stop one person at a time." Further adding, "I can't get everybody to stop and talk to me." Therefore, according to the arresting officer, the Child and his friends were not free to leave from the moment the encounter with the officer began.

Because we determine the encounter between the Child and the officer was not consensual, but rather an investigatory stop or an arrest, the Child was entitled to the protections afforded by the Fourth Amendment. *See Arvizu*, 534 U.S. at 273, 122 S.Ct. 744; *Popple*, 626 So.2d at 187. As such, and because it is undisputed that there was no probable cause to arrest the Child at that moment, we must ask "whether the content of information possessed by police and its degree of reliability gave the officer[ ] reasonable suspicion that the [Child] was committing an ongoing crime." *Navarette v. California*, —— U.S. ——, 134 S.Ct. 1683, 1693, 188 L.Ed.2d 680 (2014) (Scalia, J., dissenting).

We reach the same conclusion in this case and hold that the officer lacked reasonable suspicion that the Child was committing a crime. Therefore, the officer's investigatory stop was not justified.

III. TIPS

A. CITIZEN INFORMANT

1. Sufficiently reliable where officer received information through face-to-face communication with security guard

State v. Hutz, 144 So. 3d 618 (Fla. 4th DCA 2014)

The reasonable suspicion requirement for an investigatory stop is fulfilled where a security guard in a casino, acting as a citizen informant, reports to the officer that he witnessed a man snorting cocaine.

The state appeals from the circuit court's non-final order granting the defendant's motion to suppress his statements and physical evidence. The state argues the court erred in finding

that a security guard's observation of the defendant snorting cocaine, immediately conveyed to the arresting officer, did not provide reasonable suspicion for the officer to conduct an investigatory stop of the defendant a couple minutes later. We agree with the state's argument and reverse.

At the hearing on the motion to suppress, the officer testified as follows. On the night of the arrest, he was in uniform and armed while on patrol in a casino. He received a dispatch that a security guard observed a man snorting cocaine by one of the men's rooms. A couple minutes later, the officer met with the security guard. The officer did not know the security guard's training or whether the security guard "[knew] what cocaine is" or "[saw it] before in his life."

The security guard identified the defendant, who was sitting behind some people who were gambling at a gaming table. The officer approached the defendant with the security guard a few feet behind him. The officer tapped the defendant on the shoulder, identified himself, and, in a casual tone, asked the defendant "Sir, can I talk [to you] over here?" referring to an area to the side where there were not many people standing around. The defendant followed the officer and security guard over to an area of slot machines twenty to thirty feet away. The defendant was not blocked in any way. The officer did not say the defendant was under arrest, did not indicate he was detaining the defendant, and did not restrict the defendant's freedom of movement. However, the officer acknowledged that "normal citizens in any situation would think they have to follow [him]."

The officer told the defendant he was investigating an incident that occurred by the men's room. Before the officer was able to finish his statement, the defendant immediately responded "[s]omething to the effect [of], 'You got me. I have the stuff in my pocket.' " When the officer asked if he could "see it," the defendant reached in his pocket and pulled out a baggie of cocaine and a straw. According to the officer, the defendant spoke and acted voluntarily. The defendant was charged with possession of cocaine.

When the defendant was asked whether he hesitated in getting up and complying with the officer's request to talk, he testified: "I would have no reason not to. He's a police officer."

The defendant testified that the officer did not show a weapon or say he was under arrest. However, the defendant testified if an officer asked him to do anything, he would do it. The defendant also agreed that he complied with the officer not because the officer indicated he had no other choice, but because he "just felt like [he] needed to comply with the officer's request."

The defendant argued that the court should suppress his statements, the cocaine, and the paraphernalia because he made the statements and produced the cocaine during an investigatory stop without reasonable suspicion and without *Miranda* warnings.

After the court entered a written order granting the motion, this appeal followed. The state argues the court erred in finding that the security guard's observation of the defendant snorting cocaine, immediately conveyed to the arresting officer, did not provide reasonable suspicion for the officer to conduct an investigatory stop of the defendant a few minutes later.

Here, the tip which the officer received was sufficiently reliable to provide reasonable suspicion to conduct an investigatory stop of the defendant. The officer received information from the security guard through face to face communication. The security guard thus was a citizen informant whose tip was sufficiently reliable by itself to provide the officer with reasonable suspicion to conduct an investigatory stop of the defendant without further investigation or corroboration. Furthermore, the defendant admitted he possessed contraband before the officer posed a statement or question which required *Miranda* warnings.

Similarly, here, the security guard's observations of the defendant snorting cocaine gave the officer a well-founded suspicion to conduct an investigatory stop of the defendant. While the officer testified that he did not know the security guard's training or whether the security guard "[knew] what cocaine is" or "[saw it] before in his life," the *Marsh* officers had no such information about the employee's knowledge of cocaine either. On its face, the security guard's tip would appear to be as reliable as the *Marsh* employee's tip, if not more so because of the security guard's duty to "further justice, such as by relating details of a witnessed

crime to law enforcement." *Castella,* 959 So.2d at 1290 (internal quotation marks and citation omitted).

In sum, we conclude that reasonable suspicion existed to support an investigatory stop, and that the defendant admitted he possessed contraband before the officer posed a statement or question which required *Miranda* warnings. Because we conclude that reasonable suspicion existed to support an investigatory stop, we need not address the state's alternative argument that the event was a consensual encounter not requiring reasonable suspicion. Our decision not to address the state's alternative argument should not be interpreted as indicating that the event necessarily constituted an investigatory stop. We reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded for further proceedings.

2. **Sufficiently reliable where officer received information through face-to-face interaction with citizen and citizen's credibility and reliability confirmed by surrounding circumstances**

State v. T.S., 114 So. 3d 343 (Fla. 3d DCA 2013)

Reasonable suspicion for an investigatory stop is established where agitated man on his cell phone approaches officer, claims he was a victim of attempted robbery, officer confirms that the man was on the phone with 911 making the exact report, and officer follows his direction and description for a matching individual in the nearby area who is later found.

Officer Timothy Jackson, the arresting officer, was the sole witness to testify at the suppression hearing below. According to Officer Jackson, he was off duty and out of uniform when, on February 12, 2012, he pulled his marked police car into a McDonald's parking lot. As he neared the restaurant, he was approached by an individual, described as a Latin male, who stepped in front of Officer Jackson's moving car forcing Officer Jackson to stop. This individual, who was talking on a cell phone when he stepped before Officer Jackson's police car, appeared to Officer Jackson to be "agitated and excited." As soon as Jackson stopped his car, the man told Jackson that "somebody [had] pulled a gun on [him] in the bathroom at McDonald's."

Fearing a hoax, Officer Jackson demanded to know to whom this individual was speaking and upon being told that it was "the [911] dispatcher," Officer Jackson took possession of the phone and confirmed that dispatch was on the line taking a robbery report. At this juncture, Officer Jackson took over the investigation and was told by the individual who flagged him down, that a black man wearing a black hoodie and red shorts, accompanied by another black man wearing a white t-shirt and blue jeans, had pulled a gun on him in the McDonald's restaurant. The entire conversation between the officer and the individual lasted "at least two minutes."

Upon learning that these events had occurred only a few minutes before, and finding the individual to be credible, Officer Jackson decided to leave at once in an attempt to locate the assailants. Officer Jackson made no attempt to obtain the name and address of the man making the report, asking only that he remain at the McDonald's while Officer Jackson went in pursuit.

After searching for only a few minutes, Officer Jackson spotted two individuals just a few hundred yards from the McDonald's who matched the descriptions given to him. Jackson parked and got out of his vehicle, and based on the report that at least one of the assailants was armed, approached with his gun drawn. On reaching the two, Officer Jackson told one of them (T.S.), that he did not "know whether or not you're the actual person or not, but someone just claimed that somebody pulled a gun and you meet the description. For your safety and for my safety let me see your hands." T.S. did not respond. Officer Jackson then asked T.S. at least three more times to show his hands and received no response. Officer Jackson finally asked, "Do you speak English, do you speak Spanish, do you speak Creole, are you deaf, are you dumb[?]" Other than "swaying his body and walk[ing] back and forth," T.S. made no response to any of these demands. Finally, Officer Jackson told T.S., "I'm going to tell you one more time if you do not comply I'm going to blow your head off." This time T.S. took his hands out of his pockets and put them in the air. T.S. then acknowledged that he spoke English and stated that he had a handgun in his pocket. At this point, Officer Jackson retrieved a .38 snub nose pistol with the hammer cocked from T.S.'s pocket and called for backup.

On the other hand, a truly anonymous tip has been consistently held to fall on the low end of the reliability scale, primarily because the veracity and reliability of the tipster is unknown. *Id.* at 291–292.

The information provided in this case did not come from a truly anonymous telephone tip but came during a face-to-face interaction between a citizen and the authorities. First, and as T.S. acknowledges here, the circumstances surrounding the informant's actions do not suggest that he was motivated by pecuniary gain. Second, while the police officer involved in this interaction failed to secure the informant's identifying information, at no point did the informant indicate a desire to remain anonymous so as to remain unaccountable for any false statements. Rather, the informant's actions in reporting the robbery attempt to both the 911 dispatcher and Officer Jackson confirm his willingness to be held accountable for making not just one, but two, reports. Third, T.S. does not question the fact that the arresting officer had ample opportunity to observe the informant's demeanor during their two minute conversation to assess his credibility. Indeed, the officer's ability to independently confirm the informant's representation that he was attempting to make a police report of the criminal activity which he stated had occurred, combined with the fact that the officer was quickly able to locate the described assailants nearby and at a location generally suggested by the informant, confirmed the informant's credibility and the reliability of the information provided. Thus, while Officer Jackson did not secure identifying information from the informant, the informant was not truly an anonymous tipster but a citizen informant instead.

Because the informant in this case was a citizen informant, reasonable suspicion existed to conduct an investigatory stop and the subsequent search of T.S. was legal. Accordingly, we reverse the order under review and remand for further proceedings.

B. ANONYMOUS TIP

1. Requires Corroboration

***Berry v. State*, 86 So. 3d 595 (Fla. 1st DCA 2012)**

Anonymous face to face tips must be sufficiently corroborated and yield reasonable suspicion under the totality of the circumstances to allow a valid *Terry* stop of the suspect that the informant provided information on.

Gerome Berry appeals his convictions for possession of cocaine, possession of cocaine with intent to sell, and resisting a law enforcement officer without violence, arguing that the trial court erred in denying his motion to suppress the crack cocaine and U.S. currency seized from him during a warrantless search.

At 9:30 a.m. on October 9, 2009, Agriculture Law Enforcement Officer Allen was in a convenience store in the town of Hilliard. Inside the store, Allen was approached by a female in her early 30s who advised him that a black male was selling crack cocaine out of a small bag on a nearby corner of Orange Street. She said this person was wearing blue jean shorts, a white shirt, and a black stocking on his head. Allen called Nassau County Sheriff's Deputy Murray, who was on duty that day in the area, and relayed this information. Allen said he would wait at the convenience store in case the deputy needed assistance. As he was waiting, Allen observed a black male wearing a white shirt, blue shorts and a black stocking hat walk around the corner of the convenience store. This individual appeared to have an object in his hand although Allen "couldn't necessarily say that it was a bag." After he made eye contact with Officer Allen, the individual turned and walked into the woods adjacent to the convenience store. He returned shortly thereafter with nothing in his hands. His pants were unzipped and he told Allen that he had gone into the woods to relieve himself. He walked past the officer and headed in the direction of Orange Street.

Officer Allen advised Deputy Murray that the suspect appeared to be walking in that direction. Deputy Murray encountered appellant walking down the road "in a nervous pace" continually looking behind as he walked. The deputy pulled in behind appellant and activated his blue lights. Appellant resisted the subsequent pat down, the deputy arrested him for resisting an officer without violence, and the subsequent search revealed narcotics in a potato chip bag in appellant's pocket.

At the suppression hearing, Officer Allen testified that he did not know the woman who gave him the tip and that she expressly advised that she did not want to give her name and that

she wanted to remain anonymous. She did not advise him how she knew that appellant possessed cocaine or how she knew that he was selling cocaine. Officer Allen did not testify with respect to the credibility of the face-to-face tipster. Further, he offered his personal opinion that he "didn't observe [appellant] engage in any suspicious or criminal activity." The trial court summarily denied the motion to suppress. Following a trial, the jury found appellant guilty as charged.

Here, we must determine whether the face-to-face tip was more like a truly anonymous tip or more like a citizen informant tip. An anonymous tip requires that the information be "sufficiently corroborated" by the officer to constitute reasonable suspicion because the tipster's veracity, reliability, and basis of knowledge are typically unknown. *State v. Evans*, 692 So.2d at 218; *see also State v. Maynard*, 783 So.2d 226, 230 (Fla.2001) (applying the analysis of *Evans*). By comparison, a citizen informant is one who observes criminal conduct and reports it, along with his or her identity, to the police. A tip from a citizen informant is sufficient by itself to provide law enforcement with reasonable suspicion to conduct a *Terry* stop. *Maynard*, 783 So.2d at 228.

Relying upon *D.P. v. State*, the State submits that a person who approaches the police face-to-face to report a crime is not anonymous, but is more analogous to a citizen-informant. In *D.P.*, a woman approached an officer on patrol. The officer described the woman as very nervous and fearful and said that her hands were shaking and she was yelling.

We find *D.P.* distinguishable. Although the tipster in the case before us made face-to-face contact with Officer Allen, she stated that she wanted to remain anonymous. Her identity was unknown to the officer and was not readily ascertainable as the officer could not learn her name through later investigation. Unlike *D.P.*, here the information was not provided in appellant's presence, an indicia of reliability, and Officer Allen did not testify that he engaged in a credibility determination.

Finding that the tip in this case is at the low end of the reliability spectrum, this court must then determine whether the police had sufficient corroboration of the tip to form the

reasonable suspicion necessary to stop appellant. We do not find corroborating facts in this record. Neither officer saw the defendant at the street corner where the tipster alleged he was selling drugs or witnessed illegal or suspicious activity on the part of appellant. Though Deputy Murray witnessed appellant walking at a nervous pace, "behavior, which may be suspicious but not demonstrably or conceivably criminal, is not sufficient to establish a founded suspicion, even in a high crime area."

The incident occurred at 9:30 in the morning. There was no testimony this was a high crime area or even that drug crimes had occurred there in the past. There was nothing unusual about appellant walking down the street.

In short, when the reliability of the tip and the lack of corroborating factors are considered, we find that the totality of the circumstances demonstrates that Deputy Murray did not have a reasonable suspicion of illegal activity sufficient to conduct a *Terry* stop.

REVERSED.

M.M. v. State, 72 So.3d 328 (Fla. 4th DCA 2011)

Where police action is prompted by an anonymous uncorroborated tip, an individual simply in the vicinity or in the company of suspicious individuals is insufficient for an LEO to conduct an investigatory stop.

Officer # 1 received a dispatch from an anonymous caller regarding a large group of juveniles fighting in the vicinity of 6th Avenue and Commercial Boulevard. The tip did not include a description of the individuals involved. When Officer # 1 arrived, he saw four juveniles, and noticed that one of them, not the defendant, looked "disheveled," as if he had "been in a fight." The juvenile's hair was "messed up." His T-shirt was stretched out and the collar ripped. Those were the only observations that led the officer to conclude that the juvenile had been in a fight.

Officer # 1 asked the four juveniles to speak with him about the "possible fight in the area." Two of them stopped to speak with him, one of them was the juvenile who appeared disheveled. The other two—including the defendant—proceeded southbound on 6th Avenue, ignoring the request to stop.

A second officer arrived as backup. Officer # 2 saw the four juveniles, but did not see anyone fighting or running away. He observed two of the juveniles speaking to Officer # 1, and two others walking briskly across the street toward him. Officer # 1 then instructed Officer # 2 to stop the two juveniles who walked away.

Officer # 2 approached and instructed the two juveniles to stop, but they kept walking. Officer # 2 then yelled "stop." This time one juvenile stopped, but the defendant continued walking. Officer # 2 once again yelled "stop." This time the defendant turned around and responded: "don't raise your f——ing voice at me." At this point, Officer # 2 testified that the defendant stood in an "aggressive manner ... almost like a fighting stance."

Officer # 2 then told the defendant to sit down. According to Officer # 2, the defendant began to sit down, but did not sit down completely. Officer # 2 thought the defendant was going to flee. As the defendant started to get up, he attempted to strike the officer. Officer # 2 then turned and grabbed on to the defendant's shirt. Officer # 2 testified that the defendant again tried to punch him, so he turned, and returned two punches to the defendant's face. The officer struck the defendant twice more, then apprehended and handcuffed him.

The State charged the defendant with resisting arrest with violence.

When an anonymous tip prompts a police investigation, it will justify a stop as long as it can be corroborated. *Fuentes,* 24 So.3d at 1235. This requires the officers to observe " 'unlawful acts, unusual conduct, or suspicious behavior' " when they arrive on scene. *See* *id.* (quoting *Baptiste v.* State, 995 So.2d 285, 296 (Fla.2008)). Here, that did not occur.

There was simply insufficient corroboration of the anonymous tip to provide reasonable suspicion for Officer # 2 to conduct an investigatory stop of the defendant.

The State argues the arresting officer had reasonable suspicion to stop the defendant because he was in the vicinity where an anonymous caller reported a fight, and he was in the company of another juvenile who appeared disheveled. Neither of these factors, however, provided

either officer with reasonable suspicion that the defendant was involved in criminal activity. *See, e.g., Levin v. State*,449 So.2d 288, 289 (Fla. 3d DCA 1983) ("being out on the public street during late and unusual hours cannot constitute a valid basis to temporarily detain and frisk an individual.").

Reversed and Remanded for entry of a judgment of dismissal.

A.P. v. State, 182 So. 3d 915 (Fla. 5th DCA 2016)

A motion to suppress should be granted where evidence voluntarily given to the police is the product of police questioning following an anonymous tip that is not fully corroborated and the officer lacks valid reasonable suspicion to begin an investigatory stop.

A.P. ("Appellant") appeals the order denying his motion to suppress evidence, specifically the baggie of marijuana that he pulled from his pocket and gave to Officer Ogletree who had stopped and detained Appellant. After his motion to suppress was denied, Appellant pled no contest to possession of less than twenty grams of marijuana and possession of drug paraphernalia. Appellant reserved his right to appeal the adverse ruling. Because we find that he was stopped by the police without reasonable suspicion that he was involved in the commission of a crime, the stop was invalid and all evidence obtained as a result of the stop should have been suppressed. Accordingly, we reverse and remand.

In this case, the police received an anonymous tip by phone that advised of a black male with dreadlocks whom the caller said was possibly dealing drugs that night in front of a specific residence. This tip was truly anonymous as the caller did not provide a name, phone number, or any other type of identification. Officer Ogletree was dispatched to investigate the tip. Upon reaching the residence, he saw Appellant and a Hispanic male sitting in a silver Ford Taurus in the driveway. The record does not suggest that Appellant had dreadlocks, but it was also not negated. Appellant was the front seat passenger. Rather than stopping his marked car at the residence, Ogletree drove around the corner, exited his vehicle, and walked to where he could see the Taurus in the driveway. As a fourteen-year veteran on the force, he did not think any drug deals would take place if his cruiser was in plain view. Ogletree then called for narcotics backup.

While out of his car, Ogletree saw a white car drive down the road and stop in front of the residence. The white car was facing Ogletree's direction with its high beam lights on. Just as the white car pulled up, Ogletree heard an alarm go off, about five or six houses down the street, which made him suspect that a burglary might be in progress. Ogletree began to approach the Taurus on foot. As he did so the white car drove off. Ogletree did nothing to stop the vehicle or to get its tag number, even though he thought the white car may have been involved in a possible burglary in progress.

As Ogletree neared the residence, the Taurus began to back out of the driveway and drove down the street. Ogletree "hit" the car with his flashlight (shined his light inside it) and said "police," with the intent of telling the occupants of the Taurus to stop. The occupants complied and Ogletree asked them about the burglar alarm. The driver explained that the alarm had gone off earlier, and the homeowner said she was having trouble with the alarm.

Ogletree asked both Appellant and the Hispanic male for identification, but neither provided any at that time. The driver, however, gave Ogletree the car's registration, which Ogletree told them he was going to keep while he investigated the alarm. He told them to "stay put." As he shined his flashlight in the car and spoke with its occupants, Ogletree observed a marijuana stem on the console between Appellant and the driver. Ogletree left the car and spoke with the homeowner who confirmed that it was a false alarm.
Before Ogletree returned to the Taurus, four more officers and one K9 unit arrived at the scene. The dog was led around the car and alerted to the trunk, indicating the possible presence of contraband. By the time Ogletree returned to the Taurus, its occupants were already outside; however, he did not know why they had gotten out of the car.

Ogletree then took Appellant across the street and asked him if he could search him. Appellant immediately reached in his pocket and pulled out a small baggie with green, leafy material in it and gave the baggie to Ogletree. Appellant answered "yes" when Ogletree asked if it was grass or weed. Ogletree testified that "it was just the two of us and it was voluntary all the way." Ogletree then checked Appellant's background, found he had no

criminal record and wrote him a civil juvenile citation for possession of less than twenty grams of cannabis.

The trial judge concluded that there was a reasonable basis for this investigatory stop; we disagree. A truly anonymous tip with no identification of the tipster and few details of the suspected criminal activity, falls on the very low end of the reliability scale in terms of providing justification for a stop. *Baptiste v. State,* 995 So.2d 285, 291 (Fla.2008).

Prior to stopping the Taurus and its occupants, Ogletree did not observe anything to corroborate the tip. In fact, he observed two men in a parked car, and this observation did not match the tip. Ogletree admitted that he did not find the occupants of the Taurus to be engaged in anything criminal or suspicious. Furthermore, the fact that a burglar alarm went off several houses away while Ogletree was observing the Taurus did not provide any reasonable suspicion that Appellant had been or was engaged in any criminal activity. Thus, the stop was not justified and all evidence obtained thereafter should have been suppressed.

The trial judge also based his denial of the motion to suppress by finding that there was a voluntary turnover rather than a search, when Appellant handed the baggie of marijuana to Ogletree. "When the initial police activity is illegal, the State must establish by 'clear and convincing evidence' that there has been an unequivocal break in the chain of illegality sufficient to dissipate the taint of the prior illegal police action and thus render the consent freely and voluntarily given.' " *Jordan v. State,* 707 So.2d 338, 338 (Fla. 2d DCA 1998) (internal quotations omitted). By the time Appellant gave Ogletree the baggie of marijuana, four more police officers arrived on the scene and were involved in the investigation, a K9 unit alerted to possible contraband in the Taurus, and Ogletree had taken Appellant across the street to engage in further investigation. Thus, there is nothing in the record to suggest a break in the chain of illegality.

Because Ogletree had no justification for stopping the Taurus and because there was no break in the chain of illegality, Appellant's motion to suppress should have been granted.

REVERSED AND REMANDED.

J.H. v. State, 106 So. 3d 1001 (Fla. 3d DCA 2013)

Where officers are responding to an anonymous tip of several males fighting and one of those males was wearing black and carrying a taser, and the responding officers actually encounter a group of 30 people around but witness no fight, the simple presence and out of breath appearance of an individual in all black does not yield reasonable suspicion for a stop and frisk.

See supra **at page 40.**

Collins v. State, 115 So. 3d 1040 (Fla. 4th DCA 2013)

No reasonable suspicion to conduct investigatory stop of defendant where anonymous tip lacked any detail and was uncorroborated by the investigation.

Our holding requires a recitation of the facts garnered through the testimony of the arresting officer at the suppression hearing. At about 1:00 P.M. on the day in question, the officer, who was in uniform and driving a marked vehicle, was dispatched to an apartment complex based on an anonymous tip that two juveniles were loitering around the complex and that narcotics were possibly involved. Upon arriving at the complex, the officer encountered Defendant, who was twenty-one years old at the time, and another young man. Both young men informed the officer that they were visiting a friend who lived in one of the apartments. The officer pointed out that there was a "no trespassing" sign on the premises, and asked the men to "stand by" while he went to make sure that they were guests of one of the residents. The officer testified that Defendant and the other man were not free to leave. While he was knocking on the door of the resident's apartment (which no one answered), the officer witnessed Defendant take something out of his pocket and drop it on the ground. That substance turned out to be cocaine, and Defendant was arrested and charged with possession of cocaine.

The Florida Supreme Court described the three levels of police-citizen encounters in *Popple v. State,* 626 So.2d 185, 186 (Fla.1993):

> **The first level is considered a consensual encounter and involves only minimal police contact. During a consensual encounter a citizen may either voluntarily comply with a police officer's requests or choose to ignore them. Because the citizen is free to leave during a consensual encounter, constitutional safeguards are not invoked.**

The second level of police-citizen encounters involves an investigatory stop as enunciated in *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). At this level, a police officer may reasonably detain a citizen temporarily if the officer has a reasonable suspicion that a person has committed, is committing, or is about to commit a crime. In order not to violate a citizen's Fourth Amendment rights, an investigatory stop requires a well-founded, articulable suspicion of criminal activity. Mere suspicion is not enough to support a stop.

[T]he third level of police-citizen encounters involves an arrest which must be supported by probable cause that a crime has been or is being committed.

The State relies on the facts that the officer received an anonymous call reporting loitering and possible narcotics activity and that there was a "no trespassing sign" at the apartment complex in support of its argument that the officer did have enough reason to perform an investigative stop. This argument is misguided.

Here, the information provided in the anonymous call was bare bones and lacked any degree of detail. The officer testified that the caller informed him only that two juveniles (no race, no gender, no other description) were hanging out at an apartment complex and that there may be narcotics involved. This information was not sufficient, even if corroborated, to justify an investigatory stop. Further, this information was not even corroborated by the officer's investigation—Defendant and the other man with him were not juveniles, and the officer did not observe any narcotics before he performed the investigatory stop. Thus, the only way that the investigative stop could be justified is if the officer independently witnessed activity giving rise to a reasonable suspicion that a crime was being committed.

In Defendant's case, the officer had no basis for suspecting that Defendant and the other man with him were committing the crime of trespass other than their mere presence at the apartment complex with posted "no trespass" signs. This was legally insufficient to justify the officer's investigatory stop. Accordingly, we hold that the cocaine was the product of an illegal stop and should have been suppressed.

Stinson v. State, 117 So. 3d 859 (Fla. 4th DCA 2013)

No reasonable suspicion to justify investigatory stop of defendant where anonymous tip was uncorroborated and officers did not observe defendant engaged in any suspicious behavior before stopping him.

In this appeal from a criminal judgment and sentence, the defendant argues that the trial court erred in denying his motion to suppress evidence because the officers lacked reasonable suspicion to justify his stop and detention. We agree. The stop was based on a vague description provided by an anonymous tipster, and the officers did not observe any unusual or suspicious conduct to give them reasonable cause or founded suspicion to believe that the defendant had committed, was committing, or was about to commit a criminal offense.

An Indian River County deputy responded to a dispatch concerning a disturbance involving several black males. One of the males reportedly had brandished a handgun and fled south. He was described as wearing a white shirt and black or dark shorts and carrying a black square handgun. Several anonymous witnesses, in addition to a mail carrier who identified himself, reported the incident to 911. A helicopter was dispatched to investigate. According to the deputy, the helicopter pilot reported seeing a black male wearing a white shirt, black shorts, *and* a black jacket about 150 yards from the scene of the disturbance.

The deputy observed a person in the area who fit this description and was standing by a school bus talking to a few men. The deputy did not see the person, later identified as the defendant, doing anything illegal or engaged in any conduct that would make the deputy suspect that he had committed a crime, was committing a crime, or about to commit a crime. When officers arrived at the location, the defendant walked away from the group of men. The deputy exited his vehicle and directed the defendant to come over to him. He said he was concerned that the defendant might be carrying a weapon in his jacket because the weather in early March was too warm for a jacket.

The defendant refused the deputy's command to come talk to him and continued to walk away. He walked through a gate and up a driveway. The deputy followed him. The defendant continued up the driveway and walked into a home. He took off his jacket and handed it to a woman who was inside the house. He also handed her a large amount of cash.

While the officer was speaking to the woman, the defendant started to walk away. Another

officer approached the defendant, walked him over to a police cruiser, and began to question him. At the same time, one of the officers tossed the jacket onto the patrol car. When he did, a pill bottle "kind of popped up." The officers examined the bottle and saw plastic bags containing a white substance inside. The defendant was placed under arrest and charged with possessing cocaine with intent to sell and trafficking in Hydrocodone.

Here, the trial court found that an anonymous tipster informed police that a black male wearing a white shirt and dark shorts fled south after brandishing a firearm. Although the trial court also found that a mail carrier, who identified himself and gave a phone number, reported the same crime, the court did not find, and there is no record evidence, that the mail carrier also provided officers with a description of the subject. Based on the record in this case, we conclude that the tip which led to the officer's encounter with the defendant was anonymous. The instant case is virtually indistinguishable from *J.H.*, *J.L.*, and *Baptiste.* The anonymous tipster in this case gave a vague description of a subject who "brandished" a handgun. The tipster provided police with no information regarding the suspect's age, build, or other identifiable characteristics other than his race and gender and a generic description of his clothing. The defendant did not even fully meet the description provided by the anonymous tipster. Although he was wearing dark shorts and a white shirt as reported, he was also wearing a black leather jacket over his white shirt. The black jacket was not included in the tip.

Moreover, the officers did not observe the defendant engaged in any unusual or suspicious behavior before stopping him. The officers had no objectively reasonable basis for ordering the defendant out of a home simply because he was walking away from the area of a disturbance, matched a vague description of a subject who brandished a firearm, and was wearing a heavy jacket that appeared inappropriate for the weather. None of these facts indicated that the defendant had just committed or was about to commit a crime. The sole basis for the officer's stop and detention of the defendant was the anonymous tip, which the officer was unable to corroborate. Because the totality of the facts and circumstances did not provide reasonable suspicion to stop and detain the defendant, the trial court should have granted the motion to suppress the evidence seized as a result of the stop and detention.

Accordingly, we reverse appellant's conviction for trafficking in Hydrocodone and possession of cocaine with intent to distribute. Because the Hydrocodone and cocaine must be suppressed, the defendant is entitled to discharge on these charges. *See Hunter v. State,* 32 So.3d 170, 175 (Fla. 4th DCA 2010) (reversing denial of motion to suppress and remanding with instructions to discharge the defendant on the drug possession charge); *Gray v. State,* 550 So.2d 540, 541 (Fla. 4th DCA 1989) (reversing denial of motion to suppress and remanding with instructions to discharge the defendant on drug trafficking charge).

Reversed and Remanded with instructions for the court to discharge appellant on both charges.

2. **<u>Anonymous tip coupled with nervous and evasive behavior may establish reasonable suspicion</u>**

State v. J.T., 132 So. 3d 331 (Fla. 4th DCA 2014)

<u>Totality of circumstances established reasonable suspicion for an investigatory stop where defendant exhibited nervous and evasive behavior upon the officer's approach coupled with anonymous tip received shortly before encounter</u>.

On the morning of August 7, 2012, an anonymous person called the Fort Lauderdale Police Department and alerted law enforcement to a possible burglary of a residence. A dispatch went out at approximately 6:35 a.m. The dispatch advised that "two to three black males" were breaking into an electrical box. The dispatch further advised that the males were using a flashlight. No other identifiable details were provided.

In response to the phone call, multiple law enforcement units were sent to the area. Soon after arriving, a detective from the Fort Lauderdale Police Department observed three black males, including Defendant, riding nearby on two bicycles. The three boys were approximately 100 feet from the identified residence. The detective testified that the three boys, upon seeing law enforcement officers and the marked vehicles, "immediately ... took flight." Shortly thereafter, an officer with the Fort Lauderdale Police Department who had responded to the dispatch spotted Defendant and the other two boys approximately 100 yards away from the identified residence. The officer testified that: "[A]s soon as they saw me, before making any contact, they—the one bike went west and the—the bike that [Defendant] and the other guy who was on the handlebars—The guy jumped off the

handlebars, ran north. [Defendant] pedaled west real fast a little bit. Then he jumped off and—and started to run. And when I told him to stop, he—he got on the ground."

Further, while observing the three boys, the officer noticed that the boy riding on the handlebars of Defendant's bicycle was holding a black bag. The boy holding the bag dropped it upon seeing the officer. Also, while running away, Defendant dropped an orange screwdriver. Defendant was detained at approximately 6:47 a.m. (approximately twelve minutes passed between the dispatch and Defendant's detention). The black bag was later determined to contain a computer and a bank envelope.

Here, given the combined experience of the detective and the officer, the totality of the circumstances provided ample reasonable suspicion to detain Defendant—the early morning hour, the short time frame between the anonymous call and Defendant's detention, Defendant's close proximity to the identified residence, the dispatch identifying two to three male suspects, the dropped bag, and the uncontroverted testimony that Defendant took flight upon seeing law enforcement officers, abandoning his bicycle and running away on foot.

3. **Face-to face anonymous tipster whose identity was readily ascertainable still requires sufficient corroboration to establish RS**

State v. Bullock, 164 So. 3d 701 (Fla. 5th DCA 2015)

Where tipster was a "face-to-face anonymous tipster" whose identity was ascertainable, law enforcement was required to sufficiently corroborate tipster's information to have the requisite reasonable suspicion to justify an investigatory stop.

In this case, law enforcement received a tip that an individual by the name of Paul Jenkins had traveled from North Carolina and was at the Roadway Inn in Apopka to purchase and distribute pills. Sergeant Vidler and other deputies with the Orange County Sheriff's Office went to the motel and made contact with the manager, who confirmed that Jenkins was staying at the motel. Once contact was made with Jenkins, he agreed to cooperate and allowed the deputies to search his room, which revealed pills found in the specific location in the room as advised by Jenkins. During the search, Jenkins informed the deputies that he had just received a text message from an individual that he had previously paid $200 for 30 Oxymorphone pills. Jenkins showed the deputies the text message and explained to them that a white male named Gary would be delivering the pills to the motel room in approximately

ten minutes and that Gary would be driving an older model, white, four-by-four, Dodge pickup truck with an Alabama license plate.

The deputies got a team together and set up in the motel room. Just as Jenkins had described, approximately ten minutes later, an older model, white, four-by-four, Dodge pickup truck with an Alabama license plate, driven by a white male, pulled into the motel parking lot. The team then made contact with the driver and secured him. Sergeant Vidler spoke to the driver, who was identified as Gary Bullock. Sergeant Vidler identified himself as a sergeant with the Orange County Sheriff's Office and informed Bullock that he was stopped because they suspected him of possessing illegal narcotics. Bullock immediately confirmed that he was delivering pills to the motel, told Sergeant Vidler that the pills were in the truck, and identified the specific location of the pills in the truck. Upon a search of the vehicle, Sergeant Vidler found 31 Oxymorphone pills, less than 20 grams of Cannabis, and drug paraphernalia. Bullock was then arrested and charged with: (1) possession of more than four grams, but less than 14 grams, of Oxymorphone; (2) possession of less than 20 grams of Cannabis; and (3) possession of drug paraphernalia.

The State argues on appeal that the determinative issue is whether there was sufficient reasonable suspicion of criminal activity for law enforcement to conduct an investigatory stop. The State contends that law enforcement had enough information to justify the initial stop and questioning of Bullock, and once he admitted to delivering pills, the subsequent search of Bullock's vehicle and his arrest were proper. We agree.

The spectrum of reliability of a tip ranges from the "anonymous, unknown tipster whose assertions of criminal activity typically cannot be verified and thus require independent corroboration," which has relatively low reliability, to the relatively high reliability of a tip from the "citizen-informer crime victim whose motivation in reporting illegality is the promotion of justice and public safety rather than financial gain, and who can be held accountable for the accuracy of the information given." *State v. DeLuca,* 40 So.3d 120, 124 (Fla. 1st DCA 2010); *see also Baptiste v. State,* 995 So.2d 285, 291–92 (Fla.2008); *State v. Evans,* 692 So.2d 216, 219 (Fla. 4th DCA 1997). In between these types of tips is the face-to-face anonymous tipster whose identity cannot be ascertained, the face-to-face anonymous

tipster whose identity is ascertainable, and the paid informant, among others. "One simple rule" does not apply to every situation. *Adams v. Williams,* 407 U.S. 143, 147, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972).

In this case, we find that Jenkins was essentially a face-to-face anonymous tipster whose identity was ascertainable. *See id.* Accordingly, law enforcement was required to sufficiently corroborate Jenkins' information in order to have the requisite reasonable suspicion to justify an investigatory stop. *See id.* ("An anonymous tip requires that the information be 'sufficiently corroborated' by the officer to constitute reasonable suspicion because the tipster's veracity, reliability, and basis of knowledge are typically unknown.").

Although Jenkins may have been at the lower end of the spectrum of reliability, we find that once law enforcement officers sufficiently corroborated his information, this provided the requisite reasonable suspicion to justify an investigatory stop and briefly detain Bullock.

C. PROTECTIVE SEARCHES

1. Protective searches on school grounds may be justified on the basis of information insufficient to justify searches elsewhere

K.P. v. State, 129 So. 3d 1121 (Fla. 3d DCA 2013)

Anonymous tip established reasonable suspicion for protective search of student's backpack so as to prevent the threat of gun violence in the classroom.

Based upon an anonymous tip to a gun bounty program that K.P. was carrying a firearm, the assistant principal of his high school took possession of his book bag, removed him from a classroom full of students, and escorted him to the principal's conference room. A search of the book bag revealed a loaded, semi-automatic handgun. K.P. appeals the denial of his motion to suppress the evidence of the firearm, arguing that the search of his book bag violated his Fourth Amendment right to be free from unreasonable searches.

Admittedly, an anonymous tip like the one at issue may not constitute a sufficiently reliable indicator that a crime was occurring to justify a search of K.P. by police officers on a public street. However, the level of reliability required to justify a search is lower when the tip concerns possession by a student of a firearm in a public school classroom. The Fourth and

Fourteenth Amendments require that searches be reasonable in light of all the circumstances. Here, the lower level of reliability reflected in such an anonymous tip is more than offset because (1) a student's expectation of privacy in the school setting is reduced, and (2) the government's interest (protecting the vulnerable population of children assembled within the confines of the school from a firearm) is heightened. We therefore reject K.P.'s arguments and uphold the decision of the court below.

On October 12, 2011, the Miami–Dade County Police Department Gun Bounty Program received an anonymous tip that K.P., a student at Miami Northwestern Senior High School, was possibly in possession of a firearm. After being informed of this tip, a school resource officer, employed by the Miami–Dade County Schools Police Department and assigned to the high school, confirmed that K.P. attended the school after searching for his name in an electronic public school database system. The officer then notified the assistant principal and school security guards of the tip.

The assistant principal and two school security guards went to K.P.'s classroom, took possession of K.P.'s book bag, and escorted K.P. to the principal's conference room. Upon entering the room, the assistant principal handed over the book bag to the school resource officer. The officer opened the book bag and discovered a loaded, semi-automatic handgun. Nevertheless, it would be wrong to read *J.L.* as establishing an irreducible minimum of reliability that applies to all anonymous tips in all circumstances, and regardless of the extent of the threat that the tip revealed. Although the Court in *J.L.* set forth a required level of reliability needed for an anonymous tip to justify a stop and frisk on a public street, the Court was careful to note the Fourth Amendment did not establish a minimum level of reliability required in all circumstances.

In fact, the Court expressly recognized that there may be circumstances justifying "protective searches on the basis of information insufficient to justify searches elsewhere." *Id.* at 274, 120 S.Ct. 1375. For example, "extraordinary dangers sometimes justify unusual precautions." *Id.* at 272, 120 S.Ct. 1375. In other words, the Court recognized that a search may be justified under the Fourth Amendment based upon an anonymous tip reflecting a lesser level of reliability than the tip in *J.L.* if the tip concerned a greater danger than

possession of a firearm on a public street.

In weighing the "severity of the need" for a search, moreover, the Court also made clear that the nature of the government interest is not "a fixed, minimum quantum of governmental concern, so that one can dispose of a case by answering the question in isolation: is there a compelling state interest?" *Id.* at 661, 115 S.Ct. 2386. Instead, the Court held, "the phrase describes an interest that appears *important enough* to justify the particular search at hand." *Id.* Nor was the government's legitimate interest contingent upon a pre-determined, minimum level of suspicion: "[t]he school search we approved in *T.L.O.*, while not based on probable cause, was based on individualized suspicion of wrongdoing. As we explicitly acknowledged, however, the Fourth Amendment imposes no irreducible requirement of such suspicion." *Id.* at 653, 115 S.Ct. 2386 (internal quotation omitted).

In the Fourth Amendment context of special needs searches, examination of personal effects similar to the search of K.P.'s book bag have passed constitutional muster for airports, courthouses, government buildings, and public transportation, with some of the highest courts in the land characterizing such searches as "minimally intrusive." *See, e.g.*, *United States v. Aukai*, 497 F.3d 955, 962 (9th Cir.2007) (en banc) (holding the escalating intrusiveness of airport screen search from metal detector, to pat down, to emptying and searching pockets was "minimally intrusive"); *MacWade v. Kelly*, 460 F.3d 260, 273 (2d Cir.2006) (holding that a random visual and manual search of bags and packages carried onto the New York City subway was "minimally intrusive."); *United States v. Hartwell*, 436 F.3d 174, 180 (3d Cir.2006) (holding that a search of bags carried onto an airplane was "minimally intrusive"). Although the searches in these cases were not based on individual suspicion, the holdings shed light on the issue of the intrusiveness of the search here. And, while we may not agree that the intrusiveness of such searches qualifies as minimal, we do find that the search of K.P.'s book bag could be proportionate to the legitimate purpose of detecting a firearm.

On balance, therefore, the intrusiveness of the search at issue was not disproportionate. This analysis is not altered because the search was conducted by a school resource officer assigned full time to work at the school because such an officer is more akin to a school official than

an officer on the street and the purpose of the search was to protect students, not to establish guilt. *M.D. v. State,* 65 So.3d 563, 566–67 (Fla. 1st DCA 2011).

Given the reduced expectation of privacy, the relatively-moderate intrusiveness of search, the gravity of the threat, and the consequent reduced level of reliability necessary to justify a protective search, the decision to search K.P.'s book bag was reasonable. Admittedly, the tip at issue in this case may not be sufficient to have justified a stop and frisk of K.P. for weapons on a public street (much less an outright search of his book bag) because it may not contain sufficient indicia of reliability reflecting that K.P. was actually carrying a firearm. But the circumstances supported reasonable suspicion of wrongdoing in the context of preventing the threat of gun violence in a classroom.

WELLS, Judge, (dissenting).

In this case, no reasonable suspicion existed to support the warrantless search of K.P.'s backpack. Standing alone, the uncorroborated, unenhanced anonymous tip received by the school in this case was legally insufficient to satisfy that standard.

IV. DETAINMENT

1. Reasonable suspicion to detain defendant for carrying concealed firearm where officer saw piece of firearm handle sticking out

Mackey v. State, 83 So.3d 942 (Fla. 3d DCA 2012)

An officer's observation of what he believes to be a concealed firearm on an otherwise non-suspicious person, yields probable cause to perform a patdown to determine if the individual was armed. It is the concealment AND possession that authorizes the officer to do so and inquire if the person has a permit.

The relevant facts are not in dispute: Officer May, a member of the City of Miami Police Department, was driving his marked patrol car in an area of Miami when he saw Mackey standing alone on one side of a fence by an apartment complex. There were several people standing on the other side of the fence. Officer May slowed down and, as he drove slowly by Mackey, noticed a solid object inside Mackey's pocket. As he drew closer

to Mackey, Officer May saw a "piece of the handle sticking out. Not much, but a piece enough for me to identify a firearm."

Based upon his training and experience, Officer May was able to identify the object as a firearm. The officer had no prior contact with Mackey, nor did he know whether Mackey had a permit to carry a concealed firearm. There was no evidence that Mackey was engaged in any other criminal or suspicious activity.

Officer May got out of his vehicle, approached Mackey, and asked whether Mackey had anything on him. Mackey replied "no." The officer asked Mackey if he could pat him down. The officer proceeded to conduct a pat-down of Mackey's pocket and felt the firearm he had seen earlier. Officer May retrieved the firearm and inquired whether Mackey had a permit to carry a concealed firearm. Mackey indicated he did not, after which Officer May arrested Mackey for carrying a concealed firearm. It was later determined that Mackey had a prior felony conviction, resulting in the additional charge of possession of a weapon by a convicted felon.

Mackey readily and properly acknowledges that the precedent of this Court compels affirmance in the instant case. In State *v. Navarro*, 464 So.2d 137 (Fla. 3d DCA 1984), this Court, sitting *en banc*, held that a police officer's observation of a bulge under the clothing of an individual, which the officer in his training and experience determined to be "the outline of a firearm [,] amounted to *probable cause* to believe that the individual was carrying a concealed weapon, justifying not merely a pat-down, but a search." *Id.* at 139.

When Officer May first approached Mackey to ask him questions, the encounter was a consensual one, and no level of reasonable suspicion was required. When Officer May asked Mackey if he could conduct a pat-down search, the encounter remained a consensual one. However, when Mackey did not respond to this question and Officer May proceeded to conduct a pat-down search without Mackey's consent, the encounter became an investigatory stop, for which Officer May needed reasonable suspicion. In addition, the pat-down search itself required Officer May to have probable cause to believe that Mackey was armed with a dangerous weapon.

Mackey contends the arresting officer had no reasonable suspicion to detain him for carrying a concealed firearm. He begins by noting that it is generally not illegal to possess a firearm in Florida. Mackey then argues in his brief, relying again upon *Regalado,* that "since, under Florida law, carrying a concealed firearm is illegal only if the individual does not have a permit and since the officer had no information suggesting that defendant did not have a permit, the officer lacked reasonable suspicion to stop him for carrying a concealed firearm." Whether, as a general proposition, mere possession of a firearm is not illegal in Florida, it is beside the point. Mackey was not observed in mere possession of a firearm; rather, he was observed in possession of a *concealed* firearm, and the officer testified that he observed a "piece of the handle sticking out" of Mackey's pocket, enabling the officer to identify it as a firearm. It is the concealment of the firearm, not merely its possession, which rendered Mackey's conduct illegal, and authorized the officer's actions in this case. Moreover, Mackey'sargument necessarily overlooks the difference between an essential element of the crime and an exception, or affirmative defense, to the crime.

Mackey's argument, and the holding in *Regalado,* taken to its logical conclusion, would require that a police officer not only have reasonable suspicion of criminal activity, but reasonable suspicion of the non-existence of an affirmative defense to the crime. We decline the invitation to adopt such a holding, which is contrary to both precedent and common sense.

Affirmed on appeal to the Florida Supreme Court in *Mackey v. State*, 124 So. 3d 176 (Fla. 2013) – *see infra* at 111.

2. Reasonable suspicion to detain defendant for officer safety at drug dealer's home where defendant acts nervous and hides his hand from officer in the car

Mc Cray v. State, 177 So. 3d 685 (Fla. 1st DCA 2015)

Detention of defendant was supported by reasonable suspicion for officer safety where defendant showed up unexpectedly at drug dealers' home in the early morning hours while search warrant was being executed and defendant was acting nervous while hiding his hand in his vehicle.

Jarmen Shontane McCray appeals his conviction for unlawful possession of oxycodone asserting that the trial court erred in denying his dispositive motion to suppress evidence found during a search of his vehicle. Concluding that the search was lawful, we affirm.

On February 5, 2013, between 6:00 a.m. and 7:00 a.m., officers with the Okaloosa County Sheriff's Office served and executed a narcotics search warrant at the residence of John and Megan King. The probable cause affidavit alleged the Kings were distributing "large quantities of marijuana." Sgt. David Allen was a member of the drug task force executing the warrant. While the search was occurring, McCray, who did not live at the residence, pulled into the driveway. Sgt. Allen made contact, and McCray said he was there to visit John King. Sgt. Allen noticed McCray "seemed very nervous and he had his hand in between the driver's seat and the center console." Seeing this, the sergeant asked McCray if he had a firearm[1] or anything in the car that would get him into trouble. When McCray did not respond, the sergeant asked him to step out of the vehicle, which he did. A second officer, Investigator Rodney Owens, attended the encounter.

With McCray outside the vehicle, Sgt. Allen asked if he had any marijuana; McCray said no. Sgt. Allen then asked to search the vehicle, and McCray, in turn, asked if he had to allow the search. Sgt. Allen said no, and inquired again if there was anything in the vehicle that would get McCray in trouble. At this, McCray "took a deep sigh," "said he had some roxy's [2] [sic] in the vehicle," and allowed Investigator Owens to search it. The search yielded a napkin, found between the driver's seat and the center console area, containing oxycodone pills.

On appeal, McCray contends there was no valid concern over officer safety when he arrived at the residence being searched because he did nothing to reasonably raise such concern. Therefore, his detention was unlawful, and his consent to the vehicle search was not voluntary.

Here, McCray showed up unexpectedly at the home of known drug dealers—controlled drug buys from one or both residents had been conducted previously—while members of a law enforcement drug task force were searching the home under a warrant. It was between 6:00

and 7:00 in the morning—an odd time for a casual visit. Upon encountering McCray in the driveway of the home being searched, Sgt. Allen observed McCray acting nervous and, notably, hiding his hand between the driver's seat and the center console of the vehicle. When asked whether he had any firearms or marijuana in his possession, McCray did not respond, reasonably raising concern. Considering the totality of circumstances facing Sgt. Allen at that moment, we conclude a prudent, experienced law enforcement officer would be concerned for his safety. As such, the sergeant was justified in asking McCray to step out of the vehicle.

Finally, McCray's consent to a search of his vehicle once lawfully detained was valid. "[W]here the validity of a search rests on consent, the State has the burden of proving that the necessary consent was obtained and that it was freely and voluntarily given, a burden that is not satisfied by showing a mere submission to a claim of lawful authority."

3. <u>No reasonable suspicion to detain defendant where BOLO description was vague and defendant was merely in the vicinity</u>

Croissy v. State, 184 So.3d 570 (Fla. 4th DCA 2016)

<u>Where a suspect is found 300 feet from a vehicle sited from a BOLO, standing in the street, talking to a resident and only vaguely matching the description in the BOLO, the pat down and subsequent search can only be executed if there is reasonable suspicion that the defendant is armed or will flee.</u>

The defendant appeals his convictions and sentences for tampering with evidence, possession of methamphetamine, possession with intent to sell cannabis over twenty grams, and use or possession of drug paraphernalia. He argues the trial court erred in denying his motion to suppress. We agree and reverse.

The arresting officer testified that he received a BOLO from another officer who was attempting to pull over a vehicle on Rosser Boulevard, after witnessing the vehicle speeding. The BOLO advised that the vehicle had pulled over on the side of Rosser Boulevard and Haylake Avenue, and provided a "vague description of two black males" exiting the vehicle. It gave no other physical or clothing description.

When the officer responded to the scene, he observed the described vehicle on the southwest corner of the intersection of Rosser and Haylake, facing the woods, with both the driver's side and passenger's side doors open and no one inside. Within a minute or two of receiving the BOLO, the officer traveled down Haylake, made a left turn onto Cohutta Street, and immediately saw a black male standing in the center of the road, approximately one block or three-hundred yards from the abandoned vehicle.

The officer pulled his vehicle up to the defendant, exited, and made contact to determine if the defendant had any knowledge of what happened with the abandoned vehicle. He asked the defendant for his name, and immediately noticed that the defendant was sweating profusely and was extremely out of breath. According to the officer, the defendant looked very suspicious because he was standing in the middle of the road trying to talk to a resident. The officer asked the defendant where he was going and where he had been. The defendant responded that he was walking home from Dreyfuss Lake. The officer asked the defendant to hold on and went to speak with the resident. The defendant was not wearing any type of athletic gear. It seemed odd to the officer that the defendant was out of breath while standing in the middle of the road.

He explained he was hanging out at Dreyfuss Lake and was walking home. He did not tell the officer what he was doing, who he was with, or any other information.

Dreyfuss Lake was approximately one mile to one-and-a-half miles from where they were located. The officer surmised that if the defendant was walking from Dreyfuss Lake to his home on Rosser Boulevard, there would be no reason for him to be on Cohutta. This fact also piqued the officer's interest.

The officer then handcuffed the defendant for his safety and that of the defendant so he could check for weapons. He told the defendant he was not under arrest, but that he was placing him in handcuffs to detain him until back-up arrived.

After handcuffing the defendant, the officer checked his pockets for weapons. He removed the defendant's cell phone and some type of cigarette wrapper and placed them on the hood of his vehicle while they waited for back-up. When the back-up officer arrived, the arresting

officer spoke to the resident again. She advised that just minutes before the defendant walked up, she saw another black male walking down the road holding a child.

While speaking with the resident, the officer observed the defendant fidgeting and reaching to grab his cell phone, which was ringing constantly. The officer walked back to his car and saw the defendant stomping on something in the road. He looked down and observed a bag containing a pinkish white rock on the ground by the defendant's feet. The officer testified the bag was not on the ground when he first made contact with the defendant. The substance field tested positive for methamphetamine. The officer placed the defendant in the back-up officer's car. When others searched the abandoned vehicle, they found more drugs matching the substance and color of the rock the officer found near the defendant's feet.

The officer did not know whether the defendant was armed, but he did have a bulge in his pocket. The bulge was the defendant's large Galaxy droid type phone, which was not in the shape of a firearm. While the officer indicated he did not search the defendant, but merely patted him down for weapons, he admitted removing the defendant's cell phone from his pocket.

Defense counsel argued there was no reasonable suspicion to detain the defendant. Alternatively, he argued that even if reasonable suspicion existed to detain the defendant, there was no reasonable suspicion the defendant was armed. The officer's removal of the defendant's phone exceeded a pat-down and became an illegal search.

The defendant argues his detention was illegal as was the search and seizure of his property. He argues that he was already in custody without probable cause when the methamphetamine was found under his foot. Alternatively, he argues the search was not justified under *Terry* since there was no proof that he had committed a crime.

The State responds that the officer had a well-founded, articulable suspicion of criminal activity to detain the defendant based on the totality of the circumstances. It asserts that temporarily handcuffing the defendant was reasonable under the circumstances because the officer was waiting on back-up and was concerned the defendant might flee. The State argues it was reasonable to search the defendant based on the bulge in his pocket and his prior

actions. The officer could also have been concerned about the second person in the abandoned vehicle, who was still at large.

But, the level of encounter changed when the officer returned from speaking with the resident, handcuffed the defendant, and began a pat-down leading to a search of his person. The question then becomes whether the officer had reasonable suspicion to detain the defendant, and to conduct not only a pat-down, but a search. The answer is no.

Here, the only description given to the officer of the two people in the car was race and gender. No other physical description, height, weight, hair, age, not even clothing, was given. The officer came upon the defendant three-hundred yards away from the abandoned vehicle as he stood in the street conversing with a resident.

Subsection (5) prohibits a person from standing in the portion of a roadway paved for vehicular traffic, but only if it is for the "purpose of soliciting a ride, employment, or business from the occupant of any vehicle." *Id.* § 316.130(5). There was no testimony that the defendant was soliciting anyone for anything. And, subsection (6) prohibits a person from standing on or near a street "for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked." *Id.* § 316.130(6). But, there was no testimony that the defendant was watching or guarding a vehicle.

Further, "violation of this section is a noncriminal traffic infraction." *Id.* § 316.130(19). This would have allowed the officer to stop the defendant to write him a citation, but nothing else. In short, the officer did not have reasonable suspicion to detain and handcuff the defendant. "Courts have generally upheld the use of handcuffs in the context of a *Terry* stop where it was *reasonably necessary to protect the officers' safety or to thwart a suspect's attempt to flee." Reynolds v. State,* 592 So.2d 1082, 1084 (Fla.1992) (emphasis added). The problem here is that there was neither an indication that the defendant was attempting to flee nor that he was armed.

The officer simply had no reasonable suspicion to detain the defendant. Placing the defendant in handcuffs constituted an unlawful stop, which was then compounded by the officer's unlawful search. While handcuffed, the officer patted the defendant down. Finding

nothing that suggested a weapon, the officer reached into the defendant's pocket and removed his cell phone and cigarette paper.

Because the detention, the pat-down, and the search were unlawful, the court erred in denying the motion to suppress. We therefore reverse the order denying the motion to suppress and remand the case to the trial court to vacate the defendant's plea.

4. **<u>No reasonable suspicion to detain defendant even if defendant was being evasive in answers to questioning where officer has no prior information about defendant and defendant did not match description of perpetrator</u>**

Reza v. State, 163 So. 3d 572 (Fla. 3d DCA 2015)

There were three robberies with assaults in Key West over a week's time. Mr. Lee was assaulted on the evening of July 8, 2009, knocked to the ground and his wallet stolen. He could only generally describe his assailants as two juvenile males on bicycles.

Officers Calvert and Leahy were sent out by the investigative unit to locate Jones and to bring him to the police department for questioning regarding the robberies. The officers went to his apartment and spoke to his mother. Although Jones was not there and she could not contact him (he had lost his cell phone the previous night), Jones's brother took them to an area where he said Jones could be found. Officer Calvert testified that Officer Leahy walked a mangrove path cut- through between two apartment complexes, and in a small open area among the trees they found Jones with another person. When the police officer asked Jones where he was the previous night, he declined to answer and declined to voluntarily come in for questioning. Officer Leahy handcuffed Jones. The officer turned to the other person who was with Jones, Tomas Reza, a 16–year–old Hispanic male. Neither officer knew him, or had any instructions regarding him. They nevertheless questioned Reza about who he was and where he had been the night before. Officer Calvert testified that Reza appeared very nervous, refused to answer questions about where he had been the previous night, and also refused to voluntarily come with them to the police station for questioning. Reza was then handcuffed and both juveniles were placed in separate squad cars and taken to the local police station. Neither Jones nor Reza resisted, and neither were read their *Miranda* rights.

***Confession # 1, Case No.2009–CF–635*. The police contacted Reza's mother and she met them at the station. In the interview room and with his mother present,[1] Reza was read his *Miranda* rights and he signed the *Miranda* waiver form. He was not handcuffed at that time. Upon questioning by Detective Haley, he made statements that indicated he participated in the Sullivan and Milone attacks. He implicated Jones as well. Immediately after the interrogation, Reza was booked on charges based on the Sullivan and Milone muggings. The time between Reza's arrest and the beginning of the interview was approximately forty-five minutes.**

***Confession # 2, 2009–CF–726*. Two weeks later, while incarcerated in the juvenile detention facility, Reza was interviewed by the detectives regarding the first victim, Mr. Lee. During this interview, Reza was read his *Miranda* rights and admitted that he and Jones had assaulted and robbed Mr. Lee. Based on these statements, Reza was additionally charged with Lee's robbery as well. The two cases[2] were transferred to adult court, as Reza had turned 17. Reza sought to suppress his statements in both cases;**

***Confession #1, Case No.2009–CF–635* While the arresting police officer may have had some suspicion that Reza was being evasive in his answers and behavior, that suspicion did not approach the level necessary to establish probable cause to detain or arrest**

Even if Reza's initial detention could be considered a consensual encounter, it did not meet the criteria for an investigatory stop because "[w]hether an officer's suspicion is reasonable is determined by the totality of the circumstances which existed at the time of the stop and is based solely on facts known to the officer *before* the stop." *Fuentes v. State,* 24 So.3d 1231, 1234 (Fla. 4th DCA 2009). In Reza's case, the officer had no prior information about Reza, did not know who Reza was when he was found with Jones, and admitted at the suppression hearing that Reza did not match the description of the perpetrators. Further, the officer could not articulate reasons for handcuffing and bringing Reza to the station other than that Reza did not look him in the eyes when he questioned him, was anxious, and refused to answer his questions. "[The] police may properly handcuff a person whom they are temporarily detaining when circumstances reasonably justify the use of such

restraint." *Reynolds v. State,* 592 So.2d 1082, 1085 (Fla.1992); *Saturnino–Boudet v. State,* 682 So.2d 188 (Fla. 3d DCA 1996). Circumstances that justify handcuffing include instances "where it was reasonably necessary to protect the officers' safety or to thwart a suspect's attempt to flee." *Reynolds,* 592 So.2d at 1084. Such circumstances were not present here. As a result of the lack of probable cause at the time of the initial detention, the trial court should have granted Reza's motion to suppress those statements arising out of the first interrogation.

Examining the totality of the circumstances, we conclude that the trial court erred by denying the motion to suppress Reza's initial confession. The State has properly admitted that there was no probable cause to detain or arrest Reza. There was minimal passage of time between the illegal arrest and confession; there were no intervening circumstances sufficient to disconnect the illegality of the detention from Reza's inculpatory statements during the initial interrogation. Reza was handcuffed and transported to the police station, placed un-handcuffed in an interview room, and was not told he was free to leave. Although he was Mirandized and his mother was present during the interview, this is not enough to overcome the coercive nature of the police encounter. We therefore reverse the trial court's order denying Reza's motion to suppress his initial confession in case number 2009–CF–635.

Confession #2, Case No. 2009–CF–726 **Reza's second confession admitting his participation in the Lee mugging was made about two weeks later while he was incarcerated at the Department of Juvenile Justice ("DJJ"). The investigating detectives' stated reasons for wanting to interrogate Reza in the Lee matter was the crime's similarity and proximity in time to the Milone and Sullivan offenses. Reza was brought to speak with the detectives at the detention facility. The detective turned on a digital recorder, read Reza his *Miranda* rights, and Reza agreed to speak with the detectives. Where a confession is obtained after the administration of the *Miranda* warnings, however, the State must demonstrate by a preponderance of the evidence that the defendant knowingly and intelligently waived his or her privilege against self-incrimination and the right to counsel, especially where the suspect is a juvenile**

Keeping the *Ramirez* factors in mind, the record indicates the *Miranda* warnings were properly administered. Although the detectives did not secure a written *Miranda* waiver prior to the second interrogation, this is not fatal to the waiver analysis.

Early into the second interrogation, Reza asked for his mother and became emotional about not being able to speak with her. The officers did not ask why he wanted to see his mother, and repeatedly told Reza that they could not arrange for him to see her. The State asserts that, similar to the right to remain silent, police must cease questioning only if the juvenile expressly conditions his participation on the presence of a parent. On this record, we find that Reza's statements that he wanted to see his mother were equivocal and not an invocation of his right to remain silent. *See Deviney v. State*, 112 So.3d 57, 75 (Fla.2013) ("Although recommended by this Court, police are not required to ask clarifying questions when a suspect equivocally invokes his or her right to remain silent.... to require the police to ask clarifying questions in the face of an ambiguous invocation of the right to remain silent would pose too great an impediment on law enforcement's efforts and ability to thwart crime and promote public safety.

Considering the remaining *Ramirez* factors, we find the record demonstrates that Reza's age, experience, education, background, and intelligence were such that he could read and write English, he was aware of the penalties he faced, he understood his situation and chose to voluntarily speak with the detectives about the Lee mugging. Although the juvenile detention facility is an inherently coercive environment, there is no compelling evidence of police misconduct or coercive interrogation tactics. Reza was not worn down by improper interrogation tactics or lengthy questioning or by trickery or deceit.

V. SEARCH AFTER INVESTIGATORY STOP

1. Must be based on reasonable belief that defendant is armed

D.H. v. State, 121 So. 3d 76(Fla. 3d DCA 2013)

In order for an investigatory stop to include a pat down for weapons, there must be specific particularized suspicion that the individual is a threat to officer safety; a

juvenile who does not flee, has furtive movements, and responds to police commands does not fufill this (even in a high crime area i.e. Miami Gardens).

Before ROTHENBERG, EMAS, and FERNANDEZ, JJ.

Based on several recent gang-related shootings in the Cloverleaf area of Miami Gardens, a "high crime area," the Miami Gardens Police Department began covertly monitoring the area to prevent criminal activity, particularly violent crime. At approximately eleven o'clock on the night D.H. was arrested, Officer Rosado was in a parking lot in the Cloverleaf area in an unmarked patrol car when he observed three or fur juvenile males in the parking lot only a few feet from where Officer Rosado's patrol car was located.

After observing the group for a while, Officer Rosado exited his vehicle, and immediately smelled what he recognized as burnt marijuana emanating from the area near the group of juveniles. Officer Rosado testified that he was familiar with the smell based on his years of training and experience in law enforcement. He did not see anyone smoking marijuana, passing marijuana, concealing baggies, or using a lighter, although he did notice a "puff of smoke" hanging in the air near the juveniles. As he approached the group, the smell of marijuana became stronger.

Without asking any questions or investigating the marijuana smell further, Officer Rosado requested back-up assistance and conducted a pat-down search of the individuals to check for weapons due to his safety concerns, which were primarily motivated by the area's history of gun-related violence. During the pat-down, Officer Rosado felt a hard bulge in D.H.'s left front jacket pocket. Because Officer Rosado believed the object he felt was a firearm, he placed D.H. on the ground and detained D.H. and two other juveniles at gunpoint until backup arrived. When backup arrived, Officer Rosado continued the search, handcuffed D.H., and verified that the bulge in D.H.'s jacket pocket was in fact a .38 caliber revolver-style pistol. D.H. was arrested, and a search incident to the arrest revealed a small baggie of marijuana in D.H.'s pocket as well. D.H. was charged with (1) carrying a concealed firearm, (2) being a minor in possession of a firearm, and (3) possession of cannabis.

D.H. does not dispute, and we find, that the police encounter in this case was an investigatory stop supported by reasonable suspicion. Investigatory stops, however, are only for the

limited purpose of discovering the suspect's identity and briefly investigating the circumstances supporting the reasonable suspicion. *Id.* Should the detainee's responses or actions during a limited investigatory stop give rise to heightened suspicion rising to the level of probable cause, the stop can blossom into an arrest and search based on that probable cause.

To justify a pat-down search during an investigatory stop, however, the officer must have reasonable belief that the suspect is armed. § 901.151(5). Such reasonable belief cannot be based on a mere suspicion or hunch, but must be supported by some objective basis such as aggressive activity or seeing a bulge prior to the pat-down.

Here, Officer Rosado approached the young men based on the smell of marijuana in the air. Although this observation constituted reasonable suspicion that someone in the group possessed marijuana justifying the investigatory stop, Officer Rosado exceeded the scope of the investigatory stop when he conducted a pat-down search of D.H. because a pat-down search during an investigatory stop may only be conducted based on an objectively reasonable belief that D.H. was armed and dangerous.

Whether or not an officer reasonably believes that a suspect is armed and dangerous must be determined by the totality of the circumstances. *Hernandez v. State,* 784 So.2d 1124, 1126 (Fla. 3d DCA 1999) (citing *Alabama v. White*, 496 U.S. 325, 330–31, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990)). The relevant circumstances in the instant case are that: it was late at night; the area was dark; the location was known for gun-related crimes; and the officer was outnumbered by either three or four to one. However, the record also reflects that there was nothing about D.H.'s appearance, behavior, or manner, or about the situation itself that led Officer Rosado to believe that D.H. was armed, and it is undisputed that D.H. did not attempt to flee as Officer Rosado approached. D.H. was cooperative, he made no furtive movements, and Officer Rosado saw no "bulge" or any other indication that D.H. was armed or dangerous. Furthermore, at the time of the pat-down, the only crime Officer Rosado suspected the boys had committed was possession of marijuana, an activity that is not considered inherently dangerous or which would justify an inference that any of the juveniles was armed or dangerous.

Based on the totality of the circumstances, including that D.H. exhibited no suspicious behavior to justify a reasonable belief that he was armed or dangerous, a pat-down search conducted for officer safety was not justified in this case.

The State claims that there was probable cause to arrest D.H. based on the smell of burnt marijuana coming from the group of juveniles and the smoke lingering over their heads. We disagree. The mere scent of marijuana coming from a group of individuals does not by itself give an officer probable cause to arrest and search any particular individual in the group. A finding of probable cause must be particularized to a specific individual. *See Ybarra v. Illinois,* 444 U.S. 85, 91, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979).

2. Driver who reaches into bag to retrieve ID after lawful traffic stop does not create reasonable suspicion that driver is armed and dangerous

State v. Jones, 203 So. 3d 972 (Fla. 2d DCA 2016)

No reasonable suspicion that defendant was armed where defendant simply reached into bookbag to retrieve ID requested by officer and where defendant did not position his body in a manner consistent with officer's command.

Mr. Jones was riding his bicycle at night without proper lighting. This is a traffic infraction. *See* § 316.2065(7), Fla. Stat. (2014). Officer Vasconi testified that she and another officer stopped their patrol car beside Mr. Jones and exited the car. Officer Vasconi asked Mr. Jones for his identification. She stood right behind Mr. Jones, and the other officer stood next to her. After advising Officer Vasconi that his ID was in his bookbag, Mr. Jones shifted his bookbag from his back to his side so that he could search the front pocket of his bookbag. Mr. Jones was seated on his bicycle with his body turned away from the officers, although he turned his head so that he was looking at Officer Vasconi. Officer Vasconi claims that, as a result, she could see neither Mr. Jones' hands nor his bookbag. She then handcuffed Mr. Jones because she was "concerned for [her] safety." Officer Vasconi observed no criminal behavior and saw no bulges in Mr. Jones' clothing or in his bookbag. She seized the bookbag and, only then, smelled raw marijuana. She opened the bookbag and found six baggies of marijuana, $308 in cash, and a pocket scale. She arrested Mr. Jones.

The State charged Mr. Jones with one count of possession with intent to deliver or sell cannabis and one count of possession of drug paraphernalia. *See* §§ 893.13(1)(a)(2), .147(1), Fla. Stat. (2014). Mr. Jones moved to suppress the evidence seized during the traffic stop. Officer Vasconi was the only witness at the hearing; the other officer did not testify. The trial court granted the motion. On appeal, the State contends that the trial court erred in failing to rule that the officers legally stopped Mr. Jones, had a reasonable suspicion that he was armed and dangerous, and developed probable cause to search the bookbag after smelling marijuana. We disagree.

Similarly, Mr. Jones' action of simply reaching into the front pocket of his bookbag to retrieve the identification requested by Officer Vasconi did not create a reasonable suspicion that Mr. Jones had a weapon or otherwise posed a reasonable concern for officer safety. No one suggested that Mr. Jones acted in a threatening manner. His alleged failure to position his body in a manner consistent with Officer Vasconi's command also did not create a reasonable suspicion that Mr. Jones was armed or dangerous. Without more, Officer Vasconi's concern with the position of Mr. Jones' body did not justify a search of Mr. Jones' bookbag. Our record does not suggest that the officers could not move towards Mr. Jones to see what he might pull from his bookbag.

Officer Vasconi observed no criminal behavior, saw no bulges on his person, and did not detect the odor of marijuana until after she seized the bookbag. We find no abuse of discretion in the trial court's order suppressing the evidence. Therefore, we affirm the order on appeal.
Affirmed.

(2) CONSENSUAL ENCOUNTER

A. PERSON FEELS FREE TO LEAVE

1. Consensual encounter where officer approaches defendant on street, does not display weapon, does not touch defendant, and does not engage in threatening conduct

***State v. Bell*, 122 So. 3d 422 (Fla. 2d DCA 2013)**

A consensual encounter (officer approaches a man and woman he believes who are involved in some type of domestic situation, in uniform, without his weapon drawn or touching either person) with two individuals can yield a voluntary consent to a search, which may yield non-suppressible contraband.

In this prosecution for possession of more than twenty grams of marijuana, the State appeals an order suppressing evidence found on the person of Glenn C. Bell. Because the officer had a consensual encounter with Bell during which Bell consented to a search, we reverse the suppression order and remand for further proceedings.

Bell filed a motion to suppress the marijuana found on his person when Officer Cope searched Bell on December 23, 2011. At the suppression hearing, a sergeant with the St. Petersburg Police Department testified that while she was off duty she observed a potential domestic disturbance as she was driving in St. Petersburg on the afternoon of December 23, 2011. Bell was on foot, and a female was driving a vehicle that appeared to be following Bell. Bell and the woman were yelling back and forth at each other. The woman pulled into a driveway, and they continued to argue in the driveway. The yelling attracted the attention of onlookers, and the sergeant knew that neither Bell nor the woman lived at that location. The sergeant called dispatch and reported the incident.

Officer Cope responded to the scene, parked his cruiser, and approached Bell on foot. Officer Cope, who was in uniform, did not put his hands on Bell and did not pull out his gun. Officer Cope said to Bell, "Can I speak to you?" When asked if those were the words he used, Officer Cope testified, "Yes, that's how I generally stop people." Although he used the word "stop," Officer Cope acknowledged that he had no suspicion of criminal activity that would support a detention.

Bell agreed to speak with the officer. Officer Cope explained that he was there for a "potential domestic situation" and he "was trying to make sure that nobody was harmed, there's no physical violence between anyone." As they were speaking, Officer Cope noticed Bell fidgeting with his hands and putting them behind his back. Officer Cope asked Bell not to do that and asked whether Bell was carrying any weapons. Bell said he was not. Officer Cope then asked, "Can I search you?" Bell said yes, and Officer Cope found marijuana in a pocket of Bell's shorts.

A consensual encounter involves minimal police contact in which the individual may voluntarily comply with or ignore the officer's request. *Id.* The standard to determine if a consensual encounter or a seizure occurred is whether a reasonable person would feel free to leave, considering the totality of the circumstances. *See id.* at 978; *P.W. v. State,* 965 So.2d 1197, 1199 (Fla. 4th DCA 2007). Officer Cope explained how he asks citizens to speak to him. The fact that he asked if he could talk with an individual, thereby getting the person to stop, does not mean the officer's action constituted an investigatory stop in the constitutional sense. The focus is on whether a reasonable person would feel free to leave.

Here, none of those factors are present. Officer Cope approached Bell on the street, did not display his weapon, did not touch Bell, and did not engage in any other threatening conduct. Officer Cope asked, "Can I speak to you?" Bell agreed to speak with the officer.

Similarly, there is no evidence that Officer Cope engaged in any coercive conduct during the consensual encounter. Further, there is no evidence that Bell felt that he did not have a choice when the officer asked for consent to search. Based on the totality of the circumstances, we conclude that Bell's consent to search was voluntary.

Because Officer Cope engaged Bell in a consensual encounter during which Bell gave a voluntary consent to search, the trial court should have denied Bell's motion to suppress. Therefore, we reverse the suppression order and remand for further proceedings.

B. WELFARE CHECK

1. Concern for vehicle occupant's safety validates a consensual encounter

Dermio v. State, 112 So. 3d 551 (Fla 2d DCA 2013)

An officer may transform an investigative stop (provoked by a vehicle parked outside of a bar at 3:30AM, with the engine on, lights on, driver in passenger seat with his head cocked, phone pressed against head, with the appearance of sleep or unconsciousness) into a warrantless entry into a vehicle when the welfare of the occupant is in question (officer repeatedly asked for the occupant to roll down their window and the officer received no responses.

In March 2010, a Manatee County sheriff's deputy came across Dermio's car parked in the parking lot of a local bar around 3:30 in the morning. The car's motor was running and the lights were on. The deputy pulled in behind Dermio's car and turned on her emergency lights. Because there was a barrier in front of Dermio's car, he would not have been able to back out of the parking space without hitting the deputy's car. As the deputy got out of her car and walked up to Dermio's car, she noticed that Dermio, who was sitting in the driver's seat, had his head cocked to the left side and had a cell phone lodged between his shoulder and cheek. However, the deputy noted that Dermio's eyes were closed and that he appeared to be asleep. The deputy shined her flashlight in the window, but when Dermio did not respond, the deputy tapped her flashlight on the window. At that point, Dermio awoke but he seemed "really out of it" and incoherent. The deputy then asked Dermio to roll down the window. When Dermio did not respond, the deputy identified herself as being with the sheriff's office and asked him a second time to roll down the window. Still Dermio did not respond. After the deputy made a third request to roll down the window with no response and because Dermio still appeared to be incoherent, the deputy testified that she opened the door to the car because she was concerned for Dermio's safety. Upon opening the door, the deputy smelled the odor of burnt marijuana and observed a metal pipe on the center console. Eventually, Dermio's car was searched, and in addition to the pipe, a firearm, marijuana, and varying types and amounts of other drugs[2] were located. Dermio was transported to the sheriff's office, and after being advised of his *Miranda*[3] rights, he made incriminating statements.

In cross-examination, the deputy acknowledged that she had observed no traffic infractions and that Dermio's car was legally parked. When defense counsel inquired why the deputy conducted "an investigatory stop," the deputy responded that the "original purpose was to make sure that [Dermio's] safety was okay, that he was fine. But also in my head was this is a possible DUI." The deputy further testified that prior to opening the door to Dermio's car, she did not smell any odor of alcohol or marijuana.

In the order denying Dermio's motion to suppress, the court found that the deputy who initially discovered Dermio approached his car to determine if he needed medical attention and that "[the deputy] investigated further 'for his safety.' " The circuit court, relying

on *Mincey v. Arizona,* 437 U.S. 385, 392–93, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978), held that the deputy's conduct did not violate the Fourth Amendment prohibition against unreasonable searches and seizures because officers may make a warrantless entry and search where they believe someone is in need of immediate aid.

Addressing Dermio's confession, the circuit court credited the detective's testimony that while she told Dermio that she would speak at his sentencing hearing, she did not make any promises to him. The circuit court also noted that there was no evidence of "promises to interact with the State and no quid pro quo."

Here, the deputy clearly testified that based on the time, location, Dermio's appearance, the fact that the car motor was running, and the fact the lights were on, she was concerned for Dermio's safety. The deputy's classification of the stop as "investigatory" in nature does not control our disposition because it is clear the deputy was initially conducting a welfare check. Thus the interaction began as a consensual encounter. *See Greider,* 977 So.2d at 792.

We are cognizant that the position of the deputy's car prevented Dermio from leaving and that the deputy had activated her emergency lights. But in this case, those factors do not lead us to conclude that a seizure occurred when the deputy initially approached because Dermio was asleep and was thus not aware that the deputy had pulled in behind him and activated her emergency lights. Dermio simply had not submitted to a display of police authority. *Cf. G.M. v. State,* 19 So.3d 973, 978–83 (Fla.2009) (discussing cases involving activation of emergency lights or police officer's blocking a person's vehicle and holding that appellant was not seized until he became aware of and submitted to police authority).

This court has repeatedly held that where an officer orders an individual to exit a vehicle, an investigatory stop occurs. *See, e.g., State v. Jimoh,* 67 So.3d 240, 241–42 (Fla. 2d DCA 2010); *Parsons v. State,* 825 So.2d 406, 408 (Fla. 2d DCA 2002); *Danielewicz v. State,* 730 So.2d 363, 364 (Fla. 2d DCA 1999). We have extended that principle to situations where an officer commands an occupant of a car to roll down the window. *See Greider,* 977 So.2d at 792–93.

However *Greider* does not control this case because there, during the officer's initial welfare check, the officer's concern for the occupant's safety had subsided and the officer testified he "didn't think any criminal activity had occurred or was about to occur." *Id.* at 792. In contrast, the deputy's concern for Dermio's safety in this case had not yet been alleviated because Dermio continued to be incoherent and "out of it." Consequently, the deputy's requests for Dermio to roll down the window did not transform the consensual encounter into an investigatory stop.

For the same reason, we do not believe the deputy's conduct in opening Dermio's car door transformed the consensual encounter into an investigatory stop. Rather, we hold that under the circumstances of this case, the deputy's opening of the car door was merely a continuation of the welfare check.

Based on the deputy's concern for Dermio's safety and the fact that Dermio was unresponsive to the deputy's attempts to communicate with him, we hold that no unreasonable search or seizure occurred prior to the deputy opening the car door and smelling the odor of marijuana. The deputy was merely conducting a welfare check and her conduct did not violate constitutional principles. Accordingly, we affirm the denial of that portion of the suppression motion dealing with the search and seizure issue.

C. HIGH CRIME AREA

1. Multiple officers stop driver & ask for ID – do not block his egress – do not use lights or sirens – weapons not displayed

State v. Meachum, 195 So. 3d 417 (Fla. 1st DCA 2016)

A police encounter (3 officers present) with a vehicle in a high crime area that they observe acting suspiciously may be a consensual encounter and not a seizure, where the officers ask for identification but do not block the drivers egress, use their lights or sirens, or draw their weapons.

On October 26, 2014, three officers of the Panama City Police Department were on patrol in an area known to have a high rate of drug use, prostitution, and other criminal activity. The officers, who were in a single police cruiser, observed a vehicle in the parking lot of a pawn

shop adjacent to Bambi's Dollhouse, a night club. The vehicle had its lights on and was in a parking space, backed against a fence on the east side of the lot. The officers observed the vehicle move from that parking space to pull behind some parked cars, and noted that the driver did not exit the vehicle. The vehicle then turned sideways and stopped in the middle of a route to exit the parking lot.

Officer Doheny approached the driver's side of the vehicle and asked for Meachum's driver's license. Officer Doheny noticed a strong odor of alcohol and observed that Meachum was shaking and sweating as he fumbled through his wallet. Officer Doheny handed the license to Corporal Nichol, who returned to the police cruiser to conduct a warrant search. Based on Meachum's actions and the odor of alcohol, Officer Doheny determined Meachum was under suspicion of driving under the influence, and asked him to exit the vehicle. While Meachum was exiting the vehicle, Officer Tholke, who was on the passenger's side, observed a crack pipe on the driver's side floorboard. During a subsequent search of the vehicle, the officers located crack cocaine between the driver's seat and the center console. Meachum was arrested and charged with possession of cocaine and paraphernalia.

As a basis for its conclusion that the encounter was not consensual, the court stated only the following: that the patrol car was occupied by three officers, that one of the officers went to the rear of the vehicle to obtain tag information while another approached and requested Meachum's driver's license to conduct a warrant search, and that one officer went to conduct further investigation of other persons. Having concluded that the encounter was not consensual, the court declined to further analyze the facts or circumstances of the incident.

On appeal, the State argues the trial court erred when it concluded the encounter between the officers and Meachum was not consensual. We agree.

Here, without addressing the circumstances beyond the officers' initial approach and request for Meachum's license, the trial court concluded that the entire encounter between Meachum and the officers was not consensual. In so ruling, the trial court made no

findings that the officers blocked Meachum's egress from the parking lot, used their lights or sirens, drew their weapons, or otherwise engaged in conduct that would communicate to a reasonable person that he was not free to depart.

***See Golphin v. State,* 945 So.2d 1174, 1193 (Fla.2006) (holding that an otherwise consensual encounter does not mature into a seizure merely because police request an individual's license for the purpose of conducting a warrant search); *Tedder v. State,* 18 So.3d 1052, 1055 (Fla. 2d DCA 2008) ("In the absence of any signs of coercion, the officer's retention of Tedder's driver's license while asking additional questions ... did not in itself transform the consensual encounter into a detention."). Accordingly, we find that the court's limited findings were "insufficient to raise an inference of submission to police authority." *Triana,* 979 So.2d at 1044.**

Because we conclude the trial court's findings were not supported by competent, substantial evidence, and were insufficient to support a conclusion that the encounter was non-consensual, we reverse the order granting the motion to suppress, and remand for the trial court to resolve the factual disputes as to the circumstances that followed the initial encounter. *See State v. Moore,* 791 So.2d 1246, 1250 (Fla. 1st DCA 2001) (remanding for "additional factual findings and a redetermination, in light of those factual findings, of the legal issues raised in the motion to suppress").

REVERSED and REMANDED.

2. **<u>Officer asks to speak to defendant twice – path not obstructed – weapons not displayed</u>**

State v. Albert, 193 So.3d 7 (Fla. 5th DCA 2016)

<u>An encounter with police will be deemed to be consensual if in a high crime area the officer requests twice that the individual come to the patrol car, does not obstruct their path, and does not display a weapon (however defendant claimed officer threatened to use a K-9 unit, court did not believe the statement)</u>.

Albert was charged with possession of cocaine under twenty-eight grams, possession of hydromorphone, and possession or use of drug paraphernalia. The charges stem from an encounter with Officer Jeremy Pergerson, a K–9 officer with the Titusville Police

Department. Albert filed a motion to suppress the evidence that Pergerson obtained from Albert during their encounter.

On March 9, 2014, while patrolling an area he considered a "high crime" and "high drug" area, he identified Albert and other individuals at a residence. Based on Pergerson's patrol duties and prior investigations, he testified that he knew drug activity occurred at the residence on a daily basis. Pergerson explained that Albert had something in his hand that he appeared to be picking at, while a woman standing near Albert was looking at whatever he held in his hand. The officer further testified that one of the individuals noticed him approach, and alerted Albert to Pergerson's arrival. According to Pergerson, Albert immediately became nervous, shoved whatever he was holding into his pockets, and began to walk away.

Pergerson believed Albert was involved in a drug transaction, but admitted that he did not have enough information at that time to justify conducting an investigatory stop to detain Albert. While staying between his marked patrol car and the sidewalk, Pergerson asked Albert to come over to him. Albert asked Pergerson why he was bothering him and said he was not doing anything wrong. During the encounter, Pergerson was the only police officer present, he did not block Albert's path, did not follow him on foot, did not activate the police car's siren or lights, and did not draw his pistol or any other weapon. The officer did not tell Albert that he was not free to leave, nor did he ask him to remove anything from his pockets. After asking him a second time to come over, Albert walked over to the officer. When Albert approached him, Pergerson detected the odor of marijuana on Albert and observed in plain view a cigar tube that had been cut in half protruding from Albert's pocket. Following those observations, Pergerson searched Albert and discovered contraband that led to his arrest.

Albert testified at the hearing that he was compelled to walk toward Pergerson because the officer threatened to release the K–9 from the patrol car if Albert did not comply. According to Albert, the officer kept touching a button or control on his belt, which Albertbelieved could be used to let the K–9 out of the car. Though Pergerson had his Dutch Shepherd dog

in his patrol car, a marked K–9 unit, he denied ever threatening to release the dog. As far as Pergerson was concerned, if Albert did not respond he would have been free to walk away.

The trial court found the officer's testimony more credible, and determined that no such threat or show of force had occurred. The court found that the totality of the circumstances were such that a reasonable person in Albert's position would have felt free to leave or decline Pergerson's request and that Albert was not detained by Pergerson. The court then concluded that there had been no seizure. Thus, the officer's observations during the consensual encounter provided a basis for the search which led to discovery of the evidence. For those reasons, the trial court denied the motion to suppress.

D. CONSENSUAL ENCOUNTER TURNED INTO INVESTIGATORY STOP

1. Officer secures defendant's pocket knife and began protective patdown

Davis v. State, 67 So. 3d 1125 (Fla. 5th DCA 2011)

Simple possession of a pocketknife and no subsequent criminal activity do not yield reasonable suspicion for a pat down (transforming a consensual encounter into an investigatory stop).

Takerry Davis timely appeals his judgment and sentences for possession of drug paraphernalia, possession of twenty grams or less of cannabis,[2] and possession of a concealed weapon by a felon.

The State's evidence established that on November 24, 2009, at approximately 2:46 p.m., Officer McConnell observed several individuals in the courtyard of a "complex" located in a "high-crime area." McConnell stopped his patrol car, got out, and began to walk toward the individuals. As he neared the group, Davis began to walk away. McConnell caught up to Davis and asked if he could briefly talk to him. Davis stopped and started talking to the officer.

During the conversation, Officer McConnell observed a pocketknife clipped into one of Davis' pants pockets. McConnell "secured" the pocketknife and "considered it necessary to patdown for weapons just to ... for my own safety...." Officer McConnell felt along the outside of a nylon bag being carried by Davis. The officer felt what he immediately recognized as a

set of brass knuckles in the bag. The cannabis and drug paraphernalia were subsequently found on Davis' person.

When questioned by defense counsel, Officer McConnell acknowledged that the patdown was done without Davis' consent and that there was nothing unlawful about the pocketknife. Here, the contact between Officer McConnell and Davis began as a consensual encounter, but was transformed into an investigatory stop when the officer secured Davis' pocket knife and commenced his "protective patdown." Accordingly, to justify this investigatory stop, the State was required to show that Officer McConnell had a reasonable suspicion that Davis had committed, was committing, or was about to commit a crime. *Popple; see also Kramer v. State,* 15 So.3d 790 (Fla. 5th DCA 2009).

The State contends that because McConnell had already found Davis to be in possession of one weapon, the pocketknife, it was reasonable for him to suspect Davis might have additional weapons. We reject the State's argument. Possession of a pocketknife, without more, does not create a reasonable suspicion that a citizen is involved in criminal activity. In the instant case, there was no evidence that Davis had made any furtive movements, or engaged in any conduct that was threatening in nature. The pocketknife was apparently openly visible and its possession was entirely lawful. To accept the State's argument would mean that an officer could "stop and frisk" any individual observed in possession of a pocketknife even where there was no evidence suggesting that criminal activity was afoot.

On remand, the trial court is directed to vacate the judgment and sentence and grant the motion to suppress.

REVERSED and REMANDED.

2. **Officer touches defendant to check heart rate and temperature**

Lewis v. State, 143 So. 3d 998 (Fla. 4th DCA 2014)

Consensual encounter turned into investigatory stop when officer touched defendant to gain information about his heart rate and temperature.

The defendant argues the trial court erred in denying his motion to suppress because law enforcement exceeded a consensual encounter with the defendant without reasonable suspicion.

On December 22, 2010, the defendant entered a food mart wearing a bright-yellow knit face mask and carrying a black handgun. He placed a bag, resembling a lady's purse, on the counter and demanded money. The clerk thought the defendant was familiar with the store because he pointed the gun precisely where money was held for the next shift. The clerk gave the money to the defendant, who exited the store and went east.

A witness, pulling out of a gas station across the street, saw the defendant approach the food mart, pull the yellow mask over his face, and enter the store. The witness called 911. He watched the defendant leave the store and go east.

The first deputy on scene met with the two clerks. One of them showed the deputy the direction in which the suspect left. The deputy issued a BOLO and began searching for the suspect. The deputy saw a male fitting the suspect's physical description, but wearing different clothing. The deputy shined his searchlight on him. Because he did not seem startled and did not take flight, the deputy continued on his way.

The second deputy blocked the defendant's path with his vehicle, stepped out of the car, and approached him. He announced his presence and said: "Hey, come over here; I'd like to talk with you." The defendant complied.

Upon making contact, the deputy placed his hands on the defendant's chest and back, admittedly to see if the defendant's heartbeat was elevated or if his shirt was hot or cold. The defendant told the deputy that his cousin drove him home to get money, and he was walking back to McDonalds to meet his cousin. At this point, the deputy felt his suspicion had been raised enough to detain the defendant. He placed the defendant in the back of his patrol car to await a show-up.

The trial court denied the motion to suppress, finding that the defendant was not detained and his statements to the second deputy were part of a consensual encounter. The court also

found that the first deputy's identification of the defendant in the back of the police car need not be suppressed because the initial stop was legal. The court, however, suppressed the defendant's statements to the first deputy because he was not read *Miranda* warnings.

There, deputies were patrolling a high-crime area when they recognized two individuals, one of whom was Copeland. *Id.* at 84. The deputies spoke with them until one of the deputies noticed a bulge in Copeland's pocket and squeezed it. *Id.* After discovering that it was not hard or metallic, the deputy asked what the object was. *Id.* Copeland responded that it was "reefer," and was subsequently arrested for possession of marijuana. *Id.*

The second deputy testified that his interaction with the defendant was nonchalant and consensual. He asked the defendant to approach for questioning. The defendant complied. But the consensual nature of the encounter ceased when the deputy touched the defendant's chest and back, admittedly to gain information about his heart rate and temperature. While these determinations would, and did, raise the level of the deputy's suspicion, they also converted the consensual encounter into a stop.

The first deputy testified that once he saw the defendant in the back of the police car, he recognized him as the man he had seen earlier. The defendant's answers to his questions gave him the idea to go back and search the bushes. It is therefore unlikely that the deputy would have returned to the defendant's prior location to search without the benefit of the unlawful stop and his questioning of the defendant. For this reason, the trial court should have suppressed the evidence found by the bushes.

3. Officer grabs sweater held by defendant

B.L. v. State, 127 So. 3d 552 (Fla. 4th DCA 2012)

Where an LEO shines a spotlight on two potential suspects, approaches them and grabs a jointly possessed item (a sweater not immediately identifiable as dangerous or contraband), a seizure has taken place and the encounter has gone from consensual to an investigatory stop.

The arresting officer, Officer M.D., testified during the suppression hearing. He explained that on the night B.L. was arrested, he and another officer were parked at the northwest corner of a park observing those who entered the park after dark.

Officer M.D. noticed three people enter the park. He shined the spotlight attached to his vehicle on them and approached. Only his spotlight, and not his sirens or flashing lights, was activated. As he approached, he recognized the three people were juveniles. He said, "I need to speak with you for a minute." While he was still about five feet away from the juveniles, he noticed a sweatshirt being handed by B.L. to his female companion. He explained that his response to the circumstances was: "Whoh, what are you doing?" He further explained:

I didn't know why [B.L.] was handing a sweatshirt over to the female, for what reason, I don't know. To allay my fears if anything was going on that shouldn't have been going on, I just went and grabbed it and said, hold on to that. When I grabbed it, I felt a large metal object.

When the sweatshirt was grabbed, both B.L. and the female had their hands on the sweatshirt. As soon as Officer M.D. grabbed the sweatshirt, he felt that it contained a metal object, which he believed was a gun. Upon uncovering the object, he realized it was a knife. At that point, he ordered the three juveniles to get down on the ground.

Officer M.D. testified that nothing, prior to touching the sweatshirt, indicated that a weapon was present. However, he testified that in the past month he had experienced a similar situation in the same park: a female stopped in a similar manner was carrying a .22 caliber handgun.

The State's theory was that the encounter was consensual and that B.L. began to abandon or actually abandoned the property. Essentially, the State claimed that the seizure was proper because it violated the rights of the female, rather than B.L., and therefore, a motion to suppress evidence initiated by B.L. could not properly be granted because he did not have a privacy interest in the sweatshirt. The trial court agreed and denied the motion, explaining that B.L. was in the process of abandoning the sweatshirt with the knife in it and therefore did not have standing to raise a constitutional violation of the female's rights.

Standing

The State argued below and before this court that B.L. was in the process of abandoning the sweatshirt when Officer M.D. seized it. Regarding the abandonment argument, we note that

for Fourth Amendment analysis, it is the expectation of privacy that is controlling. We have said, "Implicit in the concept of abandonment is a renunciation of any reasonable expectation of privacy in the property abandoned." *State v. Schultz,* 388 So.2d 1326, 1329 (Fla. 4th DCA 1980) (citation omitted) (internal quotation marks omitted).

Because B.L. had not yet let go of the jacket, he retained some control and possession of it. Therefore, his reasonable expectation of privacy had not yet been relinquished. As a result, B.L. did have standing to contest the seizure of the sweatshirt and subsequent search.

Nature of Encounter: Consensual or Investigatory

Whether an encounter rises to the level of an investigatory stop or remains a consensual encounter is a question of fact. *O.A. v. State,* 754 So.2d 717, 719 (Fla. 4th DCA 1998).

Three levels of police-citizen encounters exist, ranging from a consensual encounter, to an investigatory stop, to an arrest. *Gentles v. State,* 50 So.3d 1192, 1196 (Fla. 4th DCA 2010). Investigatory stops require articulable suspicion; arrests require probable cause. *Id.* at 1197. A consensual encounter does not invoke constitutional safeguards. *Popple v. State,* 626 So.2d 185, 186–87 (Fla.1993). Because here the State conceded that Officer M.D. did not have reasonable suspicion to exceed a consensual encounter and because the record reflects no articulated reasonable suspicion, the encounter would be improper if it transitioned into an investigatory stop. *Gentles,* 50 So.3d at 1198. Whether a police-citizen encounter has transitioned from consensual into investigatory is determined by the totality of circumstances. *O.A.*, 754 So.2d at 720.

If an officer uses his or her authority to restrict an individual's freedom, then the interaction is not consensual and requires a minimum of reasonable suspicion. *Popple,* 626 So.2d at 187–88. Illuminating individuals with a police vehicle's spotlight may increase the level of restrictiveness. *Leroy v. State,* 982 So.2d 1250, 1253 (Fla. 1st DCA 2008). In *Leroy,* the First District explained that when an officer "lit up" a suspect's vehicle and approached in a confined space the suspect was detained. *Id.* at 1252. This court has previously said that use of a spotlight or flashlight is one factor to be considered in evaluating whether a seizure has

occurred, but this factor alone is not dispositive. *See Smith v. State,* 87 So.3d 84 (Fla. 4th DCA 2012); *State v. Goodwin,* 36 So.3d 925 (Fla. 4th DCA 2010).

Physical touching or grabbing of an individual's person or possessions will also raise the level of restrictiveness. *See United States v. Mendenhall,* 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980); *Stephens v. State,* 656 So.2d 531, 532 (Fla. 2d DCA 1995). In *Copeland v. State,* 717 So.2d 83 (Fla. 1st DCA 1998).

Evaluating the totality of circumstances here, we conclude that B.L. was seized at the moment the sweatshirt he was jointly holding with a female was grabbed by Officer M.D. The circumstances which elevated this police-citizen encounter to an investigatory stop include a police spotlight illuminating B.L.'s person and the officer grabbing an item still in his hands. Both of these circumstances transformed a consensual encounter into an encounter a reasonable person would not feel free to end. The Stateconceded Officer M.D. did not have articulable suspicion for an investigatory stop.

Conclusion

Having concluded that B.L. had standing to contest the seizure of the weapon and the seizing officer did not have grounds for an investigatory stop, we reverse the denial of B.L.'s motion to suppress and remand the case for the trial court to vacate the determination of delinquency and the disposition order.

4. <u>Defendant blatantly lies about being in possession of firearm while in high crime area</u>

Mackey v. State, 124 So. 3d 176 (Fla. 2013)

<u>Where an individual lies during a consensual encounter (about possessing and having a license for a concealed firearm) in a high crime area known for firearms and narcotics, this creates reasonable suspicion to transform a consensual encounter into an investigatory stop</u>.

This case is before the Court for review of the decision of the Third District Court of Appeal in *Mackey v. State,* 83 So.3d 942 (Fla. 3d DCA 2012). The Third District certified that its decision is in express and direct conflict with the decision of the Fourth District Court of

Appeal in *Regalado v. State,* 25 So.3d 600 (Fla. 4th DCA 2009). We have jurisdiction. *See* art. V, § 3(b)(4), Fla. Const.

On March 6, 2010, Officer Alexander May of the Miami Police Department was patrolling in a marked police car during daytime hours in the Overtown area of Miami. Officer May drove by the location of Northwest 2nd Avenue and 12th Street—an area, according to Officer May, that is known for firearms and narcotics. Officer May explained that he "look[s] at a lot of hand motions and waistbands and pockets in this line of work, especially in that area." While driving slowly, Officer May observed Anthony Mackey standing on one side of a fence. At that time, Officer May noticed that:

[Mackey's] right pocket looked like it was—it was something, a big mass, like a big solid thing in his pocket. And then I looked and it was like a piece of the handle sticking out. Not much, but a piece enough for me to identify a firearm.

Officer May exited the patrol car and approached Mackey. During a deposition, Officer May explained that he did not draw his service weapon because he was able to observe Mackey's hands. According to Officer May:

I asked him if he had anything on him. He said no, which I already kind of knew. And I asked him if I could pat him down for weapons.[1] I pat him down. I grab—retrieved the firearm. I asked him why don't you tell me about this. And he just shook his head, put, you know, hands behind his back.

Officer May then asked Mackey if he possessed a concealed weapons license, and Mackey answered in the negative. Thereafter, Officer May, and another officer who stopped to assist, arrested Mackey. Further investigation revealed that a bullet was in the chamber of the firearm. Officer May later confirmed that he had never met Mackey before this incident. On March 29, 2010, the State filed an information charging Mackey with carrying a concealed firearm and possession of a firearm by a convicted felon.

Mackey's argument, and the holding in *Regalado,* taken to its logical conclusion, would require that a police officer not only have reasonable suspicion of criminal activity, but

reasonable suspicion of the non-existence of an affirmative defense to the crime. We decline the invitation to adopt such a holding....

We conclude that under the totality of the circumstances, Officer May had a reasonable, articulable suspicion to believe that Mackey was engaged in illegal activity. Further, because Officer May *knew* that Mackey was in possession of a firearm, the stop and frisk pursuant to *Terry* was constitutionally valid.

The record reflects that on the day in question, Officer May was patrolling in an area of Miami that is known for narcotics and firearms. Officer May explained that when he patrols, he observes hand gestures, waistbands, and pockets, "especially in that area." It was in that geographic location that he observed Mackey with a firearm in his pocket. Officer May stopped his vehicle and approached Mackey to speak with him. Office May explained that he did not draw his service weapon because he could observe Mackey's hands. No suspicion of illegal activity was necessary at this stage of the encounter because the United States Supreme Court has explained that "a seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free 'to disregard the police and go about his business.'

When the person blatantly lied to the police officer here about possession of a firearm while he was in a geographic area well known for illegal narcotics and firearms with the weapon in view, we conclude that the officer had a reasonable, articulable suspicion that the person may have been engaged in illegal activity, and this brief detention to further investigate whether a crime was being committed is constitutionally valid. Further, if a police officer suspects that an armed individual is engaged in illegal activity, it is entirely reasonable for the officer to have concerns for his personal safety and the safety of those around him.

E. SEARCH AFTER CONSENSUAL ENCOUNTER

1. Voluntary Consent

a. Officer can ask for consent to search without RS of criminal activity before seeking consent

State v. Bell, 122 So. 3d 422 (Fla. 2d DCA 2013)

A consensual encounter (officer approaches a man and woman he believes who are involved in some type of domestic situation, in uniform, without his weapon drawn or touching either person) with two individuals can yield a voluntary consent to a search, which may yield non-suppressible contraband.

***See supra* at 99.**

(3) ARREST

A. PERSON DOES NOT FEEL FREE TO LEAVE

State v. Garcia, 126 So. 3d 419 (Fla. 2d DCA 2013)

Flight and refusal to stop following police commands in a high crime area coupled with officer observation of a suspected drug transaction yields probable cause to arrest for resisting an officer without violence.

State appealed from order of the Circuit Court, Hillsborough County, Ronald Ficarrotta, J., dismissing an affidavit of violation of probation which was entered after the trial court granted defendant's motion to suppress.

The State seeks review of the order dismissing an affidavit of violation of probation which was entered after the trial court granted Roy A. Garcia's motion to suppress. The State argues that the court erred in granting the motion to suppress because Garcia's act of engaging in headlong flight in a high-crime area gave the police a valid basis for stopping him. We agree and reverse.

The evidence established that the police went to an address in a high-crime area to pick up a man named Levens based on a probable cause pick-up order. Before the Sheriff's van arrived at the address, a deputy conducted surveillance there. He observed Levens and Garcia approach a vehicle and exchange indiscernible objects in a hand-to-hand transaction. The Sheriff's van arrived at the address shortly thereafter. At this time, Levens was standing in the driveway talking to Garcia.

The police exited the van wearing "Sheriff" vests and yelled "Sheriff's Office." Levens immediately surrendered, but Garcia turned tail and ran. The officers gave chase, yelling for Garcia to stop, but he kept "running just as fast as he could." As he was running, Garcia discarded an object. Garcia was tackled, and another object fell from his pocket during the struggle. Police thereafter located several baggies containing cocaine in the immediate area.

In granting the motion to suppress, the trial court concluded that the police did not have a valid basis for stopping Garcia. However, the police were justified in stopping Garcia because his unprovoked, headlong flight in a high-crime area provided a reasonable suspicion of criminal activity. *See C.E.L. v. State,* 24 So.3d 1181, 1185 (Fla.2009) (citing *Illinois v. Wardlow,* 528 U.S. 119, 124–25, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000)). In fact, the police had probable cause to arrest Garcia for resisting or obstructing an officer without violence based on his failure to cease his headlong flight in response to the officers' directions for him to do so. *See C.E.L.*, 24 So.3d at 1189 (holding that a defendant's "continued flight in knowing defiance of the officer's lawful order to stop constituted the offense of obstructing without violence").

Reversed and remanded.

B. SEARCH INCIDENT TO ARREST

1. Outstanding arrest warrant did not dispel the taint of officer's illegal actions under *Brown* factors

State v. Dickey, 203 So. 3d 958 (Fla. 1st DCA 2016)

Search Incident to Arrest: Taint from unlawful detention, patdown and seizure of defendant's wallet was not dispelled by defendant's outstanding arrest warrant under *Brown v. Illinois* test.

The State appeals an order suppressing contraband that was found on Appellee's person following a search conducted incident to arrest on an outstanding warrant. The State argues that suppression was not warranted given that the taint from any unlawful conduct engaged in by law enforcement was purged by the discovery of the warrant. For the reasons that follow, we disagree and, therefore, affirm.

The State charged Appellee, Douglas Dickey, with possession of cocaine, giving a false name or identification to an officer, and possession of a controlled substance. Appellee moved to suppress the evidence against him, arguing that he was unlawfully seized when the contraband was discovered. During the suppression hearing, the deputy at issue testified that he observed a stopped vehicle in the middle of a roadway with a male who was later identified as Appellee standing at the driver's side door. The deputy could not tell what Appellee was doing. The vehicle "took off" after the deputy pulled behind it and activated his lights. The deputy did not pursue the vehicle but instead made contact with Appellee, "[j]ust to see what was going on in the road." The deputy asked Appellee his name, to which Appellee stated, "Shawn Williams." The deputy ran the name but found nothing, "[n]o driver's license, no history of any type." Appellee told the deputy that he was not carrying a license or wallet but that his girlfriend who was across the street could identify him. When the deputy began to speak to the female, Appellee "leaned in whispering to her," and the deputy could hear "her say, Shawn." When asked what he did at that point, the deputy replied, "At that point for my safety and the identification of him, I went ahead and secured him in handcuffs." The deputy affirmatively responded when asked if it was a consensual encounter at the time Appellee gave the false name. When asked on cross-examination why he put Appellee in handcuffs, the deputy replied, "Due to the fact that he had leaned in and told the female to say Shawn. At that time, I knew he was lying about his identification." The deputy did a patdown for weapons, finding a knife in Appellee's pocket and "a wallet that he said he did not have in his rear pocket." The deputy ran Appellee's name, "which came back with a felony warrant." The deputy affirmatively responded when asked if he placed Appellee under arrest at that point and searched him incident to the arrest. He discovered what he suspected to be crack cocaine on Appellee's person. He estimated that a "[m]inute, minute-and-a-half" elapsed between putting Appellee in handcuffs and finding the cocaine. The trial court granted Appellee's motion and suppressed the contraband. This appeal followed.

We believe to be very significant the third factor in the *Brown* analysis, which is whether the purpose and flagrancy of the official misconduct in making the illegal stop outweighs the intervening cause of the outstanding arrest warrant so that the taint of the illegal stop is so onerous that any evidence discovered following the stop must be suppressed. In this case, we

do not find that the purpose and flagrancy of misconduct in illegally stopping respondent was such that the taint of the illegal stop required that the evidence seized incident to the outstanding arrest warrant should be suppressed. The law enforcement officer made a mistake in respect to the enforcement of the traffic law, but there was no evidence that the stop was pretextual or in bad faith.

Turning to this case and the application of the *Brown* factors, we conclude that the brief time that elapsed between the illegality and the acquisition of the contraband supports a finding that the search that yielded the contraband was not attenuated from the illegal conduct. However, as the supreme court found in *Frierson,* this first factor, standing alone, is not dispositive. As for the second *Brown* factor, we conclude that Appellee's outstanding arrest warrant constituted an intervening circumstance. Notwithstanding such, we agree with Appellee that because the evidence establishes that the deputy's unlawful seizure of his wallet was done in order to ascertain his identity, we are unable to say that the contraband found in a search incident to the outstanding arrest warrant was sufficiently distinguishable from the illegal detention, patdown, and seizure to be purged of the taint of the illegal actions. We agree with the Arizona Supreme Court that "[i]f the purpose of an illegal stop or seizure is to discover a warrant—in essence, to discover an intervening circumstance—the fact that a warrant is actually discovered cannot validate admission of the evidence that is the fruit of the illegality." *State v. Hummons,* 227 Ariz. 78, 253 P.3d 275, 278 (2011).

Here, as stated, the deputy, a law enforcement officer with more than two decades of experience, unlawfully detained Appellee and patted him down after which he unlawfully seized Appellee's wallet due to his belief that Appellee provided a false name during a consensual encounter. This is a different situation than the one involved in *Frierson* where an officer made an unlawful traffic stop and then discovered an outstanding arrest warrant. In this case, the contraband that was ultimately discovered on Appellee's person was found as a direct result of the deputy's exploitation of his illegal actions. This, coupled with the fact that only a minute-and-a-half elapsed between the unlawful detention and search incident to the outstanding arrest warrant, has led us to conclude that suppression in this case was proper.

PROCEDURAL

1. **Rulings on suppression of evidence in PVH applies equally to the new arrest**

***Santiago v. State,* 133 So. 3d 1159 (Fla. 4th DCA 2014)**

***See supra* at 19.**

2. **Trial court's erroneous rulings on admission of evidence at suppression hearing required reversal**

***Grant v. State,* 139 So. 3d 415 (Fla. 5th DCA 2014)**

***See supra* at 45.**