Stops

Vehicles

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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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TRAFFIC STOP OF VEHICLES

A. STANDARD

1. Objectively Reasonable Test

***State v. Proctor*, 161 So. 3d 409 (Fla. 5th DCA 2014)**

Reasonableness of a traffic offense should only be determined by an objective test, as such driving without headlights at night yields PC to stop a car.

The following facts were adduced at the hearing. Around 3:00 a.m., Officer Lovett observed Proctor's vehicle traveling in the left-hand lane of the eastbound lanes of Old Winter Garden Road. Proctor's right tires were on the line dividing the left and right lanes, but most of his vehicle was in the left-hand lane. Although Proctor was not swerving, he made a right-hand turn, from the left lane, onto Ohio Avenue. He then traveled down the middle of Ohio Avenue, before turning onto Central Boulevard. Once on Central Boulevard, Proctor drove the wrong way on the side of the road in order to park in a grassy lot across the street from a house known for drug sales and arrests. Officer Lovett intended to stop Proctor and ticket him, but chose not to based on the history of the house.

As the officers watched, someone from the house approached Proctor's car and proceeded to walk back and forth from the house to Proctor's car multiple times. Officer Lovett did not see a crime occur while Proctor's car was parked. However, based on the known drug sales and prior arrests related to the house, Officer Lovett believed that a drug transaction had occurred. Proctor left the area after a few minutes, driving for half a block with no headlights. There was no other traffic on the roadway. Soon thereafter, Officer Lovett stopped Proctor for the traffic infractions he committed prior to parking in the grassy lot and for driving with no headlights after he left. Officer Lovett thought Proctor was intoxicated based on his odd and unusual driving. Officer Lovett initially spoke to Proctor through the passenger side window of the vehicle.

When he asked Proctor for his license, Proctor admitted that his license was suspended. At that time, Officer Frey, who had been riding with Officer Lovett, approached the driver's side window of Proctor's vehicle with his flashlight illuminated. He saw that Proctor had a

small, beige, rock-like substance on his bottom lip that appeared to be crack cocaine. Officer Frey asked Proctor to step out of the vehicle. As he did, Officer Frey noticed that Proctor was chewing something. Officer Frey then ordered Proctor to spit out the crack cocaine. When Proctor refused, Officer Frey forcibly caused Proctor to spit it out by applying pressure to the top of Proctor's jawbone.The crack cocaine was recovered by the officers and field-tested positive. Proctor was arrested for possession of cocaine and given verbal warnings for the traffic infractions.

At the conclusion of the hearing, the trial court found that the three traffic violations that occurred prior to the stop were not the proximate cause for the traffic stop. It further found that nothing that occurred at the house provided probable cause to stop the vehicle. Thus, the issue was whether driving at 3:30 a.m. on a deserted street without headlights for a brief period of time was sufficient to warrant the stop.

The State argues that the trial court erred when it applied *Payne,* because the legal proposition set forth therein was overturned by *Holland v. State,* 696 So.2d 757 (Fla.1997). We agree.

In *Holland,* the Florida Supreme Court recognized the United States Supreme Court's holding in *Whren v. United States,* 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996), that the reasonableness of a traffic stop under the Fourth Amendment does not depend on the actual, subjective motivations of the individual officers involved in conducting the stop, but rather on the validity of the basis asserted by the officers involved in the stop.

The actual subjective motivation of the individual officer involved is irrelevant and should not factor into an ordinary, probable-cause Fourth Amendment analysis. *Whren,* 517 U.S. at 813, 116 S.Ct. 1769. *See also Holland,* 696 So.2d at 760. Instead, an objective test is used to determine the reasonableness of a stop. *Holland,* 696 So.2d at 760.[2]

It was also error to conclude that Officer Lovett stopped Proctor primarily on a hunch, especially in light of his direct testimony to the contrary.

Because Officer Lovett had probable cause to believe that Proctor violated the traffic code, we hold the stop was reasonable under the Fourth Amendment. Accordingly, we reverse the order of the trial court suppressing the cocaine discovered during the stop and remand for further proceedings consistent with this opinion.

I. TRAFFIC OFFENSES

A. SUFFICIENT REASONABLE SUSPICION OF TRAFFIC OFFENSE

1. Speeding

***Gallardo v. State*, 204 So. 3d 979 (Fla. 5th DCA 2016)**

Where a LEO has an articulable suspicion that a defendant driver has committed a traffic offense (speeding), a traffic stop is justified.

In the instant case, Deputy Tucker testified that Gallardo's traffic stop was initiated after she observed him traveling approximately sixty miles per hour in a forty-mile-per-hour speed zone. The court accepted Deputy Tucker's testimony, stating:

Considering the totality of the circumstances, the court concludes that Deputy Tucker had reasonable suspicion to believe that the Defendant committed one or more traffic offenses, to wit, speeding and/or careless driving.

A law enforcement officer may stop a motor vehicle if he or she has a well-founded, articulable suspicion that the driver has committed a traffic offense. State v. Allen, 978 So.2d 254, 255 (Fla. 2d DCA 2008)

Accordingly, actual speed need not be verified by the use of radar equipment or clocking. *See Young v. State*, 33 So. 3d 151, 153 (Fla. 4th DCA 2010)
***State v. Joy*, 637 So.2d 946, 947 (Fla. 3d DCA 1994) ("The fact that the patrol car's speedometer was not calibrated is of no moment because an officer may stop a vehicle suspected of speeding based on the officer's visual and aural perceptions.");**

In the present case, by contrast, Deputy Tucker testified in substantial detail as to her vantage point and her opportunity to observe Gallardo driving at an excessive speed.

AFFRIMED

2. Obscuring License Plate

a. Hanging tail light interfering w/ clear & distinct view of license plate

English v. State, 191 So. 3d 448 (Fla. 2016)

Under section 316.605(1), Fla. Stat., a hanging tail light constitutes as something that prevents the license plate from being "clear and distinct," and thus can be used as the reason for a valid traffic stop.

A seizure of evidence during the course of the traffic stop resulted in criminal charges against English, and he moved to suppress the evidence in the trial court on the grounds that the stop was invalid.

The present conflict turns on whether a hanging tag light obscures a license plate in violation of section 316.605(1).

The plain language of section 316.605(1) requires that a license plate be "clear and distinct" and "free from defacement, mutilation, grease, and other obscuring matter"; it does not suggest that matter external to the license plate may constitute a permissible obstruction under the statute.

Therefore, we hold that section 316.605(1) does not distinguish between obscuring matter that is on or external to the license plate. Accordingly, we conclude that a tag light, hanging down in front of a license plate, obscuring its alphanumeric designation, constitutes a violation of section 316.605(1).

PERRY, J., dissents with an opinion, in which
PARIENTE, J., concurs.
PERRY, J., dissenting.
Thus, "obscuring matter" can only logically refer to matter that physically affects the license plate and not matter that is external to the license plate and temporarily obscures part of the license plate such as the hanging tail light and attached wires in this case.

Under the majority's view, the licensing statute could lead to potentially outrageous results. For example, families and avid bikers who utilize rear bike racks will now be guilty of unlawful activity if any part of the bicycle or bicycle rack—or the nylon straps which are used to secure the bike to the rack—covers the license plate. The possibilities under which law enforcement may now detain drivers under this statute are limited only by the imagination, potentially placing in the hands of law enforcement unfettered discretion to enforce the statute.

Law enforcement no doubt must have the ability to clearly read a license plate in order to properly carry out their duties. However, there must be a balance in order to prevent uncontrolled discretion to the individual law enforcement officer who makes the determination of whether a crime has been committed.

After all, one could conjure several forms of "matter" which may temporarily obscure a license plate, only to subsequently disappear. Regardless, a violation of the statute has occurred and may now serve as a pretext for an otherwise invalid stop.

b. <u>Trailer hitch obscures license plate</u>

***Baker v. State*, 164 So. 3d 151 (Fla. 1st DCA 2015)**

<u>Where a trailer hitch obscures a license plate, an LEO may make a valid stop</u>.

At the hearing on Appellant's motion, the Okaloosa County Sheriff's Deputy testified that he observed a vehicle with an obscured license tag and conducted a traffic stop, but he could not recall specifically what obscured the tag. Estimating that he was about 25 feet from the vehicle when trying to read the tag, he recalled that it was illegible, and he incorrectly called it in to dispatch; he had to call it in a second time, which is when he discovered the vehicle was stolen. He admitted that he had since watched his patrol car's in-car video recording, and there was a trailer hitch blocking the license tag. The deputy thought the trailer hitch was part of what was blocking the tag, but also thought it had been altered or damaged and this contributed to his trouble reading the tag. Appellant was placed under arrest after it was discovered the vehicle was stolen. In searching Appellant after his arrest, the deputy discovered marijuana, cocaine and a crack pipe. The deputy acknowledged that the sole basis

for pulling Appellant over was the trailer hitch obstructing the license tag, but maintained that he still thought something else obstructed the tag, but he could not recall what it was.

Appellant asserts that the notion that a license tag obscured by a trailer hitch could violate the statute is absurd, as the Legislature could not have intended that every vehicle with a trailer hitch attached to it would be subject to a stop by law enforcement officers. We disagree, and hold that this plain reading is reasonable, as the Legislature has a legitimate public-safety interest in ensuring that license tags remain unobstructed. The Legislature has an interest in ensuring that law enforcement officers can readily identify license tag numbers. In addition, the Legislature could have intended that the general public has the ability to identify license tags, if necessary, to report criminal activity or other important information. As such, we do not think such a plain reading of the statute leads to an absurd conclusion.

Here, the deputy had a valid basis for the stop, as the trailer hitch obscured a portion of the alphanumeric designation; thus, we affirm the trial court's denial of Appellant's motion to suppress. As we conclude that the deputy had a valid basis for the stop based on our interpretation of the statute, we do not address the trial court's conclusion that even if the stop was illegal, the inevitable discovery doctrine would apply. We certify that our decision interpreting this statute is in conflict with the Second District's decision in *Harris v. State,* 11 So.3d 462 (Fla. 2d DCA 2009).

3. <u>Illegal Tint</u>

a. <u>Reasonable perception of an illegal tint justifies a stop</u>

***State v. Coley,*157 So. 3d 542 (Fla. 4th DCA 2015)**

<u>An illegal tint or reasonable perception of an illegal tint will yield a justifiable traffic stop by an LEO</u>.

At the hearing on Coley's motion, the officer testified that he had eight years of experience as a road patrol officer and has issued many citations for illegal tints of side windows. He stated that in his experience, the tint is illegal where the driver of the vehicle cannot be seen. The officer correctly stated that per statutory regulation, a tint measurement of less than 28% is illegal. He testified that he stopped Coley's vehicle at 11:52 a.m. because he

believed that the vehicle's side windows had an illegal tint. The officer explained that his belief was based upon the fact that, even with the daylight, he could not see the driver of the vehicle through the tint of its side windows, thus giving him probable cause to conduct the traffic stop. After stopping the vehicle, he was then able to put a tint meter up to the window to measure the tint, which read 11%. Because the tint was illegal, he issued Coleya citation.

The defense asserted that the traffic stop was illegal due to the officer's mistake of law because the law does not state that a tint is illegal if the driver cannot be seen through it. The defense argued that an officer's mistake of law as to what constitutes a traffic violation cannot provide justification for a traffic stop.

On appeal, the State asserts that the fact that the officer could not see the driver of the vehicle through the tint of the side window in the middle of the day gave him probable cause to believe that the vehicle had an illegal tint, and therefore, justified the traffic stop.

Likewise, in this case, we conclude the officer had probable cause to stop the vehicle based on his observation that Coley's side windows were so heavily tinted that he could not see the occupant in broad daylight.

The trial court also mentioned *State v. Wimberly*, 988 So.2d 116 (Fla. 5th DCA 2008), in its findings. *Wimberly* is also inapplicable to the facts of this case.

At the suppression hearing, Wimberly presented testimony from the owner of the shop which installed the tint that the tint was legal. *Id.* After finding as a matter of fact that the tint was legal, the trial court concluded the stop was illegal because the officers were wrong on the facts justifying the stop. *Id.* at 118. The Fifth District reversed and explained that a traffic stop based on an officer's incorrect but *reasonable* assessment of the facts does not render the stop illegal. *Id.* at 119. The court went on to explain that "[i]f an officer makes a traffic stop based on a mistake of fact, the court must determine whether the officer's mistake of fact was reasonable." *Id.*

4. **Crossing the yellow line on two-lane road**

Lomax v. State, 148 So. 3d 119 (Fla. 1st DCA 2014)

Where a driver crosses the yellow lines on a two-lane road without an obstacle in their path or a car they are trying to pass, this gives an LEO probable cause to stop the vehicle.

An officer testified that appellant was traveling down a two-lane road separated by solid double yellow lines. The officer observed the car swerve, with both the driver's side front and back tires traveling over the double yellow lines, so that the vehicle was partially in the oncoming lane of traffic. The officer then conducted a traffic stop and wrote appellant a ticket for violating a traffic control device as prohibited by section 316.047, Florida Statutes. The officer testified that when appellant crossed the double yellow lines, he was not attempting to pass another car. He testified there were no oncoming cars or cars in front of appellant, and that appellant did not interfere with the safe operation of any vehicle.

This section does not apply when an obstruction exists making it necessary to drive to the left of the center of the highway, nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

Thus, the officer's observation of appellant crossing the solid double yellow lines here constituted probable cause, regardless of the fact the officer testified that appellant did not create a safety hazard. We AFFIRM.

5. **Driving without headlights**

State v. Proctor, 161 So. 3d 409, (Fla. 5th DCA 2014)

Reasonableness of a traffic offense should only be determined by an objective test, as such driving without headlights at night yields PC to stop a car.

See *supra* at page 1.

6. Car illegally parked on grass

State v. Arevalo, 112 So. 3d 529 (Fla. 4th DCA 2013)

Where an officer witnesses the noncriminal, nonmoving traffic violation of parking a car illegally on grass with a sign that says "no parking on grass", the officer has probable cause to call the individual back to their car to conduct a traffic stop.

The issue presented is whether the trial court erred in granting appellee's motion to suppress on the grounds that a deputy could not call appellee back to appellee's vehicle after observing appellee illegally park his car and then walk away. We find that the officer had the authority to call appellee back to his vehicle and that the trial court erred by granting the motion to suppress. We, therefore, reverse and remand.

The deputy saw appellee park his car on the grass where a sign said "do not [p]ark." By the time the deputy turned his car around to get to appellee's car, appellee had already stepped out of the car and was crossing the street. The deputy "kind of motioned him to return to his car."

In the present case, the deputy had probable cause to conduct a traffic stop under section 316.1945(1)(c) 2., Florida Statutes (2011), which states that no person shall "[p]ark a vehicle, whether occupied or not, except temporarily for the purpose of, and while actually engaged in, loading or unloading merchandise or passengers" "[a]t any place where official signs prohibit parking."[2] An officer who finds a vehicle parked in violation of this section may either "[i]ssue a ticket form as may be used by a political subdivision or municipality to the driver" or "[i]f the vehicle is unattended, attach such ticket to the vehicle in a conspicuous place." § 316.1945(3), Fla. Stat. (2011). "A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation"; thus, the alleged violator "must be cited for such an infraction and cited to appear before an official." §§ 316.1945(4), 318.14(1), Fla. Stat. (2011).

Here, we conclude that the deputy's act of calling appellee back to his vehicle to issue a citation, warning, or even request appellee to move his vehicle, did not transform the encounter into an impermissible seizure under the Fourth Amendment.

In summation, as we find that the deputy had probable cause to effect a traffic stop of appellee which included calling appellee back to his vehicle, we reverse the order granting appellee's motion to suppress and remand for further proceedings.

Reversed and remanded.

7. <u>Improper left turn from wrong lane</u>

State v. Y.Q.R., 50 So. 3d 751 (Fla. 2d DCA 2010)

<u>Where an officer witnesses a juvenile make an improper left turn while driving, even when done safely and does not affect the flow of traffic, a basis for an investigatory stop is established</u>.

The State appeals from an order granting Y.Q.R.'s motion to suppress, in which the trial court concluded that Y.Q.R. was arrested following an unlawful traffic stop. We conclude that the arresting officer lawfully stopped the car in which Y.Q.R. was riding after watching the car make an improper left turn, as defined under section 316.151(1)(b), Florida Statutes (2008). Because the stop was lawful, the trial court erred in granting Y.Q.R.'s motion to suppress. We therefore reverse the order on appeal and remand for further proceedings.

In June 2009, Officer Jonathan Bailey, while on patrol, was traveling northbound in the center lane of South Missouri Avenue in Pinellas County. He came to a stop at a light at the intersection with Court Street. According to Officer Bailey, the northbound portion of South Missouri Avenue was made up of three lanes: a through-lane, a left-turn lane, and a right-turn-only lane. Although the light was green, the car in front of Officer Bailey was stopped in the through-lane. The driver of this car waited for all the vehicles in the left-turn lane to proceed through the intersection. The driver then activated his turn signal and made a left turn. Although this turn did not affect any other traffic, Officer Bailey concluded that the turn was unlawful. He stopped the vehicle and discovered marijuana and paraphernalia.

After the State filed a delinquency petition against Y.Q.R., he argued successfully to the trial court that the vehicle's turn was lawful because it "was done in a safe manner and did not affect the flow of traffic." This argument appears to have three sources: First, the failure to signal a turn can constitute a traffic offense under section 316.155 if the turn affects

traffic. *See State v. Riley,* 638 So.2d 507, 508 (Fla.1994). Second, under section 316.1515, a U-turn can amount to a traffic offense if it interferes with traffic or cannot be made safely. *See Bender v. State,* 737 So.2d 1181, 1181 (Fla. 1st DCA 1999). Third, where it impacts other traffic, a turn made from the wrong lane can constitute erratic driving so as to provide a basis for an investigatory stop. *Cf. Nicholas v. State,* 857 So.2d 980, 981 (Fla. 4th DCA 2003).

As a noncriminal traffic infraction, a violation of this section can provide a basis to perform a lawful traffic stop. *See* § 316.151(3); *see also State v. Allen,* 978 So.2d 254, 255 (Fla. 2d DCA 2008).

Here, it is undisputed that the driver of the car in which Y.Q.R. was riding began his turn from the center, through-lane of traffic, not the extreme left-hand lane. In doing so, the driver committed a traffic infraction. Officer Bailey observed the infraction—in fact, he videotaped it. The trial court therefore erred in concluding Officer Bailey did not have a lawful basis to stop the vehicle in which Y.Q.R. was traveling. Accordingly, we reverse the order granting Y.Q.R.'s motion to suppress and remand for further proceedings consistent with this opinion.

Reversed and remanded.

B. INSUFFICIENT REASONABLE SUSPICION OF TRAFFIC OFFENSE

1. Speed Limit

a. Car travelling below the speed limit

Agreda v. State, 152 So. 3d 114 (Fla. 2d DCA 2014)

A detective's observation that a car is traveling 45 mph on a 65 mph road, but not committing any other traffic infraction, does not create objective reasonable suspicion to stop a car.

The facts were developed at a suppression hearing in which the State presented the testimony of a detective from the Highlands County Sheriff's Office. The detective testified that on the day in question he was conducting an "interdiction" on U.S. Highway 27. The road was a

divided highway with two lanes in each direction, and the speed limit was 65 miles per hour. The detective was parked in the median in an unmarked car. Around noon, he saw a car traveling under the speed limit. The car was in the curb lane, and there were several vehicles behind it.

After all the vehicles passed by his location, the officer pulled onto the road and proceeded in the same direction. He passed the vehicles in the left lane and pulled into the curb lane behind the lead car. The detective paced the car for half a mile and determined that it was traveling 45 miles per hour. He did not see the car drift or weave in its lane, nor did he notice anything to indicate that there was a mechanical problem with the car or a medical problem with the driver. The traffic was light, and nothing prevented vehicles from passing in the left lane. Nonetheless, the detective testified that the car's low rate of speed was impeding the flow of traffic, so he conducted a traffic stop.

After the stop, the detective learned that the driver had a suspended license. Agreda, who was a passenger in the car, admitted that his license was also suspended. He then spontaneously told the detective that he had a gun, which the detective retrieved without incident. In a subsequent search of the car, crack cocaine and a pipe were discovered on the passenger side.

The circuit court held the stop was lawful based on the detective's concern that the car's slow speed was caused by a possible medical problem with the driver. The detective testified that his "only other concern ... was a possible medical condition." But on cross-examination, he testified that there was nothing to indicate anything was wrong with the driver. And on redirect, the following exchange occurred:

Q. Okay. Did you have any protectoral reasons to stop the vehicle or was it solely on the traffic infraction?

A. Yes, [s]ir. The sole reason for stopping the vehicle was it was impeding the flow of the traffic. There was no pre-indicated or protectoral reasons to stop the vehicle.

The detective's subjective intentions aside, the circumstances of this case simply did not present an objective basis for a stop pursuant to law enforcement's so-called community caretaking function. *See Holland v. State,* 696 So.2d 757 (Fla.1997) (adopting test of objective reasonableness for traffic stops as enunciated in *Whren v. United States,* 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996)). "Even a stop pursuant to an officer's community caretaking responsibilities ... must be based on specific articulable facts showing that the stop was necessary for the protection of the public." *Majors v. State,* 70 So.3d 655, 661 (Fla. 1st DCA 2011). Although the car was traveling below the speed limit, its speed was within the legally permissible range. The detective's concern about the driving speed was based in part on his observation that people generally drove over the speed limit, not under it. On appeal, the State points to this testimony and asserts that the car was actually traveling 30 miles per hour less than the normal practice. But it would be a strange world indeed if under the Fourth Amendment a search and seizure could be justified by the subject's *failure* to engage in typical law-breaking behavior.

2. <u>Color of Vehicle</u>

a. <u>Color of car did not match color indicated in car registration</u>

Van Teamer v. State, 108 So. 3d 664 (Fla. 1st DCA 2013)

<u>An officer who observes a vehicle whose color does not match its registration but no other traffic violations or suspicious activity does not have reasonable suspicion to validate an investigatory stop</u>.

On June 22, 2010, at about 3:00 p.m., an Escambia County Deputy Sheriff observed appellant driving a bright green Chevy. The deputy "ran" the license plate tag number through the Department of Highway Safety and Motor Vehicles (DHSMV). Upon learning that the plate number was registered to a *blue* Chevy, the deputy pulled the vehicle over based only on the color inconsistency. Upon interviewing the occupants, the deputy learned that the vehicle had recently been painted, thus explaining the inconsistency. During the stop, however, the deputy smelled marijuana emanating from the car and conducted a search of appellant, his passenger, and the vehicle. Marijuana and crack cocaine were recovered from the vehicle, and about $1,100 in cash was recovered from appellant. Appellant was charged

with trafficking in cocaine (between 28–200 grams), possession of marijuana (less than 20 grams), and possession of drug paraphernalia, scales.

On cross examination, the deputy agreed that the only thing that was out of the ordinary was the inconsistency of the vehicle color from the registration. He acknowledged he observed no other traffic violation, suspicious or furtive behavior, nor was he aware of any reports of stolen vehicles or swapped plates in the area.

The court determined that the officer "had a legal right to conduct an investigatory stop when a registration search of the automobile license tag reflected a different color than the observed color of the vehicle."

On appeal, appellant argues the mere fact that the color of a vehicle does not match the color indicated on motor vehicle registration records does not establish a reasonable, articulable suspicion of criminal activity to support an investigatory stop of a vehicle. He further argues this is particularly true in Florida where there is no legal requirement that a vehicle owner inform the DHSMV of a change in the color of the vehicle. The State argues the color inconsistency, despite being the result of innocent activity, represents the potential illegal activity of making a false application on vehicle registration, a violation of sections 320.06 and 320.061, Florida Statutes.

As a preliminary matter, we acknowledge that any discrepancy between a vehicle's plates and the registration may legitimately raise a concern that the vehicle is stolen or the plates were swapped from another vehicle. We must, however, weigh that level of concern against a citizen's right under the Fourth Amendment to travel on the roads free from governmental intrusions. *See State v. Diaz,* 850 So.2d 435, 439 (Fla.2003) ("The real test is one of reasonableness, which involves balancing the interests of the State with those of the motorist."). The question before this court, therefore, is whether an inconsistency in color alone is a sufficient basis to support an officer's articulable and reasonable suspicion that a particular person is committing a crime *in the absence of any other suspicious behavior or circumstances* to allow a temporary seizure of a person for an investigatory stop.

Changing the color of a vehicle is not illegal, and the State does not require an owner to report the change in color to the DHSMV. *See Aders,* 67 So.3d at 371. The question then is what degree of suspicion attaches to this particular noncriminal act? In *Aders* and the cases cited therein, a few courts have concluded that the color inconsistency alone created enough suspicion to justify an investigatory stop.

In Florida, it is legal to repaint a vehicle without reporting the change, creating an inconsistency between the vehicle registration and the vehicle. *See Aders,* 67 So.3d at 371. While an officer may suspect that people driving a vehicle of an inconsistent color may be violating the law by driving with a swapped tag or even driving a stolen vehicle, the officer is still required to have a "particularized and objective basis for suspecting the particular person stopped of criminal activity." *Cortez,* 449 U.S. at 417–18, 101 S.Ct. 690. If we accept the State's argument, every person who changes the color of their vehicle is continually subject to an investigatory stop so long as the color inconsistency persists, regardless of any other circumstances.

Affirmed on appeal to the Florida Supreme Court in . . .

State v. Teamer, 151 So. 3d 421 (Fla. 2014)

On June 22, 2010, an Escambia County Deputy Sheriff observed Kerrick Teamer driving a *bright green* Chevrolet. *Teamer,* 108 So.3d at 665. After noticing the car, the deputy continued on his patrol, driving into one of the neighborhoods in that area. Upon traveling back to where he had first seen Teamer, the deputy again observed Teamer driving the same car. The deputy then "ran" the number from Teamer's license plate through the Florida Department of Highway Safety and Motor Vehicles (DHSMV) database, as is customary for him while on patrol, and learned that the vehicle was registered as a *blue* Chevrolet. *Id.* The database did not return any information regarding the model of the vehicle. Based only on the color inconsistency, the deputy pulled the car over to conduct a traffic stop.

At the hearing on the motion to suppress, the deputy acknowledged that, in his training and experience, he had encountered individuals who would switch license plates and he could not verify a vehicle's identification number without pulling over the vehicle. *Id.* On cross-examination, the deputy acknowledged that the car was not reported stolen, he had not

observed any other traffic violations or suspicious or furtive behavior, he was not "aware of any reports of stolen vehicles or swapped plates in the area," and "the only thing that was out of the ordinary was the inconsistency of the vehicle color from the registration." ***Id.***

In the instant case, the State concedes that "the failure to update a vehicle registration to reflect a new color is not in specific violation of a Florida law." Thus, what degree of suspicion attaches to this noncriminal act?

Turning to the instant case, the sole basis here for the investigatory stop is an observation of one completely noncriminal factor, not several incidents of innocent activity combining under a totality of the circumstances to arouse a reasonable suspicion—as was the case in ***Terry.*** **The discrepancy between the vehicle registration and the color the deputy observed does present an ambiguous situation, and the Supreme Court has recognized that an officer can detain an individual to resolve an ambiguity regarding suspicious yet lawful or innocent conduct.**

The law allows officers to draw rational inferences, but to find reasonable suspicion based on this single noncriminal factor would be to license investigatory stops on nothing more than an officer's hunch. Doing so would be akin to finding reasonable suspicion for an officer to stop an individual for walking in a sparsely occupied area after midnight simply because that officer testified that, in his experience, people who walk in such areas after midnight tend to commit robberies. Without more, this one fact may provide a "mere suspicion," but it does not rise to the level of a reasonable suspicion.[4] Neither does the sole innocent factor here—a color discrepancy—rise to such level. The deputy may have had a suspicion, but it was not a reasonable or well-founded one, especially given the fact that the driver of the vehicle was not engaged in any suspicious activity. Moreover, "the government provided no evidence to tip the scales from a mere hunch to something even approaching reasonable and articulable suspicion, despite attempting to justify a detention based on one observed incident of completely innocent behavior in a non-suspicious context." ***United States v. Uribe,*** **709 F.3d 646, 652 (7th Cir.2013).**

The intrusion involved in the instant case is similar to that described in ***Prouse,*** **especially**

considering that anyone who chooses to paint his or her vehicle a different color could be pulled over by law enforcement every time he or she drives it. *Prouse,* 440 U.S. at 662–63, 99 S.Ct. 1391.

3. <u>Mirrors (§ 316. 294, Fla. Stat.)</u>

a. <u>Having one missing side view mirror does not violate § 316.294, Fla. Stat.</u>

Springer v. State, 125 So. 3d 271 (Fla. 4th DCA 2013)

<u>A traffic stop based solely on one missing mirror is an illegal stop</u>.

A police officer noticed the defendant's vehicle missing the sideview mirror on the driver's side. The officer conducted a traffic stop. When he asked for the defendant's driver's license, the defendant responded that he did not have it on him. The officer ran the defendant's name and date of birth, learning his license was suspended. The officer arrested the defendant for driving with a suspended license.

A search incident to arrest revealed a blank check with the victim's name on it in the left front pocket of the defendant's pants and two pocket knives in his right rear pocket. The officer also noticed possible blood stains on the trunk of the car.

Prior to trial, the defendant moved to suppress the check and knives seized during the traffic stop. At the hearing, the officer testified that he stopped the vehicle due to the missing side view mirror on the driver's side. Regarding whether the vehicle was unsafe, the officer testified:

Q And why did you feel that the car was unsafe?

A Well, it was missing the side view mirror on the driver's side. If you need to turn lanes, you need to use your mirror.

Q Did you feel that it was endangerment to any person or property?

A Sure.

The officer arrested the defendant for driving on a suspended driver's license and cited him for improper equipment under section 316.610, Florida Statutes (2011) (making it illegal to

drive a vehicle that is unsafe or not equipped as required by law). At the suppression hearing, the State argued the facts also supported the officer making a stop pursuant to section 316.294, Florida Statutes (2011) (requiring "a mirror so located as to reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of the motor vehicle...."). The trial court denied the motion to suppress, finding the missing mirror justified the traffic stop.

Here, the defendant claims his car did not violate section 316.294 because the statute requires that a vehicle only have "a mirror so located as to reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of the motor vehicle.

Because section 316.294 requires that a vehicle have "a" mirror capable of viewing 200 feet behind the vehicle, the absence of a single mirror on the exterior of the car neither violates the statute nor renders the vehicle unsafe by an objectively reasonable standard, without proof there was no other sideview or rearview mirror on the vehicle. We therefore find the stop to have been illegal. The motion to suppress should have been granted.

b. <u>Center rearview mirror not required under § 316.924, Fla. Stat.</u>

Leslie v. State, 108 So. 3d 722 (Fla. 5th DCA 2013)

<u>An officer's mistake of fact regarding the necessity of a rearview mirror (when it is missing) will yield an illegal stop if this is the sole basis for the stop</u>.

Damian Eugene Leslie (defendant) appeals his judgment and sentences, arguing that the trial court erred in denying his motion to suppress contraband seized during a traffic stop. Determining that the police lacked reasonable suspicion to justify the stop, we reverse.

The defendant was charged with possession of cocaine and possession of 20 grams or less of marijuana. He filed a motion to suppress the contraband based on the claim that its discovery resulted from an unlawful seizure. Specifically, he argued that the police lacked reasonable suspicion to conduct a traffic stop of his vehicle. At the suppression hearing, a law enforcement officer testified that he saw the defendant's vehicle driving toward him, and he noticed that the vehicle did not have a center rearview mirror. The officer believed that this absence of a mirror was a traffic violation and, therefore, waved down the vehicle. The

defendant stopped the vehicle. When the officer went to talk to the defendant, he saw three baggies of marijuana on the defendant's lap. This discovery ultimately led to the instant charges. The court denied the suppression motion. The defendant then pled *nolo contendere* after reserving the right to appeal the denial of his dispositive motion to suppress.

The defendant contends that the trial court erred in denying his motion to suppress because the traffic stop was based on a mistake of law. We agree.

An officer's mistake of law as to what constitutes a traffic violation cannot provide reasonable suspicion justifying a traffic stop. *Hilton v. State,* 961 So.2d 284, 298 (Fla.2007); *State v. Wimberly,* 988 So.2d 116, 119 n. 2 (Fla. 5th DCA 2008). Florida law requires a vehicle to have "a mirror so located as to reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of the motor vehicle." § 316.294, Fla. Stat. (2011). This statute does not require a center rearview mirror if one or more side mirrors meet its requirement, so here, the officer's belief to the contrary was a mistake of law. *See U.S. v. Chanthasouxat,* 342 F.3d 1271 (11th Cir.2003) (holding same regarding traffic stop for lack of rearview mirror based on substantially identical Alabama statute).

4. <u>Evidence presented at hearing</u>

a. <u>Testifying officer did not remember seeing the traffic infraction and did not receive information from fellow officer</u>

Carter v. State, 120 So. 3d 207 (Fla. 5th DCA 2013)

<u>Where police cannot remember or articulate the traffic infraction that created reasonable suspicion that led to an arrest and conviction, the conviction should be overturned</u>.

Orlando Police Officer Reinaldo Rivero, the only witness to testify at the suppression hearing, was on patrol with Officer Frank Sikos when they pulled over Carter's vehicle. Officer Rivero testified that "we saw ... the vehicle c [o]me to a stop sign. It didn't stop before making a turn." On cross-examination, Officer Rivero candidly admitted that he could not recall if he personally observed the traffic infraction,

To make a valid traffic stop, law enforcement must have a reasonable suspicion that a traffic violation has occurred. *See Dep't of Highway Safety & Motor Vehicles v. Roberts,* 938 So.2d 513, 514 (Fla. 5th DCA 2006). Reasonable suspicion is a less demanding standard than probable cause in that reasonable suspicion can arise from information that is less reliable than that required to show probable cause. Still, like probable cause, reasonable suspicion depends on both the content of information that law enforcement possesses and its degree of reliability. Both quantity and quality of information are considered in the "totality of the circumstances—the whole picture," that must be taken into account when evaluating whether there is reasonable suspicion. *Alabama v. White,*496 U.S. 325, 330, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990) (quoting *United States v. Cortez,* 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)). Here, there was no competent, substantial evidence to support the trial court's finding that the officers had reasonable suspicion. While Officer Rivero testified that "we" saw Carter's vehicle roll through a stop sign, on further questioning, he candidly admitted that he could not recall observing the traffic infraction himself, and he did not testify to what information, if any, he received from Officer Sikos.

As the State argues, the "fellow officer" rule allows one officer's observations to provide a reliable basis for a traffic stop initiated by another officer who receives that information. Observations of fellow law enforcement officers engaged in a common investigation are plainly a reliable basis for initiating a traffic stop. *United States v. Ventresca,* 380 U.S. 102, 110, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965).

An officer can testify in a suppression hearing as to his own knowledge and information received from other reliable sources, such as fellow officers

However, that did not occur here. In this case, Officer Rivero received no information from Officer Sikos (or, at least, did not testify as to any) and could not recall seeing the traffic violation. Consequently, there was no competent, substantial evidence to support the trial court's order validating the stop and subsequent search.

Therefore, we reverse Carter's convictions based upon the erroneous denial of the dispositive motion to suppress.

5. DUI

a. Driving slowly + periodic stopping + U-turn

***Beahan v. State*, 41 So. 3d 1000 (Fla. 1st DCA 2010)**

An illegal U-turn, where the driver drives on the grass a few feet away from the turn, is not indicative of intoxicated driving; Florida law only prohibits U-turns where there is a sign forbidding it.

The charges arose from a traffic stop on the evening of September 10, 2008, on a street in front of the Milton Housing Project in Milton, Florida. Sergeant Scott Haines of the Santa Rosa County Sheriff's Office was on patrol at that location, because drug transactions were known to take place there.

Sergeant Haines testified that he observed the defendant driving his car slowly down the street and stopping in front of several of the housing units. The street was a two-lane street with sidewalks on each side. After proceeding down the street past several of the residences, the defendant turned around and headed in the other direction. He could have reversed course by making a three-point turn but instead he made a U-turn by driving his vehicle up over the curb on the opposite side of the street. According to Sergeant Haines, the wheels of the defendant's car went onto the grass about two or three feet from the edge of the curb. There were no other vehicles on the street at the time.

Based on these facts, Sergeant Haines signaled for the defendant to pull over. The defendant produced his driver's license and, while running a computer check on the license, Sergeant Haines called another officer for assistance. Sergeant Haines told the defendant that the reason for the stop was that he had made an illegal U-turn onto the grass. He said that the defendant was nervous but that he did not smell of alcohol and that he did not appear to be under the influence of drugs or alcohol.

Within five minutes a canine officer arrived at the scene with a drug-sniffing dog in the back of his patrol car. The canine officer had arranged to be in the area of the Milton Housing Project. He knew that Sergeant Haines would be working there and he had planned to be close by, in case he was needed. The dog alerted on the defendant's car, and the officers

eventually discovered within the car a smoking pipe and a baggie with a crushed up white substance in it. Sergeant Haines then arrested the defendant for the drug offenses.

The defendant moved to suppress the evidence found in his car and the court held an evidentiary hearing on the motion. At the hearing, Sergeant Haines conceded that he had not issued the defendant a citation for making an illegal turn, even though that was the reason he initially gave for stopping the vehicle. He testified during the suppression hearing that he stopped the vehicle because he feared that the defendant was driving under the influence of alcohol or drugs.

To make a lawful traffic stop for driving under the influence of drugs or alcohol, an officer must have a reasonable suspicion that the driver is impaired.

Because we conclude that Sergeant Haines did not have a reasonable suspicion that the defendant was impaired at the time of the stop, we hold that the subsequent search of the vehicle was unlawful.

The fact that the defendant was driving slowly in a residential neighborhood should not be regarded as unusual. Any safe driver would proceed cautiously down a two-lane residential street with sidewalks on both sides. Nor is it cause for suspicion that the defendant stopped from time to time. He was not driving erratically and the fact that he stopped a few times along the side of the street is more likely to indicate that he was looking for an address or speaking with friends than it does to suggest that he was impaired by the use of alcohol or drugs.

The fact that the wheels came over the curb and a few feet onto the grass is not itself a reason for concern. An unimpaired driver might have thought that the street was wide enough for the turning radius of the vehicle only to find that it was not.

This leaves only the fact that the events took place in an area where drug transactions are known to take place. Of course, this fact is not sufficient to support a reasonable suspicion of criminal activity. The fact that there have been drug arrests in a particular neighborhood before is not a reason to believe that every person driving through that neighborhood is there

to sell or purchase drugs. *See e.g., Dames v. State,* 566 So.2d 51 (Fla. 1st DCA 1990); *Bolinger v. State,* 576 So.2d 875 (Fla. 2d DCA 1991). Here the question is whether the officer had a reasonable suspicion that a person driving through a known drug area was impaired by the use of drugs. The answer is no different. The fact that drug transactions were known to take place in the neighborhood is not alone sufficient to support a reasonable suspicion.

The sole argument made on appeal is that Sergeant Haines had a reasonable suspicion to stop the vehicle, because he feared that the defendant was under the influence of drugs or alcohol.

6. <u>Officer's "Mistake of Law"</u>

***Leslie v. State,* 108 So. 3d 722 (Fla. 5th DCA 2013)**

<u>An officer's mistake of fact regarding the necessity of a rearview mirror (when it is missing) will yield an illegal stop if this is the sole basis for the stop</u>.

See *supra* at page 18.

II. INVESTIGATORY STOP

A. REASONABLE SUSPICION BASED ON TOTALITY OF CIRCUMSTANCES

1. Description matching BOLO + GPS location

***Exantus-Barr v. State*, 193 So.3d 936 (Fla. 4th DCA 2016)**

Where police are investigating an armed robbery involving a cellphone, the totality of the circumstances creates valid reasonable suspicion to stop a car when the phone's GPS indicates a certain area where one of the individuals matches a description in a BOLO and gets into said car.

After midnight, the victim was walking home from his restaurant job when he was accosted at 36th Street and Broadway in West Palm Beach by two persons dressed all in black and with bandanas around their faces. They told the victim to give them everything he had. The victim had no money, so they took his watch and iPhone 4. After they took the phone and watch, one person shot at his feet and told him "get the f—— out of here, white boy."

The duo fled southbound on Broadway. The victim ran to the nearest phone and called 911. He provided the 911 operator with a description of the individuals, and also gave the operator his username and password to track his iPhone. The victim explained that he had an app on his phone, "Find my iPhone," that worked essentially as a GPS tracker for his phone.

The police arrived at the scene within 5 minutes. The victim gave one officer the same description of the individuals that he gave to the 911 operator. The victim described one of the robbers as "a black male, approximately six-foot-tall, thin build, short-cropped hair, wearing a black shirt, blue jeans, prescription glasses and a black bandana covering his face from the nose down." The other was "a black male, medium build." A BOLO was put out with the description of the suspects and the direction they ran.

Using the victim's username and password, the second officer began tracking the stolen iPhone on his own iPhone through the app. The phone was "live," meaning that the officer was getting a return signal of the phone's location. He directed other units in the area and

"gave them the general area of where the phone was at." With this information, the other units established a perimeter in the vicinity of Broadway between 26th and 27th Streets.

The second officer crossed 27th Street and saw the same building reflected on the overhead view of the app. Next to the building, he saw three people standing where the app indicated the phone was located. There was no one else nearby. Two of the three individuals separated from the other, and walked toward the building; the other individual walked toward the parking lot area. All made eye contact with the second officer. After he lost sight of the two men, the phone stopped transmitting a signal. Officer Matias testified that the signal stops when the iPhone is turned off.

The second officer then saw the three individuals get into a Ford Mustang in the parking lot and begin to pull away. At least two of the persons in the Mustang were similar to the description provided to the officer by the BOLO. The second officer motioned for the vehicle to stop, which it did. He waited for the other officers to come and assist him.

Appellant was the front passenger of the vehicle. When the second officer approached the car, he saw two items described by the victim—prescription glasses and a bandana. The watch and iPhone were later recovered. As a result of the stop, appellant and a codefendant were arrested.

Based on the totality of the circumstances, the trial court determined that there was reasonable suspicion to stop the Mustang. We agree with the trial judge's ruling.

"Whether 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." ***Slydell v. State,*** **792 So.2d 667, 671 (Fla. 4th DCA 2001).**

Unlike the situation in ***Slydell,*** **the officers here were responding to a reported crime with a victim who had called 911. The BOLO indicated that the suspects fled south after the robbery, which is where the officer found and eventually detained them. Most significantly, the officer had reason to believe the individuals were involved in the robbery because the victim's phone was signaling its location to him through the "Find My Phone" app. The**

suspects, the only persons in the area identified by the app, were consistent with the victim's description. It was reasonable for the officer to believe that once the defendants saw him, they turned off the phone to conceal their possession of it. There was no error in the trial court's denial of the motion to suppress.

2. Description matching BOLO + traveling same route + evasive maneuvers when police arrived

State v. Jemison, 171 So. 3d 808 (Fla. 4th DCA 2015)

Under the totality of circumstances, police officers had reasonable suspicion to stop a vehicle that matched the description of a BOLO, was traveling in the same route, and which took evasive maneuvers when police arrived.

The State appeals an order granting the defendant's motion to suppress. We conclude that, under the totality of the circumstances, the police had reasonable suspicion to stop the defendant's vehicle where, within six minutes of receiving a BOLO alert, an officer saw the defendant's vehicle—which matched the BOLO description—traveling on the only road of escape from the location of the burglary, and where the defendant later took evasive driving actions. We therefore reverse.

Shortly before noon one day, Officer Bennett responded to a BOLO regarding a burglary at an address in a residential development. The BOLO provided a description of a white Tacoma pick-up truck, newer model, with dark tinted windows, heading in an unknown direction. The BOLO did not state the number of occupants in the vehicle, nor did it describe any occupants in the vehicle. However, Officer Bennett was aware that the victim was the one who called and gave the information leading to the BOLO. The 911 caller left a phone number where he could be reached.

Without activating his lights or sirens, Officer Bennett followed the truck on Nob Hill Road. He continued to follow the truck into Cooper City, which is where Nob Hill Road becomes Palm Avenue. He followed the truck for "no more than ten minutes," during which time the driver of the truck did not violate any laws.

The truck went into a neighborhood and drove in circles for a while. Officer Bennett acknowledged that this may have indicated the driver was lost, but he also explained that the truck's license plate was registered to an address about ten minutes away. Officer Bennett asked the dispatcher to send additional patrol units.

Officer Bennett testified that when the two other officers arrived, the truck jumped the right curb, crossed over the median of grass by the sidewalk, went around the car in front of him, and made a right turn without stopping at the red light. When asked whether there was an officer behind him when the defendant ran the red light, Officer Bennett replied: "I was the only one there." The defendant then continued north on Palm Avenue. Later, the defendant was issued a ticket for running the red light.

Officer Garcia was one of the other officers who responded to the area where Officer Bennett was following the truck. Officer Garcia was on Palm Avenue with his lights activated and could see the truck at the intersection. He described what he saw when the defendant made a right turn onto Palm Avenue: "I saw the white pickup truck stop and begin to accelerate [at] a high rate of speed, coming northbound on Palm Avenue."

The defendant ultimately was apprehended and charged by information with aggravated fleeing or eluding (high speed), aggravated assault on a law enforcement officer, burglary of a conveyance, felony petit theft, resisting an officer without violence, and possession of cannabis.

The essence of the reasonable suspicion standard "is that the totality of the circumstances—the whole picture—must be taken into account." *United States v. Cortez,* 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981). The following factors are relevant in assessing whether a vehicle stop pursuant to a BOLO was supported by a founded suspicion: "(1) the length of time and distance from the offense; (2)[the] route of flight; (3) [the] specificity of the description of the vehicle and its occupants; and (4) the source of the BOLO information." *Hunter v. State,* 660 So.2d 244, 249 (Fla.1995).

As the cases demonstrate, the assessment of reasonable suspicion in the context of a BOLO is a fact-specific inquiry. Here, a correct application of the law to the facts indicates that the police had reasonable suspicion to stop the defendant under the totality of the circumstances.

Assuming *arguendo* that the record supports the trial court's conclusion that the defendant did not commit any traffic violations, the police had reasonable suspicion to stop the defendant's vehicle based on the BOLO and Officer Bennett's subsequent observations of the defendant's vehicle. While the BOLO did not describe any occupants, it did describe the make, model, color, and dark window tinting of the suspected vehicle (i.e., a white Tacoma pick-up truck, newer model, with dark tinted windows). The officer went to the development where the burglary occurred. Although the BOLO did not indicate the direction of flight, the officer positioned himself on the only route of escape from the development. Within six minutes of the BOLO being issued, the officer saw a vehicle matching the exact description in the BOLO during a time when traffic was very light. The source of the BOLO information was not an anonymous tip, as the 911 caller had left his name and a phone number where he could be reached. In fact, the officer knew that the source of the BOLO information was the victim of the burglary. Finally, the officer observed additional suspicious activity, including the defendant circling a neighborhood, cutting in front of a vehicle to make a turn, and then driving evasively.

Under the totality of the circumstances, the police had reasonable suspicion to conduct the stop. We therefore reverse the order granting the motion to suppress and remand for further proceedings.

Reversed and Remanded.

3. **Parked car with engine running and headlights on + defendant slumped over wheel + officer could smell alcohol through open window + defendant failed to respond to officer**

State v. Jimoh, 67 So. 3d 240 (Fla. 2d DCA 2010)

Where an officer comes across a vehicle that had been parked (engine running, lights on, smell of alcohol present) with an unconscious driver, circumstances for an investigatory stop are established.

The State appeals from a trial court order granting Rafiat Jimoh's motion to suppress evidence seized after Jimoh was discovered unresponsive behind the wheel of her parked car. The State argues that officers had reasonable suspicion to justify an investigatory stop of Jimoh's vehicle based on her condition, the fact that the engine was running and the headlights were on, and because the odor of alcohol could be detected coming from the vehicle. We agree and reverse.

Deputy Johnson observed Jimoh sitting in the driver's seat of her car with the engine running in the parking lot of a convenience store. The deputy testified that Jimoh appeared to be asleep or looking down at her telephone. After inquiring and discovering that Jimoh had been parked there for approximately ten to fifteen minutes, Deputy Johnson called for back-up and Deputy McCalla, an experienced DUI investigator, responded. When Deputy McCalla arrived, he observed a woman "slumped over" at the wheel of her vehicle. The engine was running and the headlights were on. The driver's side window was open about four inches and Deputy McCalla could smell alcohol coming from the vehicle. Both deputies attempted to wake Jimoh by banging on the car roof and doors. When she did not respond,

Deputy McCalla reached into the vehicle, shut off the engine, opened the door, and shook Jimoh until she woke up. He then had Jimoh get out of the car, and based on her bloodshot and glassy eyes together with the odor of alcohol coming from the vehicle, proceeded to conduct a DUI investigation that led to Jimoh's arrest.

Deputy McCalla testified that when he came up to Jimoh's car, he could smell alcohol through a window that was open approximately four inches. Despite banging on the roof and doors of the vehicle and calling out to Jimoh, she did not respond. Based on his observations of Jimoh, including her unresponsiveness and the smell of alcohol, Deputy McCalla believed further investigation was warranted. It was at this point that he woke Jimoh and asked her to get out of the car. Accordingly, we conclude that when the investigatory stop occurred, the totality of the circumstances provided Deputy McCalla with a reasonable suspicion that Jimoh may have been impaired, and therefore the investigatory stop was justified.

We reject Jimoh's contention that the circumstances observed by the officers were consistent with innocent conduct; therefore, they could not have given the officers the requisite founded

suspicion to justify an investigatory stop. "A determination that reasonable suspicion exists ... need not rule out the possibility of innocent conduct." ***United States v. Arvizu,*** **534 U.S. 266, 277, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002).**

B. REASONABLE SUSPICION OF CRIMINAL ACTIVITY

1. Officers must observe something criminal about occupant's activities

Thomas v. State, 144 So. 3d 660 (Fla. 2d DCA 2014)

Where police officers observe solely suspicious conduct, *i.e.*, a car with individuals who approach a building with flashlights, but no discernable criminal conduct, do not have sufficient reasonable suspicion for a stop in the absence of a traffic offense.

Late one evening, two Haines City police officers sitting in an unmarked vehicle noticed a car sitting with its parking lights on behind a business. The business was closed, but the gates in the fence surrounding it, which were usually shut, were not. The business owner had previously alerted the police that he had recently experienced several burglaries.

The officers observed people with flashlights walking between a dumpster and the bed of a pickup truck. After about ten minutes, the people turned their flashlights off and left the premises in the car. Both officers testified that they had not seen any criminal or illegal conduct. If they had observed such conduct, they said, they would have intervened. As it was, they simply sat in their vehicle and watched the goings-on from afar. When the people left, one of the officers radioed a patrol officer to stop the car in order to investigate the occupants' activities behind the building and to determine whether they had stolen anything.

The patrol officer recounted that the officer who radioed told her that Thomas, a passenger in the car, was with someone involved in the drug trade and that another person in the car had been seen leaving a drug house. She testified that she did not witness a traffic infraction before conducting the stop. Although the patrol officer did not testify about how she discovered the contraband, her police report stated that Thomas was uncooperative when she asked him to step out of the car. She then attempted to arrest him, and he pulled away. In the process, Thomas's shirt pulled up and the officer saw plastic baggies stuck in his trousers. The baggies contained the drugs.

The question before us is whether the facts described by the officers were sufficient to establish that law enforcement had a well-founded, articulable, suspicion that criminal activity was afoot and thus could legally stop the car. We review this question of law de novo, *State v. Hankerson,* 65 So.3d 502, 506 (Fla.2011).

Both officers who observed the people behind the business testified that they saw nothing criminal about their activities. The patrol officer stopped the car solely because one of the other officers asked her to do so—she did not see any traffic violations that would form an independent basis for a stop. Under these circumstances, the stop simply was not authorized by law.

The contraband items were discovered on Thomas's person as a direct consequence of the illegal stop. Thus, their exclusion was mandated as fruits of the poisonous tree, no exception having been argued or supported by the evidence at the suppression hearing. *See Moody v. State,* 842 So.2d 754, 759 (Fla.2003) (noting three exceptions to the poisonous tree doctrine: (1) an independent source would have led to the evidence; (2) the evidence would have inevitably been discovered in a legitimate investigation; and (3) sufficient attenuation existed between the illegal conduct and the discovery of the evidence). Accordingly, we reverse the two possession offenses.

2. **Officers must articulate a basis for suspecting criminal activity and there must be sufficient evidence to support the suspicion**

Majors v. State, 70 So. 3d 655 (Fla. 1st DCA 2011)

Officers lack reasonable suspicion to stop a vehicle (via both community caretaking doctrine and independent circumstances) where a bank teller reports that there is a client attempting to withdraw a large amount of money ($17,500), acting strangely, and conversing with unknown parties in a Nissan outside the bank.

Shortly before Appellant's arrest, a bank manager called 911 and, whispering, reported that a customer was "acting weird" and attempting to withdraw $17,500. The customer wanted to make a check payable to the driver of a Nissan that was parked in front of the bank, and the customer kept going back and forth between the Nissan and the bank, acting strangely and having discussions with the people in the Nissan. The bank manager was not aware of

this customer having made such a large withdrawal in the past. The dispatcher suggested that perhaps the people in the Nissan were forcing the customer to withdraw money. In response, the bank manager told the dispatcher that the customer seemed to know what he was doing but that the bank employees thought he might be on drugs. The bank manager also indicated that one of the people who had been outside at the Nissan had come into the bank. Some of the people involved in this scenario were pacing and wanting to know why the transaction was taking so long, and their activities were causing the bank employees concern. The bank manager described the Nissan, and the dispatcher conveyed the information to the responding officers.

When the officers arrived at the bank, they saw a Nissan matching the description provided in the call. The Nissan attempted to back out of a parking space, but the officers blocked the Nissan's exit with their vehicles and then approached. Appellant was in the Nissan when the officer approached it. Based on his interaction with the police at that point, he was arrested, and evidence was seized from him.

Appellant filed a motion to suppress all the evidence seized as a result of the stop of the Nissan. He argued, among other things, that the officers lacked reasonable suspicion to stop the Nissan. At the suppression hearing, the officers admitted that they did not see any criminal activity and were not aware of any criminal activity that had occurred before they stopped the Nissan. They explained that the basis for stopping the Nissan was that it was involved in the call they were investigating.

The State contends that the officers' collective knowledge gave rise to a reasonable suspicion that "a person, or persons, in the Nissan was, or had been, influencing the customer, by force or otherwise, to withdraw a large amount of money payable to someone in the Nissan." This argument strains the facts and may rely partly on hindsight. For example, the State notes in its brief that one of Appellant's companions went inside the bank and said she was not going to jail, that the bank customer was Baker Acted, and that several arrests were made. The record indicates that these facts came to light after the Nissan was stopped. As a result, we do not consider them in our reasonable suspicion analysis.

Importantly, the officers in this case were not able to articulate a basis for suspecting criminal activity, as they were not even able to state a crime they believed was occurring. As suggested above, this factor weighs heavily in favor of a conclusion that no reasonable suspicion existed. Moreover, had they named a crime they believed was occurring, there would have been insufficient evidence to support their suspicion. The customer's activity inside the bank was strange, but the concern that this strange behavior and his interaction with the Nissan related to criminal conduct was not supported by any articulable facts. The Nissan's attempt to leave the bank when the officers arrived does not tip the scale in favor of finding reasonable suspicion because the testimony indicates that the Nissan simply began to back out of a parking space.

As an alternative to arguing that the officers had reasonable suspicion for the stop, the State urges us to affirm on the basis of the community caretaking doctrine, claiming that it was proper to detain the Nissan to determine whether the occupants of the Nissan had placed anyone's safety in jeopardy. Under the community caretaking doctrine, an officer may stop a vehicle without reasonable suspicion of criminal activity if the stop is necessary for public safety and welfare.

In sum, because the stop of the Nissan was not justified by either reasonable suspicion or the officers' community caretaking functions, we reverse the denial of the motion to suppress. Because the motion to suppress is dispositive, we reverse the judgment and sentence appealed from and remand with directions to the trial court to grant the motion to suppress and to discharge Appellant for the offenses at issue in this case.

REVERSED and REMANDED with directions.

C. <u>VAGUE "BE ON THE LOOKOUT" (BOLO)</u>

1. <u>Vague BOLO + mere presence near scene</u>

Sousa v. State, 192 So. 3d 481 (Fla. 2d DCA 2016)

<u>A motion to suppress should be granted where an LEO used circumstantial, or (bare/mere) suspicion in initiating a traffic stop</u>.

Dalton Sousa pleaded no contest to attempted robbery with a weapon while wearing a mask and reserved his right to appeal the denial of the dispositive motion to suppress. Because the officer did not have a well-founded suspicion of criminal activity justifying the stop, we reverse.

Corporal Booth was the only witness to testify during the evidentiary hearing on Sousa'smotion to suppress. On June 9, 2013, at approximately 5:00 a.m., Corporal Booth received a BOLO from dispatch indicating that a robbery[1] had occurred in the area where he was patrolling. While in route to the scene of the crime, Corporal Booth learned that there were "three suspects with a firearm" and that "[t]hey had fled towards some apartments." Corporal Booth testified that the entire area consisted of apartments and that he could not recall which apartments the suspects fled toward. At some point, dispatch also provided that the suspects were males. Once Corporal Booth learned that Corporal Tipton had made contact with the victim, he proceeded to search for the suspects.

Corporal Booth soon observed a small vehicle with three occupants inside. He explained that it had been a quiet night, that he had not seen any vehicles on the road for some time, and that this was the first and only vehicle he saw since receiving the BOLO. As Corporal Booth followed the vehicle, he observed the passenger in the backseat "bouncing around and at points even appear[ing] to be laying [sic] down." Because Corporal Booth suspected that the vehicle occupants were involved in the recent criminal activity, he was looking for a reason to initiate a traffic stop. As he continued to follow the vehicle, he observed that it was "green, maybe a blue."

After following the vehicle for approximately two miles without observing any traffic violations or receiving any more information from dispatch, Corporal Booth conceded that while he did not have much to go on, he needed to stop the vehicle.[2] Corporal Booth based his suspicion on "[t]he back passenger bouncing around, laying [sic] down, three occupants, no other vehicles on the roadway when [he] was in that specific area where the crime had occurred." After initiating the stop and while walking toward the vehicle, he received a description of the suspects' vehicle from the Computer Aided Dispatch (CAD) report; the suspects' vehicle was reported to be red.

Corporal Booth did observe three people in a vehicle near the area where the crime had recently occurred, but a "vehicle's mere presence near the scene is insufficient to give rise to a reasonable suspicion that its occupants were connected to the recent [crime]." *Batson v. State,* 847 So.2d 1149, 1151 (Fla. 4th DCA 2003). Further, the BOLO was vague. It provided only that three male suspects with a firearm fled toward apartments in an area that consisted entirely of apartments; there was no indication that the suspects fled in a vehicle rather than on foot or by other means. *See Sumlin v. State,* 433 So.2d 1303, 1304 (Fla. 2d DCA 1983) ("A vague description simply will not justify a law enforcement officer in stopping every individual or vehicle which might possibly meet that description."); *see also State v. Jemison,* 171 So.3d 808, 811 (Fla. 4th DCA 2015) ("A BOLO providing a 'bare bones' description of a vehicle, without more, is insufficient to create the reasonable suspicion necessary for a traffic stop.").

Additionally, the trial court's reliance on the vehicle description was misplaced because Corporal Booth did not receive a vehicle description or learn that the suspects even fled in a vehicle, for that matter, until after he initiated the stop. The trial court acknowledged that Corporal Booth "had the wrong color of the vehicle" but found that Corporal Booth was correct that the vehicle "was small and occupied by three persons." However, Corporal Booth never testified that the CAD report indicated that the suspects' vehicle was small; he testified only that it was reported to be "older," "beat-up," and "red."[3]

Despite a "bare bones" BOLO description, an officer's suspicions of the occupants in a vehicle may become reasonable if the occupants match the BOLO description and "there are additional supporting factors." *Jemison,* 171 So.3d at 812. But no such factors exist in this case. *Cf. id.* at 812–13 (holding that while the BOLO only provided a vehicle description and did not provide the number of occupants or the direction of travel, the officer had reasonable suspicion to stop the defendant's vehicle upon encountering the vehicle along the only possible escape route and observing the defendant "circling a neighborhood, cutting in front of a vehicle to make a turn, and then driving evasively"). Though Corporal Booth testified that the backseat passenger in the vehicle was acting suspiciously by "bouncing around" and

"laying [sic] down," this activity is equally consistent with noncriminal activity. *Cf. Carter v. State,* 454 So.2d 739, 740, 742 (Fla. 2d DCA 1984)

Corporal Booth had nothing more than a mere or bare suspicion that the individuals in the vehicle were involved in the recent crime, which will not suffice.

Accordingly, we reverse the denial of the motion to suppress, reverse the convictions and sentences, and remand for discharge. *See id.* at 1177.

2. <u>Vague BOLO + minimal connection to defendant</u>

Sanchez v. State, 199 So. 3d 472 (Fla. 4th DCA 2016)

<u>No reasonable suspicion to justify stop based upon vague BOLO and minimal connections to the defendant</u>.

On the morning of July 30, 2008, there was a robbery at AMIGO Food Store in Pompano Beach, Florida. During the robbery, gunshots were fired and the store owner was killed. Several 911 calls prompted law enforcement to broadcast BOLOs about the suspects. Appellant was a passenger in a car that was stopped pursuant to one of these BOLOs, leading to appellant's arrest. Appellant moved to suppress, arguing the stop was unreasonable and in violation of the Fourth Amendment. The trial court denied appellant's motion. After a jury trial, appellant was found guilty of first-degree felony murder. We reverse because the officer lacked reasonable suspicion to make the stop.

Starting at 9:52 a.m., a few minutes after the robbery, several BOLOs were broadcast. Prior to the first officer's arrival at the scene, the BOLOs described Haitian males fleeing westbound from the store on foot. From 9:52 a.m. until 10:02 a.m., the police stopped every black male near the convenience store—some were on foot, others on bicycles.

The arresting officer received a radio call at approximately 9:56 a.m. and arrived near the perimeter of the crime scene within 2–4 minutes. The only BOLO he heard was for "two black males fleeing westbound from the store."[1] At the time of the stop, the officer had no further information about the suspects—he had received no information describing clothing or a vehicle.

While driving within a few blocks of the crime scene, the arresting officer saw two black males in a red Dodge Charger travelling northbound and then eastbound. The two cars passed one another going in opposite directions. The officer observed the driver's dreadlocks and noted that the passenger was seated in the rear seat furthest away from the driver. The passenger wore a white t-shirt and a large hat the officer later described as an "old grandma church hat, or turban/1930's flapper hat drawn down to his eyebrows." Neither the driver nor the passenger made eye contact with the officer, which the officer found suspicious.

Although the arresting officer witnessed no traffic violation, the sum of the odd seating arrangement, the backseat passenger's funny looking hat, and lack of eye contact, in conjunction with the outstanding BOLO, prompted the officer to make a U-turn and perform a traffic stop. After the officer activated his lights and the vehicle slowed down, the officer noticed a third black male in the front passenger seat. The arresting officer and an assisting officer approached the car with guns drawn.

After the close of the evidence at the suppression hearing, the state argued there was sufficient reasonable suspicion to justify the stop, considering the BOLO together with the officer's observations and experience. The state argued it was reasonable for the arresting officer to conclude there was an escape vehicle awaiting the suspects. Additionally, under the totality of the circumstances—the proximity of the stop to the crime scene, the rear passenger wearing a hat consistent with concealing his identity, the suspects in the only car on the road at the time of the stop, and a third person, who became visible to the officer once his lights were activated—the state argued there was reasonable suspicion to justify the stop.

Appellant countered that the police were systematically pulling over any black males in the area based on a vague BOLO, and such conduct fails to provide articulable facts which warrant a finding of reasonable suspicion. Appellant argued he was not stopped for any infractions, but rather for "driving while black."

Based on the totality of the circumstances, the trial court denied the motion to suppress finding the stop to be reasonable.

However, a vague BOLO with minimal connections to a suspect does not necessarily invalidate a stop; other suspicious conduct, coupled with a vague BOLO, can create a

reasonable suspicion. For example, flight from the police is one common circumstance that can operate in conjunction with a vague BOLO to give rise to a reasonable suspicion to stop. *Virgo v. State,* 931 So.2d 1010 (Fla. 4th DCA 2006) (finding the defendant's conduct suspicious where, after noticing officers following him, he drove down a dead end street, immediately stopped the vehicle, and darted out of the car); *Freeman v. State,* 450 So.2d 301 (Fla. 5th DCA 1984) (finding defendant acted suspiciously for the time and place and ran when approached by the officers, which added to reasonable suspicion when the defendant matched the general description of the BOLO); *see also Wardlow,* 528 U.S. 119, 120 S.Ct. 673, *Jean v. State,* 987 So.2d 196 (Fla. 4th DCA 2008).

Moreover, there is no indication the arresting officer saw appellant engage in other conduct suggesting "criminal activity [was] afoot." *Wardlow,* 528 U.S. at 123, 120 S.Ct. 673. The officer merely noticed two black males in a car, one with dreadlocks and the other sitting in the back seat wearing an odd hat. The officer observed no traffic violations or other suspicious conduct.

In fact, as the evidence disclosed, the police were stopping every black male in the vicinity of this tragic crime. To uphold the stop, in this case, would be to allow overly generic stops in the area of a crime—i.e., all black males, all Hispanic women—a practice reminiscent of Captain Renault's instruction in the film *Casablanca* to "Round up the usual suspects." The Fourth Amendment does not permit stops based on such minimal information.

Because the stop was without reasonable suspicion, the motion to suppress should have been granted, resulting in suppression of the stop. This includes the fruits of the poisonous tree, that evidence which the state obtained "by exploitation" of the illegal stop, and not evidence come at "by means sufficiently distinguishable to be purged" of the taint of the illegal search. *Wong Sun v. United States,* 371 U.S. 471, 488, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

We reverse the conviction and remand for further proceedings. We have considered the other points raised in appellant's brief and find them to be without merit.

D. ANONYMOUS TIP

1. Anonymous tip vs. Citizen Encounter

***Pasha v. State*, No. SC13-1551, 207 WL 1954975 (Fla. May 11, 2017)**

Persons qualified as citizen-informants where they: 1) called 911 reporting that they saw a man covered in blood, holding a knife like object, running, changing clothes, and throwing something into the woods; 2) notified 911 that they were following the vehicle; and 3) flagged down deputies when they arrive to the intersection where the aforementioned suspect is.

Pasha initially claims that Deputy Stahlschmidt and Deputy Mason lacked reasonable suspicion to justify the investigative stop of Pasha's vehicle because the information provided by the Sanchezes to the 911 dispatcher failed to provide the deputies with reasonable suspicion of ongoing or completed criminal activity. We disagree. The record reflects that the deputies received information from a 911 dispatcher that two witnesses had called 911 to report a man covered in blood, holding a knife-like object, running, changing clothes, throwing something into the woods, and leaving the WCC in a white cargo-style Ford E150 van bearing a specific Florida license plate number. This information provided the deputies with reasonable suspicion of ongoing or completed criminal activity within the WCC.

Pasha further claims that the Sanchezes were anonymous informants whose anonymous tip required further police investigation. We disagree. Approximately one minute after receiving the dispatch, the deputies were flagged down by a red pickup truck at a stoplight near the WCC. The occupants of the red pickup truck were yelling, pointing, and flashing their headlights at a white van—the exact same van identified by license plate number within the dispatch—in order to direct the deputies' attention towards the van. We find that the Sanchezes were not anonymous because they called 911 to report suspected ongoing or completed criminal activity within the WCC, told the 911 dispatcher that they were following Pasha's vehicle, and flagged down two deputies at a nearby stoplight. Even considering only the facts known to the deputies at the time of the investigative stop of Pasha's vehicle, the Sanchezes' identities were easily ascertainable and readily discoverable. See Maynard, 783 So.2d at 229–30. Moreover, the Sanchezes qualified as

citizen-informants. There is no indication that the Sanchezes were motivated by any reason other than a concern for the safety of others. See id. at 230.

Under the totality of the circumstances, the facts known to the deputies immediately prior to the investigatory stop of Pasha's van provided them with an objectively reasonable basis to justify the stop. Therefore, the trial court did not err in denying Pasha's motion to suppress because the investigative stop was permissible under the Fourth Amendment.

Pasha claims that even if the deputies had reasonable suspicion to justify the stop, the deputies violated the Fourth Amendment by detaining Pasha longer than necessary. We reject this claim as it is without merit and unsupported by the record. Pasha also argues for the first time on appeal that the information given by Mrs. Sanchez to the 911 dispatcher cannot be imputed to the officers who made the stop under the fellow officer rule because the dispatcher in this case was a civilian employee rather than a law enforcement officer. However, because Pasha did not raise this argument below, he is foreclosed from raising it here. See Reynolds v. State, 934 So.2d 1128, 1144 (Fla. 2006) ("[W]e note that this particular claim was not presented at the trial court level, and, therefore, the claim has not been properly preserved for review.").

2. **Anonymous tip lacking detail requires additional, independent information to stop defendant's car**

Tobin v. State, 146 So. 3d 159 (Fla. 1st DCA 2014)

Officers lacked reasonable suspicion for investigatory stop of defendant's car as he was leaving property that was the subject of an anonymous tip, where tip lacked detail and officers did not observe any behavior to form reasonable suspicion of criminal activity.

We have for review the trial court's denial of Appellant's dispositive motion to suppress evidence he was driving with a suspended or revoked license, which led the court to find Appellant in violation of community control. Because the deputy sheriff who stopped Appellant's vehicle lacked the reasonable, articulable suspicion of criminal activity necessary to justify what the court determined—and the State conceded—was an investigatory stop, we conclude the court erred in denying the motion to suppress.

Appellant was on two years' community control, followed by two years' probation, for committing battery on a law enforcement officer and resisting an officer with violence. On the night in question, the Okaloosa County Sheriff's Office received two anonymous calls complaining of a disturbance at a particular residence or business located at the end of a privately-maintained road. The Sheriff's Office had received complaints in the past about disturbances at the property; some complaints were founded, some were not. The first anonymous call that night indicated firearms may be involved. When deputies investigated, they found no disturbance. Sometime later, a second call came in reporting a disturbance at the property, this time alleging someone on the property was overheard shouting "Shoot me now!" Two deputies responded, each in his own cruiser. The first deputy to arrive saw a vehicle leaving the property as he approached, and radioed to the second deputy, who was nearer to the intersection of the private road and the public street, to stop the vehicle. The second deputy, seeing the vehicle coming directly toward him, activated the blue lights on his cruiser, causing the then-unknown driver to stop his vehicle "beak to beak" with the cruiser. When Appellant began to get out of the vehicle, the deputy directed him to stay put. The deputy testified at the suppression hearing he did so because of concerns, based on the anonymous call, that a firearm may be present. Upon approaching the vehicle, however, the deputy recognized Appellant, knew he was on community control, and knew his driver's license was suspended. At that point, he arrested Appellant for driving with a suspended license. The deputy also smelled alcohol on Appellant's breath and found a cup containing an alcoholic beverage in the passenger or back seat of Appellant's vehicle.

Applying these principles to the facts in the instant case, we conclude the deputy who stopped Appellant's car did not have a well-founded suspicion of criminal activity needed to effect a lawful *Terry* stop. The disturbance calls that sent the deputies to the property on the night question were anonymous tips bereft of any details indicating the information given was reliable. Indeed, the first call proved to be unfounded after deputies investigated. The second call, alleging someone was overheard yelling "Shoot me now," still did not provide any specific, articulable facts indicating that Appellant (or any other identifiable person, for that matter) was engaged in criminal activity. Thus, even if, as the State argues, we could characterize the callers as citizen informants, there still was insufficient information given

to support a reasonable, articulable suspicion that a crime had been, or was being, committed.

Because the anonymous calls provided neither the quantity nor the quality of information necessary to create reasonable suspicion, the deputies needed additional, independently-obtained information. They had none, for they had not yet begun to investigate the alleged disturbance when Appellant's car was stopped. Nor did they observe any behavior by Appellant to generate reasonable suspicion he was or had been engaged in criminal activity involving a firearm.

If the second deputy's action could be characterized as attempting a consensual encounter with Appellant, see generally *Popple*, 626 So.2d at 186, we could affirm the trial court's denial of Appellant's motion to suppress. But the deputy effected the stop of Appellant's car by activating the blue lights on his cruiser, positioning the cruiser on the road such that Appellant had to stop directly opposite, and ordering Appellant to remain in the car when he attempted to step out.

What occurred in this case was a seizure—an investigatory stop for which a reasonable, articulable suspicion of criminal activity *by Appellant* was required. Because the anonymous calls failed to provide deputies with the requisite level of suspicion, the stop of Appellant's car was unlawful, and the trial court should have granted the motion to suppress. Accordingly, we reverse the order of revocation of community control and the subsequent judgment and sentence, and direct the trial court to reinstate Appellant's community control.

REVERSED and REMANDED with directions.

E. DOG SNIFF

1. Can only be used if it does not prolong the stop

***Underhill v. State*, 197 So. 3d 90 (Fla. 4th DCA 2016)**

A dog sniff is unconstitutional if it prolongs the stop.

An officer with the Okeechobee Narcotics Task Force was patrolling with his drug detection dog when another team member radioed that appellant had been spotted in a truck and was not wearing his seatbelt. The officer, along with at least one other officer in a separate vehicle, stopped appellant. The officer asked for appellant's driver's license and registration, informing appellant that he was being stopped for the seatbelt violation. Appellant seemed nervous and the officer asked appellant to step out of the vehicle. At the same time and while standing beside the truck, the officer called in the license and registration information to dispatch.

While waiting for the information to come back on the license and registration, the officers questioned appellant. They asked for consent to search the truck, which appellant refused. The officers then decided to conduct a "free sniff" with the dog. By that time, the information had come back from dispatch on the license and registration. Rather than write the ticket for the seatbelt offense, the officer went back to his car, retrieved the dog and commenced the sniff on the outside of the vehicle. Within a couple of minutes, the dog alerted on the vehicle. The deputy advised the driver that the dog had alerted, and they were going to search the vehicle. Inside, the dog alerted to a black bag located on the driver's side floorboard near the transmission hump. The bag contained drug paraphernalia, and appellant was arrested. Later that day, the officers also wrote a traffic citation to appellant for the failure to wear a seatbelt.

We recently decided a case nearly factually identical to this case. In *Jones v. State,* 187 So.3d 346, 346 (Fla. 4th DCA 2016), an officer stopped the defendant for failure to wear a seatbelt. He obtained the defendant's driver's license and car registration but did not do anything with them. *Id.* at 347. Instead, he asked for permission to search the vehicle, and when the defendant refused, the officer retrieved his drug dog from his vehicle to perform a dog sniff of the defendant's vehicle. *Id.* The dog alerted, and the officer discovered oxycodone pills. *Id.* Only about three minutes passed from the beginning of the traffic stop until the dog alerted. *Id.*

In analyzing the effect of *Rodriguez* on this area of law, our Court explained that:

**Prior Supreme Court cases have held that a traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a ticket, [*Illinois v.*] *Caballes,* 543 U.S. [405] at 407, 125 S.Ct. 834 [160 L.Ed.2d 842 (2005)], and that a seizure is lawful only "so long as [unrelated] inquiries do not measurably extend the duration of the stop." *Arizona v. Johnson,* 555 U.S. 323, 333, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009). *Rodriguez,* however, eliminates any ambiguity about the reasonableness of the time required for the officer to complete a traffic stop. As the Court made clear, "[i]f an officer can complete traffic-based inquiries expeditiously, then that is the amount of 'time reasonably required to complete [the stop's] mission.' " *Rodriguez,* 135 S.Ct. at 1616 (second alteration in original) (quoting *Caballes,* 543 U.S. at 407, 125 S.Ct. 834). "The critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket ... but whether conducting the sniff 'prolongs'—*i.e.,* adds time to—'the stop.' " *Id.*

Jones, 187 So.3d at 347–48. In other words, the issue is not, as the trial court thought, what is an objectively reasonable time in which to complete the traffic stop, but whether the dog sniff in this particular stop "adds time to" the stop. *Rodriguez,* 135 S.Ct. at 1616. In *Jones,* our Court concluded that the officer had abandoned the purpose of the stop by deciding not to write a ticket but to start the dog sniff. *Jones,* 187 So.3d at 348. Therefore, the stop was prolonged beyond what was necessary to accomplish the mission. *Id.* Likewise, in this case, the officer had obtained all the necessary information from dispatch and could have started to write the ticket immediately. Instead, he decided to interrupt the traffic stop for the dog sniff. Although it was only a short period of time until the dog alerted, under *Rodriguez,* the sniff unconstitutionally prolonged the completion of the mission of the traffic stop.

2. **Dog sniff must be completed within the time required to issue a citation**

***Whitfield v. State,* 33 So. 3d 787 (Fla. 5th DCA 2010)**

Prolonged detention during a traffic stop beyond what is needed to verify information will produce an illegal search and anything found should be suppressed.

The evidence and testimony presented at the suppression hearing revealed that the arresting officer, Florida Highway Patrolman, James Barley ["Trooper Barley"], initiated a traffic

stop for unlawful speed on the turnpike in Osceola County. Whitfield was driving a rental car with his son as a passenger. They were on their way back to Georgia from the South Florida area. Upon stopping Whitfield, Trooper Barley asked Whitfield to step out of the car and asked for his driver's license. He had Whitfield return with him to the trooper's vehicle. Though not apparent from the video, Trooper Barley testified that Whitfield was nervous throughout the encounter. Trooper Barley said that he engaged Whitfield in idle conversation to calm him down. This consisted of a series of rapid-fire questions on a wide range of topics, beginning with, "What are you up to today?" While he waited for dispatch to report back on the status of Whitfield's driver's license and warrants check, Trooper Barley asked Whitfield his occupation. Whitfield answered that he was in the commercial lawn care business. Trooper Barley asked him about the type of equipment Whitfield used in his business. Trooper Barley testified that he did not believe Whitfield owned his own business because Whitfield gave him common brand names of equipment, not brands Trooper Barley knew were used for commercial purposes.

After checking Whitfield's license, at approximately six to seven minutes[3] into the traffic stop, Trooper Barley, for the first time, inquired about the car's registration. He required Whitfield to remain by his police vehicle while he went up to the passenger side of Whitfield's car and asked the son to give him the papers. As he did so, he proceeded to ask the son a series of questions similar to those he had been asking Whitfield.

When Trooper Barley's review of the rental car documents revealed that Whitfield was not the renter of the vehicle, Whitfield told Trooper Barley that his friend, "Terry," had rented it because Whitfield did not have a credit card. Whitfield said he went to Avis and was added as an additional driver. The rental agreement did have a page attached that listed Whitfield as an authorized driver. At approximately twelve minutes into the stop, Trooper Barley ran a check to verify the car was not reported stolen.

Fifteen minutes into the stop, Trooper Barley inquired whether Whitfield had a criminal record. Whitfield admitted to numerous past arrests. The next several minutes were then taken up with questions about which crimes he had been arrested for, which were the most serious, which were the most minor, whether any were homicides, and the like. Then,

eighteen minutes into the traffic stop, Trooper Barley asked Whitfield a series of questions about whether he had any contraband, narcotics, weapons, or large sums of cash in the car. Whitfield answered "no" to all of his questions. Trooper Barley then asked Whitfield for consent to search his car. Whitfield declined, citing the delay and the rain. As a result, at 19:55 minutes into the traffic stop, Trooper Barley called for a K-9 unit.

At 24:53 minutes into the traffic stop, Trooper Barley gave dispatch the long-distance number for Avis located on the rental agreement and asked them to find out whether Whitfield was an authorized driver. At 26:13, Trooper Barley can be heard on the video telling dispatch or another officer that "the guy doesn't want me to search so I am waiting on Harold," presumably, the K-9 unit. At 26:45 on the video, the K-9 unit is seen driving past their location on the opposite side of the turnpike.

At 28:36, dispatch informed Trooper Barley that Whitfield was an authorized driver. At 28:44 into the stop, the dog cannot be seen in the video and had not begun to search. The canine does not appear in the video until 28:57 to begin his sniff search. Shortly, thereafter, the canine alerted, the officers conducted a search and drugs were discovered.

It is well established that the use of a narcotics dog to sniff a vehicle does not constitute a search and may be conducted during a consensual encounter or traffic stop. *Caballes*, 543 U.S. at 408-09, 125 S.Ct. 834. However, the canine search of the exterior of the vehicle must be completed within the time required to issue a citation. *Eldridge v. State*,817 So.2d 884, 887 (Fla. 5th DCA 2002). If a properly trained police dog alerts to the presence of illegal drugs during this time period, the officer will have probable cause for a vehicle search. *Id.*

The record in this case reflects that the routine investigation had been completed within approximately twelve minutes after Whitfield's vehicle was stopped and that the amount of time reasonably required to do the necessary license/warrant checks and issue the citation-even including the several minutes expended on verifying Whitfield's authority to drive the car-was significantly less than the twenty-nine minutes expended.

Because Trooper Barley decided he would confirm that Whitfield was contractually authorized by Avis to drive the vehicle before issuing the citation, eight-and-one-half minutes

of the thirty-minute detention were taken up with that question. It is not clear on the record what criminal offense Trooper Barley was holding Whitfield to investigate. In its written order, the trial court indicated that Trooper Barley's actions were reasonable in light of the recent theft of rental cars in the Central Florida area; however, Trooper Barley had already confirmed that the car was not stolen and no effort was made to determine that the lessee had not given permission for Whitfield to use the vehicle. This investigation extended the traffic stop to more than twenty-eight minutes, which, coincidentally or not, was exactly the same amount of time it took Trooper Barley to get a drug sniff dog on the scene.

We do not see how the length of this stop could be justified by the circumstances. Even adding up separately the amount of time to: (1) run the registration/warrants checks and stolen car checks, (2) complete the warning paperwork *and* (3) verify that Whitfield was authorized to drive the car, the time reasonably required for this traffic stop was several minutes less than the time that was taken. This court has previously disapproved of such desultory, wide-ranging interrogation of the motorist that has nothing to do with the ostensible purpose of the stop. *Maxwell,* 785 So.2d 1277. Had the officer started and completed his traffic duties instead of expending the majority of his time asking the motorist about matters having nothing to do with the issuance of a traffic citation, the stop would have been completed before the dog arrived to conduct a sniff search. Time spent by law enforcement asking such questions can rise to the level of unreasonable delay. *Id.* at 1280.

In *United States v. Pruitt,* 174 F.3d 1215 (11th Cir.1999), the court held that a detention violated the Fourth Amendment where, on facts similar to this case, the officer who stopped the appellants for speeding spent an inordinate amount of time asking questions about matters unrelated to the stop, culminating in a request for consent to search the car, which was declined. This led to a call for the drug-sniff canine and a delay by the officer in issuing the warning for speeding until the drug dog arrived. In the view of the Eleventh Circuit, after a traffic citation has been processed, a citizen should be free to go, absent reasonable suspicion of criminal activity, or consent. *United States v. Ramirez,*476 F.3d 1231 (11th Cir.2007).

If a citizen has completed the ordeal of a traffic stop and is entitled to leave, the citizen's view of *de minimis* is likely very different from that of law enforcement or a judge sitting in his chambers. Innocent or guilty, a sniff search is not nothing. As Professor LaFave has outlined in his treatise on search and seizure law,[12] even if the time spent stalling until the dog arrives is not counted, a dog sniff search does take time to conduct, and is rarely the benign, seamless event that the court dealt with in *Caballes.* As in this case, passengers are ordered from the vehicle, leaving the driver and passengers exposed to the dangers of standing on the shoulder of the roadway. Although in the mind's eye, these events occur in daylight and good weather, that is not necessarily the case. In this case, for example, although it was daylight, it was raining. The temperature might be very cold or very hot. In Florida, during much of the year, thirty minutes spent standing on the shoulder of a roadway exposed to the sun and heat can easily be an adverse health event. It is a humiliating and, for some, a frightening experience.

Here, this traffic stop should have been concluded by the issuance of the written warning long before it was. It was indisputably over when Whitfield finally got his warning for speeding-almost thirty minutes after being stopped. The fact that the dog sniff began a short period of time-a *de minimis* amount of time-after the traffic stop was concluded, does not save the search.

REVERSED and REMANDED.

3. Continued detention justified because the officer had reasonable suspicion that drugs were inside the vehicle

Noto v. State, 42 So. 3d 814 (Fla. 4th DCA 2010)

In a drug investigation, any traffic infraction can yield a valid traffic stop. A drug sniffing dog can be employed that prolongs the stop if the officer has reasonable suspicion that drugs are present in the vehicle.

In June of 2004, it was reported to the Sunrise Police Department that drugs were being purchased from a residence in Sunrise, Florida. In November of 2004, Detective Hodgers and another detective conducted surveillance on the residence when a silver Nissan, driven by a Ms. Perez, drove into the driveway.

The detectives then followed Ms. Perez who drove to a restaurant's parking lot. Instead of parking her vehicle in an open space close to the restaurant, Ms. Perez parked her vehicle next to a black Cadillac occupied by Noto.

Detective Hodgers proceeded to follow Noto. After Noto's vehicle failed to come to a complete stop at a red light, Detective Hodgers pulled over Noto and asked for his driver's license and registration.

Detective Hodgers returned and explained to Noto that he is a narcotics investigator and what he observed earlier at the restaurant parking lot was consistent with a drug transaction. Detective Hodgers asked if Noto had anything illegal. Noto said no, but then stated that tomorrow was his birthday and he wanted to "get a little something." Detective Hodgers asked what he had meant, resulting in Noto's admission that he picked up a gram of cocaine from Ms. Perez, but had since swallowed the cocaine. Detective Hodgers informed him that his stomach would be pumped and that he was going to call for a canine. Ten to fifteen minutes later, a canine was brought to the traffic stop and alerted to the presence of drugs from the exterior of the vehicle. A subsequent search of the vehicle's interior revealed more than thirty grams of cocaine in the backside of the passenger seat; Noto was transported to the police station.

Noto first contends that the initial traffic stop executed by Detective Hodgers was unlawful because it was a pretext for a narcotics investigation.

The trial court found that Detective Hodgers observed Noto rolling through a red light, a violation of Florida's traffic law. *See* § 316.075(1)(c), Fla. Stat. (2004). Consequently, Detective Hodgers had probable cause to pull over Noto's vehicle. Accordingly, the stop was lawful.

Here, it took an additional fifteen to twenty minutes for the canine to arrive on the scene after Noto admitted he picked up a gram of cocaine. Accordingly, we find that the traffic stop extended beyond the time necessary to write a citation. In order to justify the continued detention, Detective Hodgers must have had "a reasonable suspicion based on articulable

facts that criminal activity is occurring." *Summerall v. State,* 777 So.2d 1060, 1061 (Fla. 2d DCA 2001).

The State argues, and the Court agrees, that Detective Hodgers had sufficient reasonable articulable suspicion of criminal activity occurring—based on the information of drugs being purchased from the Sunrise, Florida residence, observing the encounter between Noto and Ms. Perez, and Noto's admission of picking up a gram of cocaine—which justified the continued detention. Accordingly, the trial court did not err in failing to suppress the cocaine.

F. DUE PROCESS CONSIDERATIONS

1. Denial of due process to consider evidence not addressed during motion to suppress

***Walker v. State,* 55 So. 3d 718 (Fla. 1st DCA 2011)**

A defendant's due process may be violated where the trial court considers evidence not addressed during motion to suppress.

Petitioner was arrested for driving under the influence by the Jacksonville Sheriff's Office (JSO). This arrest was precipitated by a traffic stop conducted by an off-duty Atlantic Beach police officer while driving home in a marked patrol vehicle after his shift ended. The officer was outside of the Atlantic Beach city limits from the time he first observed Petitioner up through the time he pulled her over. Upon stopping Petitioner, the officer called for back-up from the JSO and then proceeded to conduct the traffic stop based on his suspicion that Petitioner was driving under the influence. The officer detained Petitioner until a JSO deputy arrived. He informed the deputy of his observations and then left the scene. The deputy conducted an investigation, which led to Petitioner's arrest.

In the county court proceedings, Petitioner sought to suppress all evidence flowing from the traffic stop, asserting that the traffic stop was conducted by an off-duty police officer acting outside of his jurisdiction, rendering the stop illegal. Near the conclusion of the evidentiary hearing, the State announced its belief of a Mutual Assistance Agreement (Agreement)

between the Atlantic Beach Police Department and the JSO which authorized the police officer to conduct the traffic stop

The court expressed reservations because it entailed presenting post-hearing evidence, and asked the State what it wanted; the State responded that it would "like to be able to submit the case law to you...." The court agreed, and gave Petitioner leave to supplement a memorandum of law. The court made no explicit ruling on whether the State could submit the Agreement.

The State submitted its memorandum to the trial court and attached the Agreement. Petitioner's response included a motion to strike the Agreement because it was not presented at the hearing and was not properly entered into evidence. In its order denying Petitioner's motion, the court noted that although the Agreement was not presented at the time of the hearing, the Agreement was considered in reaching its decision. The trial court also denied the motion based on the State's argument that the Atlantic Beach officer's actions were akin to a citizen's arrest. Subsequently, Petitioner entered a no contest plea subject to her right to appeal.

Considering the circuit court's rejection of the State's citizen's arrest theory, and the dispositive nature of all the evidence that flowed from the traffic stop, it is clear that Petitioner would not have been adjudicated guilty were it not for the improper consideration of the Agreement. *In re J.M.M.*, 795 So.2d 1034, 1036 (Fla. 2d DCA 2001) (denial of due process to consider evidence not addressed at trial). This denial of due process resulted in a miscarriage of justice.

III. DETAINMENT

1. Passenger can be detained during traffic stop

Presley v. State, 204 So.3d 84 (Fla. 1st DCA 2016)

During a lawful traffic stop, an LEO may detain a passenger without violating their Fourth Amendment rights.

Several officers testified that they conducted a traffic stop in a high-crime area in the early morning hours. Neither the legitimacy of the traffic stop nor its duration are being

challenged in this case. Officer Pandak responded to the scene to provide backup because "someone had left the car and ... there was a struggle of some sort." When the officer arrived, the driver and appellant, who was a passenger, were standing beside the car. The second passenger was in handcuffs and was being belligerent. The officer told appellant not to leave the scene and had a conversation with him.

"Very soon" into the conversation, the officer asked appellant his name, and appellant gave it to him. Appellant also volunteered his date of birth. The officer then asked appellant general questions, including questions about the passenger who had been detained and from where they were all coming. Appellant stated they were coming from his aunt's house, and he stated that he had been consuming alcohol.

Officer Pandak ran appellant's name through the system and learned that appellant was on probation and that a condition of the probation was that appellant not drink alcohol. Appellant had already admitted that he had been drinking, so Officer Pandak arrested appellant, although appellant resisted. Upon search incident to arrest, the officer found cocaine on appellant's person.

On cross-examination, the officer testified that when he approached the vehicle, he was "suspicious" that there was criminal activity associated with that vehicle due to the fact that one of the passengers had fled and had been detained. He stated, "based on the circumstances, somebody left the vehicle, we are in a high-crime, high-drug area.... [T]here were two officers dealing with someone who was being belligerent, and there was one officer with [appellant], which was me, one officer with the other person; at that point, it wasn't a safe situation. So I wasn't comfortable with letting someone leave the scene of a possible crime worrying maybe about my safety or the destruction of possible evidence."

Although he did not know what crime had been committed by the other occupant of the vehicle, Officer Pandak testified that the other man had been handcuffed, which told him that a crime was involved. He also testified that there were "numerous other people walking around" the scene, which was in a high-crime area, and it was a matter of "officer safety ... for me to feel comfortable with this person leaving a potential crime scene in getting away

with something, and/or destroying evidence, or coming back to harm me and my fellow officers."

After the hearing, the trial court determined that there had been an investigative detention, but it was lawful because the officer had reasonable suspicion of criminal activity.

In *Brendlin v. California,* 551 U.S. 249, 251, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007), the Supreme Court concluded that a passenger had standing to bring a Fourth Amendment challenge to the constitutionality of a traffic stop because "a passenger is seized as well [as the driver]." The *Brendlin* court applied the standard test for determining whether one has been seized for Fourth Amendment purposes—whether a reasonable person would feel free to decline the officer's requests or terminate the encounter—and concluded that a passenger would not feel free to do so.

Relying on *Brendlin* and *Johnson,* the Fifth District in *Aguiar* concluded that an officer may, as a matter of course, detain a passenger during a lawful traffic stop without violating the passenger's Fourth Amendment rights. 199 So.3d at 930, 41 Fla. L. Weekly at D824. We concur fully with the well-reasoned opinion of the unanimous en banc court in *Aguiar.* We also, as the Fifth District did in *Aguiar,* certify conflict with the case of *Wilson v. State,* 734 So.2d 1107 (Fla. 4th DCA 1999), *cert. denied,* 529 U.S. 1124, 120 S.Ct. 1996, 146 L.Ed.2d 820 (2000), and its progeny.

2. <u>Defendant entitled to be released once reasonable suspicion is dispelled</u>

***Sowerby v. State,* 73 So. 3d 329 (Fla. 5th DCA 2011)**

<u>When officer determines that the basis for the stop is invalid, the officer no longer has reasonable grounds to further detain driver</u>.

The premise underscoring the analysis of this case rests on the principle that the stopping of an automobile by a law enforcement officer constitutes a seizure and detention and is governed by the Fourth Amendment to the United States Constitution. *See Delaware v. Prouse,* 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979); *State v. Jones,* 483 So.2d 433 (Fla.1986). If it is an investigative detention, it must be temporary and it must last no longer

than is necessary to effectuate the purpose of the stop. *See Florida v. Royer,* 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983).

The adjudicative facts are that Mr. Sowerby's vehicle was stopped by a law enforcement officer because the officer thought that the license plate on the vehicle was improperly mounted as it was not within the mounting brackets normally found on the back of an automobile. The license plate, however, was a dealer plate with a magnetic back. The testimony reveals that although the plate was not within the brackets on the trunk of the car, it was mounted on the trunk and was "not higher than 60 inches and not lower than 12 inches from the ground and no more than 24 inches to the left or right of the centerline of the vehicle," as required by section 316.065(1), Florida Statutes (2010). That is to say, the dealer plate was, in fact, lawfully mounted and within the statutory limits, and thus the stop could not have been based on a founded suspicion that a crime had been, was being, or was about to be committed. *See Whren v. United States,* 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996), *cert. denied,* 522 U.S. 1119, 118 S.Ct. 1059, 140 L.Ed.2d 120 (1998).

As the police officer neared the car, he testified that he noticed that the license plate was a dealer plate, and not an ordinary license plate. In any event, when the officer approached Mr. Sowerby, he told him the reason for the stop and asked to see Mr. Sowerby's drivers' license. Mr. Sowerby at that time admitted that he had none, and was placed under arrest. After he was charged with driving while his license was permanently revoked, Mr. Sowerby moved to suppress all evidence and statements made during the traffic stop, arguing that the law enforcement officer lacked the requisite probable cause or reasonable suspicion to believe that a crime had been, was being, or was about to be committed. The stop, in his view, was illegal. The trial court decided otherwise.

Thus, even if we assume that the officer made a proper initial stop of Mr. Sowerby's vehicle, he should have ceased asking for additional information when he found that the plate was, in fact, properly placed. *See also Hilgeman v. State,* 790 So.2d 485 (Fla. 5th DCA 2001) (a law enforcement officer is charged with knowledge of the law and his misapprehension of the law will not establish probable cause for an arrest for a violation).

The State suggests that the stop was valid, as it turns out, because "a man of reasonable caution" approaching the vehicle with its license plate "in an unlighted area as darkness approached" would "believe that the tag was not plainly visible and legible from 100 feet." Thus it argues that while it may be true that the plate was within the locational requirements of the statute, it was probably not visible and legible 100 feet from the rear of the car, as required by the statute.

There are three flaws with this argument. First, the State presented no evidence at all that the plate was not visible from 100 feet. Second, the officer never testified that the visibility requirement was the reason he stopped the car. Finally, this is not the argument made by the State below.

Accordingly, we reverse the judgment and sentence and remand to the trial court for further action consistent with this opinion.

3. Continued detention to investigate traffic offense

Vaughn v. State, 176 So. 3d 354 (Fla.1st DCA 2015)

Officer has reasonable suspicion to detain defendant after valid stop to determine whether he had committed registration violation.

In the early morning hours of August 14, 2013, Appellant's vehicle was stopped by Gainesville Police Department Officer Candace Futrell for a window tint violation. Upon approaching the vehicle, Officer Futrell saw a television illegally mounted to the dashboard. Officer Futrell asked for Appellant's license and registration and questioned him regarding his home address. The addresses on the license and the registration, as well as the one orally provided by Appellant, were all different. Officer Futrell then asked Appellant a series of questions regarding whether he had any weapons or contraband on his person or in the vehicle, and Appellant replied that he had a knife on him. By this time, other officers, including a police K–9, had arrived onto the scene and Officer Futrell requested Appellant step out of the vehicle. At the hearing, Officer Futrell testified that she asked Appellant to exit the vehicle for officer safety purposes because Appellant had admitted to having a knife on him and she did not know if any other weapons were in the vehicle.

Once Appellant was out of the vehicle, Officer Futrell again questioned him regarding the different addresses to determine whether Appellant had failed to update his registration as required by law. In response to the questioning, Appellant replied that he had different addresses for where he lives and where he receives his mail. Officer Futrell then informed Appellant that the officers needed to remove the knife from him for safety reasons. Another officer patted down the pocket indicated by Appellant, removed what was described at the hearing as a box cutter or utility knife, and handed it to Officer Futrell. Without opening the knife, Officer Futrell was able to see a white powdery residue she suspected to be cocaine. A field test conducted on site confirmed her suspicion. Appellant was then searched and narcotics were found on his person.

Appellant was validly stopped because his car's window tint appeared, and was in fact, too dark. *See* § 316.2953, Fla. Stat. (2014) (making it a noncriminal traffic infraction for operating a motor vehicle with side windows tinted beyond a certain percentage); *State v. Moore*, 791 So.2d 1246, 1249 (Fla. 1st DCA 2001)

We find this sufficient grounds for Officer Futrell to detain Appellant in order to investigate whether he had committed a criminal offense by failing to maintain an up-to-date registration. *See* § 320.02(4), Fla. Stat. (2014)

While Appellant was being validly detained, he admitted to having a knife on his person. Officer Futrell requested Appellant exit the vehicle and informed him that the officers needed to remove the knife for safety concerns. *See* § 901.151(5), Fla. Stat. (2014) (providing that when an officer has probable cause to believe that an individual being temporarily detained is armed with a dangerous weapon, the officer may search the individual to the extent necessary to disclose the weapon). In plain view on the knife was a residue that tested positive for cocaine.

Having determined that Officer Futrell had a reasonable suspicion of criminal activity sufficient to detain Appellant as well as a valid safety concern due to the knife, we find that the lower court properly denied Appellant's motion to suppress.

4. **Officer can ask for identification and make contact with the driver while investigation into stop is still ongoing**

State v. Godard, 202 So. 3d 144 (Fla. 2d DCA 2016)

Where police pull a vehicle to investigate reports of animals left in a heated car, it is not a violation of the Fourth Amendment for the officer to explain why they were pulled over, to conduct an investigation into the welfare of the dogs, and to ask the driver to provide identification.

The State appeals an order suppressing evidence in this prosecution against Diane Godard for driving while license permanently revoked, driving under the influence, and refusal to submit to testing. We reverse the suppression order and remand for further proceedings.

The following facts were adduced at the suppression hearing. On June 28, 2015, Deputy Knorr received a call regarding two dogs left in a white vehicle in the parking lot of a Carrabba's Restaurant. The caller indicated that the windows were up and that the car was not running. The temperature was in the 90s that day. When Deputy Knorr arrived at the restaurant, the manager ran out to the deputy's car and pointed out a vehicle that was just pulling out of the parking lot, indicating it was the vehicle in which the dogs were left. The manager advised the deputy that the dogs were left unattended for twenty to thirty minutes. Deputy Knorr followed the vehicle and initiated a traffic stop as the vehicle was pulling into a Days Inn, approximately a mile from the restaurant. When the deputy approached, he saw the two dogs in the vehicle. Deputy Knorr testified that at the initial contact it was impossible to determine if the dogs were suffering or stressed.

No further evidence was presented regarding what transpired after Deputy Knorr made his initial contact with Godard, but the State ultimately charged her with driving while license permanently revoked, driving under the influence, and refusal to submit to testing. The State argued that the deputy had the right to speak to Godard and ask her to identify herself in investigating the welfare of the dogs as a violation of criminal statutes prohibiting animal cruelty or a county ordinance prohibiting animal cruelty.

The trial court determined that because the dogs did not appear to be in immediate distress when the deputy approached the vehicle, the deputy's continued detention of Godard violated her Fourth Amendment rights. To reach this conclusion, the trial court relied upon State *v. Diaz*, 850 So.2d 435 (Fla.2003). It was clear at the suppression hearing that the trial court believed that if the purpose of the stop had been resolved when the deputy first observed the dogs, then the deputy could make no contact with the driver. The trial court found that "the investigation was reasonable" but that upon the deputy viewing the dogs they showed "no signs of distress consistent with what he had reported, which is that there was 20 to 30 minutes of windows up, parked car in June, in Florida, in 90 degree temperature." Thus, the court ruled that Deputy Knorr could not make contact with Godard and granted the motion to suppress evidence.

But "when a vehicle has been lawfully stopped and the investigation relating to the stop has not yet been completed, it is not a violation of the Fourth Amendment for an officer to ask the driver to produce identification." *Lanier*, 936 So.2d at 1161. In that instance, the officer may "retain possession of the identification and run a check of its validity and a warrants check." *Id.*

Here, the trial court erred in concluding that once the purpose of a stop is complete the deputy cannot make any contact with the driver. *See Diaz*, 850 So.2d at 440. Thus, even if the purpose of the stop to check on the welfare of the dogs and, in doing so, to determine whether Godard had committed animal cruelty had been completed, Deputy Knorr could legally make contact with Godard to explain the reason for the stop.

And, as the State asserts, an explanation for the stop before the deputy left would seem to also comport with common courtesy and good public relations, as well as notifying Godard that she was free to leave. Godard correctly concedes that *Diaz* permits an officer to make contact for the purpose of explaining the basis for the stop.

He wanted to make contact with the driver to have her identify herself and then check on the dogs. The officer stated that while the dogs were not dead or unconscious, he could not determine from his initial observation whether they were suffering or in pain. Thus, if the

purpose of the stop had not been satisfied, Deputy Knorr could legally ask Godard for identification and run a check on its validity. *See Lanier,* 936 So.2d at 1161; *see also Diaz,* 850 So.2d at 439 (reiterating that once the purpose of the stop has been "clearly and unarguably satisfied" continued detention would be improper). And although no evidence was before the court on what happened after the deputy made contact with Godard, based on the charges it would appear that once Deputy Knorr checked Godard's driver's license he would have discovered that her license had been permanently revoked.

Further, the manager had seen the vehicle himself with the dogs in it. The facts before the trial court show that the manager was a known citizen informant who made personal contact with the officer and pointed out the vehicle with the dogs that had been left unattended. Thus, we reject Godard's argument on appeal that was not made below that the manager was an anonymous tipster.

Accordingly, we reverse the suppression order because the trial court misinterpreted *Diaz* to conclude that if the purpose of the stop had been accomplished, then the deputy could make no contact with the driver. In addition, the facts testified to by the deputy did not indicate that the purpose of the investigation had concluded. On remand, Godard may file a second motion to suppress based on the deputy's actions after he made contact with her should she have a basis for such a motion.

Reversed and remanded.

IV. EXCEPTIONS TO INSUFFICIENT REASONABLE SUSPICION

A. GOOD FAITH EXCEPTION

1. Traffic stop valid where officer believes in good faith that statute upon which stop is based is valid

State v. Conley, 98 So. 3d 108 (Fla. 2d DCA 2012)

The facts of this case are not in dispute. On January 20, 2011, Conley was stopped for a violation of section 316.3045(1), which provides, in pertinent part:

It is unlawful for any person operating or occupying a motor vehicle on a street or highway to operate or amplify the sound produced by a radio, tape player, or other mechanical sound making device or instrument from within the motor vehicle so that the sound is:

(a) Plainly audible at a distance of 25 feet or more from the motor vehicle....

Following the stop, on March 9, 2011, Conley was charged with possession of cocaine, in violation of section 893.13(6)(a), Florida Statutes (2010); evidence tampering, in violation of section 918.13(1)(a), Florida Statutes (2010); possession of marijuana, in violation of section 893.13(6)(a) and (b); and obstruction of a law enforcement officer without violence, in violation of section 843.02, Florida Statutes (2010). Notably, Conley was not charged with a violation of section 316.3045.

The State argues that the evidence seized during the traffic stop should not have been suppressed because the good faith exception to the exclusionary rule applies to the facts of this case. In response, Conley argues, as he did below, that the officer could not have been acting in good faith and that the exclusionary rule should apply because this court previously determined, in *Easy Way of Lee County, Inc. v. Lee County,* 674 So.2d 863, 867 (Fla. 2d DCA 1996), that the "plainly audible" standard of a comparable county noise ordinance was unconstitutionally vague and overbroad.

We conclude that at the time of Conley's stop a reasonable officer would not have known that the noise ordinance statute was unconstitutional because the *Catalano* opinion did not issue until after the stop in question in this case. *See Thomas v. State,* 614 So.2d 468, 471 (Fla.1993) (holding that evidence obtained in reliance on an ordinance should not be suppressed where the ordinance is subsequently declared unconstitutional); *State v. Calloway,* 589 So.2d 326, 328 (Fla. 5th DCA 1991) ("The fact that an ordinance is subsequently determined to be unconstitutional does not undermine the lawfulness of an arrest which was made in good faith reliance on the ordinance.").

In Conley's case, the officer acted in an objectively reasonable manner based on existing precedent and the accepted status of the law from which his authority extended.

(holding that the good faith exception applied where police reasonably relied upon a statute authorizing warrantless administrative searches, but the statute was subsequently found to violate the Fourth Amendment); ***Michigan v. DeFillippo,*****443 U.S. 31, 99 S.Ct. 2627, 61 L.Ed.2d 343 (1979) (holding that good faith reliance on a city ordinance was valid despite subsequent ruling that it was unconstitutional).**

B. COMMUNITY CARETAKER EXCEPTION

1. Stopping vehicle as a necessity for public safety much be based on articulable facts related to public safety

Majors v. State, 70 So. 3d 655 (Fla. 1st DCA 2011)

Officers lack reasonable suspicion to stop a vehicle (via both community caretaking doctrine and independent circumstances) where a bank teller reports that there is a client attempting to withdraw a large amount of money ($17,500), acting strangely, and conversing with unknown parties in a Nissan outside the bank.

See *supra* at page 31.

V. SEARCH AFTER TRAFFIC STOP

A. CONSENT TO SEARCH

1. Totality of circumstances renders consent involuntary

Villanueva v. State 189 So. 3d 982 (Fla. 2d DCA 2016)

Consent to search after a traffic stop may be found involuntary under the totality of the circumstances where the length of the stop is extended, the officer retains the driver's license, and the defendant is unaware of their right to leave.

Joey Villanueva appeals his judgments and sentences for possession of methamphetamine and possession of paraphernalia.

The underlying facts are not in dispute as only the arresting officer testified at the hearing on the motion to suppress. Officer Bradley Dollison testified that he observed a vehicle operated by Villanueva fail to come to a complete stop at a stop sign. He pulled Villanueva over and approached the driver's window. He asked

for Villanueva's license and registration. Officer Dollison went back to his patrol vehicle with the license and registration and ran Villanueva's license number to check for any outstanding warrants. The license check did not yield any outstanding warrants but informed Officer Dollison that Villanueva was on probation. Officer Dollison testified that the only thing left for him to do after running the check was to issue the citation. Instead of writing the ticket, Officer Dollison returned to the van and asked Villanueva why he was on probation.

After Villanueva told Officer Dollison he was on probation for a trafficking offense, Officer Dollison asked if Villanueva had any guns, knives, drugs, or anything illegal in the vehicle.Villanueva responded that he did not. Officer Dollison asked him to step out of the van and then asked for consent to search his person and the vehicle for anything illegal. When he asked for consent to search, Officer Dollison had not yet issued the citation and could not recall whether he had returned Villanueva's license. However, at the time of the stop, it was Officer Dollison's standard practice to return a driver's license only after he had asked for consent to search. In response to Officer Dollison's request, Villanueva said: "Go ahead. I have no choice because I'm on probation."

Officer Dollison did not correct Villanueva's misunderstanding. The officer then conducted the search and found a small baggy containing a crystal-like substance in Villanueva's front right key pocket. The entire exchange lasted about eleven minutes. Another law enforcement officer was present at the time of the search request, but did not testify.

Villanueva filed a motion to suppress arguing that he was detained in excess of the legal duration of the search and that his consent was involuntary.

If a person has been illegally seized by police and subsequently consents to a search, "the State bears the burden of showing by clear and convincing proof that there was an unequivocal break in the chain of illegality sufficient to dissipate the taint of the law enforcement's prior illegal activity."

Whether or not someone has been seized is evaluated by the totality of the circumstances. *Golphin v. State,* 945 So.2d 1174, 1181 (Fla.2006). However, the retention of a

defendant's driver's license when the officer asks for consent to search should be heavily factored when determining the nature of the encounter.

However, the trial court's order fails to address the officer's retention of the license, Villanueva's lack of awareness that he could refuse consent, and whether Villanueva was informed he was free to leave. Although the stop only lasted for eleven minutes, at the time of the request for consent to search, per the officer's uncontroverted testimony, the only thing Officer Dollison had left to do was issue the citation. Yet the citation was not written up until after Villanueva was taken into custody, after legal duration of the stop was exceeded. Considering the totality of the circumstances in this case, we find that Villanueva's consent was involuntary.

2. **Scope of consent to search**

State v. Thomas, 109 So. 3d 814 (Fla. 5th DCA 2013)

Consent to search his/her person after traffic stop allows officer to search all objects found in pockets.

Thomas was charged with possession of oxycodone, possession of twenty grams or less of cannabis, and possession of drug paraphernalia. The charges were filed following a traffic stop of Thomas' vehicle. Thomas filed a motion to suppress alleging that the stop was pretextual, that he did not voluntarily consent to a search of his person, and that the search of his wallet exceeded the scope of any consent he may have given.

Officer Robson testified that he was on routine patrol around midnight when he observed Thomas' vehicle in an empty parking lot behind a closed restaurant. Robson had previously made drug arrests in that area. As Robson approached in his vehicle, Thomas drove away. Robson followed Thomas' vehicle, observed that its windows were unusually dark, and initiated a traffic stop of Thomas for driving a vehicle with illegal window tint.

When Robson asked Thomas for his license and registration, Thomas' hands were shaking and he appeared very nervous. Thomas responded in the negative when asked if he had anything illegal in the car. When Officer Nye arrived, Robson asked Thomas to exit the vehicle. Robson testified that he sometimes requests motorists exit their vehicle, for officer

safety reasons, when he has a concern that there may be something illegal in the car or when the individual exhibits an unusual degree of nervousness.

Robson then used his tint meter and confirmed that Thomas' car windows were, in fact, illegally tinted. As Officer Nye remained with Thomas, Robson returned to his vehicle to run a warrants check on his computer. On cross-examination, Robson acknowledged that he started following Thomas based on a "hunch" or a "suspicion" of possible drug activity.

Officer Nye testified that while Robson was performing the computer background check, he asked Thomas if he had anything illegal on him and "would you mind if I search you?" Thomas was standing by his vehicle and was not handcuffed. According to Nye, Thomas consented to the search request. During the search, Nye removed Thomas' wallet from his right rear pants pocket. Inside the wallet, Nye found an oxycodone pill. Thomas admitted to Nye that he did not have a prescription for the pill. Thomas was then handcuffed and placed in the back of Robson's patrol car. A subsequent inventory search of Thomas' vehicle resulted in the discovery of cannabis and drug paraphernalia.
In the instant case, Thomas was not in custody when Officer Nye asked his permission to be searched and, accordingly, there was no requirement that Thomas first be "Mirandized."

Third, the search of Thomas' wallet fell within the scope of his consent to a search of his person. The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of "objective" reasonableness, to-wit: what would the typical reasonable person have understood by the exchange between the officer and the suspect. *Florida v. Jimeno,* 500 U.S. 248, 251, 111 S.Ct. 1801, 114 L.Ed.2d 297 (1991). If a defendant gives a general consent to search his or her person, a law enforcement officer may seize objects found in that person's pockets and, if the objects consist of closed containers, the officer may open them. *Allen v. State,* 909 So.2d 435, 438 (Fla. 5th DCA 2005). The record below reflects that Thomas consented to a search of his person, that his wallet was found on his person, and that Thomas did not object to a search of his wallet or otherwise withdraw or limit his consent. Accordingly, it was error for the trial court to find that the scope of Thomas' consent did not include a search of his wallet. *See Allen*(upholding search of lip balm container found in defendant's pocket where defendant consented to search of his person and made no effort

to withdraw or limit his consent); ***Aponte v. State,*** **855 So.2d 148 (Fla. 5th DCA 2003) (upholding search of a cigarette pack found in defendant's pocket where defendant gave general consent to search of his person and did not make any verbal or non-verbal attempt thereafter to limit search).**

B. PASSENGERS

1. Pat down search of passenger not warranted where there are no grounds to believe passenger is armed

K.S. v. State, 85 So.3d 566 (Fla. 4th DCA 2012)

Where an officer is having an encounter with a passenger of a car subject to a nonmoving violation, a pat down search is only appropriate where there is sufficient reason to believe the passenger is armed.

At the motion to suppress hearing, a female officer testified that around 1:46 a.m. she noticed a parked car running with the headlights on, but the tag light off. The officer acknowledged that a disabled tag light is a nonmoving violation. The car was parked in a lot near a closed business.

The female officer saw the juvenile "in the front seat passenger rummaging through the floorboard/center console area moving her shoulders about." Because she couldn't see what the juvenile was doing, she asked her to put her hands up. She then asked the juvenile to exit the vehicle.

The female officer conducted a pat-down search for weapons, during which she found an unidentifiable hard, round object in the juvenile's left hip area. The officer explained, "[i]t could've possibly been some sort of weapon, either a knife, taser, or small gun." When the officer asked the juvenile what the object was, she responded that it was her "weed grinder."

The officer took the object out, and performed a Valtox test, which showed positive for cannabis. She placed the item into evidence and took the juvenile into custody.

On appeal, the juvenile argues the trial court erred in denying her motion to suppress because the evidence failed to establish probable cause that she was armed or posed a threat

to officer safety.The State responds that the officers had the lawful authority to conduct a traffic stop, and the juvenile's furtive movements gave them a reasonable belief that she might be armed. This gave the officers the authority to conduct a lawful pat-down of the juvenile, revealing illegal contraband.

Here, the responding officer pulled up behind a vehicle, and properly sought to issue a traffic violation for an inoperable tag light. *See State v. Petion*, 992 So.2d 889, 895 (Fla. 2d DCA 2008) ("It is well established that an officer can stop a car for an inoperable tag light...."). After observing the juvenile rummage around the floorboard/center console, law enforcement asked the juvenile to exit the vehicle. We see nothing wrong with this request.

At this point in the encounter, however, there was no reason to believe the juvenile was armed. While the officers testified to the juvenile rummaging around, neither officer testified that they saw a bulge of any type or gave any reason to suspect the juvenile was armed, and the juvenile did nothing suspicious after having exited the vehicle. It was only after the pat-down that the officer felt the object, which did not in fact turn out to be a weapon.

Had the officers not found the "weed grinder" during the pat-down, the juvenile would not have been arrested, and there would have been no reason to go inside the vehicle to search her purse. We therefore reverse and remand the case to the trial court to vacate the disposition order and finding of guilt.

C. INEVITABLE DISCOVERY

1. Evidence of drugs admissible even though pat down for weapons after legal stop exceeded scope

***Cole v. State*, 190 So.3d 185 (Fla. 3d DCA 2016)**

Where a patdown following a traffic stop may normally be considered to exceed a patdown for strictly weapons, the inevitable discovery doctrine may prevent evidence from being suppressed if the occupant attempted to dispose of contraband by throwing it on the ground as they exited the vehicle.

Officer Rosa Olivo was on patrol during the evening of February 3, 2012 when she saw a car with a faded and illegible temporary tag, as well as a tinted film covering the brake lights,

making it impossible to determine if the vehicle's lights were on. Before Officer Olivo could initiate a stop of the car, the driver suddenly turned into the opposite lane of traffic without signaling and parked in the grassy swale. Officer Olivo activated her lights and siren, exited her car, and began walking toward the car. Cole was the driver and only occupant of the car.

As Officer Olivo headed toward Cole's car, Cole began to exit his car. Officer Olivo told Cole to remain inside. Cole handed Olivo his license and registration, and Officer Olivo described Cole as very nervous, sweating and stuttering. In response to her questions, Cole told Officer Olivo he was going to meet a "good friend" who lived nearby, but when asked, Cole could not provide the friend's name. Given Cole's behavior, Officer Olivo requested backup.

Officer Lisa Lobello arrived as backup within a few minutes of Officer Olivo's request. Upon Lobello's arrival, Officer Olivo returned to her police vehicle to conduct further investigation related to the traffic stop.

A third officer arrived at the scene who searched Cole more thoroughly. Inside of Cole's sock the officer found a bag containing crack cocaine and a bag of powder cocaine. A K–9 officer came to the scene and searched the area under Cole's car. The police retrieved additional bags of crack cocaine. Inside Cole's car police found additional empty bags matching those found in Cole's pocket.

Following this testimony, the defense argued Lobello did not have reasonable suspicion that Cole was armed with a dangerous weapon, thereby rendering the patdown illegal. The defense also argued that pulling the baggies out of Cole's pocket was unlawful, because it was not immediately apparent from the patdown search that Cole had a weapon or contraband on his person.

Cole concedes the initial traffic stop was lawful. Thus, the first issue we must address is whether Officer Lobello had reasonable suspicion to conduct the subsequent patdown search of Cole. Florida's stop and frisk law requires "not probable cause but rather a reasonable belief on the part of the officer that a person temporarily detained is armed with a dangerous weapon."

Here, in light of the totality of circumstances, we conclude there was reasonable suspicion to justify a patdown search of Cole. The stop occurred at approximately 9 p.m. The officer noticed that Cole was sweating, appeared nervous, was fidgety (bouncing his legs up and down), and his fists were tightly clenched. He could not answer some of the officer's questions, and though he said he was going to see a "good friend," Cole could not provide the friend's name or address. Further, just prior to the stop, Cole had made a sudden U-turn into oncoming traffic lanes and parked in a swale facing the wrong direction. Finally, Cole had a pen clenched tightly in one of his hands when the officer approached and initiated contact with him.

Cole contends that, even if the initial patdown search was justified, the officer exceeded the limited scope of a patdown for weapons, resulting in a full and unlawful search and the discovery of cocaine in his sock. Although we agree that the officer exceeded the limited scope of a patdown search, we nevertheless conclude that the evidence is not subject to suppression because the drugs found in Cole's sock would have inevitably been discovered.

Inevitable discovery is a recognized exception to the exclusionary rule and requires the State to establish that "the evidence would have inevitably been discovered in the course of a legitimate investigation."

In other words, given the evidence presented, "the case must be in such a posture that the facts already in the possession of the police would have led to this evidence notwithstanding the police misconduct."

The inevitable discovery exception applies in the instant case and renders admissible the evidence seized. The initial stop of Colewas lawful and, as discussed, there was reasonable or articulable suspicion for the officer to conduct a patdown search. Although the patdown search ultimately exceeded its proper scope, resulting in the seizure of empty plastic bags from Cole's pocket and the subsequent seizure of cocaine from his sock, this is not the end of our analysis.[2] The critical fact remains that, while Cole was being removed from his car during the course of a lawful investigation, and before the actual patdown search commenced, Cole flicked his wrist and threw drugs underneath the car. This act by Cole,

occurring while the officer was attempting to remove Cole out of his car, constituted a voluntary abandonment of the drugs in his hand. *See State v. Oliver,* 368 So.2d 1331 (Fla. 3d DCA 1979). We reject the defense argument that Cole's action was an involuntary act and the product of an unlawful seizure of Cole. Officer Lobello was acting lawfully at the time Cole flicked his wrist and threw the drugs under the car; Officer Lobello's actions in removing Cole from the car and twisting his arm to remove the pen and to turn Cole around to face the car were reasonable actions in preparation for a safe and proper patdown search.

We agree with Cole that Officer Lobello's subsequent search of Cole exceeded the scope of a patdown search, given that she felt empty bags and removed them from Cole's pocket. A patdown search is conducted for the purpose of discovering "a dangerous weapon." § 901.151(5), Fla. Stat. *See also Harford v. State,* 816 So.2d 789 (Fla. 1st DCA 2002). If during the course of a proper patdown search, the officer feels an object whose incriminating nature is immediately apparent, that too may be lawfully seized. *Minnesota v. Dickerson,* 508 U.S. 366, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993) (adopting the "plain feel" doctrine to permit seizure of such items during an otherwise lawful patdown search); *Griffin v. State,* 150 So.3d 288 (Fla. 1st DCA 2014). However, the patdown search here revealed neither of these, but merely what felt to the officer like "empty plastic bags." Being neither a weapon nor immediately identifiable as contraband, Officer Lobello exceeded the scope of a patdown search by removing these items from Cole's person and then conducting a full search of Cole's person which revealed cocaine in his sock. Ordinarily, the empty bags and drugs found on his person would be subject to suppression, as they were seized as a result of a search that exceeded the scope of a limited patdown search. As we explain, however, under the facts of this case, the inevitable discovery exception renders this evidence admissible.