

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

ANTHONY L. HANKERSON,

Respondent.

Case No. SC10-1074
4th DCA Case No. 4D08-3055

PETITIONER'S REPLY BRIEF

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STATEMENT OF THE CASE

Petitioner relies upon the statement of the case presented in the initial brief.

STATEMENT OF THE FACTS

Petitioner relies upon the statement of the facts presented in the initial brief.

SUMMARY OF THE ARGUMENT

Based on the totality of the circumstances, the police had probable cause to arrest Respondent at the time of the traffic stop. Even assuming *arguendo* that the police lacked probable cause to arrest Respondent, the cocaine was properly seized during an investigative stop based on reasonable suspicion.

ARGUMENT

THE TRIAL COURT PROPERLY DENIED RESPONDENT'S
MOTION TO SUPPRESS EVIDENCE.

Respondent's analysis is faulty because (1) Respondent fails to consider the totality of the circumstances and (2) Respondent fails to properly view the evidence.

"[T]he totality of the circumstances controls in cases involving the Fourth Amendment." State v. Baez, 894 So. 2d 115, 117 (Fla. 2004) (citing State v. Butler, 655 So. 2d 1123, 1125 (Fla. 1995)). In the instant case, the totality of the circumstances includes: (1) the police received information

from various sources that illegal drug offenses were occurring at the residence under surveillance, (2) Respondent arrived at the residence and conducted three hand-to-hand transactions with three individuals, (3) the transactions were brief, (4) Respondent did not maintain eye contact with the other individuals, (5) Respondent looked up and down the street during the transactions, (6) small items were exchanged for paper currency, and (7) the transactions were consistent with hundreds of narcotic transactions observed by Officer Lucas (T1 94-97). Respondent never addresses the totality of the circumstances (Answer Brief). Respondent does not even acknowledge in his brief that Respondent had limited eye contact with the other individuals or that a police officer with extensive narcotics experience testified that Respondent's actions were consistent with hundreds of narcotic transactions he had witnessed (Answer Brief).

"When reviewing a trial court's determination of a motion to suppress, an appellate court will look to all of the surrounding facts and circumstances in the light most favorable to sustaining the lower court's ruling." Cole v. State, 701 So. 2d 845, 855 (Fla. 1997) (citing Terry v. State, 668 So. 2d 954, 958 (Fla. 1996)). Respondent fails to view the facts and circumstances in such a manner and instead characterizes the

three transactions as "a suspected drug deal," a "single suspicious event," an "exchange [of] something for money," "money being exchanged for something," "the transaction," "a minor cash transaction," "one '[v]ery brief' encounter," and "a single brief incident" (Answer Brief at 4, 7, 11, 12, 14, 16, 17, 20, 31, 33). Respondent even suggests, without citation to authority or evidence presented in the case and despite record evidence to the contrary, that Respondent's actions were not actually consistent with a typical drug deal (Answer Brief at 15; T1 97). This is not a proper view of the evidence.

It is unsurprising that Respondent strives to portray the three transactions as a single suspicious event. If the three transactions are properly recognized as three separate events that each raise the level of suspicion, Respondent is unable to reconcile the instant case with Revels v. State, 666 So. 2d 213 (Fla. 2d DCA 1995), Knox v. State, 689 So. 2d 1224 (Fla. 5th DCA 1997), and Coney v. State, 820 So. 2d 1012 (Fla. 2d DCA 2002). Likewise, Respondent relies upon other cases that involve only a single hand-to-hand transaction. See Ramirez v. State, 654 So. 2d 1222, 1223 (Fla. 2d DCA 1995) (involving a single transaction where the suspect subsequently retrieved an aluminum can and went into a bathroom stall); Howard v. State, 623 So. 2d 1240, 1241 (Fla. 2d DCA 1993) (involving a single transaction observed

by an officer conducting surveillance because of numerous complaints of drug sales); Winters v. State, 578 So. 2d 5, 6 (Fla. 2d DCA 1991) (involving a single transaction observed in an area known for drug activity).

It would be improper to discount the three transactions as a single suspicious event because the totality of the circumstances controls. See Baez, 894 So. 2d at 117 ("the totality of the circumstances controls in cases involving the Fourth Amendment"); Revels v. State, 666 So. 2d 213, 215 (Fla. 2d DCA 1995) ("The fact that the officers witnessed two prior exchanges on this same evening adds to the circumstances supporting probable cause."). Although Respondent attempts to suggest that the brevity of the three transactions made Respondent's actions less suspicious, the opposite is true. Officer Lucas specifically identified the brevity of the contact as a factor that led him to believe that Respondent was dealing drugs (T1 97). This is logical because a drug dealer making illegal transactions in broad daylight would want to conduct business quickly to minimize his chances of being observed by law enforcement or concerned citizens. More importantly, Officer Lucas possessed extensive experience and described the transactions as consistent with hundreds of transactions he witnessed. See Ornelas v. United States, 517 U.S. 690, 700

(1996) ("a police officer may draw inferences based on his own experience"). Furthermore, this Court has recognized that due weight must be accorded to inferences drawn by local law enforcement officers. Jenkins v. State, 978 So. 2d 116, 122 (Fla. 2008).

When all the circumstances of the instant case are considered together and properly viewed, it is clear that there was probable cause for Respondent's arrest. As in Knox v. State, 689 So. 2d 1224 (Fla. 5th DCA 1997), the experienced narcotics officer was warranted in his belief that the suspect was engaged in criminal conduct. Therefore, the trial court properly denied Respondent's motion to suppress.

Even in the absence of probable cause, the seizure of drugs from Respondent was justified by reasonable suspicion. Respondent fails to recognize that the intent of Officer Schmidt is not relevant in the analysis. It is well settled that "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." Whren v. United States, 517 U.S. 806, 813 (1996) (citing Scott v. United States, 436 U.S. 128, 138 (1978)). "[T]he Fourth Amendment's concern with

'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent." Whren, 517 U.S. at 814 (citing United States v. Robinson, 414 U.S. 218, 236 (1973) and Gustafson v. Florida, 414 U.S. 260, 266 (1973)).

Officer Schmidt conducted only a pat-down of Respondent and this pat-down was justified by Respondent's reaching motions and the suspicion that Respondent recently completed three illegal drug transactions. See Terry v. Ohio, 392 U.S. 1, 27 (1968) (concluding that it is permissible to conduct "a reasonable search for weapons for the protection of the police officer"); Lightbourne v. State, 438 So. 2d 380, 388 (Fla. 1983) (finding a pat-down justified by "defendant's furtive movements and nervous appearance"); United States v. Hromada, 49 F.3d 685, 689 (11th Cir. 1995) ("Guns and violence go hand-in-hand with illegal drug operations").

The removal of Respondent's shoe was no search at all. Officer Schmidt merely asked a question: whether Respondent had anything in his shoes (T1 108). Respondent answered the question and then removed his shoes (T1 108-09). When a suspect responds to a question by removing items from his clothing, there is no search. See State v. Hicks, 415 So. 2d 878, 878-79 (Fla. 2d DCA 1982) (stating that "there was no search at all" where the suspect "went beyond the officer's initial inquiry and

spontaneously extracted the marijuana from his shorts into plain view"); Neely v. State, 402 So. 2d 477, 479 (Fla. 2d DCA 1981) (finding that no search took place where the suspect "went beyond the officers' inquiry about what caused the bulge and spontaneously pulled the methaqualone tablets out of his pocket"). Thus, the trial court's denial of Respondent's motion to suppress was correct even assuming *arguendo* that the police lacked probable cause to arrest.

CONCLUSION

The trial court properly denied Respondent's motion to suppress evidence. Therefore, the State requests that this Honorable Court reverse the decision of the Fourth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was sent by courier to Gary Lee Caldwell, Assistant Public Defender, Counsel for Respondent, at 421 3rd Street, 6th Floor, West Palm Beach, FL 33401 on August 25, 2010.

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CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared in Courier New font, 12 point, and double spaced.

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