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IN SUPREME COURT OF FLORIDA

LARRY C. WILLAMS,

Petitioner/Appellant,

v.

STATE OF FLORIDA,

Respondent/Appellee.

Case No. SC13-2315

PETITIONER'S INITIAL BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the defendant in the 19th Judicial Circuit (St. Lucie County) and the Appellant in the Fourth District Court of Appeal. Respondent State of Florida was the Appellee in the Fourth District Court of Appeal and the prosecution in the Criminal Division of the Circuit Court of the 19th Judicial Circuit, in and for St. Lucie County, Florida.

In the Brief on the merits, the parties will be referred to as they appear before this Honorable Court.

The following symbols will be used:

"R" will denote the record bound at the top and contained at the beginning of the one-volume record on appeal. (Volume I)

“T” will denote the transcripts of the pre-trial motion hearing, plea conference, and sentencing hearing (Volume II).

STATEMENT OF THE CASE

Petitioner, Mr. Larry C. Williams, was charged by information filed in the Nineteenth Judicial Circuit (St. Lucie County) with possession of cocaine and count II, possession of marijuana in the amount less than 20 grams. R1. Said offenses were alleged to have occurred on July 2, 2011.R1.

Defense counsel filed a pre-trial written motion to suppress the cocaine and marijuana seized in this cause on Fourth Amendment grounds. R20 (Vol. I). An evidentiary hearing was subsequently held on the motion to suppress. T1-44(Vol. II). At the conclusion of the motion hearing, the trial judge denied Appellant's motion to suppress physical evidence. T39-44.

Petitioner Williams pled no contest to the cocaine and marijuana charges expressly reserving his right to appeal the denial of his motion to suppress physical evidence. T52-57;R 24,27. He was sentenced to 26.5 months in prison with credit for time served for count I, possession of cocaine. R38-39. He was sentenced to time served for count II. R41.

Timely Notice of Appeal was filed by Mr. Williams to the Fourth District Court of Appeal. R45.

In a written decision, *Williams v. State*, 127 So.3d 643 (Fla. 4th DCA 2013), *rev. granted*, – So.3d — (Fla. May 22, 2014), Judge Demoorgian writing for the

Fourth District affirmed the order of the trial court which denied Petitioner's motion to suppress physical evidence as follows:

> The cumulative impact of a number of factors leads us to conclude that the deputy had a reasonable basis for suspicion that Williams was or had been engaged in criminal activity. *See State v. Jenkins*, 566 So.2d 926, 927 (Fla. 2d DCA 1990) (recognizing that the cumulative impact of independent factors may provide sufficient basis for reasonable suspicion of criminal activity). First, it was 1:00 a.m. in a dark parking lot. Second, located in the parking lot was a vehicle in which the deputy had just discovered a crack pipe. Third, Williams approached this vehicle and proceeded to lean into the vehicle and engage with its occupant, who was under active investigation. Finally, after engaging with the occupant of the vehicle, the deputy asked Williams what he was doing and Williams started to leave the scene with a clenched fist. When considered in light of the deputy's extensive training and field experience, including both narcotics investigations and experience with small weapons that could be concealed within a fist, these facts provide justifiable reasons to suspect that Williams possessed either drugs or a weapon within his clenched fist. *See, e.g.*, *May*, 77 So.3d at 834 (explaining that it is not absolutely necessary for an officer to observe drugs or money change hands in order to support a reasonable suspicion that a drug offense was committed and deference should be given to the officer's perspective); *Gentles v. State*, 50 So.3d 1192, 1198 (Fla. 4th DCA 2010) (noting that in certain circumstances, "[a] temporary detention of an individual may be justified by an officer's specific concern for his own safety").

Id. at 645-646.

Judge Klingensmith concurred in the result without opinion.

Judge Taylor concurred in result only writing:

> "I concur in the majority decision to uphold the denial of the defendant's motion to suppress, but not because I agree that the officer had a founded suspicion to stop Williams for interference with his criminal investigation. Founded suspicion requires more than a "hunch" or a "bare" suspicion to

validate the stop. *See Terry v. Ohio*, 392 U.S. 1, 27, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *Kearse v. State*, 384 So.2d 272, 274 (Fla. 4th DCA 1980); § 901.151(2), Fla. Stat. (2010). Here, the mere fact that Williams walked up to the driver in a parked vehicle and then quickly backed way with a clenched hand after becoming aware of the presence of police officers did not give rise to a well-founded suspicion that Williams had committed, was committing, or was about to commit a criminal offense.

The deputy testified that when Williams approached the driver's side of the vehicle and leaned inside, the deputy was several feet away checking the driver's identification with the Sheriff's Office dispatch. The deputy could not overhear the conversation between Williams and the driver, and the deputy did not see Williams do anything to disrupt his investigation. When the deputy noticed Williams, he asked him what he was doing. Williams, who appeared startled upon seeing the deputy, took a step back and then walked past him. The deputy observed that Williams' right hand was clenched, but he could not see if he had anything in his hand. The deputy just felt that "it was obviously very suspicious." These facts simply do not support a reasonable suspicion of criminal activity for an investigatory stop.

That said, however, I would nonetheless affirm the denial of the motion to suppress, because the evidence in this case does not show that the defendant complied with the officer's request to stop before he dropped the cocaine. Therefore the defendant was not unlawfully seized and the Fourth Amendment was never implicated. When the deputy attempted to stop Williams, Williams simply turned around and dropped a crack cocaine rock. "[A]n unlawful seizure takes place only if the person either willingly obeys or is physically forced to obey the police request. As such, there is no unlawful seizure when the person 'drops then stops,' even where the drop occurs after an order to stop." *State v. Woods*, 680 So.2d 630, 631 (Fla. 4th DCA 1996) (holding that defendant was not unlawfully seized before he dropped the handgun and cocaine while fleeing officer, although officer was three to four feet behind defendant when he turned around and dropped the items); *see also California v. Hodari D.*, 499 U.S. 621, 626, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991) (a seizure requires either physical force or submission to a show of authority); *Johnson v. State*, 640 So.2d 136, 137–38 (Fla. 4th DCA 1994) (holding that no unlawful seizure of

> defendant occurred before defendant voluntarily abandoned cocaine rocks; he dropped the drugs after the officer asked him to stop but before he willfully obeyed, and the officer did not physically force the defendant to obey his request to stop); *State v. A.M.*, 788 So.2d 398 (Fla. 3d DCA 2001) (holding that juvenile was not seized by police officer where juvenile had refused to stop and began to walk away after officer tried to question him).
>
> Viewing the testimony and all inferences in the light most favorable to sustaining the trial court's denial of the motion to suppress, I would conclude that the defendant was not unlawfully seized before he discarded the drugs. For that reason, I concur in the decision to affirm."

Id. at 646-647.

A timely Notice of Discretionary review was filed by Petitioner. This Honorable Court in a written order accepted jurisdiction over the instant cause.

STATEMENT OF THE FACTS

Judge Demoorgian writing for the Fourth District found the following facts were established at the hearing on the motion to suppress and were the basis for the trial court's ruling.

"The arresting officer, a St. Lucie County deputy, was an experienced narcotics law enforcement officer. On the day of Williams' arrest, at approximately 1:00 a.m., the deputy and his partner approached a vehicle with a female occupant in a parking lot near a night club. The deputy was clothed in apparel identifying him as a law enforcement officer. Upon approaching the vehicle, the deputy looked inside the vehicle and noticed a crack cocaine pipe in plain view. A criminal investigation ensued. The deputy returned to his vehicle to continue his investigation when he noticed Williams approach the driver's side of the vehicle, lean in toward the driver's side window, and begin speaking with the female occupant." *Williams*, 127 So.3d at 644-645.

"Upon seeing Williams, the deputy asked Williams: "Hey man, what's going on? What are you doing?" *Id.*

"Williams became startled and took a step back at which point, the deputy noticed Williams' clenched fist. The deputy could not recognize anything in Williams' hand, but "it was very suspicious" to him and he feared the possibility

that Williams was clenching a weapon or drugs. The deputy provided an example in which a weapon could be concealed in a clenched hand." *Id*.

"Williams started to walk away and the deputy attempted to stop Williams by saying: "Hey man, where are you going? Come here, let me talk to you." Williams turned around, unclenched his fist, and dropped what turned out to be cocaine. The trial court denied the motion to suppress, reasoning that the deputy had reasonable suspicion to stop Williams based on the totality of the circumstances." *Id.*

"Williams argues that the evidence does not support the trial court's conclusion that the deputy possessed reasonable suspicion to stop him. The State counters that the factual circumstances justified a stop. In the alternative, the State argues that the encounter between the deputy and Williams was consensual. We reject the State's alternative argument without further comment." *Id*. at 644-646.

Judge Taylor in a concurring opinion noted the following facts:

> The deputy testified that when Williams approached the driver's side of the vehicle and leaned inside, the deputy was several feet away checking the driver's identification with the Sheriff's Office dispatch. The deputy could not overhear the conversation between Williams and the driver, and the deputy did not see Williams do anything to disrupt his investigation. When the deputy noticed Williams, he asked him what he was doing. Williams, who appeared startled upon seeing the deputy, took a step back and then walked past him. The deputy observed that Williams' right hand was clenched, but he could not see if he had anything in his hand. The deputy just felt that "it was obviously very suspicious." These facts simply

> do not support a reasonable suspicion of criminal activity for an investigatory stop.

Id. at 647.

At the motion hearing, Deputy Ryan Register of the St. Lucie Sheriff's Office testified that on the early morning hours of July 2, 2011, he drove into a parking lot adjacent to a bar in Ft. Pierce. T5-6 (Vol. II). Register observed a vehicle occupied solely by the driver later identified as Ms. Nikki King. T7. Deputy Register questioned her as to why she was in the parking lot. T8. Ms. King indicated to the deputy that she was just hanging out. T8. The deputy noticed a crack cocaine pipe in the vehicle. T8. At that point according to Register, he commenced a criminal investigation and told Ms. King to hand the pipe over to him. T8.

Deputy Register then went to his nearby police vehicle to place the pipe in an envelope. T8. Register believed that he had probable cause to arrest King for possession of drug paraphernalia. T23.

Register testified that he looked up and noticed a black male later identified as Petitioner, Mr. Williams, speaking to Ms. King the vehicle driver. T9. Williams had walked up to King's vehicle and commenced a conversation with her. T8. Register believed that Petitioner Williams was interfering with his criminal investigation. T23.

Deputy Register returned to King's vehicle and said to Petitioner, "Hey man, what's going on, what are you doing?" T10,11.

Petitioner looked at Deputy Register and took a step back. T10. The deputy then realized that Petitioner had a clenched fist. T10. Register testified that he was unable to see if Petitioner had "anything in his hand but it was very suspicious" to him.T10,18. It was possible that Petitioner might have a weapon or drugs in his hand. T11.

At that point, Petitioner Williams started to walk away from the deputy. T11. Register said to Petitioner, "Hey man, where are you going? Come here, let me talk to you." T 11,16.

At that point, the deputy acknowledged at the motion hearing that he was affecting a stop of Petitioner. T16. According to Register, when Petitioner "turned in the motion and he opened his right hand which at that time I witnessed what I thought and it appeared to be with the size and shape and clarity hit the ground would have been a crack cocaine." T11(Vol. II). After the deputy observed Petitioner throw the cocaine rock to the ground, Register seized Williams who attempted to cover the cocaine rock on the ground. T13. The deputy seized the cocaine rock. T13,19.

Ms. Nikki King was called as a defense witness at the motion hearing. T25.

She was in her vehicle during the early morning hours when Deputy Register approached her. T 26. He asked her what she was doing in the area at that time. T26. The deputy looked into her vehicle and noticed a crack cocaine pipe. T26.

King observed petitioner Williams who was unknown to her in the parking lot. T27. King testified that Petitioner did not approach her vehicle or lean on her vehicle. T27. She did not have any conversation with Petitioner. T28. Petitioner did not try to sell her drugs. T28. Also it did not appear to her that Petitioner had anything in his hand. T28. King did not see Mr. Williams throw or toss anything to the ground. T28.

SUMMARY OF THE ARGUMENT

This Court has recognized three (3) distinct levels of police-citizen encounters: consensual encounters, investigatory detentions, and formal arrests. *Popple v. State*, 626 So.2d 185, 185 (Fla.1993). An investigatory detention or stop occurs when an officer makes "an official show of authority from which a reasonable person would conclude that he or she is not free to end the encounter and depart." *Dees v. State*, 564 So.2d 1166, 1167 (Fla. 1st DCA 1990). Petitioner was subjected to a stop.

In *Hollinger v. State*, 620 So.2d 1242 (Fla. 1993), this Court made clear that: **"***Hodari* [*California v. Hodari D.*, 499 U.S. 621, 626, 111 S.Ct. 1547(1991)] draws a clear distinction between those who yield to the authority of the police and those who flee. A person who flees from a show of authority has not been seized, while a person who remains in place and submissive to the show of authority has been seized. Therefore, if a person submits to an officer's show of authority and does not attempt to escape, then a seizure has occurred and dropped contraband must be suppressed if the seizure was illegal. *Id.* at 1243. Contrary to any suggestion, Petitioner was subjected to a "stop" by the deputy prior to the purported abandonment of the cocaine rock ("drop").

Based on the totality of all the circumstances, there was not the requisite

"founded suspicion" to justify the stop of Petitioner. There was mere conjecture and speculation to justify this stop. As a result, the trial court should have suppressed the cocaine and the marijuana seized in this cause. The Fourth District, in turn, misapplied the controlling U.S. Supreme Court and this Court's law on "founded suspicion" and upheld a "stop" on less than the requisite founded suspicion. The Fourth District's opinion should be vacated and Petitioner discharged on both drug charges on remand to the trial court.

ARGUMENT

THE FOURTH DISTRICT IN *WILLIAMS V. STATE* HAS DEPARTED FROM BOTH U.S. SUPREME COURT AND THIS COURT'S PRECEDENTS ON FOUNDED SUSPICION AND REACHED AN ERRONEOUS RESULT IN AFFIRMING THE TRIAL COURT'S ORDER DENYING PETITIONER'S MOTION TO SUPPRESS PHYSICAL EVIDENCE.

I. INTRODUCTION

In Florida, when ruling on search and seizure issues, courts are required by the conformity clause in article I, section 12 of the *Florida Constitution* to follow the applicable United States Supreme Court precedents. *See Holland v. State*, 696 So.2d 757, 759 (Fla.1997). Petitioner Williams was illegally detained or stopped by the deputy in violation of his Fourth Amendment rights under the United States Constitution. This stop was unsupported by the requisite "founded suspicion."

II. STANDARD OF REVIEW

In an appeal of an order on a motion to suppress physical evidence, the appellate court must defer to the trial court's findings of historical fact if supported by the record, however the application of the law to the facts is reviewed *de novo*. *Ray v. State*, 849 So.2d 1222 (Fla. 4th DCA 2003). The trial court's determination of the legal issue of probable cause is subject to the *de novo* standard of review. *See Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657 (1996); *Connor v.*

State, 803 So.2d 598 (Fla. 2001).

III PRESERVATION

At the motion hearing, defense counsel argued: "Secondly, simply walking away from law enforcement officer if there is no reason to be detained is not enough for a investigatory stop." T32. Further, the deputy turned the consensual encounter into an investigatory stop "as he is directing Mr. Williams to comply with his order to come back over to him." T31-32. This preserved these precise issues in the lower tribunal for appellate review before the Fourth District.

IV. PETITIONER WAS SUBJECTED TO A STOP

This Court has recognized three (3) distinct levels of police-citizen encounters: consensual encounters, investigatory detentions, and formal arrests. *Popple v. State*, 626 So.2d 185, 185 (Fla.1993). The test to apply to determine if Mr. Williams was seized is whether a reasonable person would have believed he was free to go. *California v. Hodari D.*, 499 U.S. 621, 111 S.Ct. 1547 (1991); *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S.Ct. 1870, 1877(1980) (holding "[A] person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.")

This Court in *Popple v. State*, 626 So.2d 185, 188 (Fla.1993), wrote that

"[w]hether characterized as a request or an order" the act of directing a person to exit his vehicle "constituted a show of authority which restrained [appellant's] freedom of movement because a reasonable person under the circumstances would believe that he should comply." In *Harrison v. State*, 627 So.2d 583 (Fla. 5th DCA 1993), the defendant Harrison was stopped on the street by the police, who ordered him to remove his hands from his pocket. The Fifth District ruled that the consensual encounter evolved into a seizure when the officer issued the order. When he complied with the order, he was submitting to the show of authority. *Id.* at *585.*

Other district courts of appeal have reached the same conclusion. *See Doney v. State*, 648 So.2d 799, 801 (Fla. 4th DCA 1994) (holding that compliance with police officer's request that appellant spit out contents of his mouth was acquiescence to authority, rather than consent); *Johnson v. State*, 610 So.2d 581 (Fla. 1st DCA 1992) (holding that seizure occurred when officer told defendant to remove hands from pockets and to turn around so that officer could get good look at him), *rev. denied*, 623 So.2d 495 (Fla.1993); *Dees v. State*, 564 So.2d 1166 (Fla. 1st DCA 1990) (holding that seizure occurred when officer directed defendant to exit vehicle and remove hand from pocket).

Deputy Register testified that he observed Petitioner Williams merely

speaking to Ms. King who was seated in her vehicle. Petitioner had walked over to Ms. King's vehicle window to converse with her while she sat in the driver seat of her vehicle. This was totally innocent behavior.

A person has a right to walk away from an encounter with the police. A consensual encounter becomes an investigatory stop "if, under the circumstances, a reasonable person would conclude that he or she is not free to end the encounter and depart." *Popple v. State*, 626 So.2d 185, 188 (Fla.1993).

When Deputy Register approached, Williams started to walk away from the deputy. T11. Deputy Register said to Petitioner, "Hey man, where are you going? Come here, let me talk to you." T 11,16. Deputy Register acknowledged at the motion hearing that he was affecting a "stop" of Petitioner. T16 (Volume II).

The deputy ordered Petitioner to "come here, let me talk to you." These two police commands turned the initial consensual encounter into a "stop." *See Johnson v. State*, 610 So.2d 581(Fla. 1st DCA 1992) (Drug suspect was "seized"; officer's order for suspect to take his hands out of his pockets and to turn around was directive that suspect was not free to disregard).

In *Hollinger v. State*, 620 So.2d 1242 (Fla. 1993), several members of the Orange County Sheriff's Department who were conducting a drug sweep pulled into a parking lot, exited their vehicles, announced "Orange County Sheriff's

Office" and approached a group of people. One of the officers noticed that Hollinger put his hand behind his back and ***drop a tissue***, which was later found to contain cocaine. Interpreting *Hodari D.* this Court held:

> *Hodari* draws a clear distinction between those who yield to the authority of the police and those who flee. A person who flees from a show of authority has not been seized, while a person who remains in place and submissive to the show of authority has been seized. Therefore, ***if a person submits to an officer's show of authority and does not attempt to escape, then a seizure has occurred and dropped contraband must be suppressed if the seizure was illega***l . . . .

Id. at 1243 [emphasis supplied].

Petitioner did not flee when commanded to "come here" to "speak to the deputy", but he apparently dropped the cocaine rock to the ground. This Court has determined that "[an] abandonment which is the product of an illegal stop is involuntary, and the abandoned property must be suppressed." *State v. Anderson*, 591 So.2d 611 (Fla. 1992); *Hollinger*, 620 So.2d at 1243.

Contrary to any suggestion otherwise, Petitioner Williams was subjected to an illegal detention or stop by the deputy. The deputy conceded this fact at the motion hearing. T16. The record negates Judge Taylor's suggestion in her concurring opinion that this scenario was actually a "drop" and then a stop by the deputy. Taylor J., concurring opinion. *See also Palmer v. State*, 625 So.2d 1303 (Fla. 1st DCA 1993) (holding that abandonment of a razor blade was product of

illegal stop and thus involuntary because seizure occurred when officer told defendant to take his hands out of his pockets); *Evans v. State*, 546 So.2d 1125 (Fla. 3d DCA 1989) (holding that cocaine was not voluntarily abandoned where defendant, who was sitting on park bench at 4:00 a.m., dropped cocaine after complying with constitutionally unjustified police order to remove hands from pocket for officer's safety).

V. STOP WAS UNSUPPORTED BY FOUNDED SUSPICION

Deputy Register stopped Petitioner Williams without the requisite "founded suspicion." Without question, a police officer may not conduct an investigatory stop unless the officer has a well-founded suspicion that the person has committed, is committing, or is about to commit a criminal offense. *Terry v. Ohio*, 392 U.S. 1 (1968); *Mullins v. State*, 366 So.2d 1162 (Fla.), *cert. denied*, 444 U.S. 883 (1979); *Kearse v. State*, 384 So.2d 272 (Fla. 4th DCA 1980); Section 901.151(2) *Florida Statutes* (2010). This was not a legal, investigatory stop "supported by reasonable suspicion of criminal activity" as found by the trial court judge. T44.

Founded suspicion, while less than probable cause, requires more than a 'bare" suspicion to validate the stop. *Mullins v. State*, 366 So.2d 1162 (Fla.), *cert. denied*, 444 U.S. 883 (1979). A "founded suspicion" is defined as a suspicion that has some factual foundation in the circumstances observed by the police officer,

when those circumstances are interpreted in the light of the officer's knowledge. "Mere" or "bare" suspicion, however, is considered no better than random selection, sheer guesswork, or hunch, has no objective justification, and will not support detention. *State v. Stevens*, 354 So.2d 1244, 1247 (Fla. 4th DCA 1978).

Relevant factors include the following: "the time of day; the appearance and behavior of the suspect; the appearance and manner of operation of any vehicle involved; and anything incongruous or unusual in the situation as interpreted in light of the officer's knowledge." *Huffman v. State*, 937 So.2d 202, 206 (Fla. 1st DCA 2006).

It is proper to consider "headlong flight," upon the approach of police officers that the United States Supreme Court has deemed "the consummate act of evasion." *Illinois v. Wardlow*, 528 U.S. 119, 121,120 S.Ct. 6730 (2000). Typically, flight from the police justifies a stop when it is unprovoked and occurs in a high-crime area. *See Wardlow.* However, flight from the police is simply one factor to be considered and that "reasonable suspicion of criminal activity is not established simply because a defendant leaves the scene when an officer nears." *Hill v. State*, 51 So.3d 649, 651 (Fla. 1st DCA 2011); *Hewlett v. State*, 599 So.2d 757 (Fla. 2d DCA 1992) (holding stop of vehicle was unlawful where three men, who were aside a vehicle parked next to the property of a known drug dealer but who were

personally unknown to police, jumped into the vehicle and drove away at a lawful rate of speed as an officer approached).

Judge Taylor in her concurring opinion in the instant case supports Petitioner's contention that the deputy lacked the requisite "founded suspicion":

> The deputy testified that when Williams approached the driver's side of the vehicle and leaned inside, the deputy was several feet away checking the driver's identification with the Sheriff's Office dispatch. The deputy could not overhear the conversation between Williams and the driver, and the deputy did not see Williams do anything to disrupt his investigation. When the deputy noticed Williams, he asked him what he was doing. Williams, who appeared startled upon seeing the deputy, took a step back and then walked past him. The deputy observed that Williams' right hand was clenched, but he could not see if he had anything in his hand. The deputy just felt that "it was obviously very suspicious." ***These facts simply do not support a reasonable suspicion of criminal activity for an investigatory stop.***

Id. at 647 [emphasis supplied].[1]

Petitioner had walked over to Ms. King's vehicle to converse with her while she sat in the driver seat of the vehicle. This was totally innocent behavior. A person has a right to walk away from an encounter with the police. If Petitioner was somehow inadvertently interfering with this police investigation of Ms. King, leaving the scene is what the deputy wanted Petitioner to do.

Likewise, a person standing with an alleged clasped fist is innocent

1. Petitioner had previously noted that Judge Taylor's basis for her concurrence that this was actually a "drop" then "stop" case is unsupported by the record, *See Statement of Facts*, or the applicable law.

behavior. *See Mosley v. State*, 519 So.2d 58, 59 (Fla. 2d DCA 1988) (no founded suspicion where defendant seen walking with an alleged drug dealer in a high crime area and his fists clenched). A person does not have to have their hands open in a free society. Common sense dictates that your hands are either open or closed as you walk.

Judge Demoorgian noted the time of day, 1:00 a.m., as a "factor" to justify the stop. *Id*. at 645. However, the location of the stop was a nightclub at 1:00 a.m. It is not unusual for patrons to come and go from a nightclub at that time. As to "late hour" generally as an impermissible factor in the "founded suspicion" equation. See *Mullins v. State*, 366 So.2d 1162 (Fla.1979)(where police officer observed the defendant riding his bicycle slowly through a residential neighborhood in the early morning hours, was not sufficient to give rise to anything more than a bare suspicion of illegal activity); *Moore v. State*, 584 So.2d 1122 (Fla. 4th DCA 1991)(fact that police officer saw defendant riding bicycle at 2:00 a.m. coming from area of burglary did not provide officer with "founded suspicion" of illegal activity to warrant stop and frisk of defendant).

Finally, Judge Demoorgian emphasized that in this case there was "a suspect's interference with an ongoing and obvious investigation." *Id*. at 646.

This suggestion is by far the weakest of the four cited "factors." There was

no indication that Petitioner knew Ms. King was being investigated by the police at the time he spoke to her. And more importantly, Petitioner walked away from the deputy thus negating any suggestion that he was somehow "interfering" with a police investigation. In fact, he did what law enforcement wanted him to do—leave.

There was insufficient founded suspicion to justify the stop or illegal detention in this case. As a result, the cocaine and the marijuana seized in this cause should have been suppressed and this Honorable Court should reverse the decision of the Fourth District upholding the stop and order Petitioner Williams discharged on both drug offenses on remand to the trial court.

CONCLUSION

Based on the foregoing arguments and authorities cited, Petitioner Mr. Williams most respectfully requests this Honorable Court to reverse the decision of the Fourth District Court of Appeal and remand this cause to the trial court for dismissal of the charges.

Respectfully submitted,

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CERTIFICATE OF E-SERVICE AND E-FILING

I HEREBY CERTIFY that a copy hereof has been furnished to Mitchell Egber Assistant Attorney General, 1515 N. Flagler Drive, Suite 900, West Palm Beach, Florida 33401 by e-service at CrimAppWPW@myfloridalegal.com; and electronically filed with this Court on this 12th day of June, 2014.

/s/ Anthony Calvello
Anthony Calvello
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CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that the instant Brief on the Merits has been prepared with 14 point Times New Roman type, in compliance with *Fla. R. App. P*. 9.210 (a) (2).

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