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IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC13-2315

LARRY CHARLES WILLIAMS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent,

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida. Petitioner was the Appellant and Respondent was the Appellee in the Fourth District Court of Appeal ("Fourth District"). In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

STATEMENT OF THE CASE AND FACTS

"The jurisdictional brief should be a short, concise statement of the grounds for invoking jurisdiction and the necessary facts. It is not appropriate to argue the merits of the substantive issues involved in the case or discuss any matters not relevant to the threshold jurisdictional issue". See, Committee Notes for 1970 Amendment of Rule 9.120.

Petitioner was convicted of robbery with a firearm or deadly weapon and aggravated assault with a deadly weapon. His conviction and sentence were affirmed in a written opinion by the Fourth District Court of Appeal on November 30, 2013. Williams v. State, 127 So.3d 643 (Fla. 4th DCA 2013).

The pertinent facts and procedural history as they appear in the opinion of the Fourth District are as follows:

> 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 *645 a.m., the deputy and his partner approached a vehicle with a female occupant in a parking lot near a night club. The deputy was clothed in apparel identifying him as a law enforcement officer. Upon approaching the vehicle, the deputy looked inside the vehicle and noticed a crack cocaine pipe in plain view. A criminal investigation ensued. The deputy returned to his vehicle to continue his investigation when he noticed Williams approach the driver's side of the vehicle, lean in toward the driver's side window, and begin speaking with the female occupant. Upon seeing Williams, the deputy

> asked Williams: "Hey man, what's going on? What are you doing?" Williams became startled and took a step back at which point, the deputy noticed Williams' clenched fist. The deputy could not recognize anything in Williams' hand, but "it was very suspicious" to him and he feared the possibility that Williams was clenching a weapon or drugs. The deputy provided an example in which a weapon could be concealed in a clenched hand. Williams started to walk away and the deputy attempted to stop Williams by saying: "Hey man, where are you going? Come here, let me talk to you." Williams turned around, unclenched his fist, and dropped what turned out to be cocaine. The trial court denied the motion to suppress, reasoning that the deputy had reasonable suspicion to stop Williams based on the totality of the circumstances.

Williams, 127 So. 3d at 644.

The instant Notice to Invoke Discretionary Jurisdiction followed.

SUMMARY OF THE ARGUMENT

This Court should decline jurisdiction. Petitioner has no basis to invoke this Court's discretionary jurisdiction. Petitioner has cited no case which is in express and direct conflict with the instant decision which would support the invocation of discretionary jurisdiction. Rule 9.030(a)(2)(A), Fla. R. App. P.

ARGUMENT

THERE IS NO BASIS FOR DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE FOURTH DISTRICT.

Rule 9.030(a)(2)(A), Fla. R. App. P. states that discretionary jurisdiction of this Court may be sought to review decisions of district courts of appeal that:

> (i) expressly declare valid a state statute;
> (ii) expressly construe a provision of the state or federal constitution;
> (iii) expressly affect a class of constitutional or state officers;
> (iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;
> (v) pass upon a question certified to be of great public importance;
> (vi) are certified to be in direct conflict with decisions of other district courts of appeal;

In the instant case, Petitioner seeks to invoke the discretionary jurisdiction of this Court pursuant to Rule 9.030(a)(2)(A) (iv), Fla. R.App. P.

Pursuant to Art. V, § 3(b)(3), Fla. Const., this Court has the jurisdiction to review a decision of a district court of appeal which "expressly and directly" conflicts with a decision of this Court or another district court of appeal. Kyle v. Kyle,139 So.2d 885, 887 (Fla. 1962); Nielson v. City of Sarasota, 117 So.2d 731 (Fla. 1960); Mancini v. State, 312 So.2d 732, 733 (Fla. 1975).

In the instant case, the Fourth District Court of Appeal made the following analysis of the facts to the law:

> To detain a person for investigation, an officer must have a reasonable suspicion, based on objective, articulable facts, that the person has committed, is committing, or is about to commit a crime. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). "Whether an officer has a 'founded suspicion' for a stop depends on the totality of the circumstances ... in light of the officer's knowledge and experience." Ippolito v. State, 789 So.2d 423, 425 (Fla. 4th DCA 2001). However, a bare suspicion or "mere 'hunch' that criminal activity may be occurring is not sufficient." Belsky v. State, 831 So.2d 803, 804 (Fla. 4th DCA 2002). Factors that may be considered in establishing reasonable suspicion include: "the time; the day of the week; the location; the physical appearance of the suspect; the behavior of the suspect; the appearance and manner of operation of any vehicle involved; anything incongruous or unusual in the situation as interpreted in light of the officer's knowledge." May v. State, 77 So.3d 831, 834 (Fla. 4th DCA 2012) (quotations and citations omitted).
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> 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").

Williams, 127 So. 3d at 645-46.

The Fourth District conducted an analysis based on a totality of the circumstances based on cumulative independent factors. This analysis comports with decisions of this Court. See Mackey v. State 124 So.3d 176, 183 (Fla.2013)("[t]he United States Supreme Court has held that a determination of whether a reasonable, articulable suspicion exists to create a circumstance for the police to lawfully conduct a Terry stop is based upon the totality of the circumstances, [citing] U.S. v. Sokolow, 490 U.S. 1, 8 (1989)); Baptiste v. State, 995 So.2d 285, 297 (Fla. 2008)(held a suspect's nervous and evasive behavior "upon the approach of an officer, when considered in conjunction with a purely anonymous tip, may under the totality of the circumstances establish reasonable suspicion

for an investigative stop."); Price v. State, 120 So.3d 198, 200 (Fla. 5th DCA 2013)(reasonable suspicion standard requires courts to examine the totality of circumstances, or "whole picture," to determine whether the detaining officers had a "particularized and objective basis" for suspecting the person stopped of criminal activity) Accordingly, as to Fourth District's analysis, it was neither in express or direct conflict with cases of this Court or other District Courts of Appeal.

Petitioner cites a myriad of cases he claims the Fourth District is directly and expressly in conflict with, where the District Courts found that the particular facts did not give rise to a reasonable suspicion. Respondent will address each and how they are distinguishable and not in conflict, based on an application of law to their specific facts. In effect, in citing these cases, Petitioner appears to be rearguing the merits of the case which he did previously with the Fourth District. In Jaudon v. State, 749 So.2d 548 (Fla. 2d DCA 2000) the defendant had only entered through the hole in the fence of an apartment complex late at night but did not engage in any further suspicious transactions. In Brown v. State, 687 So.2d 13 (Fla. 5th DCA 1996) the defendant was simply sitting in a parked vehicle in a wooded area known for illegal dumping and made a furtive movement. In Shackelford v. State, 579 So.2d 306 (Fla. 2d DCA 1991) the defendant was only an an area known for drug sales and the defendant leaned into another

vehicle and reached inside. In Stanton v. State, 576 So.2d 925 (Fla. 1st DCA 1991) the defendant was only a passenger in a vehicle where alleged crack dealers stood at side of vehicle and one of them bent over inside. Id., at 926.1 In Winters v. State, 578 So.2d 5 (Fla. 2d DCA 1991) the Second District held that the stop was justified where as here a man leaned into a vehicle in a high crime district and saw him accept money from the driver. Id., at 6. However, in Winters, the seizure of cocaine found in the defendant's pocket was not justified as to a "stop and frisk" of the defendant, unlike here where the officer believed the defendant may have had a weapon in his clenched fist. Id., at 6. In Baggett v. State, 531 So.2d 1028, 1030 (Fla. 1st DCA 1988), the defendant was only stopped because he was young and appeared to be a suspicious person.2 In R.B. v. State, 429 So.2d 815 (Fla. 2d DCA 1983) the defendant, upon seeing the police vehicle, "quickly placed his hand in his pocket and started walking faster". Id., at 816. In McMaster v. State, 780 So.2d 1026 (Fla. 5th DCA 2001), citing Illinois v. Wardlow, 528 U.S. 119, 124 (2000), the Court

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1 Moreover, there is clearly no conflict with the case at bar as the Stanton decision noted that "[p]olice may satisfy that threshold when the "cumulative impact of the circumstances perceived by the officers" indicates that criminal activity is afoot". Id., at 926 (emphasis added). In so doing the Stanton decision cited this Court's decision in Kehoe v. State, 521 So. 2d 1094, 1095-1096 (Fla. 1988).

2 It is noteworthy that the Baggett decision recognized the "totality of the circumstances" analysis as done in the case at

held that although presence in a high crime area is not sufficient to justify a stop of an individual, it is a factor that may be considered along with other factors in determining whether a reasonable suspicion exists. The record in McMaster was "devoid of any evidence that McMaster engaged in unprovoked flight upon noticing the presence of the officers and, in fact, the testimony establishes that McMaster did not flee the police officers". Id., at 1029. Such is not the case here.

The Fourth District properly analyzed this case in accordance with Florida case law.

Moreover, there was no misapplication of a decision of this Court in Poppel v. State, 626 So. 2d 185 (Fla. 1993). Petitioner does not specifically state how there was a misapplication of the decision in Poppel, though he cites to Poppel for this proposition on two occasions in his brief for discretionary review. In Poppel, this Court held that an officer's direction to the occupant of a legally parked vehicle to exit was a "seizure" requiring that officer to have reasonable suspicion to detain the occupant. Id., at 188. Further, in Poppel, the officer did not have a reasonable suspicion to justify the stop where the officer was investigating the abandoned stolen car four blocks away. Id., at 187. The analysis of the instant case as to the law applied to the facts is in conformity with this Court's decision in Poppel, and there was

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bar. Id., at 1030.

no misapplication of the holding in this Court's decision.

CONCLUSION

WHEREFORE, based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests this Court DECLINE Petitioner's request for discretionary review over the instant cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Brief on Jurisdiction" has been furnished by e-mail to: Anthony Calvello, Assistant Public Defender, Public Defenders Office, 421 3rd St Fl 6, West Palm Beach, Florida 33401-4203 at acalvell@pd15.state.fl.us on January 30, 2014.

/s/Mitchell A. Egber
MITCHELL A. EGBER

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with Fla. R. App. P. 9.210, the undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New Type.

/s/Mitchell A. Egber
MITCHELL A. EGBER