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IN SUPREME COURT OF FLORIDA

LARRY CHARLES WILLIAMS,

Petitioner/Appellant,

v.

STATE OF FLORIDA,

Respondent/Appellee.

Case No. SC13-2315

PETITIONER'S REPLY 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, the 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 Reply Brief, 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).

"RA" will denote Respondent-State's Answer Brief on the Merits

STATEMENT OF THE CASE AND FACTS

Petitioner, Mr. Larry C. Williams, relies on his **Statement of the Case and Facts** as found in the Initial Brief on the Merits.

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.

Respondent contends that the Fourth District "properly considered the totality of the circumstances leading to a reasonable suspicion to stop Petitioner." AB 4,10-14. Founded suspicion while less than probable cause for an arrest requires more than a 'bare" suspicion to validate a stop. *Mullins v. State*, 366 So.2d 1162 (Fla.), *cert. denied*, 444 U.S. 883 (1979).

1) Petitioner Williams had walked over to Ms. Nikki King's vehicle to converse with her while she sat in the driver seat of her vehicle. This was totally innocent behavior. This is not a valid "factor" to be added to the founded suspicion equation.

2) There was no indication in this record that Petitioner directly or indirectly interfered with Deputy Register's criminal investigation of the motorist Nikki King. If Petitioner Williams was somehow inadvertently interfering with this police investigation of Ms. King, leaving the scene is what the deputy wanted Petitioner to do. Thus,

walking away when the deputy ***approached*** is not a valid "factor" to be added to the founded suspicion equation.

3) A person has a right to walk away from an encounter with the police. This third "factor" is not a valid "factor" to be added to founded suspicion equation.

4) Similarly, a police officer does not possess a founded suspicion that criminal activity is occurring when he or she merely observes a pedestrian leaning into a car in a high-crime area, *Shackelford v. State*, 579 So. 2d 306 (Fla. 2d DCA 1991); *Winters v. State*, 578 So. 2d 5 (Fla. 2d DCA1991), even if the pedestrian quickly departs as the officer approaches. *Butterworth v. State*, 522 So. 2d 1039 (Fla. 4th DCA 1988); *King v. State*, 521 So. 2d 334 (Fla. 4th DCA 1988). This is not a valid "factor" to be added to the founded suspicion equation.

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

6) Finally, Judge Demoorgian in his opinion noted the time of day, 1:00 a.m., as a "factor" to justify the stop. *Williams v. State*, 127 So.3d 643, 645 (Fla. 4th DCA 2013). 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. There is nothing remotely suspicious about the time and place of the stop. Another non-factor utilized to create founded suspicion where none existed.

In conclusion, four or five innocent factors do ***not*** add up to "founded suspicion" just bare suspicion that would not support the stop of Petitioner Williams.

Respondent-State also argues that should this Honorable Court find that "the officer did not have a reasonable suspicion, this Court should adopt Judge Taylor's rationale affirming the trial court. Petitioner dropped the cocaine on his own volition, *i.e*. abandoned, and not based upon any order or request of the police to stop." AB 16.

Petitioner Williams contends that the record in this cause negates Judge Taylor's suggestion in her concurring opinion that this scenario was actually a

"drop" and then a "stop" by Deputy Register. *Williams v. State*, 127 So.3d 643, 646-647 (Fla. 4th DCA 2013) (Taylor J., concurring opinion).

The Fourth District found the following facts: "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." *Williams*, 127 So.3d at 645.

Based *on the testimony* of Deputy Register, this was a stop and then an alleged "drop" by Petitioner Williams. *See 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).

Petitioner Williams most respectfully submits that there was insufficient "founded suspicion" to justify the stop or illegal detention in this cause. As a result, the cocaine and the marijuana seized in this cause should have been suppressed by the Trial Court 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 and those contained in the Initial Brief on the Merits, Petitioner 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 A. Egber, Assistant Attorney General, 1515 N. Flagler Drive, Ste 900, West Palm Beach, FL 33401 by e-service at CrimAppWPB@myfloridalegal.com; and electronically filed with this Court on this 30th day of July, 2014.

/s/ 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).

/s/ Anthony Calvello
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