

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA  
IN AND FOR MIAMI-DADE COUNTY

CASE NO.: XXXXXXXX  
SECTION: XXXXX  
JUDGE: ORLANDO A. PRESCOTT

IN THE INTEREST OF:

WILLIAM G.  
A Child.

\_\_\_\_\_ /

**MOTION TO SUPPRESS PHYSICAL EVIDENCE**

THE RESPONDENT, pursuant to Fla.R.Juv.P.8.085(a)(3), moves the Court to suppress all evidence seized as a result of an unlawful search and seizure. The evidence to be suppressed is: Suspect Baggies of Cocaine, Suspect Baggies of Marijuana. The following grounds are asserted in support of this motion:

**FACTS**

On Tuesday, June 3, 2014, Officer Jean-Baptiste observed Mr. G “sitting on the Bus bench just south of NE 135ST on Biscayne Blvd.” Arrest Affidavit at 1. Officer Jean-Baptiste approached Mr. G because he supposedly looked like an individual suspected of armed robbery. *See id.* The armed robbery suspect was a 21 year-old Nicaraguan man, who is 5’10” tall with medium length “Afro Natural” hair and a full beard. *See* Mugshot Profile. An internal North Miami Police arrest warrant had been issued for this suspect, and included his picture, name, race, gender, DOB, as well as a prominent note that he has “ ‘NORTH MIAMI’ tattooed down his forearms.” P.C. To Arrest Poster. Mr. G is a 17 year-old child, who is 5’5” tall with short length, “WAV” style hair, and no tattoos anywhere on his body, including on his forearms. Arrest Affidavit at 1.

Upon passing Mr. G as he sat at a bus stop, Officer Jean-Baptiste turned his car around to approach Mr. G. At that point, Mr. G began walking away. Officer Jean-Baptiste “caught up with” Mr. G, with his lights activated. *Id.* He then approached Mr. G, and told him that he needed to talk to him. As a result of this stop, Mr. G put his hands in the air, at which point Officer Jean-Baptiste allegedly observed the “handle of a knife” in Mr. G’s “left pant pocket,” and “attempted to . . . reach[] the object.” *Id.* Officer Jean-Baptiste then conducted a pat down for “officer safety”, in which he recovered alleged marijuana and alleged cocaine from Mr. G. *Id.* at 2. In deposition, Officer Jean-Baptiste cites his suspicion that Mr. G was a wanted robbery suspect, and the fact that Mr. G walked down the sidewalk after seeing the officer, as the reasons for seizing Mr. G.

As a result of this stop, Mr. G was charged by Petition for Delinquency with one count of Possession of Cocaine, in violation of Florida Statute 893.13(6)(a), and one count of Possession of Cannabis Under 20 Grams, in violation of Florida Statute 893.13(6)(b).

## **ARGUMENT**

### **I. OFFICER JEAN-BAPTISTE ENGAGED IN A FOURTH AMENDMENT SEIZURE REQUIRING REASONABLE SUSPICION OR PROBABLE CAUSE.**

Officer Jean-Baptiste required reasonable, articulable suspicion of criminal activity before stopping Mr. G from continuing to walk down the sidewalk. Pursuant to the Fourth Amendment of the United States Constitution, all warrantless seizures are presumptively unreasonable and invalid. *See, e.g. Katz v. United States*, 389 U.S. 347 (1967); *Hornblower v. State*, 351 So.2d 716 (Fla. 1977). Therefore, when an individual is seized without a warrant, the State has the burden to produce evidence that the detaining officer had, at a bare minimum, a “reasonable and articulable suspicion” to detain the accused. *See Terry v. Ohio*, 392 U.S. 1, 16 (1968); *D’Angostino v. State*, 310 So.2d 12 (Fla. 1975). A person is seized if, under the circumstances, a reasonable person would conclude that she is not free to end the encounter and depart. *See, e.g. Popple v. State*, 626, So. 2d 185, 188 (Fla. 1993). A seizure differs from “a consensual encounter,” which is a situation where “a citizen may either voluntarily comply with a police officer’s requests or choose to ignore them.” *Id* at 186 (Fla. 1993). Specifically, a consensual encounter “becomes nonconsensual when the officer prevents the citizen from exercising his right to walk away.” *Nealy v. State*, 652 So. 2d 1175, 1176 (Fla. 2d DCA 1995).

In the instant case, Mr. G’s decision to walk away from the bus stop upon seeing the police officer, Officer Jean-Baptiste’s pursuit of Mr. G in his marked police car with his lights engaged, and his subsequent command to Mr. G that he needed to talk with the officer, make clear that the stop and search of Mr. G was not a consensual encounter, but rather an investigatory stop.

### **II. OFFICER JEAN-Baptiste DID NOT HAVE SUFFICIENT, REASONABLE SUSPICION TO SEIZE MR. G**

The reasons articulated by Officer Jean-Baptiste for stopping Mr. G—that the child walked away from the bus stop, and that Officer Jean-Baptiste believed the child may have been the subject of a “P.C. to Arrest” poster—do not constitute reasonable, articulable suspicion warranting an investigatory stop of the Respondent.

First, the Officer cannot articulate sufficient similarities between the subject of the P.C. to Arrest poster and Mr. G, for the poster to constitute reasonable suspicion. When probable cause to arrest a specific individual exists, Florida law is clear that “The warrant supplies the officers with probable cause to arrest the person it names and describes, not a license to duck the reasonable suspicion requirement and stop someone they only have a subjective hunch is that person.” *Rios v. State*, 975 So.2d 488, 491 (Fla. 2d DCA 2007) (citing to *United States v. Hudson*, 405 F.3d 425, 439 n. 9 (6th Cir.2005); *Dennis v. State*, 927 So.2d 173, 175 (Fla. 2d DCA 2006)). For this reason, in a case where an officer’s reasonable suspicion is based on a physical resemblance to the subject of the arrest warrant, the officer must present facts “beyond [the arrestee’s] race, gender, hairstyle,” etc. *Dennis*, 927 So. 2d at 175. “[S]imilarities,” such as *some* shared physical characteristics “raise [] a mere ‘hunch’ inadequate to justify an investigatory stop.” *Id* (internal citations omitted). Florida district courts have repeatedly emphasized that a “factual finding” that the arrestee and subject of an arrest warrant “bear a resemblance to each other” is not “sufficient to support an investigatory stop on an arrest warrant.” *Id* (internal quotations omitted) (citing to *Cillo v. State*, 849 So.2d 353 (Fla. 2d DCA 2003)). In deciding whether the arrestee and subject of an arrest warrant share a sufficiently similar physical appearance, district courts look to the “booking photograph and information used by the officers,” as well as if the “similarities that the officers observed in these two men were characteristics that would have been shared by a significant number of men in that neighborhood.” *Id*. Courts have found differences in hair, age, and height to be instructive, especially because with arrest warrants, “these were not patrol officers deciding to stop a man based on a BOLO for a recent crime.” *Id*. at 176. Specifically, in *Dennis*, the District Court found a six inch difference in height to be a crucial fact in deciding officers did not have reasonable suspicion to initiate an investigatory stop of the Defendant based on an arrest warrant. *Id*.

In the instant case, Officer Jean-Baptiste’s articulation of why he believed Mr. G was the subject of a P.C. to Arrest poster cannot even rise to the level of a hunch. Specifically, Mr. G has physical characteristics that dramatically differ from that of the arrest warrant subject. Mr. G is 5 inches shorter, 4 years younger, and has a different length and style of hair. Most critically, Mr. G was wearing a tank top on the day he was arrested and has no tattoos on his forearms. The differences between Mr. G and the armed robbery suspect rise above and beyond the differences that Florida courts have found to be sufficient to constitute a lack of reasonable suspicion based on an arrest warrant.

Finally, Mr. Gs decision to walk away from the bus stop upon seeing the officer cannot constitute reasonable suspicion to conduct an investigatory stop. Flight alone is insufficient to provide reasonable suspicion. *Parker v. State*, 18 So. 3d 555, 558 (Fla. 1<sup>st</sup> DCA 2008). While the Court in *Parker* makes clear that flight, in conjunction with other factors, could provide a possible grounds for reasonable suspicion, the only other factor cited by the officer in this case carries no weight. *Id*. Officer Jean-Baptiste, once he

caught up with and observed Mr. G on the sidewalk up close, had a full opportunity to view that this child is significantly shorter than the man wanted for robbery, younger, and lacks the dispositive identifying tattoos on his arm. At the point Officer Jean-Baptiste saw Mr. G up close, any possibility of having a suspicion based on a P.C. to Arrest poster completely dissipated. There are therefore no other factors in conjunction with Mr. G's "flight" from the officer to provide the reasonable, articulable suspicion required by law.

### CONCLUSION

The evidence in this case was therefore obtained as a result of an unlawful and warrantless search and seizure in violation of the Respondent's rights guaranteed by the Fourth and the Fourteenth Amendments to the United States Constitution, Article I, Section 12, of the Florida Constitution (1968) and an unlawful "stop and frisk" of the Respondent in violation of Section 901.151, Florida Statutes (1995). Any evidence obtained as a result of this unlawful, warrantless "stop and frisk" must be suppressed under the "Fruit of the Poisonous Tree" doctrine, *Wong Sun v. United States*, 371 U.S. 471 (1963).

WHEREFORE, the Respondent requests this Court to enter an order suppressing the aforementioned evidence and any reference thereto during the trial of this cause.

I CERTIFY that a copy of this Motion to Suppress Physical Evidence has been hand-delivered to and/or eServed upon the Office of the State Attorney, 3302 NW 27<sup>th</sup> Avenue, Miami, Florida 33142 on May 10, 2019.

Respectfully submitted,

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**NOTICE OF HEARING**

PLEASE TAKE NOTICE that on at , before the Honorable Orlando A. Prescott, in courtroom 2-5, at the Juvenile Detention Center, 3300 NW 27<sup>th</sup> Avenue, Miami, Florida 33142, the Respondent will call up for hearing **MOTION TO SUPPRESS PHYSICAL EVIDENCE**.

I CERTIFY that a copy of this Notice of Hearing has been hand-delivered to and/or eServed upon the Office of the State Attorney, 3302 NW 27<sup>th</sup> Avenue, Miami, Florida 33142 on May 10, 2019.

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