County Criminal Court: **CRIMINAL LAW**—Search and Seizure—Stop. The trial court properly granted the motion to suppress evidence, finding the evidence to have been obtained as the result of a non-consensual investigatory stop that was not supported by a reasonable, articulable suspicion that Appellee was the subject of an arrest warrant. Affirmed. *State of Florida v. Larry Darrell Smith*, No. 13-CF-3004-ES (Fla. 6th Cir. App. Ct. June 10, 2014).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION

STATE OF FLORIDA,

Appellant,

v.

LARRY DARRELL SMITH,

Appellee.
_____/

UCN: 512013CF003004A000ES
Appeal No: CRC1303004CFAES
L.T. No: 12-6412MMAES

On appeal from County Court

Honorable Candy VanDercar

Matthew O. Parrish, Esquire,
Office of the State Attorney
for Appellant

Simone A. Lennon, Esquire,
for Appellee

ORDER AND OPINION

Appellant, State of Florida, contends the trial court erroneously granted Appellee, Larry Smith's motion to suppress evidence in this case, finding it was obtained as the result of an illegal seizure. Appellant raises two issues to support this contention. First, that the encounter which led to the discovery of the

evidence at issue was consensual, and did not constitute a seizure. Second, that if the encounter did amount to a seizure, it was based on sufficient evidence to support a reasonable suspicion that Appellee was the subject of an arrest warrant, and therefore was not an unlawful seizure. This Court finds the trial court properly granted Appellee's motion to suppress evidence, finding the evidence to have been obtained as the result of a nonconsensual investigatory stop that was not supported by a reasonable, articulable suspicion that Appellee was the subject of an arrest warrant. The trial court is therefore AFFIRMED.

STATEMENT OF THE CASE AND FACTS

The facts in this case involve an encounter between Appellee, Larry Smith, and Deputy Andrew Denbo. While assisting two other officers in a search for the subject of an outstanding arrest warrant, the Deputy observed Appellee walk into a gas station after being told that the subject of the arrest warrant might be in the area. The Deputy determined that Appellee closely resembled the photograph of the subject, which he had viewed 5 to 10 minutes prior to observing Appellee enter the gas station. Deputy Denbo, along with another deputy, approached Appellee in the gas station, informed Appellee that he matched the description of the subject of an arrest warrant, and asked to see identification in order to determine whether Appellee was the subject of the warrant. Shortly thereafter, a small baggie of a substance later confirmed to be marijuana fell from the area near Appellee's left leg. Deputy Denbo claims at that point Appellee kicked the baggie under a shelf in the store, and then stated, "all of that's mine." Appellee could not provide identification, but did provide his name, date of birth and social security number to the deputies and was determined not to be the subject of the arrest warrant.

The State of Florida charged Appellee with possession of marijuana in violation of § 893.13, Fla. Stat. Appellee filed a Motion to Suppress, alleging that the evidence was obtained as the result of an illegal stop by law enforcement, and therefore must be suppressed. *See State v. Anderson*, 591 So. 2d 611, 613 (Fla. 1992) ("An abandonment which is the product of an illegal stop is involuntary, and the abandoned

property must be suppressed"). The trial court granted Appellee's motion, finding the encounter between Appellee and law enforcement was non-consensual and that the officers lacked the reasonable suspicion that Appellee was the subject of the warrant required to conduct an investigatory stop. Appellant now appeals this interlocutory order suppressing the evidence.

STANDARD OF REVIEW

"Appellate review of a motion to suppress involves questions of both law and fact." *Rosenquist v. State*, 769 So. 2d 1051, 1052 (Fla. 2d DCA 2000). This Court reviews the trial court's application of the law to the facts of the case, and the ultimate determination of the lack of reasonable suspicion, pursuant to a de novo standard. *Id.*; *Ornelas v. U.S.*, 517 U.S. 690, 698 (1996). Findings of fact by the trial court are reviewed for "clear error," and the Court will give deference to inferences drawn from those facts by the trial court and law enforcement officers. *Ornelas*, 517 U.S. at 699.

ANALYSIS

Appellant contends that the encounter between Appellee and the Deputy was a consensual encounter during which Appellee was free to ignore the Deputy's request and go free. See *Popple v. State*, 626 So. 2d 185 (Fla. 1993). Therefore, Appellant maintains it was not necessary for the trial court to find reasonable suspicion existed to stop Appellee. A mere request for identification is not a seizure, but is a consensual encounter. *Hill v. State*, 561 So. 2d 1245 (Fla. 2d DCA 1990). The question of whether a seizure has occurred depends on whether a reasonable person would believe he or she was free to decline the officer's request and go free. *Florida v. Bostick*, 501 U.S. 429, 439 (1991). *See State v. Simons*, 549 So. 2d 785 (Fla. 2d DCA 1989). Appellant states the encounter between the deputies and Appellee in this case was consensual, and a reasonable person would have felt they were able to decline the Deputy's request to produce identification, and that the encounter was very brief and the intrusion was minimal. Appellee was not instructed by the Deputy to remain on the scene, and was not detained for anything more than a "conversation and request to voluntarily provide information."

Appellee responds that the trial court correctly found the encounter to be an investigatory stop which must be supported by a reasonable suspicion. A seizure occurs if, considering 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 at 188. An investigatory stop requires an officer have reasonable suspicion an individual is committing, has committed, or is about to commit a crime, before that person may be detained. *Terry v. Ohio*, 392 U.S. 1 (1968); § 901.151, Fla. Stat. Mere suspicion is not enough to support such a stop. *See Terry*, 392 U.S. at 27; *Rinehart v. State*, 778 So. 2d 331, 333 (Fla. 2d DCA 2000) (the "officer's suspicion must possess some factual foundation in the circumstances observed by the officer when those circumstances are interpreted in the light of the officer's knowledge"). "In the case of an officer executing arrest warrants, the officer must essentially have a reasonable suspicion that the detainee is the person named in the warrant." *Dennis v. State*, 927 So. 2d 173, 175 (Fla. 2d DCA 2006).

The trial court in this case found: "No reasonable person would feel free to leave when confronted by two armed, uniformed officers about being the possible subject of a warrant investigation." This Court agrees. Although a mere request for identification does not constitute a seizure, the request for identification by the deputies in this case constituted a seizure because a reasonable person would not have felt free to decline the request. The two deputies arrived at the location in separate squad cars, stood between Appellee and the store's exit, and informed Appellee he matched the description of the subject of an arrest warrant when they asked for identification. Deputy Danbo testified that he advised Appellee he was looking for someone with a warrant who "met a very, very similar description as him," and requested identification so he could run the Appellee's information through the system and determine if he was the subject of an arrest warrant. This amounted to "a show of authority" that restrained Appellee's "freedom of movement because a reasonable person under the circumstances would believe that he should comply." *See Popple*, 626 So. 2d at 188. Based on these facts, a reasonable person would not have felt free to decline the request. Therefore, the stop must be supported by a reasonable, articulable suspicion

that Appellee was the subject of the arrest warrant, otherwise the evidence must be suppressed.

Appellant contends that in the event the encounter was a seizure, the stop was based on a reasonable suspicion that Appellee matched the description of the warrant subject. Deputy Denbo was provided a photograph of the warrant subject and was told that the subject had been seen in the area near the store where the Deputy was waiting. The Deputy observed Appellee enter the store and determined he was "visually similar, including his hairstyle," to the subject. The Deputy testified that he had viewed the photograph five to ten minutes before seeing Appellee, but did not have the picture in front of him at the time he saw Appellee. The Deputy further testified that once he approached Appellee, he remained convinced that Appellee matched the image the Deputy had viewed earlier. Further, the Deputy testified he had been informed, although he could not remember by whom, that the warrant subject was in the area. Appellant claims this evidence is sufficient to support a reasonable suspicion that Appellee was the warrant subject, and therefore the trial court improperly granted the motion to suppress.

When searching for the subject of a warrant, an officer must have a "reasonable suspicion that the detainee is the person named in the warrant," which requires articulable facts supporting the suspicion. *Dennis v. State*, 927 So. 2d at 175. The stop may not be justified by a "vague description." *See M.M. v. State*, 728 So. 2d 1200, 1201 (Fla. 2d DCA 1999); *State v. Hetland*, 366 So. 2d 831, 839 (Fla. 2d DCA 1979). In *Dennis*, the Court invalidated a seizure based on the vagueness of the subject's description which included only a description of the subject's "race, gender, hairstyle and forehead." *See* 927 So. 2d at 175. In this case, the description included less identifying traits, the subject having been identified only by his race, gender and hairstyle. Additionally, the trial court found Appellee's hairstyle either did not match the description of the subject as having long dreadlocks, or at least that there was conflicting testimony regarding this issue.

Although Appellant claims that Deputy Danbo's testimony that he viewed the photograph of the warrant subject and then determined Appellee matched the

description of that subject is sufficient to constitute a reasonable suspicion, the State must be able to articulate "a particularized and objective basis" for determining Appellee matched the warrant subject's description. See *Ornelas v. U.S.*, 517 U.S. 690, 696 (1996). The determination that Appellee matched the vague description of a "black male with long dreads" was insufficient to form a reasonable, articulable suspicion that Appellee was the subject of the arrest warrant. And, testimony at trial was that none of the deputies involved could remember the warrant subject's name, or provide any additional descriptive identifying traits. The trial court's findings of fact included that the only description of the warrant suspect was a black male with long dreadlocks, that there was no mention at trial of the warrant suspect's name, that it was possible Appellee did not have dreadlocks at the time of the stop or that there was inconsistent testimony as to Appellee's hairstyle at the time of the stop, and that photos of the subject of the warrant were not provided to the court. The trial court therefore found the evidence did not demonstrate a reasonable articulable suspicion to support an investigatory stop. This Court agrees with the trial court's determination.

The evidence abandoned as a result of an illegal stop must be suppressed. *Hollinger v. State*, 620 So. 2d 1242 (Fla. 1993); *State v. Anderson*, 591 So. 2d 611 (Fla. 1992); *Cox v. State*, 586 So. 2d 1321 (Fla. 2d DCA 1991). The encounter between Appellee and the deputies in this case was not consensual, but constituted a seizure based on the totality of the circumstances. The evidence in the record is insufficient to demonstrate that the stop was based on a reasonable, articulable suspicion that Appellee was the subject of the arrest warrant, and was therefore an illegal stop. Therefore, the evidence abandoned as a result of the illegal stop must be suppressed.

CONCLUSION

This Court finds no error with the trial court's order suppressing the evidence in this case. The facts demonstrate that the encounter between Appellee and the deputies was an investigatory stop, rather than a consensual encounter, and therefore must be supported by articulable and objective bases for an investigatory stop. The evidence in the record is insufficient to demonstrate a reasonable suspicion by the deputies that Appellee matched the description of the subject of the arrest warrant. The order of the trial court is therefore AFFIRMED.

It is therefore ORDERED that this cause is hereby AFFIRMED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 10th day of June 2014.

Original order entered on June 10, 2014 by Circuit Judges Stanley R. Mills, Daniel D. Diskey and Linda Babb.