IN THE
SUPREME COURT OF THE UNITED STATES

BENJIE WRIGHT,
Petitioner,

vs. Number

UNITED STATES OF AMERICA
Respondent.
_____/

_____
PETITION FOR A WRIT OF CERTIORARI

TO

THE UNITED STATES COURT OF APPEALS
IN AND FOR THE ELEVENTH JUDICIAL CIRCUIT
_____

DECLARATION VERIFYING TIMELY FILING

Petitioner, Benjie Wright, through undersigned counsel, and pursuant to SUP. CT. R. 29.2 and 28 U.S.C. § 1746, declares that the Petition for Writ of Certiorari filed in the above-styled matter was placed in the U.S. mail in a prepaid first-class envelope, addressed to the Clerk of the Supreme Court of the United States, on the 16th day of November, 2017.

GREGORY A. SAMMS, ESQ.

Attorney for the Petitioner

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November 16, 2017

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BENJIE WRIGHT respectfully petitions the Supreme Court of the United States for a Writ of Certiorari to review the judgement of the United States Court of Appeals for the Eleventh Judicial Circuit rendered and entered in Case No. 16-12979 of that Honorable Court as a mandate on OCTOBER 18, 2017, which affirmed the judgement and sentence of the United States District Court for the Southern District of Florida.

QUESTIONS PRESENTED

1. Whether the District Court Erred When It Ruled That A Florida Strong Armed Robbery Was A Crime Of Violence Under ACCA?
2. Whether the District Court Erred When It Denied the Motion to Suppress Physical Evidence?

LIST OF PARTIES

The parties in this proceeding or persons who have an interest in the outcome of this case are as follows:

1. Benjie Wright, Appellant.

2. United States of America, Appellee.

3. Kevin Quencer, Assistant United States Attorney.

4. Officer Arriola Miami-Dade Police Department.

5. Officer Marte Miami-Dade Police Department.

6. Gregory A. Samms, Esq., Attorney for Appellant.

7. Marcia Cooke, United States District Court Judge

8. Benjamin Greenberg, Acting United States Attorney.

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TABLE OF AUTHORITIES

OTHER AUTHORITIES

REFERENCE TO THE OPINION BELOW

The trail court issued no written opinions in this matter. The Eleventh Circuit Court of Appeals did issue a written, unpublished opinion which, along with the judgement of the trial court, is included in the appendix to this petition.

STATEMENT OF JURISDICTION

This court has jurisdiction under 28 U.S.C. Section 1254 (1).

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in the Court Below.

The Petitioner was the defendant in the district court, and will be referred to by name or as the Petitioner. The respondent, United States of America, will be referred to as the government. The record will be noted by reference to the document and page number of the Record on Appeal as prescribed by the rules of this Court. The petitioner is incarcerated.

On June 20, 2015 Detective Anthony Ray of the Miami Dade Police Department was working the front desk at the police station. (D.E. 57, p. 6). In the afternoon hours, a black male walked in and informed him that he had been robbed at gunpoint at the Yellow meat store. (D.E. 57, p. 6). Detective Ray then placed out a radio call indicating that a gentleman had just walked in the station and he was a victim of an armed robbery at 1005 Northwest 80th Street at the Yellow Meat Store. (D.E. 57, p. 7). Detective Ray then radioed a description of the suspect given to him by the victim of “a black male in his 30s, heavy set, has a low boy, wearing a white shirt, black cargo shorts, he goes by the letter "G", and he has a tattoo on both of his forearms. (D.E. 57, p. 8). Detective Ray testified that

the low boy is a common expression for a haircut for black males. (D.E. 57, p. 8). The detectives further advised that supposedly the assailant had a small black .40 caliber semiautomatic weapon on his person. (D.E. 57, p. 9).

After hearing the bolo by Detective Ray, Officer Arriola of the Miami Dade Police Department responded to the Yellow Meat Market. (D.E. 57, p. 13). Officer Arriola remembers Detective Ray describing the suspect as a black male in his 30s wearing a white shirt and black shorts. (D.E. 57, p. 13). He described the shorts as cargo shorts and he had tattoos on his arms. He further advised he recalled that the assailant was described as having a low haircut. (D.E. 57, p. 13). Officer Arriola testified that the call was in reference to an armed robbery. (D.E. 57, p. 14). Officer Arriola did not remember the bolo referencing the suspect's height, weight or build. (D.E. 57, p. 14). After the officer testified to what he remembered on the bolo the government played the audio to refresh his memory. (D.E. 57, p. 14). Officer Arriola admitted that at the time that he heard the bolo he did not remember the bolo indicating that the subject was heavy set. (D.E. 57, p. 14). Officer Arriola testified that the dispatcher also followed up on the original call by Detective Ray and indicated that the suspect was a "black male in his 30s

wearing black cargo shorts and a white shirt and that's pretty much it." (D.E. 57, p. 15).

Officer Arriola wrote in his offense incident report the description that he remembered hearing on June 20, 2015 was of a black male in his 30s wearing a white T-shirt and black cargo shorts. (D.E. 57, p. 16). Officer Arriola admitted that at the time he wrote the offense incident report that's what he remembered of the bolo. (D.E. 57, p. 17).

As Officer Arriola walked in the store he saw a black male with a white T-shirt on in his 30s walk by him. (D.E 57, p. 44; D.E. 63, 2:11). Officer Arriola did not question that individual nor did he detain or talk to him. (D.E. 57, p.45; D.E. 63, 2:11). Officer Arriola continued to walk in the store and noticed another black male playing a video game. Officer Arriola did not approach that black male or question him. (D.E. 57 p. 45). Officer Arriola then looked in the cooler area of the store and noticed a black male in a blue T-shirt who passed by Officer Arriola as well without Officer Arriola questioning that black male at all. (D.E. 57 p. 45).

An additional black male matching some of the description of the bolo walks right by Officer Arriola. (D.E. 57 p. 46; D.E. 63, 2:20). That black male was wearing a white T-shirt and appeared to be in his thirties. (D.E. 57 p. 46; D.E. 63,

2:20). Officer Arriola testified that he did not stop that black male because he did not see any tattoos on his arm. (D.E. 57 p. 46). Officer Arriola noted that the black male with the T-shirt in his 30s that passed him had on a baseball cap so he was unable to determine if he had a low haircut. (D.E. 57 p. 46). Officer Arriola did not ask that gentleman to take his cap off to view his haircut. (D.E. 57 p. 46).

Officer Arriola then noticed the appellant sitting on a milk crate and looking down at his cell phone manipulating it. (D.E. 57, p. 44). Officer Arriola admits that when he approached the appellant who was sitting on the milk crate that the appellant was doing nothing suspicious. He was sitting quietly playing on his cell phone. (D.E. 57, p. 44).

Officer Arriola approaches the appellant who was sitting on the milk crate and positions himself directly to the left of the appellant. In addition, Officer Marte of the Miami Dade Police Department comes into the area of the appellant and places himself immediately to the right of the appellant. (D.E. 57, p. 45). The defendant is enclosed at this point and is blocked in by shelving in the grocery store to his immediate frontal position. (Exhibit 63, 2:20). The appellant is sitting on the milk crate close to the wall behind him; both forward and backward motion is restricted and the appellant is unable to move or leave the area because of

obstructions to the front and back and officers standing to the left and the right. (Exhibit 63, 2:20).

The appellant is clearly wearing a black T-shirt and has on camouflage cargo pants. (Exhibit 63, 2:00). Neither of these clothing descriptions match the bolo that Officer Arriola received which was a white T-shirt and black cargo pants. Further the bolo indicated that the assailant was heavy set and Officer Arriola testified that the appellant was of medium build. (D.E. 57, p. 42). After Officer Arriola and Officer Marte immediately surrounded the defendant and had him totally enclosed, Officer Arriola claims he asked the defendant for his identification. (D.E. 57, p. 49). The officers immediately have the defendant stand up by grabbing his right elbow and begin to conduct a full-blown search. (D.E. 63, 2:20).

Once the appellant was in a standing position, the first thing the officers do is lift the appellant’s shirt and proceeded to go into his pockets without his consent. (D.E. 57, pp. 49-51). The video shows the officers immediately lift the appellant's shirt, go into his back and front pockets at that point conducting a full blow non-consensual search of the defendant who had been seized and detained prior to the full-blown search. (D.E. 63, 2:20).

After the search ensues the appellant takes a step forward and is then thrown to the ground whereupon he is punched in the torso area and head area and other officers arrive kneeing the defendant violently to the temple and head area. (D.E. 63, 2:40). The appellant is then tazed multiple times, handcuffed and taken away. (D.E. 63, 2:56). At some point during the physical accosting of the defendant an officer appears to pull a black object off the defendant's person. (D.E. 63, 3:54). The officers allege that the black object is in fact a firearm.

On January 14, 2016, the appellant filed a motion to suppress all physical evidence and statements of the appellant. (D.E. 20). The basis of the motion was that the defendant was illegally seized without probable cause and that the subsequent search of the appellant was also done in violation of the Fourth Amendment. (D.E. 20).

A hearing was held by the District Court on February 17, 2016. (D.E. 25). After taking testimony from police witnesses, the court denied the motion. (D.E. 28). The defendant subsequently entered a change of plea on March 2, 2016, specifically reserving the right to appeal the denial of the Motion to Suppress. (D.E. 31).

On April 1, 2016, the probation department filed its presentence investigation report. (D.E. 36). In paragraph 24 of the report, the defendant received an enhancement as an armed career criminal pursuant to 18 U.S.C. 924(e). The basis of the enhancement was three prior felony convictions. (D.E. 36 p. 7). Two of the convictions were for state convictions of possession with intent to sell. The third conviction was for strong-armed robbery and felony battery. (D.E. 36 p. 9). As such, the defendant was enhanced from a level 28 to a level 34. (D.E. 36 p. 7).

The appellant filed objections to the PSI on April 15, April 19th, May 15th and May 16th, of 2016. (D.E.s 37, 38, 41, 43). The appellant objected to the characterization of being an armed career criminal noting that the Florida state conviction for strong-armed robbery was not a crime of violence in light of *Johnson v. United States*, 135 S.Ct. 2551 (2015), and as such the three felony predicates necessary for the armed career criminal designation had not been met. Further, if the government attempted to rely on the Felony Battery conviction, it also was not a crime of violence under *Johnson*. The court denied appellant's objections and sentenced the appellant to 180 months imprisonment. (D.E. 47).

On May 24, 2016 the appellant timely filed his Notice of Appeal. (D.E. 48). On October 18, 2017, the Eleventh Circuit Court of Appeals issued its decision and mandate affirming the district court's ruling on the suppression hearing and the finding that the petitioner was an armed career criminal under ACCA; this petition follows.

ARGUMENT

A. Florida Robbery and Florida Felony Battery are not crimes of violence for purposes of the ACCA.

The appellant was charged in a single count indictment with possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1) and 924(e). Under the provisions of 18 U.S.C. 924(e), and pursuant to the U.S.S.G. § 4B1.4(a), if the defendant has three or more prior convictions for violent felonies or serious drug offenses then the appellant is to be categorized as an armed career criminal, subjecting him to enhanced penalties of a mandatory 15 years to life.[1] (18 U.S.C. § 924(e)(1); D.E. 36 p. 34 ¶ 118).

[1] The ACCA defines the term "violent felony" as any crime punishable by a term of imprisonment exceeding one year that:
(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another. 18 U.S.C. § 924(e)(2)(B).

The probation department cited the appellant for having three prior qualifying convictions. Two of the prior convictions were for drug offenses. A Cocaine Possession with Intent to sell on January 28, 2004 and a Possession with Intent to Sell on June 7, 2005. (D.E. 36 p. 9, 11, 12). The third and disputed conviction was a strong-arm robbery charged where the defendant was convicted pursuant to F.S. 812.13. The petitioner contends that the use of the Florida strong armed robbery charge under Florida case number F99-42127 is inappropriate in light of *Johnson v. U.S*, 135 S.Ct. 2551 (2015).

The Eleventh Circuit when presented with this issue decided to rely on the precedent of *United States v. Lockley*, 632 F.3d 1238, 1244 (11th Cir. 2011), the *Lockley* court addressed whether a 2001 Florida attempted-robbery conviction qualified as a crime of violence under the elements clause of the career-offender provision of the Sentencing Guidelines. The Eleventh Circuit determined Lockley's 2001 Florida attempted-robbery conviction categorically constituted a crime of violence under the elements clause of the career-offender guideline. *Lockley*, at 244-45.

However, the Ninth Circuit in a recent decision *United States v. Geozos*, 2017 U.S. App. LEXIS 16515 (9th Cir. 2017), found that Florida Robbery as applied to

the ACCA, was not a crime of violence. *Geozos* found that Florida robbery can be committed without using violent force. *Geozos* analyzed the Florida robbery statute and found that, for example, in the case of a purse snatching the amount of force that is necessary to overcome the resistance of a victim is a robbery under Florida law. Thus, a victim who holds on to the purse and has the purse taken from her without any injury means that a Florida robbery can be committed against such a victim without violent force, as required in *Johnson*. The *Gezos* court cited to Florida appellate decisions that stated that Florida robbery can be committed with only minimal force being used. See *Mims v. State*, 342 So. 2d 116, 117 (Fla. Dist. Ct. App. 1977) (per curiam), (Although purse snatching is not robbery if no more force or violence is used than necessary to physically remove the property from a person who does not resist, if the victim does resist in any degree and this resistance is overcome by the physical force of the perpetrator, the crime of robbery is complete. Citing *Adams v. State*, 295 So. 2d 114, 116 (Fla. 2d DCA 1974)).

The crucial question, therefore, is whether robbery as defined in section 812.13(1) "has as an element the use, attempted use, or threatened use of physical

force against the person of another." The text of the statute itself, together with the relevant Florida caselaw, shows that the answer is "no." *Gezos* at 9.[2]

Section 812.13(1) uses the terms "force" and "violence" separately, which suggests that not all "force" that is covered by the statute is "violent force." But only violent force—that is, "strong physical force," *Johnson I*, 559 U.S. at 140 — qualifies under the force clause of ACCA. Before even turning to the caselaw, then, there is reason to doubt whether a conviction for violating section 812.13 qualifies as a conviction for a "violent felony."

The Florida caselaw makes it clear that one can violate section 812.13 without using violent force. "[I]n order for the snatching of property from another to amount to robbery, the perpetrator must employ more than the force necessary to

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[2] The 1999 version of F.S. 812.13 states:

(1) "Robbery" means the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear.

(2) (a) If in the course of committing the robbery the offender carried a firearm or other deadly weapon, then the robbery is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment or as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If in the course of committing the robbery the offender carried a weapon, then the robbery is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If in the course of committing the robbery the offender carried no firearm, deadly weapon, or other weapon, then the robbery is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) (a) An act shall be deemed "in the course of committing the robbery" if it occurs in an attempt to commit robbery or in flight after the attempt or commission.

(b) An act shall be deemed "in the course of the taking" if it occurs either prior to, contemporaneous with, or subsequent to the taking of the property and if it and the act of taking constitute a continuous series of acts or events.

remove the property from the person. Rather, there must be resistance by the victim that is overcome by the physical force of the offender." *Robinson v. State*, 692 So. 2d 883, 886 (Fla. 1997). Crucially, the amount of resistance can be minimal. See *Mims v. State*, 342 So. 2d 116, 117 (Fla. Dist. Ct. App. 1977) (per curiam) ("Although purse snatching is not robbery if no more force or violence is used than necessary to physically remove the property from a person who does not resist, if the victim does resist in any degree and this resistance is overcome by the physical force of the perpetrator, the crime of robbery is complete."

The Ninth Circuit takes direct aim at the Eleventh Circuit decisions that found a Florida robbery to be a violent crime under the ACCA and states:

> We hold that neither robbery, armed robbery, nor use of a firearm in the commission of a felony under Florida law is categorically a "violent felony." We recognize that this holding puts us at odds with the Eleventh Circuit, which has held, post-Johnson I, that both Florida robbery and (necessarily) armed robbery are "violent felonies" under the force clause. See *United States v. Lockley*, 632 F.3d 1238, 1245 (11th Cir. 2011) (robbery); see also *United States v. Fritts*, 841 F.3d 937, 942 (11th Cir. 2016) ("[W]e hold here that under Lockley . . . a Florida armed robbery conviction under § 812.13(a) [sic] categorically qualifies as a violent felony under the ACCA's elements clause."), cert. denied, 137 S. Ct. 2264 (2017). But we are bound by our own precedent—including *Parnell* and *Strickland*—which may differ from the Eleventh Circuit's interpretation. Moreover, we think that the Eleventh Circuit, in focusing on the fact that Florida robbery requires a use of force sufficient to overcome the resistance of the

> victim, has overlooked the fact that, if the resistance itself is minimal, then the force used to overcome that resistance is not necessarily violent force. See *Montsdoca v. State*, 84 Fla. 82, 93 So. 157, 159 (Fla. 1922) ("The degree of force used is immaterial. All the force that is required to make the offense a robbery is such force as is actually sufficient to overcome the victim's resistance.").

Geozos at p. 10.

B. <u>The Seizure of the Petitioner was Done Without Probable Cause.</u>

When the officers approached the appellant, surrounded him, ordered him to stand up, and grabbed his person he was clearly seized. In order for the court to conclude that the appellant was seized the court must analyze all the surrounding circumstances. The appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter. *Florida v. Bostick*, 501 U.S. 429, 437 (1991). The video clearly shows that the defendant was sitting on a crate manipulating his cell phone. (Exhibit 63, 2:00). He was not engaged in any suspicious activity and was doing nothing consistent with having committed a robbery. (D.E. 57, p. 44). Officer Arriola wrote in his police report what he remembered of the bolo at the time of his encounter with the appellant, “a black male in his 30’s wearing a white T-shirt and black cargo pants.” (D.E. 57,

p. 16). The actual bolo contained the additional information of, heavyset, with a low boy, nicknamed “G”, with tattoos on both forearms.

Officer Arriola initially entered the area of the store where the appellant was sitting, he saw a black male playing video games on a machine in the same area of the appellant with a white T-Shirt. The Officer ignored that black male. Another black male in his 30’s came out of the refrigerated area and Officer Arriola ignored that black male. However, Officer Arriola made a direct line for the appellant who was sitting quietly. (D.E. 57, p. 21). He alleged that he asked the appellant for his identification. (D.E. 57, p. 22). At that time another officer came to the defendant and placed himself to the other side of the defendant, opposite Officer Arriola. The appellant was blocked in by the officers’ placement. In front of the appellant was shelving containing retail items. On each side of the appellant was an officer in full police uniform including their holstered weapons. The appellant’s freedom of movement was taken from him. He was boxed in by the officers. (D.E. 63, 2:20). At that time the appellant could not walk away from the officers and the authority of the officers was exerted over appellant such that he was forced to comply with any request that the officers issued. At that very moment the appellant was legally seized. (D.E. 63, 2:20; D.E. 57, p. 49).

Everything about the encounter between appellant and the officers indicated he was seized. As the officer ordered appellant to produce identification they simultaneously grabbed defendant and held him in a standing position. The seizure at that point had progressed to a physical seizure with the officers exerting their physical authority over the appellant. (D.E. 63, 2:20; D.E. 57, p. 49).

The Supreme Court has issued an objective test for determining when a seizure has taken place. The question is "whether 'in view of all [of] the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.'" *United States v. Mendenhall,* 446 U.S. 544 (1980). It cannot be argued that when the appellant was surrounded that he was free to leave and no reasonable person would think that he was. He had an officer on each side of him and there was no exit that the appellant could take that would have resulted in his being free to walk away. (D.E. 57, p. 49).

The question then becomes did the officers have the requisite reasonable suspicion to physically detain him? The officers were looking for a suspected robber and all Officer Arriola had was the bolo as a basis for detaining the appellant. The appellant did not match the description. The bolo said that the assailant was wearing a white T-Shirt. The appellant was wearing a black T-Shirt.

(Exhibit 63, 2:00). There is nothing more diametrically opposed to the color white than black. The bolo additionally stated that the appellant was wearing black cargo pants. The appellant was wearing camouflaged cargo pants. (Exhibit 63, 2:00). The appellant's pants were far from black. Camouflage is very distinctive to the point that a person cannot mistake and say black for camouflage. Camouflage has different colors with different shades of green, brown and black. It stands out much more than any solid color.

The bolo also said the person was heavyset. Officer Arriola admitted that he himself was a heavyset individual. (D.E. 57, p. 41). He therefore established that he knows what heavyset means in the outside world. He then admitted that the defendant was not heavyset but medium. (D.E. 57, p. 41). Therefore, physically the defendant did not match the bolo.

The government argued that the defendant did match the bolo on the crucial identification description and that probable cause was present. The government pointed to the fact that the defendant was in his thirties and had tattoos on his arm with a low haircut. The trial court pointed out however that the age description matched three black males that could be seen in the video prior to the officers randomly selecting the appellant. (D.E. p.85).

Police-citizen encounters that are consensual require no justification, but those that are not consensual impose a detention on a citizen and so must be supported by an officer's reasonable, articulable suspicion. *See Florida v. Bostick*, 501 U.S. 429, 434, (1991); *Terry v. Ohio*, 392 U.S. 1, 21 (1968). Clearly the encounter between the appellant and the officers became a detention as soon as the appellant was surrounded by the officers and prevented from leaving. The appellant's will was overborne by the officers' conduct and physical touching of the appellant. Therefore, the officers must be able to justify their actions by demonstrating reasonable articulable suspicion for the detention.

In light of the commonality of the description that Officer Arriola was relying on, the low boy haircut, tattoos on the forearm and a black male in his thirties; there was not reasonable articulable suspicion present to allow the officers to constitutionally seize the appellant. The trial court expressed how random the officers' actions were in light of the other black males present in the store that matched the vague bolo description that the officers were operating under. (D.E. p.85). As such the detention of the appellant was unconstitutional and the trial court erred when the motion to suppress was not granted.

C. It was an Unreasonable Search for the Officers to Lift the Appellant's Shirt and Go into His Pockets to Look for Evidence of a Crime.

The evidence in the video clearly shows that after the appellant was unlawfully detained, the officers immediately forced the appellant to a standing position. At that point the officers proceeded to lift his shirt. At the same time the officers began rifling through the appellants pockets. (D.E. 63, 2:20). The officers dispensed with any pretense of doing a Terry stop, skipping all the constitutional requirements of Terry and initiated an illegal full-blown search. (D.E. 63, 2:20). Detentions may be investigative yet violative of the Fourth Amendment absent probable cause. In the name of investigating a person who is no more than suspected of criminal activity the police may not carry out a full search of the person. *Florida v. Royer,* 460 U.S. 491, 499, (1983).

An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time. See, e. g., *United States v. Brignoni-Ponce*, 422 U.S. 873, at 881-882 (1975). It is the State's burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable

suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure. *Royer*, at 500.

In *Royer* detectives suspected that a traveler, Royer, was transporting drugs at an airport. The detectives asked for the suspect's airline ticket and driver's license. Without returning the ticket and license, they asked the suspect to accompany them to a small room, where the detectives retrieved the suspect's luggage from the airline without the suspect's consent. The detectives then asked to search the suspect's luggage and the suspect handed over a key that the detectives used to open the luggage. Once opened, the detectives found drugs. The Supreme Court found that the consent was not a valid consent because the detectives exceeded the permissible bounds of an investigative stop. *Royer* at 508.

Similarly, in *United States v. Hanson*, 2005 WL 2716506 (W.D. WS., Nov. 1, 2005), the police were looking for a 5' 10" African American man named Dowthard and were told that he may be in a particular location. As the officers were surveying a home where Dowthard was suspected to reside, a tall 6' 0" African American male left the home and entered a vehicle. The police stopped the vehicle and officers approached the African American male and then placed him into a police cruiser. The officers knew that the person they were looking for

had tattoos on his chest. The suspect had provided the officers with identification indicating he was not the wanted suspect. Nevertheless, without gaining any consent, the officers lifted the suspect's shirt in order to look for identifying tattoo information. Instead of tattoos the officers found a firearm on the defendant's person. After moving to suppress the firearm the *Hanson* court found that the officers violated the Fourth Amendment by lifting his shirt and conducting a full-blown search. The District court found that the officers' conduct exceeded permissible bounds and were not the least intrusive methods of establishing the defendant's identity.

Clearly the officers exceeded the bounds of an investigatory stop when they grabbed the appellant, lifted his shirt and went through his pockets without having any probable cause that the appellant had committed a crime. *Terry* permits the officers to conduct a pat down of the suspect if the officers have reasonable cause to believe that the suspect may be armed. In this instance nothing that the appellant was doing, and nothing that the appellant said gave the officers reasonable suspicion that he was armed. He was sitting quietly in the store. He made no furtive movements. He did not run and he made a motion to his pocket only after the officers asked for identification. None of these actions gave the

officers the reasonable belief that the appellant was armed. There simply was no justification to conduct a full-blown search of the defendant's person based on tattoos on his arms and having a low haircut and being in his thirties.

REASONS FOR GRANTING THE WRIT

The Eleventh circuit improperly relied upon *Lockley*, while disregarding Florida precedent interpreting its own robbery statute. The Ninth Circuit clearly has the more reasoned approach that focuses on the state decisions that interpret Florida robbery as a nuanced activity that has the ability to be completed without the use of violent force required in *Johnson*.

The detention and search of the defendant was done in contravention of Supreme Court precedent that require reasonable suspicion to detain and search a suspect.

CONCLUSION

For the reasons stated here the Petition for a Writ of Certiorari should be granted.

Respectfully Submitted
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BY: s/Gregory A. Samms

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition was served via U.S. Mail upon the Solicitor General of the United States, U.S. Department of Justice, Washington D.C. 20530 and upon all counsel of record this 16th day of November, 2017.

BY:s/Gregory A. Samms

GREGORY A. SAMMS, ESQ.
Florida Bar No. 438863