

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

JORDAIN STROUD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-2234

November 9, 2022

Appeal from the Circuit Court for Pinellas County; William H. Burgess, III, Judge.

Howard L. Dimmig, II, Public Defender and Rachel Paige Roebuck, Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee and Johnny T. Salgado, Assistant Attorney General, Tampa; and Taylor A. Schell, Assistant Attorney General, Tampa (substituted as counsel of record), for Appellee.

KELLY, Judge.

Jordain Stroud appeals his judgment and sentence for possession of methamphetamine. Stroud pleaded guilty to the

charge, specifically reserving his right to appeal the denial of his motion to suppress the contraband found inside his wallet.

Because the contraband was found as the result of an illegal stop and the State failed to show an unequivocal break between the illegal stop and Stroud's alleged consent to search, the trial court should have granted Stroud's motion to suppress. Accordingly, we reverse.

Law enforcement officers responded to a call about a man "acting very strangely" near a parking lot and around some businesses. From his patrol car, the first officer spotted Stroud. Stroud was "talking to himself," "flailing his arms," and "walking around in circles." He saw Stroud put a pocketknife in a front pocket. As the officer got out of his patrol car, Stroud put his hands up. As Stroud was raising his hands, the officer issued a series of commands: "Hey, do me a favor? Keep your hands--have a seat. Sit down." Stroud sat on the curb.

The officer then walked towards Stroud, stood over him, and asked, "What'd you just put in your pocket?" Stroud answered, "A pocketknife." The officer told Stroud, "I'm just going to grab this pocketknife from you. Okay?" The officer reached into Stroud's

pocket and took out the pocketknife. After retrieving the pocketknife, the officer reached back into Stroud's pocket and searched it a second time. After removing his hand from the pocket, the officer again pointed at the pocket and said, "In here. What else do you have on you?" Stroud answered, "Just--just tobacco," to which the officer responded, "Mind if I check?" Stroud said, "Yes sir." By then the officer had his hand back in Stroud's pocket, and he asked, "Yes, I can check?" to which Stroud replied, "What--" The officer removed a phone charger and loose cigarettes from the pocket. As the first officer was going through Stroud's pocket, a second officer arrived, reached into Stroud's other front pocket, and pulled out Stroud's wallet. As the second officer held Stroud's wallet, Stroud told the officer that there was a "tiny bit of meth in [his] wallet." The officer removed the contraband and arrested Stroud.

In denying Stroud's motion to suppress, the trial court apparently viewed the entire encounter between Stroud and the officers as consensual. This was error. As for the initial stop, the officers acknowledged, and the body-camera footage confirmed, that from the outset of this encounter Stroud was detained. *See, e.g.,*

State v. Quinn, 41 So. 3d 1011, 1013 (Fla. 5th DCA 2010) ("[T]he parties agree that the deputy 'seized' Quinn when he told him to sit on the sidewalk."). In their testimony, the officers acknowledged that they did not suspect Stroud of any criminal activity when they approached him and told him to sit down. Absent reasonable suspicion of criminal activity, Stroud's detention was unlawful.¹ *See State v. Bell*, 122 So. 3d 422, 425 (Fla. 2d DCA 2013) ("An investigatory stop to detain an individual temporarily is a seizure that requires a reasonable suspicion of criminal activity."). Because Stroud was unlawfully detained, he could not have been deemed to have voluntarily consented to the subsequent searches of his pockets or his wallet because consent given after illegal police activity is presumptively tainted and rendered involuntary unless

¹ Even if Stroud's detention had been supported by reasonable suspicion, the officers exceeded the proper scope of an investigatory pat down of the outside of Stroud's clothes when they went through all his pockets after securing the pocketknife. *See Walker v. State*, 514 So. 2d 1149, 1151 (Fla. 2d DCA 1987) (explaining that a protective search is allowed only to the extent necessary to disclose a weapon and may not ordinarily go beyond a pat down of the outer clothing); *see also Davis v. State*, 67 So. 3d 1125, 1126-27 (Fla. 5th DCA 2011) (rejecting the contention that possession of a pocketknife created a reasonable suspicion that the defendant might have additional weapons or was involved in criminal activity).

the State shows "an unequivocal break in the chain of illegality sufficient to dissipate the taint of prior official illegal action."

Norman v. State, 379 So. 2d 643, 647 (Fla. 1980); *see also Moody v. State*, 255 So. 3d 953, 957 (Fla. 2d DCA 2018) (reversing because the State failed to clearly and convincingly show an unequivocal break between the initial illegal stop and the defendant's alleged consent to search). The State made no such showing. Accordingly, we reverse the denial of the motion to suppress, vacate Stroud's judgment and sentence, and remand for discharge.

Reversed; judgment and sentence vacated; remanded for discharge.

KHOUZAM and SMITH, JJ., Concur.

Opinion subject to revision prior to official publication.