STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2015AP1540-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ARTURO LUIZ-LORENZO,

Defendant-Appellant.

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On Notice of Appeal From the Judgment of Conviction
Entered in the Kenosha County Circuit Court,
the Honorable Mary K. Wagner, Presiding

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# BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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MICHELLE L. VELASQUEZ
Assistant State Public Defender
State Bar No. 1079355

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
(414) 227-4300
E-mail velasquezm@opd.wi.gov
Attorney for Defendant-Appellant

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## ISSUE PRESENTED

1. Is presence in a poorly-lit alley at 3 a.m., and walking away from the officer's squad car, sufficient to create reasonable suspicion to justify the stop?

The trial court concluded that Mr. Luiz-Lorenzo's being alone in a poor-lit alley was suspicious and that his walking away justified the stop.

## STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Mr. Luiz-Lorenzo welcomes the opportunity for oral argument if the court has questions that the briefs do not resolve. Publication is likely not warranted. *See* Wis. Stats. (Rule) 809.23(1)(a).

## STATEMENT OF THE FACTS

Mr. Luiz-Lorenzo went to La Frontera bar in Kenosha on September 25, 2011. (61:46; App. 130). He knew the owner, who, on previous occasions, had given him a ride home. (61:52; App. 136). On this occasion, he planned to get a ride home from another friend, Mr. Martinez, and went into the alley behind the bar at approximately 3 a.m. to wait for him. (61:47: App. 131). Mr. Luiz-Lorenzo was not standing on private property, nor was there any indication that any city ordinance prohibited his presence. (61: 24, 31-32; App. 108, 115-116).

While Mr. Luiz-Lorenzo stood in the alley waiting for his ride, Officer Hancock was in the vicinity after being dispatched to investigate a group of people causing a

disturbance. (61:18; App. 102). The officer had no description of the individuals causing the disturbance, and did not see anyone in the immediate location where the caller reported the disturbance. (61:18, 23; App. 102, 114). When Officer Hancock did not see anyone, he went around to the next block and into the alley, where he observed Mr. Luiz-Lorenzo "standing against the wall of one of the businesses." (61:19; App. 103).

The officer described the lighting conditions as poor, and indicated that he was aware that in the past police have received calls about that area. (61:104). He testified that in his experience, "people behind closed businesses or poorly lit areas like that are potentially up to something whether they're either trying to break into the business or they're engaging in some type of illegal activity." (61:26; App. 110). However, Officer Hancock admitted that Mr. Luiz-Lorenzo was simply standing there, and that he did not observe him do anything to suggest that he was breaking into one of the businesses or engaged in any other illegal activity. (61:26; App. 110). Officer Hancock also testified that he had no prior contact with Mr. Luiz-Lorenzo. (61:30; App. 114).

Officer Hancock approached Mr. Luiz-Lorenzo in his marked squad car. (61:19-20, 25; App. 103-104, 109). As the officer go out of his squad, Mr. Luiz-Lorenzo walked away. (61:20, 25; App. 104, 109). The officer testified that this action, in addition to the fact that "he was standing behind a closed business in a poorly lit area by himself[,]" indicated to him that Mr. Luiz-Lorenzo had committed, or was about to commit a crime. (61:25-26; App. 109-110). The officer ordered Mr. Luiz-Lorenzo to stop and come over to him. (61:20, 26; App. 104, 110). Mr. Luiz-Lorenzo complied with that command as well as the officer's subsequent command to take his left hand out of his pants pocket, putting both hands

in the air for the officer to see. (61; 20, 26; App. 104, 110). However, Mr. Luiz-Lorenzo, whose English language skills were "poor," put his hand back into his pocket and did not take it out when the officer again told him to. (61:20, 27-28; App. 104, 111-112).

Because Mr. Luiz-Lorenzo did not "obey [his] order," and he believed he may have a weapon, Officer Hancock placed him in an "escort hold." Officer Hancock did not explain the "escort hold" to Mr. Luiz-Lorenzo, nor did he explain that he planned to pat him down for weapons. (61: 20, 29, 37, 48; App. 104, 113, 121, 132). He testified that as he grabbed him, Mr. Luiz-Lorenzo pulled away. (61:23, 29; App. 107, 113). Officer Hancock then "directed" him toward the squad car, placed him in handcuffs and told him that he was under arrest. (61:23, 29; App. 107, 113).

Mr. Luiz-Lorenzo testified that when he saw the officer, he walked away because the squad car lights were bright and "blinding [him]." (61:53; App. 137). He did not understand what the officer was telling him because other than basic words, Mr. Luiz-Lorenzo did not understand much English. (61:48, 153; App. 132, 137). Mr. Luiz-Lorenzo testified that he put his hand back in his pocket because he had a "tic that [he] always put[s] [his] hand in [his] pocket." (61:53; App. 137). At that point, according to Mr. Luiz-Lorenzo, Officer Hancock "grabbed" him by the hand and threw him toward the car. (61:54; App. 138). He stated that neither Officer Hancock nor Officer Zurcher, who had arrived on scene, communicated anything to him. (61:54-55; 138-139). He also testified that both officers "threw" him against the car. (61:55; App. 139).

According to Officer Hancock, Mr. Luiz-Lorenzo was not violent and did not do anything other than "wiggle" when he put him in a hold. (61:35; App. 119). After Mr. Luiz-Lorenzo was in handcuffs, Officer Hancock searched him, removed his wallet, and handed it to Officer Zurcher. (61:22; App. 106). Officer Zurcher opened the wallet and removed photo identification as well as a folded dollar bill. (61:21-22; App 105-106). The officer unfolded the dollar bill, which contained a substance that the officer believed was cocaine. (61:22; App. 106).

## STATEMENT OF THE CASE

The State charged Mr. Luiz-Lorenzo with one count of possession of cocaine, contrary to Wis. Stat. § 961.41(3g)(c), and one count of misdemeanor bail jumping, contrary to Wis. Stat. § 946.49 (1)(a). (1:1). Mr. Luiz-Lorenzo's trial counsel filed a motion to suppress the evidence on the grounds that the officers lacked reasonable suspicion to stop and search him. (29:1-6). At the motion hearing, Officer Hancock testified for the State. (61:17-39; App. 101-123); and Mr. Luiz-Lorenzo testified on his own behalf. (61:44-56; App. 128-140).

The circuit court denied the motion to suppress the evidence. (61:71-72; App.150-151). It reasoned that "suppression is based on what's in the officer's mind at the time of the stop[,] (61:69; App. 148), and "what they observe in their experience." (61:71;App. 150). Therefore, the court concluded, the stop was justified because "it's not uncommon for an officer at three in the morning to think that a single person in a dark alley is suspicious and when he walked away I think there was probable cause to have a Terry stop[.]" (61:71; App. 150).

The circuit court also found that Mr. Luiz-Lorenzo understood the officer's command to take his hand out of his pocket, and because he did not do so, it declined to suppress the evidence. (61:71; App. 150). Finally, the circuit court found that when the officer started his pat down for safety there was some kind of struggle and Mr. Luiz-Lorenzo ended up on the surface of the squad car. (61:70; App. 149). It concluded that because Mr. Luiz-Lorenzo "wiggled around" as the officer tried to search him, he was properly arrested for obstruction and therefore the search of his person and wallet was a search incident to a lawful arrest. (61:72; App. 151).

Mr. Luiz-Lorenzo pled guilty to one count of possession of cocaine, and one count of misdemeanor bail jumping (30:7) and was sentenced to 294 days in the House of Correction with credit for time served. (34:1). He filed a timely notice of intent to appeal (37:1) and now appeals the trial court's decision denying the suppression motion.

## ARGUMENT

### I. Mr. Luiz-Lorenzo's Presence in an Alley at 3 a.m., and an Act of Walking Away From a Squad Car, Did Not Create Reasonable Suspicion to Justify the *Terry* Stop.

#### A. Introduction and standard of review

The question presented in this case is whether there were sufficient objective facts to justify the stop. In order to invoke the Fourth Amendment's protections against unreasonable searches and seizures, a person must be seized within the meaning of the Fourth Amendment. ***United States v. Mendenhall***, 446 U.S. 544, 552 (1980). Law enforcement may only seize an individual when there is reasonable suspicion to believe that the person has engaged, or is about

to engage in criminal activity. ***Terry v. Ohio***, 392 U.S. 1, 27 (1968).

Here, Officer Hancock seized Mr. Luiz-Lorenzo at the point he ordered him to stop and come toward him; therefore, the objective facts known to the officer up until that point must be sufficient to justify the stop. ***Id***. Officer Hancock's observation of Mr. Luiz-Lorenzo standing in an alley at 3 a.m. and walking away from the squad did not create reasonable suspicion to justify the stop. Accordingly, the subsequent arrest and search must be suppressed as fruits of the illegal seizure. ***Wong Sun v. United States***, 371 U.S. 471, (1963).

When reviewing a trial court's ruling on a motion to suppress evidence, this court upholds findings of fact unless clearly erroneous, ***State v. Eskridge***, 2002 WI App 158, ¶ 9, 256 Wis. 2d 314, 647 N.W.2d 434, but reviews independently whether those facts establish a constitutional violation. ***State v. Richardson***, 156 Wis. 2d 128, 137-38, 456 N.W.2d 830 (1990).

B. Mr. Luiz-Lorenzo was seized for purposes of the Fourth Amendment when Officer Hancock ordered him to stop.

Citizens are guaranteed the right to be free from unreasonable searches and seizures under both the Fourth Amendment to the United States Constitution and Article I, section 11 of the Wisconsin Constitution. ***State v. Washington***, 2005 WI App 123, ¶ 12, 284 Wis. 2d 456, 700 N.W.2d 305 (citing ***Richardson***, 156 Wis. 2d at 137); *See also,* Wis. Stat. § 968.24. Wisconsin "consistently follows the United States Supreme Court's 'interpretation of the search and seizure provision of the [F]ourth Amendment in construing the same provision of the state constitution.'" ***Id***.

Within the meaning of the Fourth Amendment, a seizure requires restraint of movement either by physical force, or by a show of authority. ***Washington***, ¶ 13; *citing* ***Mendenhall***, 446 U.S. 544 (1980). The test for determining whether an individual is seized within the meaning of the Fourth Amendment is, if in light of the totality of the circumstances surrounding the incident, a reasonable person would not have believed he was free to leave. ***Id***. ¶ 12; *citing* ***Mendenhall*** at 554. Furthermore, a person must yield to law enforcement's show of authority in order to be seized within the meaning of the Fourth Amendment. ***California v. Hodari D.***, 499 U.S. 621, 626 (1991).

An order from an officer to do some action, even absent a uniform, flashing lights, a siren, drawn weapons, or physical restraint can be a show of authority. In ***Washington***, plain clothes officers in an unmarked vehicle responded to a complaint of loitering. ***Id***. ¶ 2. Mr. Washington was walking in front of the house that was the subject of the complaint and that was believed to be vacant. ***Id***. The officers recognized him from previous dealings and were aware that he did not live in the area. ***Id***. ¶ 3. Within a few feet of the defendant, the officer ordered him to stop. ***Id***. This court determined that the officer's order to "stop" was a show of authority, and that because Mr. Washington yielded to that show of authority, he was seized within the meaning of the Fourth Amendment. ***Id***. ¶ 15.

In this case, the circuit court found that Officer Hancock ordered Mr. Luiz-Lorenzo to "stop" when he saw him walk away, and that his walking away justified the officer's command. (61:71; App. 150). Further, it is undisputed that Mr. Luiz-Lorenzo complied with Officer Hancock's order to stop. Therefore, consistent with this court's conclusion in ***Washington*** that an order to "stop" is a

show of authority, and that upon yielding to that show of authority a person is seized, here Mr. Luiz-Lorenzo was seized under the meaning of the Fourth Amendment in the instant that Officer Hancock ordered him to stop and he complied. Accordingly, the protections of the Fourth Amendment to be free from unreasonable searches and seizures attached at that time, ***Washington,*** ¶ 15; thereby requiring that Officer Hancock have reasonable suspicion to justify the intrusion. *See* ***Terry v. Ohio***, 392 U.S. at 27.

C. No reasonable suspicion existed to justify the stop.

1. Legal principles.

An investigatory stop, even if brief, is a seizure and therefore, it is subject to the Fourth Amendment's requirement that all searches and seizures be reasonable. ***State v. Young***, 212 Wis. 2d 417, 423, 569 N.W.2d 84 (Ct. App. 1997). To determine whether an officer had reasonable suspicion to stop an individual, this court conducts an objective analysis of the totality of the circumstances. ***Ohio v. Robinette***, 519 U.S. 33, 34 (1996); ***Richardson***, 156 Wis. 2d at 139-140.

In order to be reasonable, an investigatory stop must be based on more than an "inchoate and unparticularized suspicion or 'hunch.'" ***Terry v. Ohio***, 392 U.S. 1, 27 (1968). A stop that complies with the mandate of the Fourth Amendment to the United States Constitution is one in which an officer has a "particularized and objective basis" to believe that the person has been engaged in criminal activity. ***Ornelas v. United States***, 517 U.S. 690, 696 (1996). "The officer must be able to point to specific and articulable facts that, taken together with rational inferences from those facts, reasonable warrant the intrusion. ***Young***, 212 Wis. 2d at 423-424; (citing

***Terry***, 392 U.S. at 21). This same standard applies under Article I, section 11 of the Wisconsin Constitution. ***Young***, 212 Wis. 2d at 424.

An objective analysis of the totality of the circumstances, and the reasonable inferences from the facts in this case, reveals that Officer Hancock lacked reasonable suspicion to justify the stop. Taken together, presence in an alley at 3 a.m. and walking away from a squad car did not create reasonable suspicion that Mr. Luiz-Lorenzo had committed, or was about to commit a crime. Therefore, the evidence obtained as a result of the unconstitutional stop must be suppressed. ***Wong Sun***, 371 U.S. 471, (1963).

2. The officer's stop was based on a generalized suspicion or hunch rather than particularized observations.

After being dispatched to a specific location regarding a group of people causing a disturbance, Officer Hancock drove into a nearby alley, where he observed Mr. Luiz-Lorenzo standing by himself. (61:101-102) (61:17-18; App. 101-102). There was no indication that Mr. Luiz-Lorenzo was in any way involved in the disturbance, and the officer did not have description about the people involved. (61:23; App. 107). It was after bar time and the alley was poorly lit. (61:19; App. 103). Officer Hancock testified that it was his experience "that people behind closed businesses or [in] poorly lit areas like that are potentially up to something whether they're either trying to break into a business or they're engaging in some type of illegal activity." (61:26; App. 110). He also testified that Mr. Luiz-Lorenzo's act of walking away, in addition to the fact that "he was standing behind a closed business in a poorly lit area by himself[,]"

indicated to him that he had committed, or was about to commit a crime. (61:25-26; App. 109-110).

The circuit court found that the stop was justified because "it's not uncommon for an officer at 3 in the morning to think that a single person in a dark alley is suspicious and when he walked away I think there was probable cause to have a Terry stop[.]" (61:71; App. 150).

Although it was Officer Hancock's *general* belief that people who are alone behind closed businesses, or in places with poor lighting are potentially engaging in illegal activity, he did not make any particular observations that suggested that Mr. Luiz-Lorenzo had committed, or was about to commit a crime. (61:26; App. 110). Moreover, there was no indication that the alley was private property or that any other ordinance made Mr. Luiz-Lorenzo's presence there unlawful. (61: 24, 31-32; App. 108, 15-116).

The circuit court, relying on the officer's general belief, found that it is common for an officer to think that someone in a poorly lit alley at 3 a.m. is suspicious. (61:71; App. 171). However, an officer's training and experience, without reasonable inferences to draw from *particular observations*, does not create reasonable suspicion. ***Young***, 212 Wis. 2d at 429. (Emphasis added). Although an officer's training and experience is one factor that courts may take into account when evaluating the totality of the circumstances to decide whether there is reasonable suspicion to make the stop, a court is "not required to accept all of [an officer's] suspicions as reasonable, nor does mere experience mean that an [officer's] perceptions are justified by the objective facts. The 'basis of the police action must be such that it can be reviewed judicially by an objective standard.' [Citations

omitted.]" ***Young***, 212 Wis. 2d at 429, *quoting* ***United States v. Buenaventura–Ariza***, 615 F.2d 29, 36 (2nd Cir.1980).

Here, there was nothing particularized about Officer Hancock's observation of Mr. Luiz-Lorenzo standing in an alley at 3 a.m. The time of day, while a factor which can contribute to the totality of the circumstances equation, is not, by itself, sufficient to create reasonable suspicion. ***State v. Allen***, 226 Wis. 2d 66, 75-76, 593 N.W.2d 504 (Ct. App. 1999) (where the time of day was added to the sequence of the officer's observations in order to reach reasonable suspicion, but was not by itself sufficient justification.). In ***Allen,*** officers were conducting surveillance at night in a particular area after receiving numerous citizen and aldermanic complaints about drugs, gangs and gun violence. ***Id***. at 68. An officer observed a car pull over and two men approach it. ***Id***. One of the men got into the car and exited within a minute. ***Id***. The car then drove away and the two men stood around for five to ten minutes before walking to a pay phone, at which time they were stopped and frisked. ***Id***. This court upheld the stop, concluding that the sequence of events, not each separate observation on its own, *combined* with the time of day, the neighborhood, and the officer's training and experience, created reasonable suspicion. ***Id***. at 75-76. (Emphasis added).

Unlike the officer in ***Allen***, who made particularized observations of the suspects, here, Officer Hancock observed nothing more than Mr. Luiz-Lorenzo's presence in an alley at 3 a.m. and his walking away. (61:24, 26, 31-32; App. 108, 110, 115-116). Without particularized objective facts about Mr. Luiz-Lorenzo's movements or behavior, his mere presence in an alley at 3 a.m. is insufficient to satisfy the particularized objective basis standard required for reasonable suspicion to stop. ***Brown v. Texas***, 443 U.S. 47, 52 (1979)

(presence in an alley in a high-crime neighborhood, without any facts to support the conclusion that the defendant "looked suspicious" was insufficient to justify the stop); ***Allen***, 226 Wis. 2d at 75 ("Hanging around a neighborhood for five to ten minutes, standing alone, would not be enough to create reasonable suspicion.").

Contrary to the officers in ***Allen***, who had specific information about ongoing drug, gang, and gun violence occurring in the neighborhood, here there was no testimony about the level of crime, or concern about a particular type of crime going on in the area. Officer Hancock testified that he was unaware of any loitering, trespass, or other ordinance that Mr. Luiz-Lorenzo's presence may have been violating. (61:24, 31-31; App. 108, 115-116). Moreover, Officer Hancock had no reason to believe that Mr. Luiz-Lorenzo was part of the group of people causing a disturbance blocks away for which the officer had been dispatched.

The objective facts here did not support Officer Hancock's perception that Mr. Luiz-Lorenzo had likely committed a crime or was about to commit a crime merely because he was in an alley at 3 a.m. Unlike the officer in ***Allen***, who drew suspicion from particularized observations in light of his experience and knowledge about the crime in the area, Officer Hancock's suspicion was based primarily on his *general* belief and experience that people standing behind closed businesses –not even the particular businesses Mr. Luiz-Lorenzo was standing behind- or in places with poor lighting, may be involved in criminal activity, (61:26; App. 110); as well as his belief that Mr. Luiz-Lorenzo was in a place "someone shouldn't be at that time of night." (61:24, 31-32; App. 108, 115-116). Officer Hancock, however, did not provide any reason why *Mr. Luiz-Lorenzo* was suspicious.

Notably, Officer Hancock admitted that he did not observe Mr. Luiz-Lorenzo do anything that in his prior experience would have lead him to believe he was breaking into one of the closed businesses or doing anything illegal. (61:26; App. 110). Therefore, his particular observations about Mr. Luiz-Lorenzo directly contradicted his general perception that someone in an alley or poorly-lit at that time of night would be engaged in illegal activity.

The circuit court also found that the Mr. Luiz-Lorenzo's presence in the alley at 3 a.m., along with his act of walking way justified the stop. (61:71; App. 150). It concluded that Mr. Luiz-Lorenzo's decision to walk away when he saw the officer was to his "detriment" because walking away gave the officer "probable cause to have a Terry stop . . . ." (61:70-71; App. 149-150). According to the circuit court, had Mr. Luiz-Lorenzo not walked away, he would have communicated to the officer in some way that he was waiting for a ride and then been on his way when that person arrived, provided that the driver was sober. (61:70-71; App. 149-151). This finding suggests that Mr. Luiz-Lorenzo was not free to ignore the officer and that he had some affirmative duty to explain his presence.

However, contrary, to the circuit court's conclusion that Mr. Luiz-Lorenzo's act of walking away created reasonable suspicion, a person approached by a law enforcement officer *does not* have to answer any questions put to him, and can, in fact, decline to listen to the officer at all and go on his way. *See* ***Florida v. Royer***, 460 U.S. 491, 497–498 (1983) (emphasis added); *See also* ***Young***, 294 Wis. 2d 1, ¶ 73, *citing* ***Illinois v. Wardlow***, 528 U.S. 119 (2000).

For example, in ***State v. Alexander***, 2005 WI App 231, 287 Wis. 2d 465, 706 N.W.2d 191, the officer stopped the

defendant as he walked down the street because he (1) fit the description of a "black male wearing a black skull cap, black jacket, and dark pants," suspected in a shooting that occurred the previous day, ten blocks away; (2) "stutter-stopped" for a few seconds upon seeing the officer and then continued walking; and (3) avoided making eye-contact with the officer. ***Alexander***, 2005 WI App 231, ¶¶ 4-5.

This court reversed the decision of the circuit court denying the motion to suppress evidence recovered from the stop. ***Id***. ¶ 16. With regard to the "stutter-stopping" and walking, this court noted: "Alexander was doing nothing particularly suspicious when he was stopped—certainly nothing suspicious before [Officer] Boynack approached him and Alexander averted his gaze." ***Id***. ¶ 11. Put simply, the officer's observation that the defendant stopped walking and then started walking away did not create reasonable suspicion to stop him.

And, while under certain circumstances flight from police presence can create reasonable suspicion, here there was no testimony that Mr. Luiz-Lorenzo tried to flee upon seeing the officer. For example, in ***State v. Jackson***, 147 Wis. 2d 824, 434 N.W.2d 386 (1989) an officer drove by the defendant in his patrol car and upon seeing the officer, the defendant immediately started running away. The defendant continued to run away—through yards and over fences—even after the officer got out of the patrol car to try and stop him. ***Id***. at 834-35. The Wisconsin Supreme Court held that the defendant's flight in that case did amount to reasonable suspicion. ***Id***.

Unlike the defendant's extreme actions in ***Jackson***, Mr. Luiz-Lorenzo did not flee upon seeing the squad car. He stood by himself, waiting for his ride home, and then walked

away when the officer got out of his squad car. (61:20, 25; App. 120-125). Just as walking, stopping for a few seconds upon seeing the officer, then walking again did not create reasonable suspicion in ***Alexander***, here too Mr. Luiz-Lorenzo's simple act of walking after seeing the officer was insufficient to create reasonable suspicion under ***Terry***.

If walking away from an officer's squad car at a particular time of day without any further observations justifies a ***Terry*** stop, then people are not in fact free to ignore the police or decline to interact. To hold that Mr. Luiz-Lorenzo walking away created reasonable suspicion to stop him would run contrary to both the United States Supreme Court and Wisconsin's recognition that people are free to ignore the police. *See* ***Young***, 294 Wis. 2d 1, ¶ 72. Moreover, any person who declines an interaction with an officer would be subjected to a ***Terry*** stop, regardless of any particularized observations.

The officer's observations in this case, even when combined with his general perception of individuals out at 3 a.m. or in poorly lit places, are insufficient to create the requisite reasonable suspicion to justify a stop. In a similar case, this court declared an investigatory stop unlawful where an officer had no specific observations about the actions of the defendant. In ***Washington***, 284 Wis. 2d 456 ¶17, the officers responded to a vague complaint of loitering in a high-crime area and noticed the defendant standing in that area. The officer in ***Washington*** testified that he believed the house where the defendant stood to be vacant, knew the defendant did not live in the area, and had been told by another officer that the defendant had been arrested for drug dealing in the past. ***Id***. ¶ 3. This court, however, concluded that the officer did not have the necessary reasonable suspicion to stop the defendant:

> Investigating a vague complaint of loitering and observing Washington in the area near a house that the officer believed to be vacant, even taken in combination with the officer's past experiences with Washington and his knowledge of the area, does not supply the requisite reasonable suspicion or a valid investigatory stop.

***Id***. ¶ 17.

Like the officer in ***Washington***, Officer Hancock was in the vicinity of where Mr. Luiz-Lorenzo was standing because he was investigating a vague complaint. However, his observations about Mr. Luiz-Lorenzo were even more attenuated from the complaint than the officer's observations in ***Washington***. Whereas the officer in ***Washington*** saw the defendant in front of the house that was the subject of the complaint, here, Mr. Luiz-Lorenzo was not located in the immediate area of the noise complaint. (61:19; App. 103). Furthermore, the complaint that Officer Hancock was investigating was that a group of people were making noise, and Mr. Luiz-Lorenzo was alone when the officer noticed him. (61:18-19; App. 102-103). Without any description of the individuals making the noise, the officer had no reason to believe that Mr. Luiz-Lorenzo standing alone in an alley, was involved.

Furthermore, in contrast to the stop in ***Washington***, where the officer knew the area to be high-crime, here, there was no testimony that the area where Mr. Luiz-Lorenzo was located was "high-crime." Likewise, there was no testimony that the business located where Mr. Luiz-Lorenzo were standing had made complaints or reported any type of criminal activity occurring in the alley behind it. Moreover, the officer in this case, unlike the officer in ***Washington*** who knew the defendant and knew that he did not live in the area, had no prior dealings with Mr. Luiz-Lorenzo. Instead, Officer

Hancock merely observed a "male Hispanic standing against the wall of one of the businesses." (61:19; App. 103). Nothing about his behavior suggested that he was involved in criminal activity. (61:26; App. 110). Rather, Officer Hancock relied on a generalized suspicion to justify the stop. Such generalized suspicions or "hunches," however, do not meet the minimum constitutional requirements justifying an investigative stop. ***Terry***, 392 U.S. at 27 (1968).

Under the totality of the circumstances, Officer Hancock lacked reasonable suspicion to justify the stop. At the time he stopped Mr. Luiz-Lorenzo his only observations were that he was standing in an alley at 3 a.m., and that he walked away from the squad car. Because he had no particularized observations of Mr. Luiz-Lorenzo, and instead acted on only a vague suspicion based on a general belief or hunch, Officer Hancock's stop violated Mr. Luiz-Lorenzo's Fourth Amendment rights, and the fruits of the illegal stop must be suppressed.

## CONCLUSION

For the reasons stated in this brief, Mr. Luiz-Lorenzo respectfully requests that the court reverse the circuit court's decision denying his motion to suppress the evidence resulting from an illegal stop of his person. He asks that this court find that there was a stop within the meaning of the Fourth Amendment and that it was not supported by reasonable suspicion.

Dated this 27th day of November, 2015.

Respectfully submitted,

MICHELLE L. VELASQUEZ
Assistant State Public Defender
State Bar No. 1079355

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
(414) 227-4300
E-mail velasquezm@opd.wi.gov

Attorney for Defendant-Appellant

## CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 4,725 words.

## CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 27th day of November, 2015.

Signed:

MICHELLE L. VELASQUEZ
Assistant State Public Defender
State Bar No. 1079355

Office of State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
(414) 227-4300
velasquezm@opd.wi.gov
Attorney for Defendant-Appellant

# CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 27th day of November, 2015.

Signed:

MICHELLE L. VELASQUEZ
Assistant State Public Defender
State Bar No. 1079355

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
(414) 227-4300
E-mail velasquezm@opd.wi.gov
Attorney for Defendant-Appellant

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