

IN THE COUNTY COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,
vs.

CASE NO.: 16-2013-MM-008571-AXXX-MA

[REDACTED]
Defendant.

FILED

JUL 16 2013

D. W. Amell
CLERK CIRCUIT COURT

MOTION TO DISMISS

Defendant, [REDACTED] by and through his undersigned attorney and pursuant to Rule 3.190(c)(4), Florida Rules of Criminal Procedure, hereby moves this Honorable Court to dismiss the Information filed in the above-captioned cause. As grounds for this Motion, Defendant states as follows:

1. That, for the sole limited purpose of legal argument concerning the instant Motion to Dismiss, the material facts produced in the State's discovery will not be disputed in the Motion.

2. That the material undisputed facts alleged by the State of Florida are in the Discovery provided by the State of Florida, including Defendant's Arrest and Booking Report, and are set forth as follows:

- 1) On or about May 16, 2013, [REDACTED] le and student at Lavilla School of the Arts (hereinafter referred to as "Lavilla") walked out of school without the permission of her parents or school administrators.
- 2) Lavilla is located at 501 North Davis Street, Jacksonville, Florida 32202.
- 3) Cameras at the school showed [REDACTED] walking to Davis Street.
- 4) Subsequent to [REDACTED] leaving the school grounds without permission, school resource officers at Lavilla notified Sergeant R.E. Burns, Jr. of the Duval School Board Police.
- 5) At approximately 2:00 p.m., Sergeant Burns observed [REDACTED] mother and step-father allegedly arguing with an adult male across the street from Lavilla.
- 6) The adult male observed by Sergeant Burns was Defendant, [REDACTED]
- 7) Sergeant Burns then approached the parties and, "not knowing what may have transpired

within the 2 and a half hours since [REDACTED] had left school, [Sergeant Burns] told [Defendant] to put his hands on top of his head and turn his back" Arrest Rprt., 2.

- 8) Sergeant Burns alleges that, although Defendant initially complied, Defendant dropped his hands, pulled away, failed to follow orders to place his hands behind his back, and had to be wrestled to the ground.
- 9) As a result of the foregoing, the State of Florida has charged Defendant with one count of Resisting Without Violence, a violation §843.02, Florida Statutes.
- 10) Florida Statutes §843.02 provides that: "whoever shall resist, obstruct, or oppose any [law enforcement or probation] officer or other person legally authorized to execute process . . . in the law execution of a legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree. . ."
- 11) To obtain a conviction for Resisting Without Violence, the State of Florida must prove the following four elements beyond a reasonable doubt: (1) The defendant resisted, or obstructed, or opposed the victim; (2) At the time, the victim was engaged in the execution of legal process or the lawful execution of a legal duty; (3) At the time, the victim was an officer or a person legally authorized to execute process; and (4) At the time, the defendant knew that the victim was an officer or a person legally authorized to execute process. Fla. Std. Jury Instr. (Crim.) 21.2 (Resisting Officer Without Violence); Polite v. State, 973 So.2d 1107 (Fla., 2007).
- 12) The element of lawful execution of a legal duty requires an officer to have either a founded suspicion to stop the person or probable cause to make a warrantless arrest. EAB v. State, 851 So.2d 308, 311 (Fla. 2d DCA 2003); I.Y.D. v. State, 711 So.2d 202, 203 (Fla. 2d DCA 1998); S.G.K. v. State, 657 So.2d 1246, 1247 (Fla. 1st DCA 1995).
- 13) The crime of resisting an officer without violence does not take place if the officer lacked an articulable well-founded suspicion of criminal activity to justify the attempt to detain the defendant. Harris v. State, 647 So.2d 206 (Fla. 1st DCA 1994); S.G.K. v. State, 657

So.2d 1246, 1247 (Fla. 1st DCA 1995). For this reason, the unlawfulness of an arrest or detention is a recognized defense to a charge of Resisting Without Violence. State v. Anderson, 639 So.2d 609, 610-11 (Fla. 1994).

- 14) Where a police officer conducts an unlawful arrest or detention, an individual has a recognized right to resist those unlawful actions without violence. Hadley v. State, 846 So.2d 1236, 1238 (Fla. 1st DCA 2003). A defendant is furthermore entitled to a jury instruction on this principle and a failure to give the instruction constitutes reversible error if there is any evidence to support the instruction. Id.
- 15) In the instant case, the undisputed material facts establish that the only conduct engaged in by Defendant within the knowledge of police was Defendant arguing with the mother and step-father of [REDACTED] on a public street.
- 16) The conduct of Defendant observed or known by police officers at the time of the alleged incident was protected First Amendment activity and in no way provides the requisite probable cause or founded suspicion that Defendant had committed, was committing, or was about to commit a crime. Sergeant Burns's attempted detention of Defendant and was therefore unlawful, and Defendant was under no legal obligation to comply with Sergeant's Burns's directives.
- 17) Without sufficient legal justification to detain defendant, the crime of resisting an officer without violence could not have taken place. Harris, 647 So.2d at 208; S.G.K., 657 So.2d at 1247. As such, the undisputed facts do not establish a prima facie case of guilt against Defendant and Defendant is entitled to a dismissal as a matter of law.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter an Order dismissing the above-captioned cause.

DATED this 16th day of July, 2013.

HUSSEIN & WEBBER, P.L.



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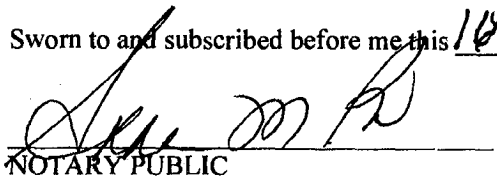
OATH

I hereby swear or affirm that the above-representations constitute the State's undisputed material facts solely for the limited purpose of legal argument relating to this Motion that I continue to deny that the above-referenced facts as alleged by Sergeant Burns are true.



Defendant

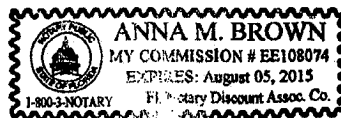
Sworn to and subscribed before me this 16th day of July, 2013.



NOTARY PUBLIC

My Commission Expires:

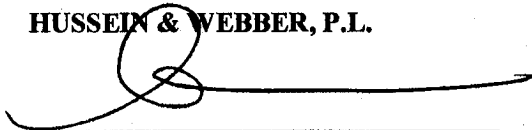
Affiant personally known to me
Affiant produced identification (specify type)



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to the Office of the State Attorney, St. Johns County Courthouse, by US mail and/or hand delivery on this 16th day of July, 2013.

HUSSEIN & WEBBER, P.L.



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