

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,		
v.		CRIMINAL CASE NO.
DEMARCO ARNOLD,		1:25-CR-277-JPB-JSA
Defendant.		

REPORT AND RECOMMENDATION

Defendant DeMarco Arnold was arrested in the vicinity of a bus stop on November 5, 2024. He moves to dismiss the physical evidence and statements obtained as being in violation of his rights against unreasonable searches and seizures under the Fourth Amendment. *See* Motion [22]. After careful consideration of the facts elicited in an evidentiary hearing on February 20, 2026 (*see* Transcript (“Tr.”) [29]) and the parties’ arguments in post-hearing briefs, the undersigned **RECOMMENDS** that the Motion [22] be **DENIED**.

I. FACTS

Atlanta Police Department (“APD”) Officers Tompkins and White were driving on Martin Luther King, Jr. Drive around the intersection of Fairburn Road, in Atlanta, on the evening of November 5, 2024. Tr. at 6. They saw a group of

individuals congregating at a bus stop in an area known for crime, and at least one of the individuals (later identified as the Defendant) was wearing at least a partial head covering such as a ski mask. *See id.* at 8, 11, 34, 37. The evidence revealed a dispute as to the extent to which the Defendant's face was covered. Defense Exhibit 2, for example, is a screenshot from the officers' body camera, which, consistently with other images introduced into evidence, shows that the Defendant was wearing a tight spandex-type head covering completely obscuring his hair, back of his head, ears and neck, but left the central area of his face below his forehead uncovered. *See* Def. Ex. 2. The Court thus finds that the main part of Defendant's "face" was not obscured although most of the rest of his head was obscured at least at the beginning of the encounter.

The officers decided to pull up to the group at the bus stop "just to show police presence." *Id.* at 8. The officers, however, did not activate any lights or sirens or issue any commands. Tr. at 44. Indeed, before the officers could interact with anyone, the Defendant and another man appeared to quickly cross the street and walk away, in an apparent effort to avoid contact with the officers. *Id.* at 14. These individuals were walking across the middle of a busy street outside of the crosswalk. *Id.* at 16. The officers engaged in a U-turn to get closer to the individuals, parked and got out of the car. No lights were activated. *Id.* at 44. As one of the officers got out of his car, he yelled over to the two individuals crossing

the street, “let me holler at you.” *See* Gov’t Ex. 2 (DVD recording). The individual later identified as the Defendant began to run away. *Id.*; Tr. at 17. The officers chased him, deployed a taser, and were able to apprehend him after a short distance. *Id.* at 19. One of the officers reported that the Defendant threw something away while running, near a parked white truck. *Id.* at 18. After Defendant was apprehended, Officer White searched the vicinity of the white truck and found a firearm. *Id.* at 18, 44.

Defendant now moves to suppress this recovered firearm as well as post-arrest statements that he made on the grounds that the Officers lacked reasonable suspicion to engage in any investigative detention.¹

¹ Defendant’s post-hearing brief also makes a conclusory statement, referencing no facts, that “any statements made by Mr. Arnold were done so involuntarily, without a knowing waiver of his *Miranda* rights, and on the heels of the government’s constitutional violations, all in violation of the Fifth Amendment to the United States Constitution.” *See* [30] at 8. However, Defendant’s counsel confirmed at the outset of the evidentiary hearing that they were not seeking suppression of any statements on the grounds of involuntariness or lack of compliance with *Miranda*. *See* Tr. at 2. Rather, counsel confirmed that the only basis upon which they were seeking suppression of statements was that those statements were the fruit of an illegal seizure under the Fourth Amendment. *Id.* Presumably based on this assurance, the Government elicited no evidence as to the nature of any specific questioning or whether *Miranda* rights were provided or waived or other similar topics. Thus, the Court only addresses the Fourth Amendment issues raised by Defendant and deems any challenge to the voluntariness of statements or lack of compliance with *Miranda* under the Fifth Amendment to be waived or abandoned.

II. DISCUSSION

The Fourth Amendment protects persons from unreasonable seizures by government actors, including unjustifiable arrests or detentions. A seizure can result from use of physical force and/or submission to a threatening show of authority. *California v. Hodari D.*, 499 U.S. 621, 625-26 (1991). Evidence obtained from an illegal detention, including incriminating statements from the detained person, are subject to suppression. *Id.*

Not all warrantless seizures are unreasonable, however. Police may detain a suspect briefly for an “investigative stop” if they have a reasonable, articulable suspicion based on objective facts that the person has engaged in, or is about to engage in, criminal activity. *Terry v. Ohio*, 392 U.S. 1 (1968). “Reasonable suspicion” requires a lesser quantum of factual support and certainty than does probable cause. *United States v. Tapia*, 912 F.2d 1367, 1370 (11th Cir. 1990). Reasonable suspicion must, however, be more than just an “inchoate and unparticularized suspicion or hunch.” *Id.*, 392 U.S. at 27. The officer must have “some minimal level of objective justification” taken from the totality of the circumstances. *United States v. Sokolow*, 490 U.S. 1, 7-8 (1989). What is a “reasonable suspicion” is determined from the totality of the circumstances, including the collective knowledge of the officers involved. *United States v. Glinton*, 154 F.3d 1245, 1257 (11th Cir. 1998). The “determination of reasonable

suspicion must be based on commonsense judgments and inferences about human behavior.” *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000).

Further, not all interactions with the police amount to seizures or detentions requiring any such showing of reasonable suspicion. As the Eleventh Circuit has explained:

A “seizure” does not occur every time a police officer interacts with a citizen. Officers are free to “approach[] individuals on the street or in other public places and put[] questions to them if they are willing to listen.” *United States v. Drayton*, 536 U.S. 194, 200, 122 S.Ct. 2105, 153 L.Ed.2d 242 (2002). In these consensual encounters, the officers need no suspicion because the Fourth Amendment is not implicated. *Florida v. Bostick*, 501 U.S. 429, 434, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991); *Perez*, 443 F.3d at 777–78. But officers need reasonable suspicion if an encounter becomes an investigatory stop. *See Bostick*, 501 U.S. at 434, 111 S.Ct. 2382; *United States v. Jordan*, 635 F.3d 1181, 1186 (11th Cir. 2011). An investigatory stop occurs “[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.” *Jordan*, 635 F.3d at 1185 (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)).

United States v. Knights, 989 F.3d 1281, 1286 (11th Cir. 2021).

Based on this standard, the Court finds that the officers did not engage in any investigative seizure by simply pulling up to the bus stop. *Knights* itself rejected a defendant’s claim of an investigative seizure based on far greater facts than what happened at the outset of the encounter here. In *Knights*, the police saw two individuals leaning into open doors of a parked car in a high-crime neighborhood. The police drove past, made eye contact with the individuals, and then engaged in a U-turn and pulled up to park on the street next to the car. In

doing so, the officers parked their vehicle in the wrong direction of traffic. One officer got out and trained his flashlight on the defendant, who was inside the car. Another person had walked away. Multiple officers approached the car and knocked. The defendant opened the door, and the officers immediately smelled marijuana. *Id.* at 1284, 1286-1287. The Eleventh Circuit found that this was a “consensual” encounter, not requiring a showing of reasonable suspicion, and denied suppression as to the drugs and other evidence that were subsequently obtained.

The Eleventh Circuit in *Knights* noted that the officers did not block the defendant’s or any other individual’s path, did not activate any lights or siren, and that one of the individuals (not the defendant) actually walked away apparently unmolested. *Id.* at 1287; *see also Miller v. Hargett*, 458 F.3d 1251, 1257-1258 (11th Cir. 2006) (an officer did not engage in a detention or seizure requiring a showing of reasonable suspicion by merely parking behind and partially blocking a suspect’s car, turning on his window lights, and approaching the suspect’s car on foot (even “quickly”)).

A person in Defendant’s position here, similarly to the defendants in the above cases, would likewise not have reasonably felt detained by the officers merely pulling their car over by the side of the bus stop. The facts show no display of lights, sirens, or weapons, or that the officers even spoke to Defendant (or

anyone else) at this juncture. Further, just like in *Knights*, some of the individuals (including Defendant) actually did walk away from the bus stop, suggesting that they felt free to do so. At least at this point, no arguable seizure had been initiated.

Subsequently, the Defendant (along with another person) quickly left the bus stop, and crossed a major street outside of a crosswalk in doing so. The officers engaged in a U-turn, parked, got out of the car to approach, and said “let me holler at you.” At this point, the Defendant fled. Based on the standards set forth above, the Court remains unable to find that the officers’ actions amounted to a seizure at the moment when Defendant fled. Again, *Knights* helps lead to that conclusion. That precedent makes clear that pulling a U-turn for the obvious purpose of specifically approaching and contacting a person is not itself a seizure. Again, the officers here had not pulled any weapons, activated any lights or sirens, or blocked Defendant’s path. The statement “let me holler at you” indicated the officer’s desire to at least briefly speak to Defendant. But this informal and colloquial phrase lacked the intimidation or force of a true police command such as “freeze.” Although the question is closer than it was at the bus stop, the Court does not find that a *Terry* stop had been initiated at this point.

But even if the “let me holler at you” interaction rose to the level of being a *Terry* stop, it was justified by reasonable suspicion at that juncture. Defendant had walked away briskly once the police arrived at the bus stop, apparently to avoid

them, and did so by illegally walking across a busy city road and outside of the crosswalks. And even though his face was mostly visible, it is true that he was wearing a ski mask that covered at least most of his head. The street crossing violation alone, which Officer Tompkins stated was in violation of anti-jaywalking laws, *see* Tr. [29] at 16², would have been sufficient for the officers to at least approach (including by saying, “let me holler at you”), and briefly detain the individuals to issue a ticket. The combination of all these facts would have reasonably contributed to suspicion of evasive conduct warranting at least a brief investigation. *See United States v. Hardy*, 806 Fed.Appx. 718, 721 (11th Cir. March 18, 2020) (presence in a high-crime area and evasive conduct vis-à-vis the police are among factors combining to reasonable suspicion); *see generally United States v. Luckett*, 484 F.2d 89, 91 (9th Cir. 1973) (officers were permitted to detain individual stopped for jaywalking for a least the brief amount of time necessary “to obtain satisfactory identification from the violator and to execute a traffic citation.”).

² *See also* O.C.G.A. § 40-6-92 (“Between adjacent intersections at which traffic-control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.”). Both the body camera video (Gov’t Ex. 2) and the street map (Gov’t Ex. 1) that were introduced into evidence showed the traffic control signals on this road and the crosswalk. And the video clearly shows that the Defendant was crossing in the middle of the street, outside any crosswalk, across yellow lines.

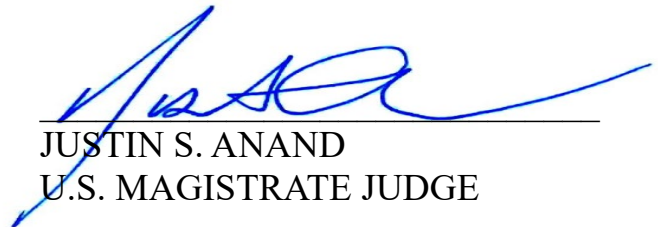
The Defendant then immediately ran away once the police simply began to approach. Such flight, unprovoked by any actions amounting to a seizure, clearly added to the existence of reasonable suspicion. *See United States v. Franklin*, 323 F.3d 1298 (11th Cir.2003) (“While flight is not proof of wrongdoing, it is indicative of such. Innocent persons might run from police officers; but flight creates an ambiguity; and the officers may stop the person to resolve the ambiguity.”). In any event, where flight is not provoked by a coercive conduct amounting to a seizure, the individual is not seized until apprehended, and so items discarded or abandoned during the chase are not subject to exclusion. *See Hodari D.*, 499 U.S. at 629; *United States v. Knight*, 336 Fed.Appx. 900, 903 (11th Cir. July 8, 2009) (unpublished) (“When individuals abandon contraband during a chase with law enforcement, they have no expectation of privacy to challenge seizure of the property”) (*citing United States v. Tinoco*, 304 F.3d 1088, 1117 (11th Cir. 2002) and *Hodari D.*, 499 U.S. at 629).³

³ That the officers may not have pursued any investigation or ticket against the other individual with whom Defendant appeared to be jaywalking does not negate their reasonable suspicion as to Defendant especially after he fled. The police were within their reasonable discretion to choose to pursue and investigate Defendant in light of his more suspicious activity and to potentially forego an investigation against the other person because of manpower limitations or other reasons.

CONCLUSION

Thus, it is **RECOMMENDED** that the Motion to Suppress [22] be **DENIED**. As there is nothing further before the undersigned, this matter is certified as **READY FOR TRIAL**.

SO RECOMMENDED this 14th day of May, 2026.



JUSTIN S. ANAND
U.S. MAGISTRATE JUDGE