

IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT, IN AND
FORORANGE COUNTY, FLORIDA

CHAUNCEY CHAMEL CLECKLEY,

Appellant,

vs

STATE OF FLORIDA,

Appellee.

CASE NO. CJAP 09-09

County Court Case No. 2008-MM-10524

Appeal from the County Court
of Orange County, Florida

Honorable Kenneth A. Barlow, Jr., County Judge

Alicia Levetta Peyton, Assistant Public Defender
for Appellant

No appearance for Appellee

Before Powell, LeBlanc and Komanski, J. J.

FINAL ORDER AFFIRMING LOWER COURT

Appellant Cleckley appeals his judgment and sentence for misdemeanor possession of marijuana, contending that the trial court erred in denying his motion to suppress. We dispense with oral argument pursuant to *Florida Rule of Appellate Procedure 9.320*. We have carefully considered appellant's brief, the legal authorities cited therein, the record on appeal, and have read the transcript of the motion hearing.

The facts as shown from the transcript are as follows: The Sheriff's Department received an anonymous tip that a black male had pulled a white female wearing a black dress into apartment 419 in a complex in Lake Heritage Circle with a knife at her throat. Deputy Dees and

another deputy responded to the call. The apartment was in a part of the area which Dees knew had a lot of narcotics activities and numerous robberies. Rounding the corner of the building containing apartment 419, Dees heard a high-pitched female scream which sounded to him that someone may have been scared or in fear. He observed a black male and a white woman wearing a black dress in the hall in front of apartment 419. They appeared to be hugging. The deputies immediately commanded the black male, later identified as appellant Cleckley, to get on the ground and handcuffed him. Dees asked appellant if he had anything illegal on him. Appellant replied that he had a bag of marijuana. Dees seized the bag of marijuana which formed the basis of this prosecution.

Appellant argues that the anonymous tip was not reliable and did not give rise to reasonable suspicion for the investigatory stop.

The standard of review of a trial court's factual findings is whether substantial competent evidence supports the findings; the trial court's application of the law is reviewed *de novo*. See *D.B.P. v. State*, 31 So. 3d 883, 885 (Fla. 5th DCA 2010). A trial court's ruling on a motion to suppress comes to the appellate court clothed with a presumption of correctness. *Id.* A reviewing court must interpret the evidence and reasonable inferences and deductions derived therefrom most favorable to sustain a trial court's ruling. *Id.*

“An anonymous tip can provide the basis for an investigatory stop when the tip, as corroborated by independent police work, exhibits sufficient indicia of reliability to furnish police with a reasonable suspicion that the defendant is engaged in criminal activity.” *Butts v. State*, 644 So. 2d 605, 606 (Fla. 1st DCA 1994) (citing *Alabama v. White*, 496 U. S. 325 (1990)). “The ‘totality of the circumstances’ is used to determine the requisite level of reasonable suspicion.” *Id.* As appellant recognizes in his brief, a tip corroborated by independent police observation of otherwise seemingly innocent acts may exhibit sufficient reliability depending on

the totality of the circumstances. *See Kimball v. State*, 801 So. 2d 264, 266 (Fla. 4th DCA 2001).

While some may view this as a close case, we conclude that the tip as corroborated by Dee's observations furnished sufficient reasonable suspicion that appellant was engaging in criminal activity, and thus the stop was valid.

AFFIRMED.

DONE and ORDERED this 3rd day of August, 2010.

/S/
Rom W. Powell, Sr. Judge

/S/
Bob LeBlanc, Circuit Judge

/S/
Walter Komanski, Circuit Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished to Alicia Levetta Peyton, Assistant Public Defender, attorney for appellant, 435 N. Orange Ave., Suite 400, Orlando FL 32801, and to Lawson L. Lamar, State Attorney, 415 N. Orange Ave., Orlando FL 32801, by mail, this 3rd day of August, 2010.

/S/
Judicial Assistant