

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: 2011-AP-45
Lower Court Case No: 2011-MM-6839

JAMES HAMILTON,

Appellant,
vs.

STATE OF FLORIDA,

Appellee.
_____ /

Appeal from the County Court,
for Orange County, Florida,
Nancy L. Clark, County Court Judge

Robert Wesley, Public Defender and
James Stevenson Fisher, Assistant Public Defender,
for Appellant

Lawson Lamar, State Attorney and
Dugald McMillan, Assistant State Attorney,
for Appellee

Before POWELL, HIGBEE, and JOHNSON, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Following entry of a plea of nolo contendere and imposition of sentence, Appellant Hamilton takes this appeal. Oral argument is dispensed with pursuant to Florida Rule of Appellate Procedure 9.320. We affirm.

Appellant failed to preserve his right to appeal the denial of his motion to suppress; consequently, he has waived or lost this right and his conviction must be affirmed. *See §§*

924.051(4), 924.06(3), Florida Statutes; *Marion v. State*, 913 So. 2d 1243 (Fla. 4th DCA 2005); *Camerota v. State*, 959 So. 2d 1240 (Fla. 4th 2007).

Even had Appellant preserved his right to appeal, and regardless of whether the deputy's encounter with Appellant was an unlawful investigative stop or a lawful stop based upon credible information from a citizen-informant, the trial court correctly denied the motion to suppress. *See State v. Frierson*, 926 So. 2d 1139 (Fla. 2006); *Golphin v. State*, 945 So. 2d 1174 (Fla. 2006), *cert. den.*, 552 U.S. 810 (2007). Applying the three factor test in *Frierson*, the record establishes the following: (1) little time elapsed between the initial encounter and the arrest, pat-down search, and seizure of the marihuana and drug paraphernalia; (2) the arrest was based on a supervening cause of an outstanding writ of bodily attachment¹ and not the stop; (3) there was no misconduct on the part of the deputy.

For the foregoing reasons, Appellant's conviction is

AFFIRMED.

DONE AND ORDERED at Orlando, Florida this 24th day of June, 2013.

/S/ _____
ROM W. POWELL
Senior Judge

/S/ _____
HEATHER L. HIGBEE
Circuit Judge

/S/ _____
ANTHONY H. JOHNSON
Circuit Judge

¹ We see no legal distinction between a writ of bodily attachment and an arrest warrant or capias in the context of this case. Both require a law enforcement officer to take the subject into custody and both support a search of the person incident thereto.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **James Stevenson Fisher, Assistant Public Defender**, 435 N. Orange Avenue, Ste. 400, Orlando, Florida 32801; **Dugald McMillan, Assistant State Attorney**, 415 N. Orange Avenue, Ste. 200, Orlando, Florida 32802-1673; and **Honorable Nancy L. Clark**, 425 N. Orange Avenue, Orlando, Florida 32801, by mail, this 24th day of June, 2013.

/S/ _____
Judicial Assistant