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Criminal law -- Search and seizure -- Baker Act detention -- Trial court erred by denying motion to suppress evidence discovered on defendant's person after he was detained by officers under Baker Act -- Officer's subjective interpretation of a text message sent to defendant's ex-girlfriend stating "This is it. Once you're done reading this, I will be gone" was insufficient to have subjected defendant to involuntary physical seizure under Baker Act where message itself was not an explicit suicide threat, and accompanying photo showed only a hand holding a needle -- Court rejects argument that no Fourth Amendment violation occurred because search was performed pursuant to standard policy for transporting individuals to a receiving facility -- While local law enforcement agency policies may be indicative of whether a search occasioned by a noncriminal seizure is reasonable, they do not dictate ipso facto the parameters of the Fourth Amendment -- To conduct such a search, an officer must have a reasonable belief that his or her safety is in danger and must first perform a pat down -- There was no evidence in instant case that detaining officer believed he was in danger, and it was undisputed that a pat down was not conducted -- No exigent circumstances existed to warrant search

K.M., Appellant, v. STATE OF FLORIDA, Appellee. 2nd District. Case No. 2D22-564. April 14, 2023. Appeal from the Circuit Court for Pinellas County; Susan St. John, Judge. Counsel: Howard L. Dimmig, II, Public Defender, and Siobhan Helene Shea, Special Assistant Public Defender, Bartow, for Appellant. Ashley Moody, Attorney General, Tallahassee, and Jonathan P. Hurley, Assistant Attorney General, Tampa, for Appellee.

(BLACK, Judge.) K.M. appeals from his judgment and sentence for possession of methamphetamine.[1] He argues that the trial court should have granted his dispositive motion to suppress. We agree.

K.M. contended in the motion, as he does here, that officers failed to comply with the requirements of the Baker Act[2] when they placed him in custody and handcuffed and searched him. He argues that the search violated his Fourth Amendment rights because there was no probable cause for the search; that even had the officers complied with the Baker Act, a search pursuant to the Baker Act must be reasonable under the circumstances; and that the policy which required the officers to search K.M. after placing him in protective custody pursuant to the Baker Act is unreasonable.

Two officers from the Clearwater Police Department testified at the suppression hearing. Officer Neris-Ruiz testified that K.M.'s ex-girlfriend had called police to request a welfare check after receiving text messages purportedly from K.M. According to Officer Neris-Ruiz, she was dispatched to conduct the welfare check. She called the ex-girlfriend and was advised that K.M. had sent suicidal text messages. Officer Neris-Ruiz testified that "the complainant[, the ex-girlfriend,] stated that she received a picture of a subject holding -- not a subject -- of [K.M.] holding a needle." She testified that she viewed the text messages, forwarded to her from the ex-girlfriend; that the sender's phone number appeared in the photograph or screenshot she viewed; and that she only knew that the number appearing as the sender's is associated with K.M. because the ex-girlfriend told her that it is K.M.'s phone number. Officer Neris-Ruiz was later able to confirm that the number is associated with K.M. through the police "report writing database."

When asked what criteria is used, based on police policies, to determine whether someone should be taken into protective custody pursuant to the Baker Act, Officer Neris-Ruiz testified: "It -- text messages from a complainant stating that they have made suicidal statements -- suicidal statements directly from the person that I made contact with. Their actions at the time that I made contact with them." Officer Neris-Ruiz testified that she made the decision to take K.M. into protective custody pursuant to the Baker Act due solely to the text messages. She made the decision before she had any interaction with K.M.

On cross-examination, Officer Neris-Ruiz testified that another officer went to K.M.'s mother's home and that K.M.'s mother made contact with K.M. No concerns about K.M. were relayed to Officer Neris-Ruiz from that contact. Officer Neris-Ruiz testified that police pinged K.M.'s cellphone, providing an address for the storage facility at which he was ultimately located.

The court also questioned Officer Neris-Ruiz, asking specific questions and seeking clarification about the content of the text messages.[3] In response to those questions, Officer Neris-Ruiz testified that there "was a picture of [K.M.] holding a needle with an unknown substance. And [the text] stated, 'This is it. Once you're done reading this, I will be gone.' " Upon further questioning, it was revealed that the picture was of only a hand holding a needle. Because of that, Officer Neris-Ruiz was unable to confirm that the person in the text photograph was K.M. Officer Neris-Ruiz further testified that a needle was not found in the search of K.M.; rather, a small amount of a rock-like substance, which turned out to be methamphetamine, was found in his pocket.

Officer Neris-Ruiz also testified regarding police procedures. She stated that when the police receive calls about people threatening self-harm officers do not follow the same procedures that they would in a criminal investigation; when police receive emails or text messages claiming self-harm, they do not vet or attempt to find information about the IP address or otherwise authenticate the information.

Officer Corujo testified that Officer Neris-Ruiz had advised him that K.M. was possibly suicidal, had provided K.M.'s location at the storage facility, and had told him that there was sufficient cause to take K.M. into protective custody pursuant to the Baker Act. Officer Corujo testified that upon his arrival at the storage facility, he saw two men talking and asked if one of them was K.M. K.M. answered affirmatively, and Officer Corujo placed K.M. into protective custody immediately, handcuffing and searching him. Officer Corujo further testified that K.M. had been calm and cooperative and caused Officer Corujo no concern. When asked about the other man with K.M. at the storage facility, Officer Corujo testified that he had spoken with the other man and that the other man expressed no concerns about K.M.

Although it was only Officer Corujo who searched K.M., both Officer Neris-Ruiz and Officer Corujo testified that the search of K.M. was a full search and not simply a pat down. Both officers also testified that it is department policy to fully search an individual before placing him into a police vehicle for transport. Their testimony does not include timeframes for the events, except that Officer Neris-Ruiz was assigned the welfare check around 1:45 p.m. However, it is apparent from the testimony that some time necessarily elapsed between the welfare call and locating K.M., given that Officer Neris-Ruiz initially went to one storage facility to locate K.M., an officer was dispatched to speak with K.M.'s mother after Officer Neris-Ruiz failed to locate K.M., K.M.'s mother spoke to K.M. while that officer was present, K.M.'s phone was then pinged, and finally K.M. was located at a second storage facility.

"We employ a mixed standard of review for suppression orders: factual findings are reviewed for competent substantial evidence, while legal determinations are reviewed de novo." *S.P. v. State*, 331 So. 3d 883, 887 (Fla. 2d DCA 2022). "Although law enforcement officers are vested with a certain level of discretion when determining whether an individual meets the criteria under the Baker Act, a circuit court most assuredly can review the propriety of an officer's decision to place an individual into protective custody pursuant to that act." *Id.* at 888. And our review of the trial court's decision in such circumstances is de novo. *See id.* at 887 ("[A] trial court's application of the law to historical facts is also de novo." (citing *Cuervo v. State*, 967 So. 2d 155, 160 (Fla. 2007))).

In this case, the trial court made few factual findings because the facts were largely undisputed. The court stated: "It's just whether or not it was legal. Number one, were they required to ask for his voluntary consent for the Baker Act? Two, does he meet the criteria for involuntary Baker Act without his consent -- with or without his consent? And three, it is the scope of the search, essentially."

This case turns on whether text messages and the request for a welfare check -- standing alone -- are sufficient to take a person into protective custody under the Baker Act or to otherwise detain a person in compliance with the Fourth Amendment. We have found no case where the facts indicate that a person was taken into protective custody pursuant to the Baker Act without the officer first having had a face-to-face encounter with the person and then making the decision to take the person into protective custody. Moreover, the facts of the cases supporting protective custody under the Baker Act are all more compelling and egregious than the facts of this case. *See, e.g.*, *State v. Garcia*, 346 So. 3d 581, 583 (Fla. 2022) ("Another day, shaking and crying as he did,

Garcia aimed a gun in the face of a neighbor who had stopped by Garcia's house to pick up some tools and have a beer; the neighbor did not call the police. Just two days after that episode, the police were summoned to Garcia's ex-wife's house, where Garcia had gone to retrieve guns from a safe. They found him banging on her door, acting in a manner that to them suggested intoxication, mental disturbance, or both. Garcia denounced an officer on the scene with a racial epithet; the officer deescalated the situation and gave Garcia a ride home. No sooner had Garcia gotten out of the officer's car than he struck up an argument with his neighbor, threatening to shoot him and the officer who had driven him home. The officer, at that point having heard enough, took Garcia to a mental health facility and sought to have him involuntarily examined under the Baker Act."); *Bybee v. State*, 295 So. 3d 1229, 1231-32 (Fla. 2d DCA 2020) ("M.S.'s doctor, who was out of town on vacation, received an email ostensibly sent from M.S. the night before with a subject line reading 'Killing Myself Tonight.' The doctor called his office and asked an associate to see about having M.S. 'Baker Acted' again. His staff, in turn, called the Sheriff's Office, and two deputies . . . were dispatched to M.S.'s house. When they arrived, they found M.S. apparently confused, combative, and screaming profanities. Based on their observations, the two deputies agreed that M.S. should be transported to the hospital for further examination under the Baker Act."); *cf. J.W. v. State*, 313 So. 3d 909, 912 (Fla. 2d DCA 2021) ("[T]he only information the affidavit contains about J.W.'s actions prior to his being informed that police wanted to remove him from his home for an involuntary Baker Act evaluation was that he was sitting on his couch and EMS personnel were 'evaluating' his 'medical issues.' Under section 394.463(1), [Florida Statutes (2017),] these facts are insufficient to warrant subjecting J.W. to an involuntary examination. . . . Although it is possible that the officer witnessed other behavior on the part of J.W. that caused concern for his well-being, the affidavit was the sole factual basis for the pleas, and it did not provide an articulable reason for J.W. to have been subjected to an involuntary physical seizure under the Baker Act.").

Section 394.463(1), Florida Statutes (2020), sets forth the criteria which must be met in order for someone to be taken into protective custody pursuant to the Baker Act:

> A person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness **and** because of his or her mental illness:
>
> (a) 1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; **or**
>
> 2. The person is unable to determine for himself or herself whether examination is necessary; **and**
>
> (b) 1. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; **or**
>
> 2. There is a **substantial likelihood** that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

(Emphasis added.) The statute requires that there be reason to believe both that a person has a mental illness and that the mental illness has led to other statutory criteria. The other statutory criteria also have two requirements, both of which can be met in alternative ways: (1)(a)1 refusal of voluntary examination or (1)(a)2 inability to determine for himself whether examination is necessary and (1)(b)1 likelihood of neglect with real and present threat of harm to his wellbeing that cannot be avoided with other services or (1)(b)2 substantial likelihood of serious bodily harm to himself in the near future based on recent behavior.[4]

K.M. contends that the State failed to meet any of the latter criteria. It is undisputed that he was not asked whether he would voluntarily consent to examination; as a result, the State could only have proceeded under the Baker Act by having reason to believe that K.M. was unable to determine for himself whether examination was necessary. On this point, the trial court did not make a finding. K.M. further argues that the State failed to establish either a likelihood of neglect or a substantial likelihood based on recent behavior of serious bodily harm in the near future. In its ruling, the trial court stated: "It's noteworthy that [Officer Neris-Ruiz] is making the decision before she even gets to the scene . . . . She makes th[e] determination [that K.M. needs to be Baker

Acted], passes that information on to her fellow officer who takes him immediately into custody." However, the court does not appear to have connected those findings to subpart (1)(a)2 -- that K.M. was unable to determine for himself whether examination was necessary -- because the court then stated: "The second part of that is a person unable to determine for himself or herself whether examination is necessary. And then it goes on to, I think, at that point, it would be (1)(b)(2) of the statute." The court moved on to (1)(b)2 without recognizing that subparts (1)(a) and (1)(b) are conjunctive, connected by "and," such that either (1)(a)1 or (1)(a)2 must be met in addition to (1)(b)1 or (1)(b)2. And the court's only finding of fact bearing on that issue and supported by the evidence is that Officer Neris-Ruiz made the determination that K.M. should be taken into custody before she got to the scene.

Applying the "probable cause" standard to the Baker's Act's "reason to believe" language, *see S.P.*, 331 So. 3d at 888 (quoting *Watkins v. Bigwood*, 797 F. App'x 438, 442 (11th Cir. 2019)), we conclude that Officer Neris-Ruiz's subjective interpretation of the text -- "This is it. Once you're done reading this, I will be gone" -- is insufficient to have subjected K.M. to involuntary physical seizure under the Baker Act. *Cf. Robinson v. State*, 976 So. 2d 1229, 1233 (Fla. 2d DCA 2008) ("[T]he State has the burden to prove that the officer had probable cause, and the proof must be more than the 'naked subjective statement of a police officer who has a "feeling" based on "experience" that the accosted citizen is committing a crime.' " (quoting *Coney v. State*, 820 So. 2d 1012, 1014 (Fla. 2d DCA 2002))). The photo was only of a hand with no face or identity, and the message itself was not an explicit suicide threat. *Cf. Bybee*, 295 So. 3d at 1231-32 (stating that the basis for M.S. being detained pursuant to the Baker Act was officers' personal observations that M.S. was "confused, combative, and screaming profanities," not "an email ostensibly sent from M.S." with the subject line "Killing Myself Tonight"). Further, the testimony from Officer Corujo does not support a finding that K.M. was unable to determine for himself that examination was necessary, as required by subsection (1)(a)2.

Even assuming, however, that the requirement of section 394.463(1)(a)2 had been met -- that K.M. was incapable of making a decision for himself that examination was necessary -- K.M. argues that the State failed to meet either of the requirements of subsection (1)(b). To reiterate, the Baker Act requirements are conjunctive; an element of subsection (1)(a) must be met in addition to an element of subsection (1)(b). The State conceded at the hearing that subsection (1)(b)1 (neglect) was not at issue. The State argued only that subsection (1)(b)2 had been met: there was reason to believe that a substantial likelihood existed that K.M. would cause serious bodily injury to himself in the near future without care or treatment, as evidenced by his recent behavior. On this element, the State presented Officer Neris-Ruiz's testimony as to the content of the unadmitted text messages.

This court's opinion in *S.P.* is again instructive. There, the testimony at the suppression hearing established that S.P.'s boyfriend reported to police that S.P. "was very intoxicated, that she was -- that she walked away from him, and said that she had a gun, and that she was threatening to shoot herself." 331 So. 3d at 886. Testimony further established that when she was approached by officers, S.P. "seemed visibly upset"; she was not crying, but "she was real upset." *Id.* The officer who testified at the hearing stated: "[W]hen we first walked up she made a couple of statements, just about our tactics how we walked up, how it was unsafe how we walked up. How if she was wanting to harm us, she could have, but she -- she kind of just made a little comment." *Id.* He then testified that his sergeant had a conversation with S.P. and that the sergeant advised the officer that S.P. met the criteria to be taken into protective custody pursuant to the Baker Act. *Id.* at 886-87. Applying the law to those facts, this court found it to be "a close call" in determining whether there was probable cause to take S.P. into custody. *Id.* at 888. Quoting *Watkins*, this court agreed that the Baker Act's standard, a "substantial likelihood" of "serious bodily harm," "is a high one: for example, a reasonable belief about 'some likelihood,' 'might cause' 'some kind of bodily harm,' 'at some point in the future' is not good enough for probable cause to deprive a person of their freedom." *Id.* (quoting *Watkins*, 797 F. App'x at 442); *see also Khoury v. Miami-Dade Cnty. Sch. Bd.*, 4 F.4th 1118, 1126 (11th Cir. 2021) ("Vague notions about what a person might do -- for example, a belief about **some** likelihood that without treatment a person **might** cause **some** type of harm at **some** point -- does not meet [the Baker Act] standard."). Given that high standard, this court noted that the facts surrounding S.P.'s detention under the Baker Act were not particularly compelling. *Id.* at 889. "When the deputies came upon S.P., she was not crying, she was uninjured, and she was able to communicate appropriately." *Id.* Thus even though the testifying officer believed that the hearsay from S.P.'s boyfriend combined with S.P.'s behavior and her possession of a firearm would satisfy the requirements of section 394.463, this court noted that it was not the

testifying officer who made the decision to take S.P. into protective custody, and this court very clearly remained skeptical that the evidence was sufficient. *See id.*

If the facts of *S.P.* represent a "close call" and are not "particularly compelling," certainly the facts of this case are less compelling and not a close call. The text messages in this case are no more compelling than the boyfriend's statements to police in *S.P.*, particularly given that the officer had already interacted with S.P. and knew she was "very intoxicated" before the boyfriend reported the suicide threat. But it is apparent that the high standard of the Baker Act has not been met in this case where the text messages were the sole basis to subject K.M. to involuntary physical seizure and the photo did not depict K.M. and the language is not an express suicide threat. The trial court expressed that the officers in this case were

> do[ing] exactly what they're supposed to do which is their non-criminal function which is to prevent people from harming themselves. . . . [J]ust think about if they hadn't have done that. Well, [K.M.] looks calm so I'm going to drive away. You know, that's an OMG moment if something bad happens later on or we didn't find the narcotics and he pulled fentanyl out of his pocket and rubbed it on himself.

But "some likelihood" that "some of kind of bodily harm" "might" occur "at some point in the future" had officers not taken K.M. into protective custody or searched him is not the standard. And we again reiterate that we have found no Baker Act case where the person was taken into protective custody without a face-to-face encounter with officers supporting the physical seizure. *Cf. Bailey v. Kennedy*, 349 F.3d 731, 740 (4th Cir. 2003) ("Without more, the 911 report cannot bear the weight that the officers would place on it. The law does not permit 'random or baseless detention of citizens for psychological evaluations.' " (quoting *Gooden v. Howard County, Md.*, 954 F.2d 960, 968 (4th Cir. 1992))).

Given our conclusion that K.M. could not legally be seized under the Baker Act, we address the ultimate issue of suppression. Citing *Lukehart v. State*, 70 So. 3d 503, 518-20 (Fla. 2011), the State argues that the Florida Supreme Court has held that the exclusion of evidence is not the proper remedy for a violation of the Baker Act unless a constitutional violation has also occurred and that such a constitutional violation did not occur in this case. We cannot agree that a violation did not occur.

The Fourth Amendment applies where officers are "engaged in a noncriminal function," *S.P.*, 331 So. 3d at 889, such as where they are conducting welfare checks, *Taylor v. State*, 326 So. 3d 115, 118 (Fla. 1st DCA 2021). This court has held "that police officers may conduct welfare checks and that such checks are considered consensual encounters that do not involve constitutional implications." *Dermio v. State*, 112 So. 3d 551, 555 (Fla. 2d DCA 2013) (citing *Greider v. State*, 977 So. 2d 789, 792 (Fla. 2d DCA 2008)). "[S]earches and seizures conducted in connection with welfare checks are 'solely for safety reasons,' " and "the scope of an encounter associated with a welfare check is limited to prevent the exception from becoming an investigative tool that circumvents the Fourth Amendment." *Taylor*, 326 So. 3d at 118 (citations omitted); *see also S.P.*, 331 So. 3d at 892 ("[C]ase law has recognized that officers engaged in a so-called 'community caretaking' role (which the case at bar would seem to invoke) may conduct a limited search of persons and property when it is necessary to ensure safety."). Simply stated, "[t]he Baker Act does not (and could not) categorically preclude the protections of the Fourth Amendment." *S.P.*, 331 So. 3d at 893. "The necessity of ensuring safety in these situations does not create an inchoate warrant to bypass every protection of the Fourth Amendment." *Id.* at 892.

Here, there was no evidence presented that the officer who placed K.M. into protective custody was aware of the details of why K.M. was being seized pursuant to the Baker Act.[5] *Cf. S.P.*, 331 So. 3d at 892 ("And locating (and then sequestering) the gun in her possession was also warranted given the information the deputies had."). Officer Corujo testified that K.M. did not give him any cause for concern. He searched K.M. only because of the department policy to conduct searches before placing anyone in the police cruiser: "[B]y policy, we have to search. I won't -- even for a courtesy transporting." He also testified that he did not do a pat down and then search the pocket based on what he felt during the pat down; the officer testified that he went right to the full search because that was policy. Officer Neris-Ruiz testified, "The purpose of the search is to completely empty their pockets of any personal effects, anything that's in their pockets regardless of what it is."

Such a search has been deemed to be without a legal basis by this court:

> [T]he officer did not have a legal basis to search A.B.S.'s person before transporting him in his cruiser. . . . [T]he officer had no indication that A.B.S. was in possession of either a weapon or contraband when he searched A.B.S. He admitted that he searched A.B.S. solely because it was his policy to search people before transporting them in his cruiser.

A.B.S. v. State, 51 So. 3d 1181, 1182 (Fla. 2d DCA 2010) (citation omitted); *see also R.A.S. v. State*, 141 So. 3d 687, 689 (Fla. 2d DCA 2014) ("It is also the case that an officer may conduct a pat-down for weapons before placing a truant in his vehicle, but he is not authorized to conduct a full search."); *L.C. v. State*, 23 So. 3d 1215, 1219 (Fla. 3d DCA 2009) ("The uniqueness of this case lies in the fact Officer Quintas **did not pat-down L.C.** prior to directly searching her pockets. Although we appreciate the concern of officer safety, we are aware of no case that stands for the proposition officers can search an individual without having performed a pat-down simply because the individual is being placed in a police vehicle."). Just like in *S.P.*, *A.B.S.*, and *L.C.*, here "the State maintains that the incursion against [the defendant's] Fourth Amendment rights was nevertheless justified because it was performed pursuant to a standard policy for transporting individuals to a receiving facility." *See S.P.*, 331 So. 3d at 889-90.[6] "Standing on its own, we find that justification unpersuasive. Local law enforcement agency policies may be indicative of whether a search occasioned by a noncriminal seizure is reasonable, but they do not dictate ipso facto the parameters of the Fourth Amendment." *Id.* at 890. "[C]ase law consistently indicates the officer must have a reasonable belief his safety is in danger **and** must first perform a pat-down." *L.C.*, 23 So. 3d at 1219. There is no evidence that Officer Corujo believed that he was in danger; rather, Officer Corujo testified that K.M. gave him no concern. Further, it is undisputed that a pat down was not done in this case.

Finally, we note that the State argues that the suppression motion was properly denied because exigent circumstances such as medical emergencies or threats of suicide are exceptions to the warrant requirement for a search. It is apparent that no exigent circumstances existed in this case. There was no medical emergency. K.M. was calm and cooperative and did not appear to be under the influence of anything. In that respect, this court's opinion in *Fields v. State*, 105 So. 3d 1280 (Fla. 2d DCA 2013), is instructive. There, while the officer had "initially responded to address a feared medical emergency, by the time [the officer] demanded the pill bottle from Fields, any exigency had clearly dissipated," and this court concluded that the suppression motion should have been granted. *Id.* at 1284.

K.M.'s motion to suppress should have been granted. There was no basis to take K.M. into protective custody pursuant to the Baker Act, and K.M. was detained and searched in violation of his Fourth Amendment rights. Accordingly, we reverse K.M.'s judgment and sentence and remand with directions to discharge him.

Reversed and remanded for discharge. (NORTHCUTT, J., Concurs. ATKINSON, J., Concurs in result only with opinion.)

(ATKINSON, Judge, Concurring in result only.) I concur in the result that K.M.'s judgment and sentence must be reversed because the trial court's denial of K.M.'s motion to suppress was erroneous. And I agree with the majority that the trial court erred by failing to make a finding -- and that the evidence would not support such a finding -- that K.M. had "refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination" or was "unable to determine for himself . . . . whether examination is necessary" so as to justify his detention pursuant to section 394.463(1)(a). *See* § 394.463(1)(a)1, 2, Fla. Stat. (2020). However, I write separately because I disagree with, among other things, the majority's conclusion that the requirements of section 394.463(1)(b) were not met.

While the State failed to establish that K.M. had refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or that K.M. had been unable to determine for himself whether an examination was necessary, *see* § 394.463(1)(a), competent substantial evidence does support a finding that law enforcement could draw an objectively reasonable conclusion that there was a substantial likelihood that

without care or treatment K.M. would have caused serious bodily harm to himself in the near future. *See* § 394.463(1)(b)2. The text message provided by K.M.'s ex-girlfriend and her explanation to the officer who interviewed her indicated that K.M. was in danger of committing suicide.[7]

The majority is correct that the State must demonstrate more than "the naked subjective statement of a police officer who has a 'feeling' based on 'experience' that the accosted citizen is committing a crime." *See Robinson v. State*, 976 So. 2d 1229, 1233 (Fla. 2d DCA 2008) (quoting *Coney v. State*, 820 So. 2d 1012, 1014 (Fla. 2d DCA 2002)). However, that proposition of law is immaterial to the resolution of this case, and the suggestion that the officer's subjective interpretation of what she has observed is necessarily insufficient to support a finding of probable cause is misguided. Probable cause is an objective standard that requires the State to demonstrate that the officer had an articulable reason -- more than a mere hunch -- for concluding that there is a fair probability that, in this case, a person satisfies the requirements for involuntary examination under the Baker Act. *Cf. Hawxhurst v. State*, 159 So. 3d 1012, 1013 (Fla. 3d DCA 2015) ("[T]he concept of probable cause is grounded upon a standard of objective reasonableness." (citing *Ornelas v. United States*, 517 U.S. 690, 696-97 (1996))); *Wallace v. State*, 8 So. 3d 492, 494 (Fla. 5th DCA 2009) (explaining that reasonable suspicion -- a standard "less demanding" than probable cause -- arises from " 'specific and articulable facts' and the 'rational inferences from those facts' " and must be "something more than a 'mere hunch' " (first quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968); then quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000); and then quoting *United States v. Arvizu*, 534 U.S. 266, 274 (2002))). Reliance on an officer's subjective interpretation of the facts as she perceived them is often necessary to a determination of whether probable cause justified what would otherwise be an unreasonable search; the relevant distinction, however, is between a subjective interpretation that is objectively reasonable based on an *articulable* rationale and one that is based on a mere *inarticulable* hunch or gut instinct. *See, e.g.*, *Robinson*, 976 So. 2d at 1232-33 ("An investigatory stop requires a well-founded, articulable suspicion of criminal activity. Mere suspicion is not enough. . . . [T]he proof must be more than the 'naked subjective statement of a police officer who has a "feeling" based on "experience" that the accosted citizen is committing a crime.' " (quoting *Coney*, 820 So. 2d at 1014)).

Here, the dispatching officer's interpretation of the information she received was objectively reasonable and based on an articulable rationale insofar as it indicated probable cause to believe that K.M. had threatened imminent suicide. She testified that K.M.'s ex-girlfriend called the police to request a welfare check on K.M. -- an individual the caller identified as her boyfriend, someone she knew. K.M.'s ex-girlfriend represented to the dispatching officer that she received a text message from K.M. that included a picture of K.M. holding a needle accompanied by the statement "This is it. Once you're done reading this, I will be gone." The ex-girlfriend forwarded the picture and text message to the officer. It was objectively reasonable for the officer to conclude that K.M.'s text messages -- the picture of a hand holding a needle together with a statement that he would soon be "gone" -- communicated that he intended to commit suicide in the near future.

It is unnecessary to decide whether either one of the text messages -- the picture or the statement that he would be "gone" -- standing alone might be sufficient to establish probable cause, because the two text messages in context of the other are sufficient to establish probable cause that there was "a substantial likelihood that without care or treatment" K.M. would have "cause[d] serious bodily harm to himself . . . in the near future." *See* § 394.463(1)(b)2. The majority faults the dispatching officer's reasoning because the purported suicide threat was not "explicit"; however, such a rigid requirement would obligate law enforcement officers to ignore practical human intuition and would transform what should be a common-sense analysis into a stilted standard of certitude that is not supported by applicable caselaw.[8] *See Hatcher v. State*, 342 So. 3d 807, 810 (Fla. 1st DCA 2022) ("Probable cause is a 'flexible, common-sense standard.' It 'turn[s] on the assessment of probabilities in particular factual contexts -- not readily, or even usefully, reduced to a neat set of legal rules.' Probable cause 'is not a high bar.' It is enough if there is 'the kind of "fair probability" on which "reasonable and prudent [people,] not legal technicians, act." ' " (alteration in original) (first quoting *Florida v. Harris*, 568 U.S. 237, 240 (2013); then quoting *id.* at 244; then quoting *Kaley v. United States*, 571 U.S. 320, 338 (2014); and then quoting *Harris*, 568 U.S. at 244)); *J.J. v. State*, 312 So. 3d 116, 123 (Fla. 3d DCA 2020) ("The standard for probable cause does not rely on one factor and does not consider the various factors in isolation. Instead, it 'depends on the totality of the circumstances.' " (quoting *Maryland v. Pringle*, 540 U.S. 366, 371 (2003))).

To the extent the majority suggests that at the hearing on K.M.'s motion to suppress, the State was required to admit and authenticate the text messages upon which the officers relied, this is incorrect. What the dispatching officer testified to observing during her encounter with the ex-girlfriend -- even if that included out-of-court statements -- is admissible and relevant to the issue of whether it was objectively reasonable for the dispatching officer to conclude there was probable cause to believe detention of K.M. was justified under the Baker Act or as part of a welfare check. The State may establish its case using hearsay evidence or evidence that would not otherwise be admissible at trial. *See United States v. Raddatz*, 447 U.S. 667, 679 (1980) ("At a suppression hearing, the court may rely on hearsay and other evidence, even though that evidence would not be admissible at trial." (first citing *United States v. Matlock*, 415 U.S. 164, 172-174 (1974); then citing *Brinegar v. United States*, 338 U.S. 160, 172-174 (1949); and then citing Fed. R. Evid. 104(a), 1101(d)(1))).

If, for example, a hypothetical officer were to encounter a communication sent via an electronic messaging application which automatically deletes messages after a certain time period, and that message included a photo depicting the sender standing on a stool with a noose around his neck asserting that he'd "soon be gone," the subsequent inability to admit and authenticate the electronic message at a future suppression hearing would not undermine the State's argument that probable cause justified the officer's intervention. Admission and authentication of the text message and image encountered by the dispatching officer in this case is no more necessary for the purposes of the adjudication of K.M.'s motion to suppress. *Cf. Ferrer v. State*, 785 So. 2d 709, 711 (Fla. 1st DCA 2001) ("The [State is] not required to 'produce any particular witness provided [it] sustains [its] burden of coming forward with evidence showing that there was probable cause . . . .' ") quoting *People v. Edwards*, 741 N.E.2d 876 (N.Y. 2000), *disapproved on other grounds by State v. Bowers*, 87 So. 3d 704 (Fla. 2012)).

The evidence presented by the State was sufficient to establish that the dispatching officer had probable cause to believe that there was a substantial likelihood that K.M. would harm himself in the near future because the text message and the picture together gave rise to a reasonable inference that he intended to commit suicide imminently. Nothing indicates that there was reason to be confused by what K.M. meant or to doubt his sincerity. While there might have been other conceivable explanations for the image and message sent by K.M., a reasonable reader under the circumstances would be justified in concluding that it was fairly probable that by "I'll be gone," K.M. meant to convey that he would be dead. *See Owens v. State*, 317 So. 3d 1218, 1219 (Fla. 2d DCA 2021) ("The probable cause standard . . . is a 'practical and common sensical standard.' It is enough if there is the 'the kind of fair probability' on which 'reasonable and prudent people, not legal technicians, act.' " (quoting *Johnson v. State*, 275 So. 3d 800, 802 (Fla. 1st DCA 2019))).

However, because the State failed to establish *all* the necessary elements to justify detention under the Baker Act, the only justification for the detention of K.M. and attendant search was pursuant to the officers' community caretaking role of performing welfare checks and delivering potential victims of serious harm to safe havens. *See S.P. v. State*, 331 So. 3d 883, 892 (Fla. 2d DCA 2022) ("The case law has recognized that officers engaged in a so-called 'community caretaking' role . . . may conduct a limited search of persons and property when it is necessary to ensure safety."); *White v. State*, 170 So. 3d 77, 80 (Fla. 2d DCA 2015) ("From a Fourth Amendment perspective, as a matter of officer safety, it often may be reasonable for an officer to search an individual who is mentally ill or severely intoxicated prior to transporting the individual in the officer's vehicle to a safe haven."). The majority is correct that the scope of such a search would be limited to that necessary to accomplish the purpose of ensuring the safety of the individual or the officer -- and not the scope of a search incident to arrest, which is what appears to have been performed on K.M. *See Taylor v. State*, 326 So. 3d 115, 118 (Fla. 1st DCA 2021) (explaining searches conducted during a welfare check are "solely for safety reasons"). The State's argument that the detaining officer's search of K.M. was within the limited scope permitted for searches associated with welfare checks fails for several reasons. The detaining officer ascertained nothing with respect to whether K.M.'s safety was at risk, instead operating under the presumption that the dispatching officer (who had interacted with K.M.'s ex-girlfriend and herself observed the text messages) properly determined that detention under the Baker Act was justified. Had the dispatching officer's observations and conclusions been sufficient to make such determination reasonable -- and provided that the detaining officer did not encounter any circumstances that tended to contradict what the first officer conveyed -- then the fact that the detaining officer was relying on his fellow officer's knowledge would not necessarily have made the detention unlawful. *See State*

v. Bagley, 844 So. 2d 688, 690 (Fla. 3d DCA 2003) ("The fellow officer rule allows an arresting officer to assume probable cause to arrest a suspect from information supplied by other officers.").

The majority emphasizes that it found no recorded opinions in which the dispatching officer who made a satisfactory Baker Act determination did not have a face-to-face encounter with the person to be examined pursuant to the Baker Act. The majority insinuates that detentions for involuntary examinations pursuant to the Baker Act are categorically prohibited unless the officer making the determination that the Baker Act criteria are met has had a face-to-face interaction with the person before taking the person into custody. However, it is not inconceivable that under some circumstances a dispatching officer has all the facts necessary to justify detention pursuant to the Baker Act even without a face-to-face encounter between the officer and the person to be detained; as such, it would be incorrect to suggest that such a categorical requirement exists.

In this case, however, even considering the fellow-officer rule, the dispatching officer's observations were insufficient -- as explained above. Additionally, the detaining officer observed circumstances that contradicted the dispatching officer's conclusions. Upon the detaining officer's arrival, instead of appearing suicidal, K.M. appeared calm, alert, and did not appear to be in any distress as he conversed with another unnamed individual.

Moreover, even if the detaining officer could have relied on the fellow officer rule to support that K.M. met the criteria in section 394.463(1)(a) and (1)(b) or was otherwise in need of a welfare check, what the detaining officer observed when he encountered K.M. would suggest that any danger that might have existed had passed. *Cf. Fields v. State*, 105 So. 3d 1280, 1284 (Fla. 2d DCA 2013) (reversing the judgment and sentence and remanding for discharge where the officer was dispatched to the defendant's home due to reports and concerns about a "medical emergency" and the defendant's mental status, but "contrary to the facts reported" to the officer, the officer's investigation revealed "a fully clothed adult male who was standing outside smoking a cigarette" and who was "neither agitated nor aggressive, and . . . able to engage in a lengthy and coherent conversation with" the officer and the officer "only . . . order[ed the defendant] to hand over the [pill] bottle" after the officer had determined that there was no medical emergency or concern for the defendant's mental status). And even if the detaining officer had encountered circumstances that corroborated the dispatching officer's conclusion that K.M. should be detained under the Baker Act or was otherwise in need of a welfare check, the scope of the search performed by the detaining officer was too broad. Had the detention been to perform a welfare check, the search should have been limited to a pat-down for a needle or for another dangerous implement or substance that could jeopardize the safety of K.M. or the attending officers. *See S.P.*, 331 So. 3d at 892. And had the search been incident to a detention pursuant to the Baker Act, then its scope should have been limited to that necessary to ensure the safety of the detainee or attending officers during transportation of the individual to the site of an involuntary examination. *See* § 394.463(1), (2) (providing authority for an officer to "take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination"). The majority is correct that a police department's blanket policy of conducting the equivalent of a search incident to arrest every time an individual rides in a police cruiser may violate the Fourth Amendment under certain circumstances and would not justify such a search in this case. *See, e.g.*, *id.*; *A.B.S. v. State*, 51 So. 3d 1181, 1182 (Fla. 2d DCA 2010).

For the foregoing reasons, I concur in result only.

1Pursuant to Florida Rule of Judicial Administration 2.420(d)(1)(B)(viii), we refer to the appellant by initials.

2§§ 394.451-.47892, Fla. Stat. (2020).

3The text messages were not admitted into evidence.

4We emphasize the statutory criteria and its conjunctive, alternative requirements because the State, at the suppression hearing, argued to the trial court that it is "a twisted reading" of the statute "to say that you must do

one part of an and/or statement before you can get to the second part of the and/or statement."

[5]We note that the State did not argue below or here that the fellow officer rule has any application in Baker Act cases, and we have found no law supporting its application in Baker Act cases. *Cf. State v. Bowers*, 87 So. 3d 704, 707 (Fla. 2012) ("Under this rule, the collective knowledge of officers *investigating a crime* is imputed to each officer and one officer may rely on the knowledge and information possessed by another officer to establish probable cause." (emphasis added) (quoting *Bowers v. State*, 23 So. 3d 767, 769 (Fla. 2d DCA 2009))); *S.P.*, 331 So. 3d at 889 ("[T]he fact remains that it was Sergeant Lewis who made the determination and that it was under Sergeant Lewis' direction that Deputy Anderson took S.P. into custody for a Baker Act assessment.").

[6]Although *A.B.S.* and *R.A.S.* concerned the truancy statute rather than the Baker Act, this court has made it clear that such distinction is not determinative. *S.P.*, 331 So. 3d at 893 ("[I]t seems to us that the operative effects of a law enforcement officer's actions in both kinds of cases -- as to the seizure of an individual and the constitutional rights being implicated when that individual is searched -- are effectively indistinguishable, whether the precipitating event is truancy or a mental health crisis. We think the conclusions reached in *L.C.* and *A.B.S.*, as well as in [*Fields v. State*, 105 So. 3d 1280 (Fla. 2d DCA 2013)], offer a more suitable framework to examine the Fourth Amendment's operation in cases such as these.").

[7]This discussion omits analysis of whether the State presented sufficient evidence that K.M. "had a mental illness" and that the criteria of subsections (1)(a)1 or (1)(a)2 and the requirements of subsections (1)(b)1 or (1)(b)2 were met "because of his . . . mental illness." *See* § 394.463(1). The issue of whether there was sufficient evidence presented for the trial court to conclude that K.M. had a mental illness was not raised by the parties.

[8]The majority relies in part on *Bybee v. State*, 295 So. 3d 1229, 1231-32 (Fla. 2d DCA 2020) for its conclusion that the picture of the hand holding the needle "with no face or identity" together with K.M.'s message was "not an explicit suicide threat" and were insufficient to indicate a likelihood of imminent harm. It is worth noting that the majority's reliance on *Bybee* is misleading because the *Bybee* decision is inapposite. In *Bybee*, the defendant -- a former police officer -- appealed his judgments and sentences for felony kidnapping, exploitation of the elderly or disabled, fraudulent use of personal identification of another person, and offenses against users of computers, computer systems, computer networks, and electronic devices. *Id.* at 1231. Bybee had impersonated the subsequently Baker Acted elderly victim by sending an email from the person's account to her doctor with a subject line, "Killing Myself Tonight," and when deputies arrived at the elderly person's house, "they found [her] apparently confused, combative, and screaming profanities." *Id.* at 1231-1232. While the facts pertaining to the defendant's actions concerning the elderly person's email and the resulting involuntary commitment pursuant to the Baker Act were relevant to the criminal appellate issue discussed in the *Bybee* opinion, this court had no occasion to evaluate whether the elderly person was properly subjected to involuntary commitment pursuant to the Baker Act. *Cf. id.* at 1232-35. As such, the facts and analysis of *Bybee* are irrelevant to the question of whether there was probable cause to detain K.M. pursuant to the Baker Act in this case, and the majority's reliance upon that decision for such purpose in this case is misplaced.

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