SULLIVAN, C. J., dissenting, with whom VERTEFEUILLE, J., joins. Because I would conclude that the stop and search of the defendant, Tommy Hammond, did not violate the fourth amendment to the United States constitution, I respectfully disagree with the majority's resolution of the first certified issue. I would, therefore, reach the second certified issue, i.e., whether the Appellate Court properly concluded that the defendant's two convictions for possession of narcotics in violation of General Statutes § 21a-279 (a) did not violate the federal and state prohibitions against double jeopardy, and I would affirm the judgment of the Appellate Court. See *State* v. *Hammond*, 60 Conn. App. 321, 759 A.2d 133 (2000).

I

INVESTIGATORY STOP

The majority cites *Florida* v. *J.L.*, 529 U.S. 266, 268, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000), in support of its conclusion that the stop and search in this case was not justified. In *Florida* v. *J.L.*, supra, 268, the police received a tip that a young black man in a plaid shirt, standing at particular bus stop, was carrying a gun. The police went to the bus stop and found three young black

men, one of whom was wearing a plaid shirt. On this basis alone, the police approached the suspect, frisked him and seized a concealed firearm. Id., 268. The tip made no predictive claims that could be used to assess its credibility, and the veracity of the tip was not verified by any of the other indicators of possible criminal activity. Id., 270. Accordingly, the investigatory stop was ruled unconstitutional. Id., 271.

At first glance, the facts in the present case seem to resemble those in *Florida* v. *J.L.*, supra, 529 U.S. 266. The police received an anonymous tip and stopped and searched the defendant on the basis of the facts that (1) he matched the general description given by the anonymous caller and (2) he was in the area indicated by the anonymous caller. In this case, however, the police had additional justification for making the stop. See *Alabama* v. *White*, 496 U.S. 325, 329, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990) (anonymous tip, ''standing alone, would not warrant a man of reasonable caution in the belief that [a stop] was appropriate''; rather, ''something more'' is necessary [internal quotation marks omitted]).[1] In *Alabama* v. *White*, supra, 332, that ''something more'' included accurate predictions as to the suspect's future behavior, i.e., the suspect's destination. The ''something more'' in the present case included (1) the evasive behavior of the defendant, first, in walking away after making eye contact with one officer and, second, in turning around again when faced by another officer and (2) the fact that the area was a location known for drug sales activity. *Illinois* v. *Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000), and *Florida* v. *Rodriguez*, 469 U.S. 1, 6, 105 S. Ct. 308, 83 L. Ed. 2d 165 (1984). Thus, under the totality of the circumstances standard; see *United States* v. *Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981); I would conclude that the facts supported a reasonable and articulable suspicion that criminal activity was afoot so as to justify an investigatory stop under *Terry* v. *Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

II

DOUBLE JEOPARDY

Because I would conclude that this case should be affirmed on the first certified issue, I would also address the second certified issue. The defendant claims that conviction on two counts of possession of narcotics violates his constitutional protection against double jeopardy. I disagree.

The defendant was found guilty of possession of cocaine in violation of § 21a-279 (a), possession of heroin in violation of § 21a-279 (a), possession of heroin with intent to sell in violation of General Statutes § 21a-277 (a), and possession of heroin with intent to sell within 1500 feet of a school in violation of General

Statutes § 21a-278a (b). The trial court sentenced the defendant to four years incarceration for possession of cocaine. The trial court merged the conviction for possession of heroin into the conviction for possession of heroin with intent to sell and sentenced the defendant to twelve years to run concurrently with the sentence for possession of cocaine. Finally, the trial court sentenced the defendant to three years for possession of heroin with intent to sell within 1500 feet of a school, to run consecutively to the other sentences.

The fifth amendment protection against double jeopardy ensures that defendants are neither tried nor punished multiple times for the same offense. *Brown* v. *Ohio*, 432 U.S. 161, 165, 97 S. Ct. 2221, 53 L. Ed. 2d 187 (1977). The constitution of Connecticut incorporates the same double jeopardy prohibitions into its due process protection. *State* v. *Chicano*, 216 Conn. 699, 706, 584 A.2d 425 (1990), cert. denied, 501 U.S. 1254, 111 S. Ct. 2898, 115 L. Ed. 2d 1062 (1991).

In the present case, relying on his two convictions for possession of narcotics, the defendant invokes the double jeopardy prohibition against multiple punishments for the same crime. The defendant relies heavily on *State* v. *Rawls*, 198 Conn. 111, 111–12, 502 A.2d 374 (1985), in which a defendant was convicted of one count of possession of cocaine and one count of possession of heroin, and sentenced to seven years incarceration on each count, with the terms to run concurrently. This court, holding that the imposition of separate penalties violated the prohibition against double jeopardy, set aside both the conviction and the sentence for possession of heroin. Id., 122.

When faced with a similar situation in *State* v. *Chicano*, supra, 216 Conn. 706, five years after *Rawls*, however, this court adopted the approach used by the Second Circuit Court of Appeals and vacated one of the sentences but allowed both convictions to stand. See also *United States* v. *Roman*, 870 F.2d 65, 75–76 (2d Cir.), cert. denied, 490 U.S. 1109, 109 S. Ct. 3164, 104 L. Ed. 2d 1026 (1989); *United States* v. *Aiello*, 771 F.2d 621, 632–33 (2d Cir. 1985). In *Chicano*, we upheld our holding in *Rawls* that the imposition of separate sentences for possession of heroin and possession of cocaine violated the prohibition against double jeopardy. We also concluded, however, that it was only necessary to vacate one of the sentences, and not the conviction itself. We then combined both convictions into a compound offense.

Applying this methodology to the present case, I would conclude that the trial court has not imposed multiple punishments for the same crime. The conviction of possession of heroin was merged into the conviction for possession of heroin with intent to sell because the former is a lesser included offense of the latter. Therefore, the defendant was convicted of possession

of cocaine, possession of heroin with intent to sell, and possession of heroin with intent to sell within 1500 feet of a school. It would be improper to merge the convictions for possession of heroin and possession of cocaine together, and then merge that conviction into possession of heroin with intent to sell because the defendant was not charged with possession of cocaine with intent to sell. Therefore, the Appellate Court properly concluded, it was possible for the defendant to commit the greater offense of possession of heroin with intent to sell without having first committed the lesser offense of possession of cocaine. *State* v. *Hammond*, supra, 60 Conn. App. 333.

Accordingly, I respectfully dissent.

[1] In *Alabama* v. *White*, supra, 496 U.S. 326–27, the police received an anonymous tip that a certain woman would be exiting a certain apartment at a certain time, getting into a brown Plymouth station wagon with a broken right taillight, heading toward a certain motel, and transporting cocaine in a brown attache case. The police saw a woman leaving the building in question and getting into a brown station wagon with a broken right taillight. After the woman began driving in the direction of the motel, the police stopped her, told her she was suspected of transporting cocaine and asked to search her car. Id. She agreed, and the police located a brown attache case containing marijuana. Id. The United States Supreme Court held that the investigatory stop was permissible under *Terry* v. *Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), because the tip accurately predicted the specific car, point of departure, and apparent destination of the woman, all of which demonstrated inside knowledge and gave credibility to the tip. *Alabama* v. *White*, supra, 332. Accurate prediction of future behavior overcame the fact that a tip was the only indication that illegal activity was afoot. Id.