IN THE SUPREME COURT OF FLORIDA

CASE NO.SC05-1249

LAWRENCE TIMOTHY REID,

Petitioner,

-vs-

CHARLES J. CRIST, JR.
ATTORNEY GENERAL FOR THE STATE OF FLORIDA

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

PETITIONER'S BRIEF ON JURISDICTION

MARISA TINKLER MENDEZ, P.A.
MARISA TINKLER MENDEZ, ESQ.
901 Ponce deLeon Blvd.
Suite 304
Coral Gables, Florida 33134
Florida Bar No. 586455
(305) 444-3747

Counsel for Lawrence Timothy Reid
Petitioner

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PREFACE

Lawrence Timothy Reid (hereinafter referred to as "Mr. Reid" or "Petitioner" was charged by information filed May 16, 2003 with a single count of possession of cocaine, in an amount of less than 0.05 grams. After the Circuit Court denied his suppression motion, Mr. Reid chose to enter a no contest plea and pursue his case on appeal. Given Reid's lack of any prior criminal record, adjudication was withheld and he was placed on eighteen (18) months probation. The Fourth District Court of Appeal affirmed the lower court order. Reid seeks to invoke the discretionary jurisdiction of this Court based on clear direct and irreconcilable conflicts created by the appellate court's decision.

STATEMENT OF THE CASE AND FACTS

On the evening of May 7, 2003, at approximately 10:30 p.m. Broward Sheriff Deputy Samuel R. Sirico saw a grey Saab drive into the quite, residential area of 433 S.W. 2nd Court in Pompano Beach, turn onto S.W. 2nd Court and pull into the parking lot/driveway at 437 S.W. 2nd Court. The SAAB parked briefly and then properly backed out onto S.W. 2nd Court. After backing out of the parking lot area into the swale, the Saab stopped briefly in the street facing the correct direction and on the correct side of the street.

During the time the Saab was briefly standing in the street, Sirico

claimed that a single vehicle drove down the street and had to "drive around" the Saab. He explained that this vehicle had a clear and unobstructed path past the Saab, with no opposing traffic. The vehicle maintained its same speed as it easily drove by the Saab. There was no traffic in the neighborhood, and no other vehicles driving down that street.

Sirico then decided to follow the grey Saab as it drove out of the residential area, at a lawful speed, and followed the vehicle for nearly two miles. During the time he followed the Saab he did not see any traffic infractions committed, did not see the driver make any furtive or suspicious movements, or otherwise drive improperly. Sirico also "ran" the license plate and determined that there were no problems with the plate or vehicle. Obviously having no fear or concern whatsoever for his safety, Sirico decided to make a traffic stop without any back up or assistance. When the SAAB was stopped, Sirico noted that the driver was the only person in the car. He asked the driver for his license and registration, and Mr. Reid immediately complied. Sirico found Mr. Reid to be pleasant, cooperative, calm and forthright. Mr. Reid stayed in the car while Sirico ran the license. Some time then passed, and Sirico returned to the driver's side of the car. Sirico did not find any warrants or other problems with the license. However, instead of issuing a traffic citation, which Sirico claimed was for

obstructing traffic, he ordered Mr. Reid from the car. The "order" was given before any other officer arrived at the location.

Sirico claimed that, after Mr. Reid got out of his car, Sirico looked inside of the car and saw one or two pieces of something that he was "fairly certain", but was not positive, was cocaine. He claimed that the pieces were on the "flat" part of the driver's front seat. He said he left the objects on the seat to allow his partner and trainee, Deputy Newell-Martinez, the opportunity to search the car. Upon arrival, Newell-Martinez spent some time searching the vehicle, yet, never saw anything on the driver's seat.

During the subsequent suppression hearing, the Circuit Court Judge specifically found that there was ***no evidence that any drug transaction had occurred on the night of May 7, 2003 involving Mr. Reid, and, but for the alleged traffic infraction, there was no basis to stop Mr. Reid.*** Moreover, the Court found that the entire case turned on the validity of the traffic stop and whether or not the obstruction of traffic citation was lawfully issued, and there was no evidence to show that Mr. Reid's conduct was willful or that he willfully intend to obstruct traffic. An appeal followed, and the order denying the motion to suppress was affirmed with opinion. (App. Exh. A)

SUMMARY OF THE ARGUMENT

The Petitioner seeks discretionary review from this Court. The lower

court's decision that Petitioner was lawfully stopped for the traffic infraction of obstructing traffic, Fla. Stat. sec. 316.2045 was erroneous since Petitioner's conduct was not willful, and the Court misapplied existing law requiring proof that Petitioner willfully intended to impede or obstruct the normal flow of traffic.

Further review is sought since the court below misapplied existing law that, for a Fourth Amendment intrusion, which is, to order a traffic offender from his vehicle, there must be some *real, apparent and articulable concern for the police officer's safety.*

Finally, the court below applied an erroneous "plain view" analysis of the search in this case instead of the "open view" analysis, which requires a warrant when a search is conducted pursuant to a traffic infraction, unless contraband is *immediately* apparent or exigent circumstances exist.

ARGUMENTS

I.

The Fourth District Court of Appeal's Decision is in Direct conflict with the District Court's Decisions in Jones v. State, 842 So.2d 889 (Fla. 2d DCA 2003) and Metropolitan Dade County v. The State of Florida Department of Environmental Protection, 714 So. 2d 512 (Fla. 3d DCA 1998), since it ignores the statutory requirement of proof that the offense conduct was willful

The Fourth District has incorrectly interpreted Florida Statute section 316.2045, the obstruction of traffic statute, resulting in an erroneous finding

that the Mr. Reid's driving conduct established the offense. The Court below has misinterpreted the term "willful" or "willful intent", and the Fourth District's decision conflicts with the decisions in Jones v. State, 842 So.2d 889 (Fla. 2d DCA 2003) and Metropolitan Dade County v. The State of Florida Department of Environmental Protection, 714 So.2d 512 (Fla. 3d DCA 1998), as well as an earlier decision in the Fourth District in Thunderbird Drive-In Theatre, Inc. v. Reed, 571 So.2d 1341 (Fla. 4th DCA 1990).

Florida Statute §316.2045, the obstruction of traffic statute provides in pertinent part:

> (1) It is unlawful for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon…

In Thunderbird Drive-In Theatre, Inc. v. Reed, supra, the Fourth District Court found that the statute's use of the word "willfully" required that there be an intentional act of an unreasonable character, that disregards a known or obvious risk of such magnitude as to render it probable that harm would result. The lower court here, however, refused to correctly apply the statute and ignored the statutory requirement of showing

specific willful intent.[1]

In Metropolitan Dade County v. The State of Florida Department of Environmental Protection, 714 So.2d 512 (Fla. 3d DCA 1998), the Third District engaged in an evaluation of the term "willful" in the context of an FDEP statute. Relying on the definition of "willful violation" in Thunderbird, which, in turn, had relied on the Prosser & Keeton Handbook of the Law of Torts, the Third District Court concluded that the usual meaning of the term "willful…is that the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow…."

The Third District Court referring further to the Black's Law Dictionary definition of the term "willful", which provides "willful" as:

[A]n act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. ***Black's Law Dictionary 1434 (5th ed. 1979)***. See also Jones v. State, supra.

Since the lower court here refused to apply the correct definition of

[1] The trial judge actually stated that he could not find that Mr. Reid acted willfully—that is with "specific intent to impede or hinder traffic.[Tr.294]

the term "willful" to the conduct in this case, the court erroneously concluded that Mr. Reid's conduct amounted to a violation of the obstruction of traffic statute. The Court below neglected to require that a "willful intent" to impede or hinder the free flow of traffic rather than just the "intent" to impede or hinder the free flow of traffic had to be shown to result in a violation of the statute. The Fourth District in this case required much less as far as the intent element of the offense than other Court's of appeal, resulting in a conflict in the District Courts. See, e.g. Jones, supra.; Metropolitan Dade County. Finally, the facts of this case do not establish a violation of the obstruction of traffic statute. There was no willful interference with or obstruction or impeding of any traffic, and the Appellate Court neglected to apply the proper definition of the term willful resulting in a decision that conflicts with other appellate court decisions and also an internal conflict.

II.

The Fourth District Court of Appeal's Decision is in Direct and Express Conflict with the Third District Court's Decision in R.H. v. State of Florida, 671 So. 2d 871 (Fla. 3d DCA 1996), and further mis-interprets the United States Supreme Court Decision of Pennsylvania v. Mimms, 434 U.S. 106 (1977), since it erroneously approves an unconstitutional detention and search, violating the Petitioner's Fourth Amendment

To justify a Fourth Amendment intrusion to remove an individual from a vehicle following a *lawful* traffic stop, there must be some real,

apparent and articulable concern for the police officer's safety. See Pennsylvania v. Mimms, 434 U.S. 106 (1977); See R.H. v. State of Florida, 671 So.2d 871 (Fla. 3d DCA 1996). There are, however, limits to the intrusion, as exemplified by what occurred in R.H., supra., since an order to exit a vehicle, although *de minimis* is a Fourth Amendment seizure. See Pennsylvania v. Mimms, supra.

The Fourth District in this case misinterpreted the Supreme Court's holding in Mimms, resulting in a misapplication of the existing law. There must be more than "general" safety concerns for the officer to order a traffic offender out of his car. The Fourth District minimized the legal requirements in order to validate the unlawful seizure that occurred in this case. Deputy Sirico had absolutely no concern for his safety at any point during the entire encounter. This was clear from his conduct and the facts of the case. More important, however, is that the Court of Appeal refused to acknowledge and apply the correct legal and constitutional standard for determining whether or not Sirico's conduct, in ordering Mr. Reid from the vehicle, was proper. R.H. v. State, supra; L.W. v. State, 538 So.2d 523 (Fla. 3d DCA 1989).

III.

The Decision of the Fourth District Court of Appeal is in Direct Conflict with Ensor v. State, 403 So. 2d 349 (FLA. 1981), Jordan v. State, 664 So.2d 275 (Fla. 5th DCA 1995), Doctor v. State, 596 So.2d 275 (Fla. 5th DCA 1995) and Carroll v. United States, 267 U.S. 132 (1925) in that it

mis-applied existing law for open view searches as opposed to plain view searches

The review of the legality of the search conducted in this case was erroneously made under the "plain view" standard instead of the "open view" standard. In the case of a traffic stop, the police must obtain a warrant to search the vehicle unless contraband in *immediately apparent*, or exigent circumstances exist, which would then authorize a search of the vehicle under the plain view doctrine. See e.g. Carroll v. United States, 267 U.S. 132 (1925). The legal analysis of the District Court of Appeal in this case was fatally flawed and in conflict with this Court's decision in Ensor v. State of Florida, 403 So.2d 349 (Fla. 1981) The Court of Appeal confused the terms "plain view" and "open view" in concluding that the police officer lawfully seized the cocaine after discovering it in *plain view* when Mr. Reid was ordered out of his vehicle. The plain view doctrine, however,

> "…[r]efers exclusively to the legal justification [of] the reasonableness for the seizure of evidence which has not been particularly described in a warrant and which is inadvertently spotted in the course of a constitutional search…..but, where the vantage point from which the "plain view" is made is not within a constitutionally protected area, the language to use is "open view".

In this case the incriminating nature or character of the evidence was not readily or immediately apparent at the time of the stop. Doctor v. State, 596So.2d 442(Fla. 1992);Jordan v. State, 664 So. 2d 275(Fla. 5th DCA 1995)

CONCLUSION

The Petitioner urges this Court to accept discretionary review of this case, based on direct and irreconcilable with decisions of the Fourth District Court of Appeal, other District Courts of Appeal and of the United States Supreme Court.

Respectfully submitted,

MARISA TINKLER MENDEZ, P.A.
901 Ponce deLeon Blvd.
Suite 304
Coral Gables, Florida 33134
(305) 444-3747
By_____
MARISA TINKLER MENDEZ, ESQ.
Florida Bar No. 586455

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petitioner's amended brief on jurisdiction was delivered by mail to the Office of the Attorney General, 1655 Palm Beach Lakes Blvd. Suite 300, West palm Beach, Fla. 33401on this 17th day of August, 2005.

By_____
MARISA TINKLER MENDEZ, ESQ.

CERTIFICATE OF TYPE SIZE

I hereby certify that this brief is printed in 14 point Times New Roman, conforming to Florida Rule of Appellate Procedure 9.210.

By_____
MARISA TINKLER MENDEZ, ESQ.

APPENDIX