

TIMOTHY WALLACE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

VS.

STATE OF FLORIDA,)
)
 Respondent.)
 _____)

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN <u>WALLACE V. STATE</u> , 34 Fla. L. Weekly D925 (Fla. 5 th DCA May 8, 2009), DIRECTLY CONFLICTS WITH <u>PANTER V. STATE</u> , 34 Fla. L. Weekly D921a (Fla. 1 st DCA May 7, 2009).	3
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF CITATIONS

<u>CASES CITED:</u>	<u>PAGE NO.</u>
Florida Constitution	4
<u>Brye v. State</u> 927 So.2d 78 (Fla. 1 st DCA 2006)	3,4
<u>Hilton v. State</u> 961 So.2d 284 (Fla. 2007)	4
<u>Holland v. State</u> 696 So.2d 757 (Fla. 1997)	4
<u>Huffman v. State</u> 937 So.2d 202 (Fla. 1 st DCA 2006)	3
<u>Illinois v. Gates</u> 462 U.S. 213 103 S.Ct. 2317 76 L.Ed.2d 527 (1983)	4
<u>Ornelas v. United States</u> 517 U.S. 690 116 S.Ct. 1657 134 L.Ed.2d 911 (1996)	3
<u>Pagan v. State</u> 830 So.2d 792 (Fla. 2002)	3
<u>Panter v. State</u> 34 Fla. L.Weekly D921a (Fla. 1st DCA May 7, 2009)	3,4
<u>Terry v. Ohio</u> 392 U.S. 1, 21 (1968)	3,4

TABLE OF CITATIONS(continued)

<u>CASES CITED:</u>	<u>PAGE NO.</u>
<u>United States v. Arvizu</u> 534 U.S. 266 122 S.Ct. 744 151 L.Ed.2d 740 (2002)	4
<u>United States v. Bajakajian</u> 524 U.S. 321 118 S.Ct. 2028 141 L.Ed.2d 314 (1998)	3
<u>Wallace v. State</u> 34 Fla. L. Weekly D925 (Fla. 5th DCA May 8, 2009)	1

STATEMENT OF THE CASE AND FACTS

The Petitioner filed a motion to suppress evidence on September 6, 2007. (R101-3). A hearing was held on the motion on October 8, 2007. (R1-79). During the hearing, Sergeant Scott Molyneaux testified. (R6). He testified that he was undercover on June 15, 2007 looking for various criminal activity. (R8). He testified that around 9:30 P.M. he saw the Petitioner arrive at a 7-Eleven store in a high-crime area, walk in the store quickly and look around a lot. (R9-10). He also testified that he observed a hand-to-hand transaction between the Petitioner and another man, but that he did not see any money or drugs exchanged, nor was he able to hear anything said by the two men. (R10, 30).

The trial court denied the Petitioner's motion to suppress. (R129-34). The trial court commented on the difficulty in determining whether or not to grant or deny the suppression motion. The court said:

Mr. Wallace, I have really been back and forth on this. I have read cases from the Second, the Fourth, and Fifth, and I changed my mind four times; that is how difficult I think it is. I'm going to deny your motion to suppress but I encourage your attorney to let the Fifth tell me I was right or wrong. (R82).

The Petitioner filed his notices of appeal to the Fifth District Court of Appeal on November 26, 2007 and on December 21, 2007. (R135, 178). The Fifth District filed an opinion affirming the trial court's decision on May 8, 2009. (**Wallace v. State, 34 Fla. L. Weekly D925 (Fla. 5th DCA May 8, 2009)**). The Fifth District concluded "that the totality of the circumstances in this case justified the detention". (**Id.**).

SUMMARY OF THE ARGUMENT

The decision of the Fifth District Court of Appeal directly conflicts with the First District Court of Appeal's decision on the same issue of law. Therefore, this Court's discretionary review should be exercised and the decision of the Fifth District Court of Appeal should be reversed.

ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN
WALLACE V. STATE, 34 Fla. L. Weekly D925 (Fla. 5th DCA May 8,
2009), DIRECTLY CONFLICTS WITH PANTER V. STATE, 34 Fla.
L. Weekly D921a (Fla. 1st DCA May 7, 2009).

The opinion of the Fifth District in the instant case affirmed the order denying the suppression of evidence. This holding directly conflicts with Panther v. State, 34 Fla. L. Weekly D921a (Fla. 1st DCA May 7, 2009).

The facts in Panther were that a deputy observed two men in a “high-crime area” engage in “a hand-to-hand transaction”. (Id at 1). The deputy in the Panther case did not actually see any money or drugs exchanged between the two men. (Id at 1). Similarly, in the instant case, the officer testified that he observed a hand-to-hand transaction but that he did not see any money or drugs exchanged. (R10, 30). The main issue in both cases is whether the officer had a reasonable, well-founded, particularized suspicion of criminal activity to justify an investigatory stop. See Terry v. Ohio, 392 U.S. 1, 21 (1968).

The First District in Panther found:

“The trial court's ruling on a motion to suppress is a mixed question of law and fact.” Brye v. State, 927 So.2d 78, 80 (Fla. 1st DCA 2006). We review the trial court's ruling denying a motion to suppress to determine whether competent, substantial evidence supports the factual findings. See Huffman v. State, 937 So.2d 202, 205 (Fla. 1st DCA 2006).

[M]ixed questions of law and fact that ultimately determine constitutional rights are to be reviewed by the appellate courts applying a two-step approach. Deference is to be shown to the trial court on questions of historical fact, but de novo review of the application of a constitutional standard to the facts in a particular case is proper. Brye, 927 So.2d at 80-81; see United States v. Bajakajian, 524 U.S. 321, 336 n. 10, 118 S.Ct. 2028, 141 L.Ed.2d 314 (1998); Ornelas v. United States, 517 U.S. 690, 696-99, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996); Huffman, 937 So.2d at 205-06. We must view the evidence and all reasonable deductions and inferences in a manner most favorable to sustaining the ruling. See Pagan v. State, 830 So.2d 792, 806 (Fla.2002). In Florida, when

ruling on search and seizure issues, courts are required by the conformity clause in article I, section 12 of the Florida Constitution to follow the applicable United States Supreme Court precedents. See Holland v. State, 696 So.2d 757, 759 (Fla.1997); Brye, 927 So.2d at 80. In evaluating the legality of the officers' actions, we must examine the facts available to the officers and the totality of the circumstances to determine whether they had a particularized, objective basis to suspect criminal activity. See United States v. Arvizu, 534 U.S. 266, 273, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002); Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); Hilton v. State, 961 So.2d 284, 294 (Fla.2007).

After review, we conclude that Panter's position is well-founded. The deputy did not have a reasonable, well-founded, particularized suspicion of criminal activity to justify an investigatory stop. See Terry, 392 U.S. at 30-31, 88 S.Ct. 1868. Because Deputy Wiggins was not justified in conducting the investigatory stop, the trial court erred in denying the dispositive motion to suppress. We REVERSE the judgment and sentence and REMAND WITH DIRECTIONS to the trial court to grant the motion to suppress and to discharge Panter for these offenses.

(Panter v. State, 34 Fla. L.Weekly D921a (Fla. 1st DCA May 7, 2009), at 2-3).

The Fifth District's opinion in the instant case is in direct conflict with the decision of the First District. This Court should exercise discretionary review, and reverse the decision of the Fifth District Court of Appeal.

CONCLUSION

BASED UPON the cases and authorities cited herein, the Petitioner requests that this Honorable Court accept jurisdiction of this cause and vacate the decision of the Fifth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been served upon The Honorable Bill McCollum, Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, via his basket at the Fifth District Court of Appeal, and mailed to the Petitioner, Timothy Wallace, on this ____ day of June, 2009.

LEONARD R. ROSS
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