

SUPREME COURT OF FLORIDA

HARRY LEWIS HENDERSON,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

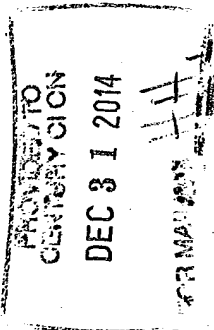
CASE NO.:
SC14-2007
L.T. NO.:
1D11-863

*On Review from the District Court of Appeal,
First District State of Florida.*

**AMENDED
JURISDICTIONAL BRIEF OF PETITIONER
HARRY L. HENDERSON**

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Harry Lewis Henderson, # J05680, *pro-se*
Century Correctional Institution
400 Tedder Road
Century, Florida 32535

QUESTIONS PRESENTED

1. WHETHER THE FOURTH AMENDMENT PROTECTS A CITIZEN FROM THE ARBITRARY AND CAPRICIOUS ACTIONS OF THE POLICE, WHERE NO PROBABLE CAUSE EXISTED FOR THE TRAFFIC STOP PURSUANT TO TERRY V. OHIO. 392 U.S. 88S.CT. 1868 20 L.ED. 2D (1968).
2. WHETHER THE DECISION RENDERED IN THE INSTANT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN CUNNINGHAM V. STATE , 884 SO.2D 1121 (FLA. 2ND DCA 2004), WHERE THE SECOND DISTRICT COURT OF APPEAL HELD THAT THE LOWER COURT ERRED IN APPLYING WARDLOW,¹ IN THAT THERE WAS NO HEADLONG FLIGHT.

¹ ILLINOISE V. WARDLOW, 528 U.S. 119 (2000).

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STATEMENT OF JURISDICTION

This Honorable Court has “discretionary” jurisdiction under article V, § 3(b) of the Florida Constitution and Florida Rule of Appellate Procedure, 9.030(a)(2)(A)(i)-(vi), to review a decision of the District Court of Appeal that expressly declares a state statute as being invalid; expressly construes a provision of either the state or Federal Constitution; expressly affects a class of constitutional or state officers; expressly and directly conflicts with a decision of another District Court of Appeal or with the Supreme Court on the same question of law; passes upon a question certified to be of great public importance; or that is certified to be in direct conflict with decisions of other District Courts of Appeal.

In the instant case, the First District Court of Appeal issued an opinion in the petitioner’s direct review which expressly construed a provision of the Federal Constitution, and expressly and directly conflicts with the decision rendered by the Second District Court of Appeal in *Cunningham v. State*, 884 So.2d 1121 (Fla. 2nd DCA 2004), and as such, is subject to discretionary review by this Honorable Court. See *Henderson v. State*, 88 So.3d 1060 (Fla. 1st DCA 2012). The provision construed by the First District Court of Appeal is the Fourth Amendment to the United States Constitution,² and expressly and directly conflicts with the decision

² See appendix, at APP. 1

rendered by the Second District Court of Appeal in *Cunningham v. State*, 884 So.2d 1121 (Fla. 2nd DCA 2004), and as such

The very nature of a brief on jurisdiction requires the brief to be a short and concise statement of the grounds for invoking this Honorable Court's jurisdiction, and as such, it is not appropriate to argue the merits of the substantive issues involved in this case, or to discuss matters not relevant to the threshold issue of jurisdiction.

This Honorable Court should exercise its discretion and entertain the instant case on the merits if it so chooses.

STATEMENT OF CASE AND FACTS

The Petitioner was convicted of Possession of a Firearm by a convicted Felon and Fleeing to Elude and Driving while License is Suspended or Revoked. The Petitioner filed a timely appeal alleging that there was no probable cause for the stop absent a valid warrant and that because Deputy Floyd the testifying officer who initiated the stop testified as to what a U.S. Marshall told him, the fellow Officer rule could not be applied. The First DCA agreed and rejected the States argument that the stop was justified by the Fellow Officer Rule. Also the First DCA rejected the States claim that the arrest warrant issued five (5) hours later justified the stop. However, the First DCA affirmed the Petitioners conviction based on the fact that he was charged and convicted of fleeing and attempting to

elude. Though the First DCA cited in this opinion that the Petitioner never sped or broke any traffic laws the conviction based on the Petitioners action of continuing to drive for nearly two (2) miles provided probable cause to stop Petitioner for violating Statute making it illegal to flee or attempt to elude police Officer.

SUMMARY OF THE ARGUMENT 1

This Honorable Court has jurisdiction, vested by the Florida Constitution, to adjudicate the merits of Fourth Amendment claims, where the District Court of Appeal has expressly construed a provision of the United States Constitution.

ARGUMENT 1

The Fourth amendment to the United States Constitution clearly states:

“THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED.” U.S.C.A. 4

The corresponding protection for the Florida citizen is found under article 1, § 12 of the Florida Constitution, which states in pertinent part:

“...NO WARRANT SHALL BE ISSUED EXCEPT UPON PROBABLE CAUSE, SUPPORTED BY AFFIDAVIT, PARTICULARLY DESCRIBING THE PLACE OR PLACES TO BE SEARCHED, THE PERSON OR PERSONS, THING OR THINGS TO BE SEIZED, THE COMMUNICATION TO BE INTERCEPTED, AND THE NATURE OF EVIDENCE TO BE OBTAINED, THIS RIGHT SHALL BE CONSTRUED IN CONFORMITY WITH THE 4TH AMENDMENT TO THE UNITED STATES CONSTITUTION, AS INTERPRETED BY THE UNITED STATES SUPREME COURT. ARTICLES OR INFORMATION OBTAINED IN VIOLATION OF THIS RIGHT SHALL NOT BE ADMISSIBLE IN EVIDENCE IF SUCH

ARTICLES OR INFORMATION WOULD BE INADMISSIBLE UNDER DECISIONS OF THE UNITED STATES SUPREME COURT CONSTRUING THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.” FLA. CONST. ART.1 §12.

Thus, the due process clause of the Fourteenth amendment to the United States Constitution protects the Florida citizen from the arbitrary and capricious action of state governments, and also guarantees that “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within it’s jurisdiction the equal protection of the laws.’ U.S.C.A. 14, §1.

As such, and because this Honorable Court’s decisions are binding on all courts and citizens of the State of Florida, this Honorable Court is vested with the duty to decipher the constitutional questions that arise when District Courts of Appeal subject their decisions to review by expressly construing provisions of the Federal Constitution.

If this Honorable Court accepts jurisdiction, it will be compelled to decide whether the Fourth Amendment to the United States Constitution permits warrant less arrests, which are the product of capricious actions of the police³, and whether a Florida statute, such as §316.1935 can be constitutionally applied to criminalize and penalize the exercise of a constitutional right. “The right of the people to be

³ Terry v. Ohio, 392 U.S. 88S.CT. 1868 20 L.ED. 2D (1968).

secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S.C.A. 4. The petitioner prays this Honorable Court accepts jurisdiction.

SUMMARY OF THE ARGUMENT 2

The Florida Supreme Court has discretionary Jurisdiction to resolve conflicts between district courts of appeal where a decision expressly and directly conflicts with a decision of this Honorable court or another district court of appeal. Here, the instant case expressly and directly conflicts with the Second District Court of Appeal in *Cunningham v. State*, 884 So.2d 1121 (Fla. 2nd DCA 2004).

ARGUMENT 2

This Honorable Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the Supreme Court or another district court of appeal on the same point of law. See, Art.V §3(b)(3) of the Florida Constitution; Florida Rules of Appellant procedure, Rule 9.030 (a)(2)(A)(iv).

A conflict exists between the Second District Court of Appeals decision in *Cunningham v. State*, 884 So.2d 1121 (Fla. 2nd DCA 2004) and the First District Court of Appeals decision in the instant case. The resolution of this conflict will set

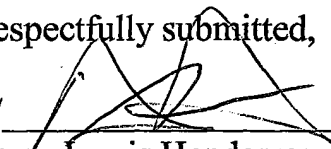
the standard for the decision, to be used in analogous cases, of headlong flight and what constitutes the actual charge of fleeing or attempting to elude where no traffic laws have been broken.

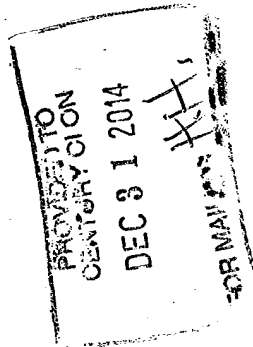
CONCLUSION

Based upon the statement of Jurisdiction, and the authorities cited herein, the Petitioner respectfully request that this Honorable Court accept jurisdiction in this case and issue an order to that effect forthwith.

Respectfully submitted,

/s/


Harry Lewis Henderson #J05680,
Century Correctional Institution
400 Tedder Road
Century, Florida 32535




CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date indicated below, a true and correct copy of the foregoing Jurisdictional Brief was placed in the hands of prison officials for mailing to:


- Office of the Attorney General, The Capitol, PI-01, Tallahassee, Florida 32399-1050: and
- Supreme Court of Florida, Office of the Clerk of Court, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1927.

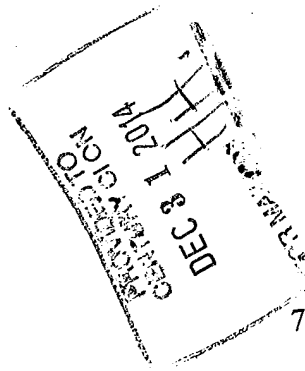
DATE: 12/31/2014


Harry Lewis Henderson #J05680,
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CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of font used in this Appendix is 14 point Times New Roman.


Harry Lewis Henderson #J05680,
Pro-se litigant



SUPREME COURT OF FLORIDA

HARRY LEWIS HENDERSON,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

CASE NO.:
SC14-2007
L.T. NO.:
1D11-863

*On Review from the District Court of Appeal,
First District State of Florida.*

**AMENDED APPENDIX IN SUPPORT OF
PETITIONER'S JURISDICTIONAL
BRIEF
HARRY L. HENDERSON**

Harry Lewis Henderson, # J05680, *pro-se*
Century Correctional Institution
400 Tedder Road
Century, Florida 32535

Citation/Title

88 So.3d 1060, 37 Fla. L. Weekly D1308, Henderson v. State, (Fla.App. 1 Dist. 2012)

*1060 88 So.3d 1060

37 Fla. L. Weekly D1308

District Court of Appeal of Florida,
First District.

Harry HENDERSON, Appellant,

v.

STATE of Florida, Appellee.

No. 1D11-0863.

June 1, 2012.

Background: Defendant was convicted in the Circuit Court, Duval County, Mallory Cooper, J., of possession of a firearm by a convicted felon, fleeing or attempting to elude a police officer, and driving while license suspended, and he appealed.

Holding: The District Court of Appeal held that, when the officers attempted to pull defendant over with lights and sirens activated, defendant's action of continuing to drive for nearly two miles provided probable cause to stop defendant for violating statute making it illegal to flee or attempt to elude police officer.

Affirmed.

Benton, C.J., concurred in result.

West Headnotes

[1] Arrest 63.4(11)

35 ----

35II On Criminal Charges

35k63 Officers and Assistants, Arrest Without Warrant

35k63.4 Probable or Reasonable Cause

35k63.4(7) Information from Others

35k63.4(11) Other officers or official information.

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Fellow-officer rule was not applicable so as to justify stop of defendant because there was no evidence of the U.S. Marshall's grounds for suspecting that defendant had been involved in a homicide and, thus, there was nothing on the record to impute to deputy, who initiated the stop based on the U.S. Marshall's request.

[2] Arrest ⌨ 60.2(11)

35 ----

35II On Criminal Charges

35k60.2 Investigatory Stop or Stop and Frisk

35k60.2(6) Grounds for Stop or Investigation

35k60.2(11) After-acquired information.

Arrest warrant issued five hours after stop of defendant did not justify the stop, absent any evidence of the information that was provided to the judge who issued the warrant and when the information was provided. U.S.C.A. Const.Amend. 4.

[3] Arrest ⌨ 60.3(2)

35 ----

35II On Criminal Charges

35k60.3 Motor Vehicle Stops

35k60.3(2) Particular cases.

Deputy's stated reason for the stop had no bearing on whether there was probable cause for the stop.

[4] Arrest ⌨ 60.3(2)

35 ----

35II On Criminal Charges

35k60.3 Motor Vehicle Stops

35k60.3(2) Particular cases.

When the officers attempted to pull defendant over with lights and sirens activated, defendant's action of continuing to drive for nearly two miles provided probable cause to stop defendant for violating statute making it illegal to flee or attempt to elude police officer. West's F.S.A. § 316.1935(2).

[5] Weapons ⌨ 247

406 ----

406V Prosecution

406V(C) Presumptions and Burden of Proof

406k243 Possession, Use, Carrying

406k247 Possession after conviction of crime.

[See headnote text below]

[5] Weapons ⚔ 249

406 ----

406V Prosecution

406V(C) Presumptions and Burden of Proof

406k243 Possession, Use, Carrying

406k249 Intent, knowledge, purpose.

Because defendant was the sole occupant and driver of the car when apprehended, he had exclusive possession of it, regardless of the vehicle's ownership, and thus, his knowledge of the contraband and his ability to maintain control of it was inferred in prosecution of defendant for being felon in possession of a firearm.

[6] Weapons ⚔ 307

406 ----

406V Prosecution

406V(F) Questions for Jury

406k303 Possession, Use, Carrying

406k307 Possession after conviction of crime.

Defendant's evidence that the automobile was a rental car leased by a friend and used by several other people did not require a judgment of acquittal on the charge of felon in possession of a firearm, but, rather, simply presented a jury question regarding whether the possession was exclusive.

***1061** Nancy A. Daniels, Public Defender, M.J. Lord, Assistant Public Defender, and Daniel Cauley, Legal Intern, Office of the Public Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Jennifer Moore, Assistant Attorney General, Office of the Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Harry L. Henderson appeals his convictions for possession of a firearm by a convicted felon, fleeing or attempting to elude a police officer, and driving while license suspended. He contends the trial court erred by (1) denying his motion to suppress because the arresting officer did not have reasonable suspicion or probable cause to stop his vehicle pursuant to the fellow-officer rule, and (2) denying his motion for judgment of acquittal because the state failed to prove he was in constructive possession of the firearm. We affirm.

Jacksonville Sheriff's Office Deputy J.E. Floyd testified that on June 24, 2010, a U.S. Marshall requested assistance over the police radio from available

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patrol units to stop an armed homicide suspect who was driving in front of him on Interstate 95 in a gold Kia with an Ohio tag. Deputy *1062 Floyd caught up with them and the Marshall pointed to the gold Kia as containing the suspect. Deputy Floyd activated his red and blue lights, as did Deputy Wilke, who was by then in front of Deputy Floyd. Deputy Wilke's SUV had Jacksonville Sheriff's Office insignia on it, "prominent and easily determined," as did Dep. Floyd's patrol vehicle. Deputy Floyd could also see lights and hear sirens behind him.

When the lights and sirens commenced, appellant slowed, as if to pull off on the grass shoulder, but then continued to drive for one to two miles, although he could have pulled over on the shoulder during that time. Appellant did not speed or violate any traffic laws before he pulled over, but he did not stop until there were officers approaching from the opposite direction. A loaded .45-caliber handgun was found under the driver's seat.

Deputy Floyd testified that he initiated the stop based on the U.S. Marshall's request. The U.S. Marshall did not testify. The deputy said he was given a teletype at around 3:00 p.m. when he booked appellant into jail stating that a warrant for appellant's arrest had been issued in St. John's County.

[1] We reject the state's argument that the stop was justified by the fellow-officer rule. The rule cannot be applied under the facts of this case. Because there is no record evidence of the U.S. Marshall's grounds for suspecting that appellant had been involved in a homicide, "there is nothing on the record to impute" to Deputy Lloyd. *J.P. v. State*, 855 So.2d 1262, 1265 (Fla. 4th DCA 2003). *Accord C.H.C. v. State*, 988 So.2d 1145 (Fla. 2d DCA 2008).

[2] We also reject the state's claim that the arrest warrant issued five hours later justified the stop, absent any record evidence of the information that was provided to the judge who issued the warrant and when the information was provided. See, e.g., *Mills v. State*, 58 So.3d 936 (Fla. 2d DCA 2011) (facts discovered after an arrest cannot be used retroactively to justify a warrantless arrest).

We affirm the order, however, because appellant's act of fleeing or attempting to elude Deputy Floyd and the other officers (FN1) obviates the necessity of determining whether there was reasonable suspicion or probable cause for the initial attempt to stop. (FN2)

In a case much like that at bar, *Green v. State*, 530 So.2d 480 (Fla. 5th DCA 1988) (on motion for rehearing en banc), the defendant drove through a driver's license checkpoint that was later shown to be unlawful because it did not meet constitutional standards. The defendant was stopped after a brief pursuit and cocaine was found in his car. The Fifth District affirmed the denial of a motion to suppress, finding that the stop was valid under section 316.1935, Florida Statutes, because the police stopped and searched him based on his flight rather than at the illegal checkpoint. *Accord State v. McCune*, 772 So.2d 596, 597 (Fla. 5th DCA 2000) (reversing the order granting the defendant's motion to suppress,

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because, ***1063** "regardless of the legality of the initial stop (or attempted stop), the statutory offense of fleeing and eluding does not require the lawfulness of the police action as an element of the offense.").

Appellant relies instead upon *Ray v. State*, 40 So.3d 95 (Fla. 4th DCA 2010), in which the Fourth District reversed the denial of the defendant's motion to suppress, finding there was no reasonable suspicion for the traffic stop. A police officer responding to a complaint about drug dealing witnessed a hand-to-hand exchange between the defendant and another person. Believing this was a drug sale, the officer followed the defendant in her patrol car and activated the lights to make a stop. The defendant drove through a stop sign and then pulled over, dropping cocaine out the window. The Fourth District concluded that the initial hand-to-hand exchange did not by itself provide reasonable suspicion for the stop; hence, the officer had activated her emergency lights without reasonable suspicion. In addition, the defendant's traffic infraction of running the stop sign did not provide a reason for the stop because it occurred after the lights were activated.

[3][4] Ray is distinguishable, because the court did not characterize the defendant's brief act of running the stop sign before pulling over as flight, and there was no charge of fleeing or attempting to elude. In our case, when the officers attempted to pull appellant over with lights and sirens activated, appellant continued to drive for nearly two miles, providing probable cause to stop him for violating section 316.1935(2). Deputy Floyd's stated reason for the stop has no bearing on whether there was probable cause for the stop. See *Whren v. United States*, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996); *State v. Moore*, 791 So.2d 1246 (Fla. 1st DCA 2001).

Our decision is also supported by recent case law addressing the lawfulness of a stop based upon a defendant's unprovoked flight. In *C.E.L. v. State*, 24 So.3d 1181 (Fla.2009), the Florida Supreme Court affirmed a conviction for resisting an officer without violence, finding that even if the officer initially lacked reasonable suspicion to stop the defendant, reasonable suspicion was established by the defendant's flight, citing *Illinois v. Wardlow*, 528 U.S. 119, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). In *Wardlow*, the Court acknowledged that merely standing around in a high-crime area does not provide reasonable suspicion, but that the defendant's "unprovoked" flight did. "Headlong flight--wherever it occurs--is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Id.* at 124, 120 S.Ct. 673. Our supreme court concluded in *C.E.L.* that the defendant's flight in a high-crime area provided reasonable suspicion to justify an investigative stop, and that his "continued flight in knowing defiance of the officer's lawful order to stop" constituted resisting an officer without violence. *C.E.L.*, 24 So.3d at 1189. Accord *Williams v. State*, 55 So.3d 596 (Fla. 3d DCA 2010); *Livingston v. State*, 985 So.2d 1144 (Fla. 5th DCA 2008).

In the case at bar, had appellant pulled over immediately after Dep. Floyd activated his lights and siren, there would have been insufficient evidence in

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the record to justify the stop. When appellant continued driving, however, long after the officers had activated their lights and sirens, in combination with the request from the Marshall to assist in stopping a homicide suspect and the Marshall's signal that the gold Kia contained the suspect, Deputy Floyd did have a reasonable suspicion that a crime had been or was being committed sufficient to warrant the stop.

***1064.** [5][6] As to the second issue, appellant fails to show that the trial court erred as a matter of law by denying his motion for judgment of acquittal on the charge of felon in possession of a firearm. Because appellant was the sole occupant and driver of the car when apprehended, he had exclusive possession of it, regardless of the vehicle's ownership, and thus his knowledge of the contraband and his ability to maintain control of it was inferred. See *Sinclair v. State*, 50 So.3d 1223 (Fla. 4th DCA 2011); *Lee v. State*, 835 So.2d 1177 (Fla. 4th DCA 2002); *State v. Odom*, 862 So.2d 56 (Fla. 2d DCA 2003). Appellant's evidence that the automobile was a rental car leased by a friend and used by several other people did not require a judgment of acquittal but simply presented a jury question regarding whether the possession was exclusive. *Odom*, 862 So.2d at 59.

AFFIRMED.

PADOVANO and SWANSON, JJ., concur.

BENTON, C.J., concurs in result.

(FN1.) Section 316.1935(2), Florida Statutes (2010), provides: "Any person who willfully flees or attempts to elude a law enforcement officer in an authorized law enforcement patrol vehicle, with agency insignia and other jurisdictional markings prominently displayed on the vehicle, with siren and lights activated commits a felony of the third degree[.]"

(FN2.) Although the prosecutor mainly argued below that the fellow-officer rule should defeat defendant's motion to suppress, he did briefly raise an argument regarding defendant's flight once the officer's lights and siren were activated.