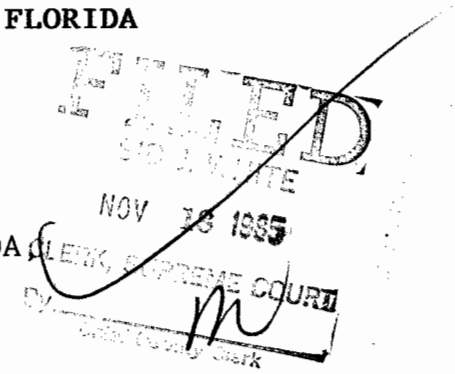
IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,528



THE STATE OF FLORIDA,

Petitioner,

vs.

J. D., A JUVENILE,

Respondent.

* *

ON PETITION FOR DISCRETIONARY REVIEW

* *

BRIEF OF PETITIONER ON THE MERITS

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PRELIMINARY STATEMENT

Respondent, J. D., a juvenile, was the respondent in the Juvenile Division of the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida and the appellee in the District Court of Appeal of Florida, Third District. Petitioner, the State of Florida, was the petitioner in the trial court and the appellant in the district court. In this brief, the parties will be referred to as they appear before this Court.

The symbol "R" followed by a page number will constitute a page reference to the record on appeal. The symbol "T" will be used to designate the transcript of the proceedings. The appendix to this brief will be referred to as "App." All emphasis has been supplied unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

On August 12, 1982, a petition for delinquency was filed, charging Respondent with the grand theft of an automobile window louver. (R. 1). The Public Defender was appointed on August 20, 1982 and a plea of denial was entered on Respondent's behalf. (R. 3-3A).

On September 23, 1982, Respondent filed a Motion to Suppress Written And/Or Oral Statements (R. 4, 5). In said Motion, Respondent contended that he made statements subsequent to an "illegal detention" and as such constituted "fruits of the poisonous tree" pursuant to Wong Sun v. United States, 371 U.S. 471 (1963) and other authority. A motion entitled "Motion to Suppress Evidence Obtained Through An Unreasonable Search and Seizure", predicated upon the same argument, was filed on that same date (R. 6, 7).

A hearing as to Respondent's motions to suppress was held before the Honorable Ralph B. Ferguson, Circuit Judge, on September 29, 1982. (T. 1). City of Miami Springs Police Officer James Joseph Pessolano testified at the hearing (T. 5-21). Officer Pessolano stated that he had about eight and one-half years of law enforcement experience (T. 6). On July 6, 1982, he was attempting to clock a speeding vehicle as he drove eastbound on South Royal

Poinciana. He observed Respondent riding a bicycle and towing another juvenile on the handlebars. They were carrying a large black item with which the officer was familiar, namely a set of louver windows from the rear of a motor vehicle. (T. 7).

The officer went on to testify that based upon his past experience, he found it odd to see two boys riding on a bicycle, carrying an item belonging to a vehicle. In addition, the officer knew that Respondent and the other individual were violating the law by "towing" on the handlebars of a bicycle. The officer noted that the rider of a bicycle is only supposed to be on the seat, not the handlebars. (T. 9, 10).

Once the juveniles were stopped, the officer inquired as to their destination and the source of the item. The officer was not satisfied with their answers, so he called his partner over and read Respondent his Miranda rights from his partner's card. (T. 12). Respondent indicated that he understood his rights and that he stated, "No, I don't need an attorney." (T. 15). Respondent then admitted that he and his companion had taken the window louver (item) off "the little red car, down the road." (T. 16). Respondent subsequently accompanied the officer and pointed out the red, 1979 Datsun 280Z-X from which the item was removed. (T. 16).

At the conclusion of the suppression hearing, the trial court orally granted Respondent's motions. (T. 29). Written orders granting the motions were filed on November 2, 1982 (R. 12, 14). Petitioner filed a Notice of Appeal on October 13, 1982. (R. 11). Pursuant to a motion filed by the Petitioner, the court entered an "Order Extending Period of Time Established by Florida Rule of Juvenile Procedure 8.180 for Trial," which was filed on November 2, 1982. (R. 11, 13).

Petitioner appealed to the District Court of Appeal of Florida, Third District. Respondent moved to dismiss the appeal. On November 8, 1983, the Third District Court of Appeal dismissed the case on the authority of State v. C. C., 449 So.2d 280 (Fla. 3d DCA 1983) (en banc) and certified that the decision directly conflicted with State v. W. A. M., 412 So.2d 49 (Fla. 5th DCA), pet. for rev. denied, 419 So. 2d 1201 (Fla. 1982). (R. 17).

On November 10, 1983, Petitioner filed a Notice to Invoke Discretionary Jurisdiction of this Court. On November 21, 1983, this Court established a briefing schedule. Petitioner filed a Motion for Stay pending this Court's decision in State v. C. C., Fla.S.Ct. (Case No. 64,354). This Court granted Petitioner's motion on January 6, 1984. On October 21, 1985, this Court issued

a new briefing schedule. This brief on the merits is being filed in response to said briefing schedule.

QUESTION PRESENTED

WHETHER THE THIRD DISTRICT COURT OF APPEAL ERRED IN DISMISSING THE INSTANT CASE WHERE THE TRIAL COURT DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW IN GRANTING RESPONDENT'S MOTIONS TO SUPPRESS EVIDENCE AND WRITTEN AND/OR ORAL STATEMENTS?

SUMMARY OF THE ARGUMENT

The Third District Court of Appeal erred in dismissing the instant case, as the trial court departed from the essential requirements of law in granting Respondent's Motions to Suppress Evidence and Written and/or Oral Statements. This Court is urged to adopt the rationale set forth in Chief Justice Boyd's special concurrence in Jones v. State, __ So.2d __ (Fla. 1985) (Case No. 64,042; Opinion filed October 17, 1985) and determine that the instant case should be remanded for treatment as a petition for writ of common law certiorari and directions for granting the writ.

ARGUMENT

THE THIRD DISTRICT COURT OF APPEAL ERRED IN DISMISSING THE INSTANT CASE, AS THE TRIAL COURT DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW IN GRANTING RESPONDENT'S MOTIONS TO SUPPRESS EVIDENCE AND WRITTEN AND/OR ORAL STATEMENTS.

The District Court of Appeal of Florida, Third District erred in dismissing the instant case as the trial court clearly departed from the essential requirements of law in granting Respondent's Motions to Suppress Evidence and Written and/or Oral Statements. Notwithstanding this Court's recent pronouncements in State v. G. P., __ So.2d __ (Fla. 1985) (Case No. 63,613; Opinion filed August 30, 1985) and State v. C. C., __ So.2d __ (Fla. 1985) (Case No. 64,354; Opinion filed August 29, 1985), this Court is urged to re-examine and adopt the rationale set forth by Chief Justice Boyd in his special concurrence in Jones v. State, __ So.2d __ (Fla. 1985) (Case No. 64,042; Opinion filed October 17, 1985) noting that, ". . . it should be kept in mind that the common-law writ of certiorari is within the jurisdiction of the District Courts of Appeal and issuable in the appellate court's discretion under certain circumstances where there is no right of appeal." As further noted by the Chief Justice, lack of availability of an appeal or other remedies is one of the prerequisites to the issuance

of the writ and it is only when there is no other adequate remedy available that the question of seeking or providing certiorari review arises. Thus, although the State may not presently appeal, as a matter of right, from adverse rulings by trial courts in juvenile cases, certain particular cases should nonetheless properly be reviewable, if the requirements necessary for the granting of a writ of certiorari may be met. This position is consistent with well-established case law of this Court, as noted in Chief Justice Boyd's special concurrence in Jones v. State, supra. See also State v. Smith, 260 So.2d 489 (Fla. 1972).

The ruling of the trial court in this particular case clearly meets the necessary prerequisites for the granting of a writ of common-law certiorari. Neither the statements given by Respondent nor the automobile window louver taken from Respondent and his companion should have been suppressed since the initial stop of Respondent was clearly lawful. Since there was no initial illegality, neither the statements nor the tangible evidence could have been "tainted." Thus, there was no valid legal basis to support the trial court's ruling.

In determining whether a law enforcement officer may stop an individual for investigatory purposes, the question is not whether there was probable cause, but whether there

were circumstances which could give rise to a "well-founded suspicion" of criminal activity. State v. Baxter, 378 So.2d 1339 (Fla. 2d DCA 1980). See, State v. Webb, 398 So.2d 820, 822 (Fla. 1981); State v. Lewis, 406 So.2d 79 (Fla. 2d DCA 1981); See also, e.g., State v. Brown, 395 So.2d 1203 (Fla. 3d DCA 1981). The officer's suspicion must be based on observed facts interpreted in light of the officer's knowledge and experience. Taylor v. State, 384 So.2d 1310 (Fla. 2d DCA 1980).

The testimony of Officer James Joseph Pessolano, Miami Springs Police Department, indicates that the officer had the requisite reasonable, well-founded suspicion to stop Respondent. The officer had approximately eight and one-half years of law enforcement experience (T. 6) and had knowledge of previous cases in the area where items were stolen from vehicles. (T. 11). He could not figure out why individuals who appeared too young to drive were carrying part of a vehicle while riding on a bicycle. (T. 11). Furthermore, the officer was doing his duty in enforcing bicycle regulations as enumerated in the Florida Uniform Traffice Control Law.

Section 316.2065 (3), Florida Statutes provides that no bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped. Furthermore, §316.2065 (2), Florida Statutes states that ,

"A person propelling a bicycle shall not ride other than upon or astride a permanent or regular seat attached thereto." Respondent and his companion clearly violated the above-noted statutory provisions in the officer's presence.

In State v. Crummie, 367 So.2d 1106 (Fla. 3d DCA 1979), the Court held that an officer who observed the defendant run a red light while driving a moped had lawfully stopped him pursuant to §901.15 (5), Florida Statutes. The defendant had claimed that the arresting officer's testimony that he stopped the defendant and his companion because of reports of recent robberies and burglaries committed by three young black males on mopeds was insufficient to support a reasonable suspicion that he was engaged in criminal activity and to permit an investigatory stop. In light of the validity of the stop pursuant to the traffic violation committed in the officer's presence, the court noted that any other intentions of the officer toward the defendant and his companions would not validate the lawful investigatory stop as a result of the traffic violation.

The holding in State v. Crummie, supra, can be easily applied to the instant cause. It is clear that the bicycle traffic infractions committed in the officer's presence were sufficient to validate the stop. Thus, the trial court

reached a legally erroneous conclusion in determining that the stop was invalid and thereby granting Respondent's motions to suppress. The record is clearly contrary to the Court's ruling. Absent any initial illegality, there can be no valid finding that either Respondent's statements or the physical evidence seized were "tainted." Moreover, it is of no import that the record does not indicate that Respondent was cited for violation of the bicycle regulations. In State v. Cobbs, 411 So.2d 212, 214 (Fla. 3d DCA 1982), the Third District Court of Appeal held that the validity of a stop is unaffected by the fact that the ultimate arrest and prosecution are for a more serious, different crime thereafter discovered. Respondent therefore submits that the trial court's orders suppressing Respondent's statements and the window louver constituted departures from the esssential requirements of law. The Third District Court of Appeal's Order of Dismissal should therefore be quashed and the instant case remanded with directions to the Court to treat the instant case as a petition for common-law certiorari and to grant the writ, such as in State v. Smith, supra.

CONCLUSION

Wherefore, based upon the foregoing reasons and citations of authority, Petitioner, the State of Florida, respectfully requests that this Court quash the District Court of Appeal of Florida, Third District's Order of Dismissal and remand the instant case to the District Court of Appeal with directions to treat the case as a petitiion for writ of common-law certiorari to the Circuit Court and grant the writ.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing **BRIEF OF PETITIONER ON THE MERITS** was furnished by mail to **HOWARD K. BLUMBERG**, Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125, on this 15th day of November, 1985.

CALIANNE P. LANTZ
Assistant Attorney General