

IN THE SUPREME COURT OF THE STATE OF FLORIDA  
CASE NO. 65,638

STATE OF FLORIDA,  
Appellant,  
vs.  
LEWIS ABAYOMI TEAGUE,  
Appellee.  
\_\_\_\_\_ /

**FILED**  
SID J. WHITE  
AUG 13 1984  
CLERK, SUPREME COURT  
By [Signature]  
Chief Deputy Clerk

BRIEF OF AMICUS CURIAE, THE DEPARTMENT  
OF HIGHWAY SAFETY AND MOTOR VEHICLES

PAUL A. ROWELL  
General Counsel

MICHAEL J. ALDERMAN  
Assistant General Counsel  
Department of Highway Safety  
and Motor Vehicles  
Tallahassee, Florida 32301  
Telephone: (904) 488-1606

Attorney for Amicus Curiae.

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INTRODUCTION

The State of Florida Department of Highway Safety and Motor Vehicles appears as Amicus Curiae for the purpose of assisting the court in making its determination on a question of great importance to law enforcement officers in this state.

This brief is filed in support of Appellant State of Florida. The statement of the case and facts in the brief of Appellant State of Florida is adopted in this brief.

II

QUESTION ON APPEAL

Does the carrying of a firearm by the occupant of a motor vehicle having tinted window glass which prevents the firearm from being visible within the ordinary sight of persons outside the vehicle, although the firearm is otherwise in clear view and unconcealed, constitute the offense of carrying a concealed firearm under Section 790.01(2), Florida Statutes?

### III

#### ARGUMENT

The Department would respectfully ask the court to consider the serious issue of public policy in answering the question certified to it by the District Court of Appeal. The answer given by the court to the certified question will directly affect the safety and very lives of all police officers who must perform traffic stops within this state.

As was recognized by Judge Nimmons in his dissent below, traffic stops and vehicle detentions are inherently dangerous situations for law enforcement officers. In 1983, 686 law enforcement officers were assaulted during traffic pursuits and stops in Florida, 1983 FDLE Ann. Rep. Crime in Florida 205. Nationwide, 52 officers were murdered and 23,057 were assaulted while performing traffic pursuits and stops during the period of 1976 through 1979; traffic pursuit and stops account for more than 10 per cent of the assaults on officers nationwide. Sewell and Beckerman, Stop that Vehicle and Stay Alive, in LAW ENFORCEMENT BIBLE No. 2 (R. A. Scanlon ed. 1982). Vehicular stops should be viewed as a major source of danger for the law enforcement officer. Sewell, supra.

The court below decided that a person who sits in his vehicle with a gun on the seat beside him, and who, because of tinted windows, can observe those outside the vehicle but cannot be seen himself, does not commit the crime of carrying a concealed weapon. This decision in effect legalizes the

attempted ambush of law enforcement officers during traffic stops. For the safety of the police, upon whom the preservation of public order depends, it must be reversed.

In asking that the lower court's decision be reversed, the Department is not asking this court to do violence to the statute in question, nor is it asking the court to usurp the role of the legislature. Rather, it is asking the court to adhere to its opinion in Ensor v. State, 403 So.2d 349, 355, (Fla. 1981) wherein it was stated:

The critical question turns on whether an individual, standing near a person with a firearm or beside a vehicle in which a person with a firearm is seated, may by ordinary observation know the questioned object to be a firearm. The ultimate decision must rest upon the trier of fact under the circumstances of each case. (emphasis supplied)

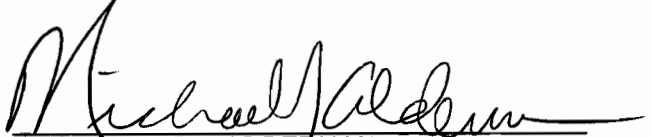
Section 790.01(2), Florida Statutes, prohibits the carrying of concealed firearms. Section 790.001(2) defines a concealed firearm as one concealed from the ordinary sight of another person. Interpreting these statutes so as to answer the certified question in the affirmative is reasonable; indeed, in light of the enhanced danger to police officers resulting from any other interpretation, the Department believes it to be the only reasonable alternative.

CONCLUSION

The lower court's opinion in effect legalizes the attempted ambush of police officers making traffic stops. For the sake of the lives and safety of the law enforcement officers of the state, the Department asks the court to adhere to its opinion in Ensor, supra, and answer the certified question in the affirmative.

Respectfully submitted,

PAUL A. ROWELL  
General Counsel

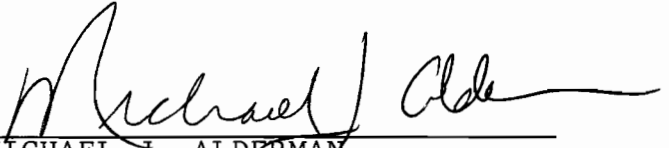


MICHAEL J. ALDERMAN  
Assistant General Counsel  
Department of Highway Safety  
and Motor Vehicles  
Neil Kirkman Building  
Tallahassee, Florida 32301  
Telephone: (904) 488-1606



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Amicus Curiae, Department of Highway Safety and Motor Vehicles, has been furnished by regular United States mail on HAROLD C. ARNOLD, Esquire, 437 East Monroe Street, Suite One, Jacksonville, Florida, 32202, and LAWRENCE A. KADEN, Esquire, Assistant Attorney General, The Capitol, Tallahassee, Florida, 32301, this 13<sup>th</sup> day of August, 1984.

  
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MICHAEL J. ALDERMAN  
Assistant General Counsel