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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. 71,631

PAUL CLIVE JOHNSON,

Respondent.

PETITIONER'S BRIEF ON THE MERITS

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TOPICAL INDEX

AUTHORITIES CITED

OTHER AUTHORITY

STATEMENT OF THE CASE

Respondent Paul Clive Johnson was charged by information filed June 13, 1985, with possession of three hundred and twenty-six (326) pounts of cannabis, occurring on June 4, 1985 (R 137). He filed a motion to suppress the cannabis January 17, 1986 (R 153). Hearing was held on February 18, 1986, and May 22, 1986 (R 1-136), after which Judge C. McFerrin Smith, Circuit Court, Volusia County, granted the motion (R 169). Notice of Appeal was filed eight (8) days later on August 29, 1986 (R 172).

In a per curiam decision dated December 3, 1987, the District Court of Appeal, Fifth District, affirmed the lower court's suppression order, but certified the following question:

> May a profile of similarities of drug couriers, which is developed by a law enforcement officer and which, in light of his experience, suggests the likelihood of drug trafficking, be relied upon by him to form an articulable or founded suspicion which will justify a brief investigatory traffic stop on highways known to the officer to be frequently used for the transport of drugs?

A copy the district court this opinion is attached hereto as appendix "A".

The State of Florida sought review in this court by notice filed December 18, 1987. On December 23, this court ordered that the state serve its initial brief on the merits on or before January 17, 1988.[1]

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[1] January 17, 1988, falls on a Sunday, and January 18, 1988, was Martin Luther King Day: consequently, this brief was served Tuesday, January 19, 1988.

STATEMENT OF THE FACTS

In 1984, the Federal Drug Enforcement Administration's Miami Field Division seized over twenty one thousand, five hundred (21,500) pounds of cocaine and almost two (2) million pounds of marijuana; in 1985, the amount of cocaine seized more than doubled, to fifty thousand, two hundred twenty-one point five (50.221.5) pounds: marijuana weighed in at over one point five (1.5) million pounds (R 93). Federal intelligence analysts have calculated that about twenty (20) percent of the drugs entering the country are seized (R 94-95). Drugs entering Florida are primarily distributed to the rest of the United States by motor vehicles and airplanes leaving the State of Florida; the major routes north in Florida are 1-95 and 1-75 (R 99-100). The DEA does not even consider any other routes north (R 100).

Over the years as a highway patrolman, Trooper Robert Vogel began keeping a list of the narcotics arrests he was making in the course of his duties issuing traffic citations, from which he could identify similarities common to the drug case (R 24-25). Vogel compiled a "profile" based on his own thirty (30) drug arrests from March 5, 1985, through April 18, 1985 (R 19). Some factors common to the drug cases included, inter alia:

1. The speed of the vehicle: each and every vehicle Vogel stopped[2] was traveling at or less than the speed limit

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[2] Three arrests were persons sleeping at a rest stop (R 20). In one case, another trooper made the arrest and Vogel was backup; in this case, the vehicle was traveling fifty-seven (57) mph (R 34-35).

(R 20).

2. The time of day: every drug arrest was made during the night shift, between 6:30 p.m. and 4:30 a.m., except one [made at 3:00 p.m.] (R 20).

3. The age of the individuals: almost all were between twenty (20) and forty (40) years old (R 20-21).

4. The number of occupants: of the thirty (30) cases, ten (10) cases involved one person, twenty involved two in the car[3] (R 21).

5. The car tags: Florida rental cars and/or out of state rental cars, or borrowed cars (R 22).

6. The sex of the individuals: forty-seven (47) males, five (5) females (R 21).

A Florida Highway Patrol guideline sheet identifying drug courier characterists also includes factors Vogel considers (R 43: R 53-54), such as:

a. large, late model vehicles with large trunks (R 38);

b. air shocks (R 38):

c. blacked out glass (R 39);

d. heavily loaded vehicles[4] (R 30);

After a vehicle is stopped, there are usually "some continuing

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[3]One case involved two cars traveling together, with one person in one car and two in another (R 21).

[4]Vogel recognized the vehicle in the instant case to have "load levellers" which prevent it from appearing weighed down (R 40).

factors'' which then prompt Vogel to request consent to search:

> ... that's usually extreme nervousness by the individual, driver's license issued in another state other than the tag is displayed. If it's a rental vehicle, usually registered in somebody else's or rented in somebody else's name, conflicting stories from the driver and passenger.

(R 29). On the other hand, if the individual(s) do not warrant further suspicion, the vehicle is released within a few minutes **(R 29: R 32).**

From June, **1985**, to about August, Vogel made vehicle stops solely to investigate possible drug involvement **(R 26).** He was also assigned to regular traffic and accident work, but during this period Vogel spent about nine **(9)** nights doing strictly drug profile stops **(R 26-27).** Vogel made about fifteen to twenty **(15-20)** stops on these nine **(9)** nights, which resulted in seven **(8)** arrests of persons transporting drugs, or almost one per night (R **27).** In the instant case, Mr. Johnson was stopped pursuant to a "profile" investigative stop on June **4, 1985**, and over three hundred **(300)** pounds of marijuana was discovered in the trunk of his rented **1985** Lincoln (R **5;** R **7: R 10).** The trial court's order containing Factual Findings relating to Mr. Johnson is attached hereto as appendix **"B"** (R **169-171).**

SUMMARY OF ARGUMENT

The State of Florida contends that drug courier profile stops are a necessary law enforcement method to combat the huge quantities of drugs enjoying passage north on Florida's highways. A brief vehicle stop, taking less than five (5) minutes, is not unreasonable under the Fourth Amendment, given the immensity of the problem, and the minimal nature of the intrusion. The state does not in this case seek to justify any subsequent detention of a vehicle, but only a stop to allow an officer to engage the driver, check his license, and look at the car registration.

Profile stops, the state contends, are reasonable under any Fourth Amendment consideration. Investigatory seizures usually require "reasonable suspicion" that an individual is engaged in criminal activity; such suspicion is provided by an objective list of profile factors. Since heavy drug traffic is a known fact along the particular highway at issue, the profile factors are sufficient to justify a stop of those vehicles most likely to be transporting the drugs. Additionally, the need underlying "reasonable suspicion" is control of abuse of power by individual officers. Proper use of the profile stop controls discretion in individual police officers, by defining, a priori, the limited place to be patrolled, and the type of vehicle to be stopped.

ISSUE

MAY A PROFILE OF SIMILARITIES OF DRUG COURIERS, WHICH IS DEVELOPED BY A LAW ENFORCEMENT OFFICER AND WHICH, IN LIGHT OF HIS EXPERIENCE, SUGGESTS THE LIKELIHOOD OF DRUG TRAFFICKING, BE RELIED UPON BY HIM TO FORM AN ARTICULABLE OR FOUNDED SUSPICION WHICH WILL JUSTIFY A BRIEF INVESTIGATORY TRAFFIC STOP ON HIGHWAYS KNOWN TO THE OFFICER TO BE FREQUENTLY USED FOR THE TRANSPORT OF DRUGS?

In Delaware v. Prouse, 440 U.S. 648; 99 S.Ct. 1391; 59 L.Ed.2d 660 (1979), the Supreme Court declared improper a "spot check" system of driver's license control, because the potential for abuse by officers outweighed any possible benefit claimed by Delaware. The court reasonably pointed out that "spot checks" could just as easily be made among those committing traffic infractions; presumably, those involved in violations or accidents would yield a higher percentage of unlicensed drivers - or else licensing would not be rationally related to state purposes. Likewise, completely arbitrary "spot checks" within an officer's complete discretion would presumably yield relatively few improper licenses, and had a great potential for abuse. Determining that an automobile stop is indeed a limited seizure within the Fourth Amendment, the court reasoned:

> The permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's fourth amendment interests against its promotion of legitimate governmental interests.

99 S.Ct. at 1396. In Delaware, the objective of highway safety was not promoted sufficiently by completely discretionary stops

to warrant the potential for abuse. In this appeal, the State of Florida contends that the constitutional balance may be tipped in favor of investigatory stops under the facts and realities of Florida's drug problem.

According to Prouse, two factors are material when considering a Fourth Amendment balance: (1) the degree of Fourth Amendment intrusion, and (2) the promotion of legitimate government interests. Consequently, petitioner ~~respondent~~ discusses the issue of automobile drug profile stops in the following analytic framework:

I. THE TEST FOR REASONBLENESS.

A. Promotion of legitimate government interests.

1. The magnitude of the need:

2. Availability of other methods of combating the drug problem:

3. Effectiveness of the profile stop as an investigatory method,

B. The degree of intrusion,

11. CONSIDERATIONS IN STRIKING THE REASONABLENESS BALANCE.

A. "Reasonable suspicion": individualized suspicion vs. profile factors.

B. Arbitrary use of power by police.

I. THE TEST FOR REASONABLENESS,

As noted by the district court opinion below, the "key principle of the Fourth Amendment is reasonableness - the balancing of competing interests". Michigan v. Summers, 452 U.S. 692, 700, n.12; 101 S.Ct. 2587, 2593, n. 12; 69 L.Ed.2d 340 (1981). The "competing interest" of the State of Florida is the

state's legitimate concern in stemming the avalanche of drugs trafficking up the state's highways.

A. Promotion of legitimate government interest.

1. Magnitude of the need.

Florida's unenviable position as the "Ellis Island" for drugs is ably set out in the district court opinion below. "South Florida is the point of entry for more than **80** percent of the marijuana nad cocaine imported into the United States from South American and the Caribbean." Kellner, The National Strategy - An Overview, 11 Nova L. Rev. **933, (1987).** The state offered evidence in this case establishing that literally tons of narcotics pass through the state each day, and **1-95** is a major pipeline for those drugs. The Federal government has trained **80** Georgia state troopers to focus on the drug "pipeline" out of Florida. This record (limited to the evidence available at the time) established that the DEA Miami Field Division caught nearly seventy-five thousand **(75,000)** pounds of cocaine[5], and about three point five **(3.5)** million pounds of marijuana in **1984** and **1985.** However, federal intelligence analysts calculate that only 20% of the drugs actually entering the country are seized. Consequently, during **1984** and **1985,** some **300,000** pounds of cocaine and 14 million tons of marijuana passed through this state. The State of Florida respectfully suggests the magnitude

[5] As a basis for comparison, "trafficking" in cocaine involves delivery of twenty-eight **(28)** grams - or about an ounce. § **893.135,** Fla. Stat. **(1985).** An ounce usually sells for around fifteen hundred to three thousand dollars **(1500-$3000).**

of the need, in terms of the sheer volume of narcotics enjoying passage on Florida highways, is staggering.

2. Availability of *other* methods.

Although faced with huge amounts of narcotics passing by on northbound 1-95 each day, law enforcement has limited choices in combating the problem. The highway patrol has used a roadblock checkpoint on lesser-traveled highways, wherein every vehicle is stopped and subject to a license check and dog "sniff". See, Cardwell v. State, 482 So.2d 512 (Fla. 1st DCA 1986). This method, used by the immigration service to combat the entry of illegal aliens, has received a U.S. Supreme Court approval. U.S. v. Martinez-Fuerte, 428 U.S. 543; 96 S.Ct. 3074; 49 L.Ed.2d 1116 (1976). At a checkpoint, it is permissible for an officer to make "selective referrals" based on his sheer whim, without any need for articulable suspicion, and waive the remaining cars through. Id.

Checkpoints are not a practical solution on 1-95 for Florida. A temporary, limited checkpoint on a lesser-traveled road is within the capability of the Florida Highway Patrol. See, Cardwell. However, the volume of traffic on 1-95 and the limited resources of the state eliminate the permanent checkpoint as a viable law enforcement tool for Florida, even if 1-95 were subject to Florida's jurisdiction in this regard. Further, intrusion into the public privacy and inconvenience is clearly greater when every vehicle is detained rather than a selected few. See, Martinez-Fuerte, 428 U.S. at 560; 96 S.Ct. at 3084. Essentially, if drug investigatory stops of particular

identifiable vehicles is impermissible, no other practical law enforcement method is available to Florida on major interstates. Certainly, no less-intrusive method is available.

3. **Effectiveness of the profile stop.**

Even an overwhelming need, and the unavailability of other methods, would not justify a law enforcement practice which did not work. The profile stop, however, has proven remarkably effective. No jurisdiction has denied the usefulness of a drug courier profile as a law enforcement tool, and most specifically recognize its value. See, e.g., Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319: 75 L.Ed.2d 229 (1983).

In the instant case, evidence established that approximately one-third to one-half of Trooper Vogel's profile stops resulted in a major drug arrest. It is difficult to imagine that typical Terry' stops result in actual arrests anywhere near this often. In addition, the "effectiveness" of a practice should also be judged in qualitative terms: the amount of drugs seized in this stop was 326 pounds. Trooper Vogel's success in identifying major drug carriers has been the subject of a CBS "Sixty Minutes" segment, as this court is undoubtedly aware.

In sum, the amount of drugs on Florida's northbound highways is staggering: there are no practical, non-intrusive law enforcement alternatives to combat the problem; and the profile stop, as employed by a trained officer, is a remarkably effective

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'Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1980).

tool. Petitioner respectfully suggests that the legitimate government interest in use of the profile stop is compelling.

B. Degree of intrusion.

Balanced against the government's need to stop vehicles based upon profile factors is the degree of intrusiveness the stop entails. Additionally, petitioner recognizes that vehicle stops, under the Fourth Amendment, may be no more intrusive than is necessary to meet the state's limited purpose. U.S. v. Sharpe, 470 U.S. 675; 105 S.Ct. 1568; 84 L.Ed.2d 605 (1985). The only purpose sought by the state, however, is the stop of the vehicle and examination of the driver's license and car registration. This record has established that without further reason for suspicion, vehicle stops take less than five (5) minutes.[7] The degree of intrusion is therefore minimal. In the case of illegal alien patrols, the U.S. Supreme Court has recognized:

> Against this valid public interest we must weigh the interference with individual liberty that results when an officer stops an automobile and questions its occupants. The intrusion is modest. The government tells us that a stop by a roving patrol "usually consumes no more than a minute." (cite omitted) There is no search of the vehicle or

[7] In the instant case, Mr. Johnson was arrested during a particularly active two day period when Trooper Vogel was assigned to work with a DEA agent, Frank Chisari. On those two days, about eight or nine cars were stopped, and all but three released within a few minutes. Of the three which were detained until a narcotics dog arrived or a consent search was completed, two arrests resulted: the third search revealed only paraphenalia, and the vehicle was released (R 28-29).

> its occupants, and the visual inspection is limited to those parts of the vehicle that can be seen by anyone standing alongside.

U.S. v. Brignoni-Ponce, **422** U.S. **873, 879-880: 95** S.Ct. **2574, 2579: 45** L.Ed.2d **607 (1975).** Likewise, the court commented regarding alien checkpoint stops: "While the need to make routine checkpoint stops is great, the consequent intrusion on Fourth Amendment interests is quite limited" U.S. v. Martinez-Fuerte, **428** U.S. **543, 557; 96** S.Ct. **3074, 3083: 49** L.Ed.2d **1116 (1976).** Drug profile stops do not involve a search of the vehicle or the driver: the state would contend that a simple vehicle stop makes no constitutionally significant intrusion into an individual's privacy interests at all.

Vehicle stops do impact upon the convenience of the motoring public, This interest does not outweigh the need to interdict the flow of drugs, however. In Martinez-Fuerte, the U.S. Supeme Court has already indicated that a roadblock checkpoint, which inconveniences every driver, is a permissible government method to check for illegal aliens. The individualized profile stop is akin to checkpoint "selective referrals", but without the general costs and inconvenience of the checkpoint. As the Court noted, selective referrals "tend to advance some Fourth Amendment interests by minimizing the intrusion on the general motoring public" Martinez-Fuerte, **428** U.S. at **560: 96** S.Ct. at **3084.**

The state suggests that the most significant legitimate interest respondent could claim is a motorist's potential anxiety at being stopped by an officer without knowing why. In the case of a drug smuggler like respondent, this legitimate interest is

de minimis. Any anxiety he feels is undoubtedly attributable to the fact that he is transporting illegal drugs. In the case of an innocent traveler, the U.S. Supreme Court has shown concern regarding the "psychological intrusion" a vehicle stop may cause, particularly on a dark, lonely road where an officer's authority is not visible (such as a border patrol stop). See, U.S. v. Ortiz, 422 U.S. 891, 894: 95 S.Ct. 2585, 2587: 45 L.Ed.2d 623 (1975); Delaware v. Prouse, 440 U.S. 648: 99 S.Ct. 1391: 59 L.Ed.2d 660 (1979). An essential aspect of the state's position here, however, is that the stops are made on a major interstate highway, not a dark, less-traveled road. The trooper's vehicle is clearly marked and readily discernable. The state respectfully submits that any "anxiety" potentially associated with being pulled over by a trooper on an interstate highway is a fact of every day life, and no reason to invalidate profile stops.

11. **CONSIDERATIONS IN STRIKING THE REASONABLENESS BALANCE.**

A. Reasonable suspicion.

To accomodate public and private interests, some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure: however, "the Fourth Amendment imposes no irreducible requirement of such suspicion". U.S. v. Martinez-Fuerte, 428 U.S. at 560-561; 96 S.Ct. at 3084. In Terry v. Ohio, 392 U.S. 1; 88 S.Ct. 1868: 20 L.Ed.2d 889 (1968), an officer conducted the original ''Terry" stop based on the following facts: (1) two men unknown to the officer (who patrolled the area 30 years), (2) walked up and down a street

five to six times, looking to a store, nd conferring. The two then left in the direction of a third man with whom they had briefly .conferred.

The officer in Terry was suspicious of the men's "elaborately casual and oft-repeated reconnaissance", and was entitled to make a simple investigatory stop. The particular facts making the officer suspicious in Terry could be classified into "factors" in a "profile" , and the instant case would be no different. Trooper Vogel in the instant case has listed a set of factors which basically identify a vehicle and its driver by its travel from a known drug source area along a known drug corridor, use of a vehicle particularly suited to drug smuggling, a time of night associated with smuggling, and indications of nervousness or avoidance of law enforcement. The compilation of factors is entirely consistent with a "profile" - type list approved in U.S. v. Brignoni-Ponce, 422 U.S. 873; 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975), as allowing investigatory auto stops for smuggling. In Brignoni-Ponce, the Supreme Court held that Mexican ancestry alone was insufficient reason to stop a car to investigate for illegal aliens within one hundred (100) miles of the Mexican border. However, the court recognized that factors remarkably appropriate to the instant case would be sufficient:

> Any number of factors may be taken into account in deciding whether there is reasonable suspicion to stop a car in the border area. Officers may consider the characteristics of the area in which they encounter a vehicle. Its proximity to the border, the usual patterns of traffic on the particular road, and previous

> experience with alien tr ffic re all relevant (cites omitted). They may also consider information about recent illegal border crossings in the area. The driver's behavior may be relevant, as erratic driving or obvious attempts to evade officers can support a reasonable suspicion (cites omitted). Aspects of the vehicle itself may justify suspicion. For instance, officers say that certain station wagons, with large compartments for fold-down seats or spare tires, are frequently used for transporting concealed aliens (cites omitted). The vehicle may appear to be heavily loaded, it may have an extraordinary number of passengers or the officers may observe persons trying to hide (cite omitted). The government also points out that trained officers can recognize the characteristic appearance of persons who live in Mexico, relying on such factors as modes of dress and haircut.

95 S.Ct. 2582. Thus, while slow speed, rental cars, night driving, and avoidance of police may all be legal, "the officer is entitled to assess the facts in light of his experience in detecting illegal entry and smuggling." Brignoni-Ponce, at 2582. "Circumstances completely consistent with legal conduct may still amount to reasonable suspicion." U.S. v. Reeh, 780 F.2d 1541, 1544 (11th Cir. 1986). The individual vehicles stopped by Trooper Vogel distinguished themselves by their conduct and appearance particularly suited to drug activity, in this officer's experience. Similar conduct and appearance has frequently permitted officers to conduct smuggling investigatory stops. See, U.S. v. Pallares-Pallares, 784 F.2d 1231 (5th Cir. 1986); U.S. v. Alvarado-Garcia, 781 F.2d 422 (5th Cir. 1986); U.S. v. Reeh, 780 F.2d 1541 (11th Cir. 1986); U.S. v. Henke, 775

F.2d 641 (5th Cir. 1985); U.S. v. Andreau, F.2d 1497 (11th Cir. 1983); U.S. v. Ruano, 647 F.2d 577 (5th Cir. 1981). With respect to vehicles, an investigatory stop based on factors like Vogel's here was described as "abundantly supported by the record". U.S. v. Sharpe, 105 S.Ct. at 1573.

In the instant case, Mr. Johnson's vehicle aroused Trooper Vogel's suspicions because it was a large vehicle - a 1985 Lincoln - associated with drug transport, being driven northbound on 1-95 by a lone male in casual clothes at 4:15 a.m. The car had out-of-state tags, and was traveling between 50-55 mph (R 7, R 10). The driver avoided looking at Vogel as he passed (R 11). While all this might be completely innocent and is certainly legal, it is also somewhat unusual to find all these factors at the same time unless drug transport is involved. An important factor in assessing the reasonableness of this stop is the fact that we know major hauls of drugs are being transported up this highway each day. The question is identifying which vehicles are carrying them. This vehicle seems likely: a large vehicle of the type associated with drug trafficking; arriving in this area at a time consistent with leaving Miami when most drug transfers take place. Like the suspect in Terry, the driver here is "elaborately casual'' in his efforts to avoid the attention of police: driving at 55 p.m. (although it is 4:00 a.m., when traffic usually is considerably faster), and avoiding eye contact with the officer.

The state does not suggest these profile factors do any more than justify an initial stop. They need not, for example,

entitle the officer to detain the vehicle. The State of Florida only here seeks a reasonable device to allow the officer to make contact with the driver and vehicle. As employed by the trooper in this case, the necessary quantum of suspicion differs for the initial stop, and any subsequent detention. Vogel testified he stopped about twenty (20) cars based on the profile, but most of them were released within a few minutes when his suspicions could not be associated with the individual driver [8]. In other words, Vogel stopped all of the vehicles because of their suspicious nature, but the vehicle fitting the profile he found insufficient to detain the driver. Rather, the profile stop was used, at minimal inconvenience to the motoring public, merely as a tool to engage the driver. If the individual driver then acted suspiciously or other factors compounded the officer's suspicion, a narcotics dog was called. The entire procedure took at most about thirty minutes; for the majority of persons, it took less than five (5).

The fact that this route (I-95) is known to be frequented by

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[8] In the instant case, as soon as Vogel stopped the vehicle and Johnson identified himself, it was as if lights began flashing and alarms when off: Johnson was extremely and inexplicably nervous, to the extent that his hand trembled and he could not stand still (R 13). The vehicle was a rental car, rented to someone other than the driver (R 11). Vogel could see the trunk of the car was bulging upward, as if overloaded, and he could smell fabric softener from the trunk (R 12-13). [The officer testified that fabric softener sheets are frequently used to disguise the odor of marijuana.] The "space saver" tire and jack were in the back seat rather than the trunk (R 14). Mr. Johnson told Vogel the only thing in the trunk was his clothes (R 14). At that point, there can be no serious dispute that there was sufficient cause to detain Mr. Johnson an additional few minutes until a narcotics dog arrived.

northbound drug traffickers affects the quantum of suspicion necessary to stop any individual vehicle.

> In Camara [v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967)], the Court required an "area" warrant to support the reasonableness of inspecting private residences within a particular area for building code violations, but recognized that "specific knowledge of the condition of the particular dwelling" was not required to enter any given residence. 387 U.S., at 538, 87 S.Ct., at 1736. In so holding, the Court examined the government interests advanced to justify such routine intrusions "upon the constitutionally protected interests of the private citizen," Id., at 534-535, 87 S.Ct., at 1734, and concluded that under the circumstances the government interests outweighed those of the private citizen.
>
> We think the same conclusion is appropriate here, where we deal neither with searches nor with the sanctity of private dwellings, ordinarily afforded the most stringent Fourth Amendment protection. See, e.g., McDonald v. United States, 335 U.S. 451, 69 S.Ct. 191, 93 L.Ed. 153 (1948). As we have noted earlier, one's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence.

U.S. v. Martinez-Fuerte, 428 U.S. at 561; 96 S.Ct. at 3084-3085. Put another way, an experienced officer knows that drug transport at this time of night on the route is highly likely, and he reasonably suspects this vehicle because it is suited to transport of large quantities; he has seen this type of vehicle

before and the driver's conduct evinces a deliberate avoidance of the possibility of law enforcement contact. This court has held that factors which taken alone do not seem particularly suspicious can, given the knowledge of an experienced officer, provide reasonable suspicion for an investigatory stop. Tamer v. State, 484 So.2d 583 (Fla. 1986); see also, State v. King, 485 So.2d 1312 (Fla. 5th DCA 1986). This court in Tamer, quoted the same passage of U.S. v. Cortez, 449 U.S. 411; 101 S.Ct. 690; 66 L.Ed.2d 621 (1981), as was quoted in the Fifth District opinion below:

> Courts have used a variety of terms to capture the elusive concept of what cause is sufficient to authorize police to stop a person. Terms like "articulable reasons" and "founded suspicion" are not self-defining; they fall short of providing clear guidance dispositive of the myriad factual situations that arise. But the essence of all that has been written is that the totality of the circumstances - the whole picture - must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.
>
> The idea that an assessment of the whole picture must yield a particularized suspicion contains two elements, each of which must be present before a stop is permissible. First, the assessment must be based upon all of the circumstances. The analysis proceeds with various objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers. From these data, a trained officer draws

> inferences and makes deductions - inferences and deductions that might well elude an untrained person.
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> The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior: jurors as fact-finders are permitted to do the same - and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.
>
> The second element contained in the idea that an assessment of the whole picture must yield a particularized suspicion is the concept that the process just described must raise a suspicion that the particular individual being stopped is engaged in wrongdoing.

Id. at 417-18: 101 S.Ct. at 695 (citations omitted). In a common-sense balance of reasonableness, the state suggests, profile stops on 1-95 are justified.

B. Arbitary use of police power.

Perhaps the main underlying the need for "reasonable suspicion" in making vehicle stops is the fear of abuse of power by police. See, Delaware v. Prouse. Where abuse of police power is otherwise subject to regulation, such as at a checkpoint, "reasonable suspicion" is not necessary to make distinctions between vehicles stopped, nor is it even desirable:

> A requirement that stops on major routes inland always be based on reasonable suspicion would be impractical because the flow of

> traffic tends to be too heavy to allow the particularized study of a given car that would enable it to be identified as a possible carrier of aliens. In particular, such a requirement would largely eliminate any deterrent to the conduct of well-disguished smuggling operations, even though smugglers are known to use these highways regularly.

U.S. v. Martinez-Fuerte, 428 U.S. at 557; 96 S.Ct. at 3082-3083. The use of a specific, deliniated profile, on the other hand, provides "particularized study" by identifying a class of suspicious vehicles. Discretion on the part of an individual officer is controlled and limited to stopping vehicles previously identified to him by factors other than his own whim, caprice, or prejudice. Furthermore, the concerns of Brignoni-Ponce and Delaware v. Prouse for an officer's ability to stop a vehicle outside a limited checkpoint area, are not present here. This case is limited to use of a drug courier profile to make stops along a particular, limited stretch of 1-95, along the pipeline corridor. There is no general "anywhere, anytime" power claimed here by law enforcement. Officers are subject to the control of their supervisors, who direct the area to be patrolled, and to their objective ability to establish, a priori, reasons for the "checkpoint patrol" area. The "reasonable suspicion" standard allows considerably more discretion and judgment in an individual officer than is afforded by use of a profile. By making a list of previously defined "suspicious" characteristics, the profile stop decreases the possibility of improper use of police power, and lends more objectivity to the investigative process.

In summary, the need for reasonable use of "profile" stops is great, and the intrusion minimal. The state is not attempting to vest any uncontrolled power in individual officers; this case is limited to a particular need along particular routes, defined in advance, and readily controllable. Under these limited circumstances, a simple five minute traffic stop is well worth the thousands of lives potentially destroyed by the narcotics we know are travelling right in front of us.

CONCLUSION

The decision of the Fifth District Court of Appeal is well-reasoned and comprehensive, but (reluctantly) reaches the wrong conclusion. Petitioner contends use of the drug courier profile, when employed properly by an experienced officer, is a necessary and effective tool in a drug interdiction program, and constitutes a minimal inconvenience to the motoring public. Petitioner prays the opinion of the lower court be reversed, and proper use of the drug courier profile be approved.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Petitioner's Brief on the Merits has been furnished by mail to Lane S. Abraham, Esquire, 300 south Dixie Highway, Suite 217, Miami, FL 33133, this 19th day of January, 1988.

Ellen D. Phillips

Ellen D. Phillips
Of Counsel