IN THE SUPREME COURT OF FLORIDA

CASE NO.: 72,494

TRAVIS HARRISON CRESSWELL,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

ON CERTIFIED QUESTION FROM THE DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

BRIEF OF PETITIONER ON THE MERITS

ALAN E. WEINSTEIN
Law Offices of Weinstein & Preira
1801 West Avenue
Miami Beach, Florida 33139

Attorney for Petitioner

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INTRODUCTION

The petitioner, Travis Harrison Cresswell, was the defendant at trial and the appellant before the District Court of Appeal, Fifth District. The respondent, The State of Florida, was the prosecution at trial and the appellee in the District Court of Appeal.

In this brief, the parties will be referred to by their proper name or as they stood in the trial court. The Record on Appeal, including all transcript references, will be referred to as "R 1", etc. The defendant's appendix contains the Opinion of the district court and the court's ruling on his Motion for Rehearing and Rehearing ~~En Banc~~, which certified as a question of great public importance the issue raised herein. These appendix pages have been separately numbered and are refereed to herein as "App.1", etc.

STATEMENT OF THE CASE AND FACTS

(a) Course of Proceedings and Disposition in the Courts Below.

On April 30, 1985, the defendant, Travis Harrison Cresswell, was charged in a two-count Information with trafficking in cannabis (in excess of 100 pounds, but less than 2,000 pounds) in violation of F.S. 893.135(1)(a)1 and unauthorized possession of a driver's license in violation of F.S. 322.212(1) (R.164).

A Motion to Suppress Physical Evidence was filed by the defendant and, on November 21st, 1985, a hearing was conducted on that motion (R.1-89). The trial court originally denied, without opinion, the Motion to Suppress (R.199). On February 20th, 1986, the defendant entered a Nollo Contendere plea to Count I of the Information (trafficking in cannabis), specifically reserving his right to appeal the denial of his Motion to Suppress (R.90-104). The parties stipulated (R.91) and the court ruled (R.94-95) that the ruling on the Motion to Suppress was dispositive of the case. Count II of the Information was nolle prossed by the State. On March 19, 1986 subsequent to the aforesaid negotiated plea but prior to sentencing, a Petition for Reconsideration of the Motion to Suppress, predicated on the recently published opinion in

State v. Anderson, 479 So.2d 816 (Fla. 4th DCA 1985), was filed by the defendant (R.200-205). This petition was denied on October 7th, 1986, also without opinion (R.210). Following his conviction and the imposition of a sentence of 4 years incarceration and a fine of $25,000.00 (R.219), the defendant timely perfected his direct appeal to the District Court of Appeal of Florida, Fifth District. This appeal raised, inter alia, the trial court's denial of the defendant's Motion to Suppress. The essence of the defendant's motion was that no well-founded suspicion of criminal activity existed sufficient for the arresting officer to continue to detain him after the conclusion of a legitimate traffic stop and the issuance of a warning.

The Opinion rendered by the Fifth District Court of Appeal affirmed the instant case with a separate dissenting opinion by Judge Dauksch (App.1, 4). Judge Cobb wrote a concurring opinion which acknowledged that "the issue on this appea is a close one" and cited the opinion in State v. Anderson, supra (App. 2-3).

The defendant timely filed a Motion for Rehearing and Rehearing ~~En Banc~~ on March 29th, 1988. On May 12th, 1988, the said Motion for Rehearing and Rehearing En Bane was per ~~curiam~~ denied, although the d strict court specifitally certified to this court as a question of great public importance the follow ng 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 DETENTION AFTER THE CONCLUSION OF A LEGITIMATE TRAFFIC STOP ON HIGHWAYS KNOWN TO THE OFFICER TO BE USED FOR THE TRANSPORT OF DRUGS? (App. 5)

A notice of invocation of this court's discretionary jurisdiction to review the decision of the District Court of Appeal was filed on May 24th, 1988. This Court accepted discretionary review, and on June 2nd, 1988, an Order was entered setting forth the briefing schedule.

(b) Statement of the Facts.

On March 27, 1985 at 1:55 p.m., the defendant, Travis Cresswell, while traveling north on 1-95 in Volusia County, was stopped for a traffic infraction by Trooper R.L. Vogel (R.7-9 According to Vogel, he stopped Cresswell for "following too closely" and for no other reason (R.9, 40). Vogel acknowledged that there was nothing about the defendant or his conduct that created any suspicion of criminal activity in his mind prior to him stopping the defendant's vehicle (R.35-36, 39-40).

At the request of the trooper, Mr. Cresswell produced a valid driver's license from Massachusetts and a valid vehicle registration. The car displayed Maine tags

(R.10). The vehicle identification number on the automobile matched that on the registration (R.16, 40). Officer Vogel determined that the car had not been reported stolen (R.40). Vogel issued Cresswell a warning for the traffic infraction (as opposed to a citation), but did not allow Mr. Cresswell to depart (R.42-43). The defendant refused to sign a consent form for the search of his trunk. Trooper Vogel, however, indicated that he had determined to detain Mr. Cresswell even prior to the defendant's refusal to consent to the search of his trunk (R.42, 44, 53-54). According to the trooper, he continued to detain Mr. Cresswell after issuing the written warning for the infraction for the following reasons:

(a) Cresswell was nervous;

(b) The car displayed Maine tags and Cresswell had a Massachusetts driver's license;

(c) The car had a New York registration and inspection sticker on the window;

(d) There was a steering wheel lock on the floor of the car;

(e) There were items in the back seat that were normally found in a trunk (i.e., a air pump, a tow rope, and some tire cleaning materials), as well as a suit bag;

(f) The ignition key was separate from the other keys;

(g) A CB radio was in the car; and,

(h) The car was registered to someone else.

(R.11-15, 17, 46-51).

It was solely these reasons that caused the officer to become suspicious that the defendant was transporting illegal drugs (R.51). Prior to detaining Mr. Cresswell, Trooper Vogel had observed no criminal activity; had affirmatively determined that the car Cresswell was driving was not stolen; and noted that Cresswell did not act drugged or impaired. No drugs or drug residue were observed by the officer inside the car (R.35-37, 40). The officer did not remember returning Mr. Cresswell's driver's license to him and the defendant testified it never was returned (R.43, 51, 65-66). After giving the defendant his written warning for the infraction, Officer Vogel asked Mr. Cresswell if he would open the trunk. Cresswell indicated that he did not have the trunk key (R.51-52). Vogel then called for a narcotics dog at 2:05 p.m. (R.22-23) and went back and handed the defendant a consent to search form which Mr. Cresswell declined to sign (R.23, 52). The officer continued to detain Mr. Cresswell and indicated that he was not free to leave, notwithstanding the fact that Trooper Vogel had been advised that no narcotics dog was immediately available (R.24), and that it might be an hour before the dog handler arrived (R.26).

Trooper Vogel did not recall attempting to limit Mr. Cresswell's detention by personally smelling for marijuana or pushing down on the fenders of the car. No marijuana was smelled by the trooper personally (R.54). A narcotics dog arrived at 2:47 p.m. and alerted on the defendant's trunk approximately 5 minutes later. Mr. Cresswell had been detained at this time for approximately an hour, between the time he was originally stopped and the time the narcotics dog finally arrived and alerted on the vehicle's trunk (R.52-53). The trunk was then opened, marijuana found, and the defendant arrested (R.27-28).

SUMMARY OF ARGUMENT

After being stopped for a minor traffic violation by Trooper Vogel, Travis Cresswell should have been detained no longer than the time it took for the trooper to write the written warning which he had determined to issue Mr. Cresswell for following too closely. All of the facts known to the trooper were insufficient to create a "founded suspicion" of criminal activity and, thus, Mr. Cresswell should not have been detained after the infraction warning was given to him.

The drug courier profile upon which the State relies to justify the defendant's detention in actuality constitutes no real standard whatsoever. The profile is nothing more than an amorphous and constantly changing device which, if approved by this Court, will only serve to legitimatize a police officer's action in detaining individuals for lengthy and unreasonable periods of time after simple traffic stops in an attempt to see if he can come up with some evidence of drug movement. The fact that there is no "real" drug courier profile is shown not only by the variable and ever changing nature of the profile between different cases, but by the fact that even Trooper Vogel's profile is constantly changing and in many ways did not even appertain to Travis Cresswell.

The majority decision in this case directly conflicts with other decisions of the same court and with opinions of other district courts of appeal as well as this Honorable Court.

Since virtually every citizen driving on the roads of Florida meets some aspects of the "drug courier profile", to sustain the decision rendered herein in the lower court would potentially create an onslaught of pretextural traffic stops and improper detentions every time a police officer observed an individual he wished to interrogate.

CERTIFIED QUESTION

The Fifth District Court of Appeal has certified the following question to this Court:

> 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 DETENTION AFTER THE CONCLUSION OF A LEGITIMATE TRAFFIC STOP ON HIGHWAYS KNOWN TO THE OFFICER TO BE USED FOR THE TRANSPORT OF DRUGS?

ISSUE

Notwithstanding this Honorable Court's resolution of the general question certified by the District Court, the defendant suggests that the specific "profile of similarities" herein employed was legally insufficient under these facts to establish an articulable or founded suspicion. Therefore, the following legal issue is presented by the facts of the instant case:

> BECAUSE THE DEFENDANT WAS ILLEGALLY AND ARBITRARILY SEIZED AND DETAINED WITHOUT FOUNDED SUSPICION OR PROBABLE CAUSE IN VIOLATION OF HIS RIGHTS UNDER THE FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THE TRIAL COURT ERRED IN DENYING HIS MOTION TO SUPPRESS.

ARGUMENT

POINT I

BECAUSE THE DEFENDANT WAS ILLEGALLY AND ARBITRARILY SEIZED AND DETAINED WITHOUT FOUNDED SUSPICION OR PROBABLE CAUSE IN VIOLATION OF HIS RIGHTS UNDER THE FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, THE TRIAL COURT ERRED IN DENYING HIS MOTION TO SUPPRESS.

The defendant submits that in reality there exists no "profile of similarities of drug couriers" which is reliable enough to be the predicate of an articulable or founded suspicion sufficient to justify investigatory detention. However, should this Court differ with that contention, the instant case must still be reversed insofar as the profile employed by Trooper Vogel herein was legally insufficient to create a founded suspicion.

The question that readily presents itself from the record herein is whether Officer Vogel had a "well founded suspicion" to maintain Travis Cresswell in a "Terry type" detention [Terry v. Ohio, 392 U.S. 1 (1968)] after the issuance of the traffic infraction warning. In a case whose facts are virtually identical to the facts of the instant case, the Fourth District Court of Appeal has ruled that such a "founded suspicion" is not created from circumstances as existed herein. In State v. Anderson,

479 So.2d 816 (Fla. 4th DCA 1985), the court affirmed an order granting a defendant's motion to suppress evidence seized from a vehicle stopped on the Florida Turnpike by a highway patrol officer. The material facts of Anderson are legally indistinguishable from the facts of the instant case; except, in Anderson, there existed even greater reason to detain and search the defendant's vehicle than existed herein. A comparison of the facts in Anderson with the facts of the instant case unfailingly leads to the conclusion that Officer Vogel did not have a founded suspicion to detain the defendant after the issuance of his traffic infraction warning. An analysis of all of the pertinent facts of the two cases follows:

	ANDERSON	CRESSWELL
1.	The defendant was driving northbound on the Turnpike and was clocked by a highway patrol officer speeding at 64 miles per hour.	Cresswell was traveling northbound on 1-95 and was observed following too closely by Officer Vogel (R.7-9).
2.	The Anderson automobile was a Wisconsin vehicle registered to a Richard Johnson in Wisconsin.	The Cresswell car displayed Maine tags and was registered to a Thomas in Maine(R.14).
3.	Anderson appeared nervous.	Cresswell appeared nervous.
4.	In Anderson, the trooper noted an air valve on the bumper used for inflating air shocks, the car had air shocks but no trailer hitch, and had luggage in the rear seat. Anderson could not re-	Cresswell had a steering wheel lock lying beneath the driver's seat and a clothing bag on the rear left seat. Trooper Vogel also said a box on the right rear floor

	late the address of the owner. The trooper in Anderson felt that it was his experience that persons hauling contraband in the trunk customarily kept their luggage in the rear seat for easy access.	board contained items normally found in the trunk (R.11-15, 17, 46-51).
5.	Anderson declined to give the trooper permission to search the trunk.	Cresswell declined to give the trooper permission to search the trunk (R.42,44).
6.	In Anderson, the trooper detained the car for 1/2 hour until a dog arrived and alerted on the trunk. During the detention, he told the occupants of the car that they were free to go.	Cresswell was detained virtually an hour before the dog arrived (R.52-53) and was not free to leave (R.42-43).

Based on the above facts, the Anderson court held that the officer did not have a "founded suspicion" to detain Mr. Anderson for a period of time longer than it took to write out the traffic citation and stated:

> "A proper stop cannot enlarge the length of detention for the stop should be no longer than it takes to write out the traffic citation." 479 So.2d at 818.

Specifically addressing the above facts, the court held that they were insufficient to create a founded suspicion to detain the defendant and that the factors were no better than "random selection, sheer guess work or hunch; there is no objective justification [for the search]." State v. Anderson, supra at 818.

The above comparison of the facts in Anderson to the facts present herein unquestionably shows that there is no legal distinction between the material facts of the cases. It is respectfully submitted that if the trooper in Anderson did not have a founded suspicion sufficient to detain Mr. Anderson after the issuance of the ticket, then, as a matter of law, Trooper Vogel did not have a founded suspicion sufficient to detain Mr. Cresswell after the issuance of his traffic infraction warning.

As reflected in the concurring Opinion rendered herein, none of the facts known to Trooper Vogel at the time he detained the defendant directly indicated guilt of any crime. However, the Opinion concludes that the facts known to Trooper Vogel were sufficient to create a founded suspicion because of his "experience and knowledge". The Fifth District's reliance on the similarities between the defendant and Trooper Vogel's personal drug courier profile (his "cumulative similarities") to support the legality of the defendant's detention is totally misplaced.

This Court has adopted the decision of the Supreme Court of the United States in Reid v. Georgia, 448 U.S. 438, 100 S.Ct. 2752, 65 L.Ed.2d 890 (1980) and has clearly held that profile type characteristics are insufficient as a matter of law to establish the reasonable and

articulable suspicion necessary for a Terry type detention. In Jacobson v. State, 476 So.2d 1282 (Fla. 1985), a similar argument made by the State of Florida was rejected and, in so doing, this Honorable Court held:

> A person may be subjected to a limited seizure under Terry V. Ohio when an officer has a reasonable and articulable suspicion that the person may be engaged in criminal activity. Reid V. Georgia, 448 U.S. 438, 100 S.Ct. 2752, 65 L.Ed.2d 890 (1980). Reid v. Georgia has established the principle that similarities between a suspect and a "drug courier profile" are insufficient to establish a requisite reasonable and articulable suspicion. 476 So.2d at 1286.

The case law in both Florida and the federal system is legion holding that the facts as known to Officer Vogel at the time he stopped the defendant were woefully insufficient to allow him to continue to detain Travis Cresswell after the issuance of the warning and Cresswell's refusal to authorize a consent search. The most oft quoted opinion in Florida law relating to temporary detention and "founded suspicion" is found in State V. Stevens, 354 So.2d 1244 (Fla. 4th DCA 1978). Therein, Chief Judge Alderman held:

> To justify temporary detention, only 'founded suspicion' in the mind of the detaining officer is required. (Citations omitted.) 'A founded suspicion is a suspicion which has some factual foundation in the circumstances observed by the officer, when those circumstances are interpreted in the

> light of the officer's knowledge. 'Mere' or 'bare' suspicion, on the other hand, cannot support detention. (citation omitted) Mere suspicion is no better than random selection, sheer guess-work, or hunch, and has no objective justification. 354 So.2d at 1247. (Emphasis ours).

Herein, all of the facts at Trooper Vogel's disposal after he stopped the defendant for the traffic infraction could not create, as a matter of law, an articulable and objective foundation that the defendant was engaged in criminal activity. Carter v. State, 454 So.2d 739 (Fla. 2d DCA 1984) and Currens v. State, 363 So.2d 1116 (Fla. 4th DCA 1978).

None of the facts at hand, taken either separately or collectively, rose to the level of "founded suspicion". At best, the facts created a "mere or bare" suspicion, lacking objective justification and thus were akin to "random selection, sheer guesswork, or hunch". State v. Stevens, supra at 1247 and Carter v. State, supra at 741.

In Oesterle v. State, 382 So.2d 1293 (Fla. 2d DCA 1980), with facts far more substantial than those instanter, the Court ruled that a well founded suspicion to stop and detain the driver of a vehicle failed to exist. Therein, a deputy sheriff testified that he received information that a plane loaded with marijuana had just landed in DeSoto County near the Highlands County

line. The deputy proceeded to the area in question where he observed the plane, which was visible from the intersection, but reachable only by going through a gate. At 5:00 a.m., the deputy began surveillance and noticed a truck in the area with out-of-county tags. The truck had a topper with blacked out windows. The deputy stopped the truck and upon questioning, the defendant admitted he was at the scene to unload marijuana from the airplane. In suppressing the confession, the Second District Court of Appeal held:

> In the present case, the information available to Deputy Fennel1 did not give rise to a well founded suspicion. Appellant's truck was proceeding lawfully along a public road and gave no indication of turning into the gate which provided the only access to the marijuana plane. Moreover, neither the fact that the truck had an out-of-county tag nor the fact that the topper's windows were blacked out was sufficient to indicate criminal activity. Hence, the stop and detention of Appellant were illegal, and as a result, the confession which the officers obtained immediately thereafter was also tainted. (Citations omitted). 382 So.2d at 1295.

Unquestionably, if the facts available to the deputy in the Oesterle case were insufficient to create a founded suspicion, the information available to Officer Vogel herein could create no more than the slimmest of hunches.

Apparent y what occurred herein when Trooper Vogel stopped the defendant is that he applied his amorphous

"cumulative similarities" standard in deciding that he wanted to search the defendant's vehicle (R.30-33). Vogel had a bare suspicion that Cresswell was hauling drugs based on his self created "cumulative similarities" (R.30-33, 51). Thereafter, when Cresswell refused to sign the consent to search form presented to him by the officer, that "magnified" the suspicion in the officer's mind, albeit improperly (although Vogel testified that he was detaining Mr. Cresswell even prior to the refusal to consent to a search of the trunk). (R.44, 53-54)

Neither the application of Vogel's "cumulative similarities" (which in large measure were not even applicable herein)[1] (R.32-37), nor the facts at Vogel's disposal at the time he detained Mr. Cresswell, created a well founded suspicion of criminal activity. In Kayes v. State, 409 So.2d 1075 (Fla. 2d DCA 1982), circumstances causing far greater suspicion (including nervousness and a weighted-down vehicle leaving a suspicious warehouse) were deemed to be insufficient to create a well founded suspicion of criminal activity sufficient to justify the stop of the vehicle therein. The Court in Kayes, held:

> Prior to seizing the vehicle, the police had no actual knowledge that appellants were engaged in any criminal

[1] See pp. 19-20, infra.

> activity. The officer's suspicions were based on the profile of typical drug smuggling activities. We think, however, that meeting the criteria of such a profile does not, in and of itself, create a well founded suspicion of criminal activitv. 409 So.2d at 1077, 1078. (Emphasis ours).

If the circumstances in Kayes failed to create a well founded suspicion of criminal activity, then the factors present in the case at bar clearly are insufficient to justify the investigative detention of the defendant which occurred after he was issued the traffic infraction warn ng. See United States v. Glass, 741 F.2d 83 (5th Cir. 1984); United States v. Frisbie, 550 F.2d 335 (5th Cir. 1977).

Brought down to its lowest common denominator, the State's position is that Trooper Vogel's experience and knowledge (based on his own cases) when considered in light of the fact that Cresswell met some of the trooper's own "cumulative s mi larities", somehow blends together to create a founded suspicion of criminal activity as opposed to just the sl mmest of hunches. This contention is belied not only by existing case law, but by the record itself which clearly shows that Trooper Vogel uses his "cumulative similarity standards" only when it suits his purpose.

By the trooper's own admission, the defendant in this case did not fit the trooper's self-created standards as

they related to the time of his travel (R.32) and the fact that he was not driving very cautiously and following the law (R.34, 35). Nowhere does Trooper Vogel acknowledge that he considered these contra-indicated factors in determining whether or not he had a founded suspicion to detain the defendant. Further, an analysis of the allegedly same guidelines in In re Forfeiture of $6,003.00 in U.S. Currency, 505 So.2d 668 (Fla. 5th DCA 1987), and United States v. Smith, 799 F.2d 704 (11th Cir. 1986) shows that the facts of the instant case are contrary to the supposed "profile characteristics" delineated therein. See, In re Forfeiture of $6,003.00 in U.S. Currency, supra at 669.

In In re Forfeiture of $6,003.00 in U.S. Currency, supra, the profile factor of importance consisted of a late model vehicle -- herein Cresswell's car was an older 1978 Mercury (R.12). In In re Forfeiture of $6,003.00 in U.S. Currency, supra, it was significant that the car had Florida rental tags -- herein the car displayed Maine tags (R.11). Likewise, in In re Forfeiture of $6,003.00 in U.S. Currency, supra, and United States v. Smith, supra, the profile was met because there were two occupants in the car -- herein there was a single occupant, just the defendant. See, e.g., State v. Johnson, 516 So.2d 1015,

1018 (Fla. 5th DCA 1987) (single driver fits the profile).

An analysis of the alleged profile characteristics in the various cases clearly reflects that those characteristics are what the officer wants them to be when he stops a car. More importantly, for purposes of the instant case, the majority ruling totally overlooks the fact that if a profile characteristic detention is going to be authorized, at the very least the facts extant prior to the detention should fit the profile. By Trooper Vogel's own acknowledgement herein, as well as by a comparison with his previously espoused profile characteristics, a large number of those characteristics are not met by the defendant. Thus, his detention was not in reality predicated upon a founded and reasonable suspicion but rather, was simply the result of guesswork and a hunch. See, State v. Stevens, 354 So.2d 1244 (Fla. 4th DCA 1978).

Candidly, in view of the Fifth District's prior rejection of Officer Vogel's profile factors in In re Forfeiture of $6,003.00, supra, and State v. Johnson, supra, their decision sustaining the detention of the defendant in the instant case predicated on those same profile factors is inconsistent, inexplicable, and unjustifiable. In

In re Forfeiture of $6,003.00, supra, the Fifth District Court of Appeal specifically condemned a Terry type stop predicated solely on the fact that Trooper Vogel app ied his personal drug courier profile to justify the stop. In condemning the use of that profile to justify a stop, the court therein ruled:

> Terry allows police stops only where the officer had a reasonable suspicion that the detainee either is committing, has committed or is about to commit a crime. The drug courier profile used in this case is too general and unparticularlized to support a Terry stop, so says the federal appeals court. We agree. 505 So.2d at 669-70 (emphasis ours).

There is absolutely distinction in law between Trooper Vogel's use of his profile characteristics in In re Forfeiture of $6,003.00, supra, to stop a defendant and his use of virtually those same characteristics to detain Travis Cresswell after he issued the written traffic warning. There is no legal distinction between the use of profile characteristics to stop an individual [as in State v. Johnson, supra, and In re Forfeiture of $6,003.00 in U.S. Currency, supra] and to detain an individual for investigation after a legitimate traffic stop has been concluded.

Interestingly enough, the State of Florida itself, in attempting to justify the use of profile characteristics

as the predicate for an initial stop, has acknowledged that the same characteristics "need not . . . entitle the officer to detain the vehicle". (See Petitioner's Brief on the Merits in State v. Johnson, pp. 16-17) In the instant case, Trooper Vogel learned absolutely nothing additional after he issued his traffic warning to the defendant that legitimatized Travis Cresswell's continued detention by him.

Realistically, the impact of authorizing police to detain citizens for virtually an hour on no more than the slimmest of hunches and the barest of suspicions would be totally unreasonable and unfair to the citizenry of this state. While we know from Trooper Vogel's testimony that he had a compilation of some 27 cases from which he extracted his "cumulative similarities" (R.20-21), what we do not know and can never ascertain is the number of innocent travelers inconvenienced, harassed, and annoyed by Trooper Vogel because they met his own self-created profile. Certainly other people have been detained for an undetermined period of time, and were let go because they were not carrying contraband. In other words, while this time he guessed right, we don't know how many times he has guessed wrong.

In view of all of the foregoing, the defendant respectfully contends that the conclusion is inescapable

that his detention by Trooper Vogel was without founded suspicion and was thus illega

CONCLUSION

WHEREFORE, based upon the foregoing citations and authorities and a careful examination of the facts presented by the Record on Appeal, the defendant, TRAVIS HARRISON CRESSWELL, contends that the Opinion of the Fifth District Court of Appeal should be reversed and the lower court should be directed to grant the defendant's Motion to Suppress.

Respectfully submitted,

ALAN E. WEINSTEIN
Law Offices of Weinstein & Preira
Attorney for Petitioner
1801 West Avenue
Miami Beach, Florida 33139
Telephone: 305/534-4666

By: Alan E. Weinstein
Alan E. Weinstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Petitioner on the Merits was furnished by U.S. Mail, this 25th day of June, 1988, to JOSEPH N. D'ACHILLE, JR., Assistant Attorney General, 125 North Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014.

By: Alan E. Weinstein
Alan E. Weinstein