IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NO. 82702

TODD RILEY,

Respondent.

_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF PETITIONER

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ANTHONY J. GOLDEN
ASSISTANT ATTORNEY GENERAL
Fla. Bar #162172
210 N. Palmetto Ave.
Suite 447
Daytona Beach, FL 32114
(904) 238-4990

COUNSEL FOR PETITIONER

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STATEMENT OF THE CASE

Respondent was charged by Information dated August 6, 1992, with possession of more than 20 grams of cannabis in violation of section 893.13(1)(f), Florida Statutes (1991). (Appendix I). On September 14, 1992, Respondent moved to suppress the marijuana based upon an allegedly illegal stop and improperly obtained admission of guilt. After hearing, the motion to suppress was granted. (Appendix II and III, -- Motion and Order). In its opinion filed October 1, 1993, the Fifth District Court of Appeal affirmed the order of the trial court suppressing the marijuana, but "cited" conflict with the Fourth District Court of Appeal in State v. Kamins, 615 So. 2d 867 (Fla. 4th DCA 1993). (Appendix IV).

STATEMENT OF THE FACTS

Officer Nicholas Green of the Cocoa Police Department was the first witness at the hearing on the Respondent's motion to suppress evidence. On July 18, 1992, he along with his partner, Officer Cantaloupe, stopped a car for a traffic violation, "no turn signal". Officer Green activated his blue lights and pulled the vehicle over in less than one minute despite the fact that they were in rush hour traffic. Respondent Todd Riley was a passenger in that vehicle. While Green spoke to the driver, Officer Cantaloupe asked the passenger, Riley, if he had anything illegal on him and thereafter seized several bags of marijuana. Riley was placed under arrest and the driver was issued a warning for no turn signal. On cross-examination, Greeen said they were part of a "Street Crimes Unit" and that he told everyone he stopped that, as members of that unit, their objective is to stop street level narcotics.

Officer Cantaloupe testified that Riley was standing outside the passenger side of the vehicle while Green spoke to the driver. Cantaloupe started talking to Riley and asked him for identification. He told Riley that they were on the Street Crimes Unit and asked him if he had anything illegal on his person. Riley responded in the negative. When Cantaloupe asked him for permission to search his person, Riley admitted having some "pot". The trial court found that the traffic stop was illegal because the driver was not cited for an improper, unsafe turn, but only for failure to give a right hand turn signal.

SUMMARY OF ARGUMENT

The decision of the Fifth District Court of Appeal in the case subjudice is in express and direct conflict with the holding of the Fourth District Court of Appeal in State v. Kamins, 615 So. 2d 867 (Fla. 4th DCA 1993), that, under section 316.155(1) and (2), Florida statutes (1991), an appropriate turn signal must be given when a vehicle is turning from a direct course on a highway.

ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN THE CASE SUBJUDICE IS IN EXPRESS AND DIRECT CONFLICT WITH THAT OF THE FOURTH DISTRICT COURT OF APPEAL IN STATE v. KAMINS, 615 SO. 2D 867 (Fla. 4th DCA 1993).

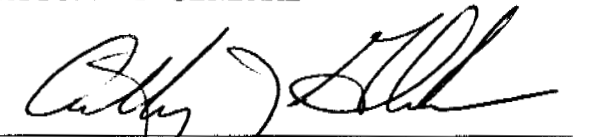
Under Article V, Section 3(b)(3), of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), this Court may review any decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law. In Reaves v. State, 485 So. 2d 829 (Fla. 1986), this Court held that the conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Although the Fifth District Court of Appeal refused to certify conflict with State v. Kamins, 615 So. 2d 867 (Fla. 4th DCA 1993), it did "cite" conflict with the Fourth District in that case. No two cases could be more expressly and directly in conflict with each other. The Fourth District contends that section 316.155, Florida Statutes (1991), requires the use of appropriate turn signals whenever a turn from a highway is made, while the Fifth District believes that the driver must use a turn signal only if he has determined that another vehicle may be affected by this movement. This clear conflict between districts should be resolved and this Court should exercise its discretionary jurisdiction to do so.

CONCLUSION

Based on the arguments and authorities presented herein, Petitioner requests that this Court exercise its discretionary jurisdiction to resolve this conflict between the Fourth and Fifth District Courts of Appeal.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

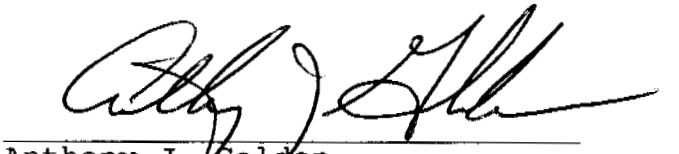


ANTHONY J. GOLDEN
ASSISTANT ATTORNEY GENERAL
Fla. Bar #162172
210 N. Palmetto Ave.
Suite 447
Daytona Beach, FL 32114
(904) 238-4990

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Jurisdictional Brief of Petitioner has been furnished by mail to Susan A. Fagan, Assistant Public Defender, and counsel for the appellee, at 112 Orange Avenue, Suite A, Daytona Beach, Florida 32014, on this 15th day of November, 1993.



Anthony J. Golden
Assistant Attorney General

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NO. _____

TODD RILEY,

Respondent.

_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

A P P E N D I X

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ANTHONY J. GOLDEN
ASSISTANT ATTORNEY GENERAL
Fla. Bar #162172
210 N. Palmetto Ave.
Suite 447
Daytona Beach, FL 32114
(904) 238-4990

COUNSEL FOR PETITIONER

INDEX TO APPENDIX

DOCUMENT(S): **APPENDIX:**

Appendix Part 1

THE CI[illegible]JIT COURT OF THE EIGHTEENT
JUDICIAL CIRCUIT IN AND FOR
BREVARD COUNTY, FLORIDA

ISSUE CAPIAS
SET BOND
$_____
Statute No.
893.13

CASE NO. 92-12359-CF-A-M

STATE OF FLORIDA	:	INFORMATION FOR
	:	
VS	:	
	:	
TODD MICHAEL RILEY	:	POSSESSION OF MORE THAN 20 GRAMS OF CANNABIS (002205)

IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA, NORMAN R. WOLFINGER, STATE ATTORNEY, THROUGH THE UNDERSIGNED DESIGNATED ASSISTANT STATE ATTORNEY, CHARGES THAT

In the County of Brevard, State of Florida, TODD MICHAEL RILEY, on the 18th day of July, 1992, did then and there unlawfully and knowingly be in actual or constructive possession of a controlled substance, named or described in Section 893.03(1)(c), Florida Statutes, to wit: MORE than 20 grams of CANNABIS, contrary to Section 893.13(1)(f), Florida Statutes,

I HEREBY state under oath that I am instituting this prosecution in good faith and I certify that I have received testimony under oath from the material witness or witnesses for the offense, which, if true, would constitute the offense(s) herein charged.

Michael L. Bowen, Designated Assistant
State Attorney of the Eighteenth Judicial
Circuit
Florida Bar No. 0353094

This Information was sworn to and subscribed before me this 6 day of August, 1992, by Michael L. Bowen, Designated Assistant State Attorney, who is personally known to me.

Arlene Chamberlain
Notary's Signature - State of Florida

ARLENE CHAMBERLAIN
Notary's Name (typed, printed or stamped)

ARLENE CHAMBERLAIN
MY COMMISSION # CC 184514
EXPIRES: March 4, 1996
Bonded Thru Notary Public Underwriters

MLB/las 8/5/92

FILED
Aug 7 11 46 AM '92
R.C. [illegible] JR.
CLERK CIRCUIT COURT
BY VANESSA WILLIAMS

000039

APPENDIX PART 2

FILED IN OFFICE

SEP 15 9 25 AM '92

R.C. WAR... CLERK CIR... BY TINA SEASE

IN THE CIRCUIT COURT IN AND FOR BREVARD COUNTY, FLORIDA EIGHTEENTH JUDICIAL CIRCUIT

STATE OF FLORIDA,

Plaintiff,

vs.

TODD MICHAEL RILEY,

Defendant,

CASE NO. 92-12359CF-A

m

_____/

MOTION TO SUPPRESS EVIDENCE

DEFENDANT, through undersigned counsel and pursuant to Florida Rules of Criminal Procedure 3.190(h), moves this Honorable Court to suppress certain evidence in this cause.

EVIDENCE TO BE SUPPRESSED:

Cannabis

GROUNDS FOR SUPPRESSION:

Unlawful Search and Seizure

1. The evidence was illegally seized without a warrant, in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Sections 9 and 12 of the Constitution of the State of Florida.

2. The evidence was obtained only as a result of an illegal search without a warrant, in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Sections 9 and 12 of the Constitution of the State of Florida.

3. The evidence is the "tainted fruit of the poisonous tree," having been obtained only as a result of illegal law enforcement activity, to-wit: unlawful search and seizure.

000048/C

4. The evidence was obtained in violation of Defendant s right to privacy guaranteed by Article I, Section 23, of the Constitution of the State of Florida.

5. The evidence was obtained as a result of an illegal investigatory detention of Defendant in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Sections 9 and 12 of the Constitution of the State of Florida.

FACTUAL BASIS:

The Defendant was a passenger in a vehicle pulled over by Cocoa Police Department. The Police officers ordered the Defendant out of the vehicle. Subsequently the Defendant submitted to Officer Cantalope's authority and produced the cannabis following a request by the officer to consent to a search.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter an Order suppressing in this cause the evidence described above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to the Office of the State Attorney, Brevard County, Florida, this 14th day of September, 1992.

BRIAN N. ONEK
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0373079
525 Palm Avenue
Titusville, Florida 32796
(407) 264-5319

Appendix Part 3

[X] IN THE CIRCUIT COURT, EIGHTEENTH JUDICIAL CIRCUIT, BREVARD COUNTY, FLORIDA
[ ] IN THE COUNTY COURT, BREVARD COUNTY, FLORIDA

DIVISION	ORDER	CASE NUMBER
[ ] CIVIL [X] CRIMINAL [ ] JUVENILE [ ] VIOLATIONS		92-12359CFA

FILED IN OPEN COURT
This 30 day of October, 1992
AT 1:30 P.M.
R. C. WINSTEAD, JR., CLERK OF COURT
BY [signature] DC

PLAINTIFF	DEFENDANT
State of Florida	Todd Riley

This Cause having come to be heard upon Defendant's Motion to Suppress & the Court having heard argument of counsel the Motion is hereby granted based upon the reasons set forth in the record.

DONE AND ORDERED IN BREVARD COUNTY, FLORIDA

[signature] JUDGE

DATE 10-30-92

LAW 171

000053

Appendix Part 4

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FIFTH DISTRICT JULY TERM 1993

NOT FINAL UNTIL THE TIME EXPIRES TO FILE REHEARING MOTION, AND, IF FILED, DISPOSED OF.

STATE OF FLORIDA,

Appellant,

v. CASE NO.: 92-2789

TODD RILEY,

Appellee.

Opinion filed October 1, 1993

Appeal from the Circuit Court for Brevard County, John D. Moxley, Jr., Judge.

Robert A. Butterworth, Attorney General, Tallahassee, and Anthony J. Golden, Assistant Attorney General, Daytona Beach, for Appellant.

James B. Gibson, Public Defender, and Susan A. Fagan, Assistant Public Defender, Daytona Beach, for Appellee.

COBB, J.

The state appeals an order of suppression based upon the trial court's finding that the defendant was improperly stopped for failure to use a turn signal. The trial court found that no other vehicle was affected by the turn, therefore no offense occurred based upon the provisions of section 316.155, Florida Statutes (1991), which provides:

> (1) No person may turn a vehicle from a direct course upon a highway unless and until such movement can be made with reasonable safety, and then only after giving an appropriate signal in the manner hereinafter provided, in the event any other vehicle may be affected by the movement.

> (2) A signal of intention to turn right or left must be given continuously during not less than the last 100 feet traveled by the vehicle before turning, except that such a signal by hand or arm need not be given continuously by a bicyclist if the hand is needed in the control or operation of the bicycle.

The state, relying on State v. Kamins, 615 So. 2d 867 (Fla. 4th DCA 1993), argues that the "specific" language of subsection (2) above prevails over the "general" language of subsection (1), thereby negating the reference to the effect of a turn on any other vehicle.

We agree with the trial court and disagree with Kamins. Subsections (1) and (2) of section 316.155, Florida Statutes, should be read *in pari materia*. Subsection (2) is not in conflict with subsection (1), but merely defines the distance prior to an intended turn that a signal is required -- in the event one is required at all by the effect of that turn on another vehicle.

Accordingly, we affirm, and cite conflict with State v. Kamins, 615 So. 2d 867 (Fla. 4th DCA 1993).

AFFIRMED.

HARRIS, CJ., concurs and concurs specially with opinion.
DAUKSCH, J., concurs and concurs specially with opinion.

HARRIS, C.J., concurring and concurring specially: 92-2789

I agree with the logic of Judge Cobb's analysis. He has, I think, properly interpreted the statute as written. But, as so interpreted, the statute, as an effective traffic regulation, becomes illusory. The question before the traffic judge is no longer whether the signal was given but rather whether the requirement for a signal is applicable.

What does "may be affected by the movement" mean? If any vehicle is in or near the intersection (even behind the subject vehicle) is the law applicable? How close to the intersection must other traffic be in order to make the statute applicable?

One must stop at a stop sign even if no other vehicle is in sight; twenty-five miles an hour through a residential section is the speed limit even if everyone else is asleep. It is only the applicability of the turn signal requirement that is subject to debate depending upon the location of other traffic. *Kamins* is better policy.[1] But policy is the function of the legislature. It should reexamine this issue.

---

[1] It also appears to be more consistent with the legislative history of the 1983 amendment to section 316.155:

> The bill amends § 316.155 to prohibit turning a vehicle or moving right or left upon a roadway unless it is safe to do so and proper turn signals are given. (Emphasis added.)

Ch. 83-68, S. B. 274, Senate Staff Analysis and Economic Impact Statement (1983).

DAUKSCH, J., concurring specially.

I concur with the opinion of Judge Cobb; I write only to say that the trial judge would be eminently correct in suppressing the evidence based upon the illegal pretextual stop and could easily disbelieve the drug enforcement policemen who urge that they were merely trying to keep the highways safe from persons who don't signal a right turn after they have stopped for a stop sign.