IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

TODD M. RILEY,

Respondent.

CASE NO. 82,702

APPEAL FROM THE CIRCUIT COURT
IN AND FOR BREVARD COUNTY
STATE OF FLORIDA

# JURISDICTIONAL BRIEF OF RESPONDENT

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

SUSAN A. FAGAN
ASSISTANT PUBLIC DEFENDER
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ATTORNEY FOR RESPONDENT

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IN THE SUPREME COURT OF FLORIDA

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| STATE OF FLORIDA,<br><br>Petitioner,<br><br>vs.<br><br>TODD M. RILEY,<br><br>Respondent. | ) | CASE NO. 82,702 |

JURISDICTIONAL BRIEF OF RESPONDENT

SUMMARY OF ARGUMENT

Although the Fifth District Court of Appeal cites in the instant decision a conflict with a decision issued by the Fourth District Court of Appeal in State v. Kamins, 615 So.2d 867 (Fla. 4th DCA 1993), due to the particular factual circumstances in the instant case, it is not necessary for this Court to accept jurisdiction at this time to resolve the apparent conflict.

## ARGUMENT

WHETHER THE FLORIDA SUPREME COURT HAS JURISDICTION TO ACCEPT THE INSTANT CASE FOR REVIEW SINCE THE DISTRICT COURT OF APPEAL'S DECISION CITES CONFLICT WITH ANOTHER DISTRICT COURT DECISION.

Petitioner alleges that this Honorable Court has jurisdiction to review this case due to the Fifth District Court of Appeal's citing conflict in its decision with another decision issued by the Fourth District Court of Appeal in State v. Kamins, 615 So.2d 867 (Fla. 4th DCA 1993). This argument overlooks, however, that the facts present in the instant case, as pointed out by Judge Dauksch in his specially concurring opinion, differ from those in Kamins. In the instant case, there is a sufficient factual basis upon which the trial court could find an illegal pretextual stop which was specifically not found to exist in Kamins by the Fourth District Court of Appeal. Therefore, the instant case does not lend itself as a proper candidate for review, notwithstanding the apparent conflict with Kamins due to the decisions being factually distinguishable.

This Honorable Court should decline to accept jurisdiction under these circumstances.

## CONCLUSION

For the reasons expressed herein, Respondent respectfully requests that this Honorable Court decline to accept jurisdiction in this cause.

Respectfully submitted,

JAMES B. GIBSON, PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

SUSAN A. FAGAN
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Avenue, Suite 447, Daytona Beach, Florida 32114, by delivery to his basket at the Fifth District Court of Appeal; and by mail to the Respondent, Todd M. Riley, 6817 Elder Road, Cocoa, FL 32927 on this 3rd day of December, 1993.

SUSAN A. FAGAN
ATTORNEY FOR PETITIONER

IN THE SUPREME COURT OF FLORIDA

| | | |
|---|---|---|
| STATE OF FLORIDA, | ) | |
| | ) | |
| Petitioner, | ) | |
| | ) | |
| vs. | ) | CASE NO. 82,702 |
| | ) | |
| TODD M. RILEY, | ) | |
| | ) | |
| Respondent. | ) | |
| | ) | |

APPEAL FROM THE CIRCUIT COURT
IN AND FOR BREVARD COUNTY
STATE OF FLORIDA

APPENDICES

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

SUSAN A. FAGAN
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ATTORNEY FOR RESPONDENT

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.

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[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.

STATE of Florida, Appellant,

v.

Ralph KAMINS, Appellee.

No. 92-1785.

District Court of Appeal of Florida, Fourth District.

March 24, 1993.

Rehearing and Rehearing En Banc Denied April 16, 1993.

The Circuit Court, Broward County, Robert W. Tyson, Jr., J., found that officer's stop of vehicle which made two left turns without proper turn signals in violation of statutory provision, stating that signal of intention to turn must be given continuously during not less than last 100 feet traveled by vehicle before turning, was illegal and suppressed evidence obtained during stop, and state appealed. The District Court of Appeal held that: (1) specific language and requirements of statute pertaining to when turn signal is required controls over general requirements of same statute, and (2) stop was valid.

Reversed and remanded.

1. Automobiles ⇐329
Statutes ⇐223.4

Statutory provision, stating that signal of intention to turn must be given continuously during not less than last 100 feet traveled by vehicle before turning, need not be read in conjunction with statutory provision, stating that person may turn vehicle, only after giving appropriate signal in event any other vehicle may be affected by movement, so as to state that signal of intention to turn need only be given in event another vehicle may be affected by movement; specific language and requirements of former statutory provision controls over general requirements of latter. West's F.S.A. § 316.155(1, 2).

2. Automobiles ⇐349(2.1), 349.5(8)

Stop of vehicle which made two left turns without proper turn signals in violation of statute, providing that signal of intention to turn must be given continuously during not less than last 100 feet traveled by vehicle before turning, was valid and therefore, evidence which was in plain view was admissible. West's F.S.A. § 316.155(2).

3. Automobiles ⇐349.5(4)

Stop of vehicle which made two left turns without proper turn signals in violation of statute, providing that signal of intention to turn must be given continuously during not less than last 100 feet traveled by vehicle before turning, was valid and therefore, evidence found during subsequent search was admissible, since officer had probable cause for search. West's F.S.A. § 316.155(2).

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Robert A. Butterworth, Atty. Gen., Tallahassee, and Melvina Racey Flaherty, Asst. Atty. Gen., West Palm Beach, for appellant.

Stuart L. Stein of Stuart L. Stein, P.A., Santa Fe, NM, for appellee.

PER CURIAM.

The State argues the trial court erred in finding that Kamins' traffic stop was illegal and in suppressing the evidence obtained during the stop. We agree and reverse.

A police officer stopped Kamins' vehicle after Kamins made two left turns without proper turn signals in violation of section 316.155(2), Florida Statutes (1991). During the traffic stop, the police officer observed marijuana, cocaine, and an open beer bottle in plain view. Kamins was arrested, and a subsequent search revealed additional cocaine and large sums of cash.

[1] We do not agree with the trial court that section 316.155(2) must be read in conjunction with section 316.155(1) and that a signal of intention to turn right or left need only be given in the event another vehicle may be affected by the movement. The specific language and requirements of subsection (2) controls over the general provi-

sion of subsection (1). *Adams v. Culver*, 111 So.2d 665 (Fla.1959).

[2, 3] Because the police officer observed a violation of section 316.155(2), the police officer acted in accordance with the law and made a valid stop. *Andrews v. State*, 540 So.2d 210 (Fla. 4th DCA 1989). The evidence was in plain view and, therefore, is admissible. Likewise, the evidence found during the subsequent search is admissible since the police officer had probable cause for a search. *Id.* Accordingly, the trial court's order granting Kamins' motion to suppress is reversed.

REVERSED AND REMANDED.

DELL, GUNTHER and FARMER, JJ., concur.


**Richard D. ROTH, Appellant/Cross–Appellee,**

**v.**

**Marian Y. ROTH, Appellee/Cross–Appellant.**

**No. 92–0798.**

District Court of Appeal of Florida, Fourth District.

March 24, 1993.

Former wife moved to modify final judgment of dissolution and, inter alia, requested extension of rehabilitative alimony. The Circuit Court, Palm Beach County, Virginia Gay Broome, J., extended rehabilitative alimony and refused to correct mistake in final judgment. Former husband appealed and former wife cross-appealed. The District Court of Appeal, Klein, J., held that: (1) trial court erred in extending rehabilitative alimony by failing to specify more definite period of payment, and (2) trial court's mistake in final judgment of dissolution by requiring former husband to maintain medical insurance with deductible of "not less than $250.00" was type of mistake arising from oversight or omission which could be corrected at any time.

Affirmed in part, reversed in part, and remanded.

**1. Divorce ⇐247**

Trial court erred in extending rehabilitative alimony at request of former wife by failing to specify more definite period of payment in ruling on former wife's motion to modify final judgment of dissolution; court found that former wife continued to need rehabilitative alimony and would do so until she graduated and was able to establish herself in job, but failed to specify how long period of payment would continue.

**2. Divorce ⇐254(2), 287**

Trial court's mistake in final judgment of dissolution by requiring former husband to maintain medical insurance with deductible of "not less than $250.00" was obvious mistake, since it allowed husband to provide health insurance with no ceiling on deductible, and was type of mistake arising from oversight or omission which could be corrected at any time, despite former wife's failure to seek relief within one year; therefore, trial court on remand was instructed to correct final judgment to require former husband to maintain medical insurance with deductible of not more than $250. West's F.S.A. RCP Rules 1.540(a, b).

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Donald C. Dowling of Spinner, Dittman, Federspiel & Dowling, Delray Beach, for appellant/cross-appellee.

James P. O'Flarity of James P. O'Flarity, P.A., West Palm Beach, for appellee/cross-appellant.

KLEIN, Judge.

[1] Former wife moved to modify the final judgment of dissolution and, among other things, requested an extension of rehabilitative alimony. The court extended rehabilitative alimony, finding that former wife "continues to need rehabilitative alimony and will do so until she graduates and is able to establish herself in a job," but failed to specify how long it would