5-2-95

FILED
SID J. WHITE
FEB 23 1995
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

ALAN DANIEL,

Respondent.

CASE NO. 84,486

PETITIONER'S REPLY BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Parties, the record on appeal ("R"), the transcript of the trial court's motion-hearing and sentencing proceedings ("T"), and pagination will be referenced as in Petitioner's Initial Brief on the Merits. "IB" and "AB" will designate Petitioner's Initial Brief on the Merits and Respondent's Answer Brief, respectively. The opinion of the First District Court of Appeal will be referenced by its Florida Law Weekly citation at Daniel v. State, 19 Fla. L. Weekly D1920 (Fla. 1st DCA Sept. 8, 1994).

All emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Contrary to Respondent's contention (AB 1), the State maintains that the "defense then conceded that an officer would have stopped someone if the windshield had been cracked." (IB 8) This is supported by trial defense counsel's statements:

> I could understand if there was a cracked windshield, but I think it's established that the windshield was not cracked.

(T 39)

> Had there been a cracked windshield certainly that's a whole different story ... .

(T 43-44)

ARGUMENT

ISSUE

WAS AN OFFICER'S STOP OF A CITIZEN REASONABLE WHERE THERE WAS NO EVIDENCE OF PRETEXT; WHERE THE STOPPING OFFICER OBSERVED A CRACKED WINDSHIELD AND UPRIGHT WINDSHIELD WIPER ON THE MOTORIST'S CAR; AND, WHERE THE OFFICER WAS A SQUAD SUPERVISOR AT THE TIME OF THE STOP WHO HAD PREVIOUSLY STOPPED MOTORISTS FOR SIMILAR EQUIPMENT DEFECTS? (Certified Question, as restated at IB 12)

A. In arguing the facts, Respondent-Daniel's Answer Brief ignores the appropriate appellate standard of review.

Daniel's arguments rely upon a number of factual assumptions that blatantly violate the standard of appellate review (as discussed at IB 12-14, citing Owen v. State, 560 So. 2d 207, Fla. 1990, and Caso v. State, 524 So. 2d 422, 424, Fla. 1988).

1. In violation of the appellate standard of review, Daniel infers pretext.

Daniel assumes or infers pretext for the traffic stop (AB 5 n. 2: "indirectly suggested a pretext." AB 10 n. 3: "suggest an invalid purpose". AB 13: "suggests pretext". But see AB 13: "do not directly prove ... some ulterior motive") in the face of evidence that explicitly indicated to the contrary. The stopping officer testified:

Q At the time when you saw Mr. Daniel or when you motioned him to turn in front of you or even when you talked to Mr. Daniel, was he in any way somebody you suspected of criminal activity?

A No sir. He was not.

Q Were you during this shift and at this time working in conjunction with any drug deployment or task force?

A I was not.

Q As far as you know had you ever seen Mr. Daniel before?

A No, sir, not to the best of my recollection I never have. He doesn't look familiar.

Q And had anybody in the station or any other officers shared with you, fellow officer information that Alan Daniel is a -- suspected of drugs?

A No, sir.

(T 10. Also, see T 18) Instead of any ulterior motive, the officer explicitly testified that he decided to stop Daniel because of the cracked windshield and the upright windshield wiper (T 5, 7, 14). Accordingly, Daniel's trial counsel conceded that there was no evidence of pretext. (T 41-42) As the trial court concluded in defense counsel's presence without objection: "even counsel for the defendant are satisfied that it was not a pretextual stop pursuant to the Kehough [sic] case ... ." (T 45)

Therefore, the First District Court of Appeals' conclusion that "there is no evidence that the stop was pretextual," 19 Fla. L. Weekly at D1920, was well-grounded on the record on appeal.

2. In violation of the appellate standard of review, Daniel speculates on improper motives.

Daniel aggravates his violation of the appellate standard of review by descending into specific speculation totally devoid of record support. He speculates that "Sergeant Deal could have decided he was going to enforce the alleged violations because he didn't like ... the color of his skin." (AB 6) Similarly, Daniel "suggests" an "invalid" purpose for the stop. (AB 10 n. 3) There was absolutely no evidence whatsoever indicating that Sergeant Deal stopped Daniel for a racial, or any other improper, reason. Instead, the evidence indicated the obstructions on the windshield as the reasons for the stop, and, as an officer in a supervisory position (T 3-4, 25), Sergeant Deal testified that he had stopped people in the past for a cracked windshield. (T 18-19)

3. In violation of the appellate standard of review, Daniel infers that the trial court did not believe that there was a cracked windshield.

Respondent-Daniel "pays lip service" to the appellate standard of review and the Owen case, then immediately violates it by

speculating that the trial court "may very have believed the State failed to prove a cracked windshield" (AB 15).[1] The trial court ruled against Daniel with no explicit finding of fact regarding the cracked windshield. Therefore, the ruling against Respondent is entitled to the evidence supporting it that, in fact, the cracked windshield and the obstructing windshield wipers were the reasons for the traffic stop, as the officer testified (T 5-6, 7, 14-15). See Owen, supra.

4. In violation of the appellate standard of review, Daniel assumes as a fact that his view was unobstructed.

In attempting to minimize the significance of his traffic violations, Respondent-Daniel implies that the evidence shows that his view was unobstructed. (AB 14, 15. Also, see AB 3) He is incorrect. The officer explicitly testified that Daniel's view was obstructed: "where it was obstructing his view" (T 7. Also see T 6: "directly across his view"; T 15: crack "in the middle of the windshield").

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[1] If one looks at the context of the trial court's observation regarding the windshield wiper, it was made in passing (T 46) immediately after defense counsel had narrowed his argument to the windshield wiper (See T 43-46).

5. In the context of belittling evidence of the cracked windshield, the obstructed view, and the officer's motives, Daniel also totally ignores that he failed to signal while making a turn in the face of oncoming traffic.

Since "the officer's stated reasons for stopping Daniel's car were more than adequate to justify the stop" (IB 12 n. 2), Petitioner, in the Initial Brief, did not emphasize Daniel's failure to use a turn signal. However, in the context of Daniel's wholesale re-weighing of the evidence, in violation of the appellate standard of review, it is important to note this additional justification for the stop (discussed at IB 12 n. 2). As summarized in Petitioner's Initial Brief, "while Daniel's car approached the car Deal was driving as oncoming traffic (T 5, 13), they met in an intersection, where Daniel was attempting to make a left turn onto a one-way street **without signaling**. (T 5, 14)" (IB 13. Also, see IB 3: "without signaling")

6. In violation of the appellate standard of review, Daniel infers that "no reasonable supervising patrol sergeant" would have stopped him (AB 16).

Sergeant Deal was the only supervisor who testified at the motion to suppress hearing. In contrast to Daniel's speculative inference,[2] the Sergeant testified that he had stopped people in

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[2] Petitioner is overlooking for the sake of argument some absurd consequences of Daniel's argument. It appears that Daniel would require the State to produce evidence that a "reasonable

the past for a cracked windshield. (T 18-19)[3] Apparently, Daniel would also contend that "no reasonable supervising patrol sergeant" would have stopped a motorist for not only a cracked windshield but also an upright wiper and failing to use a turn signal while there was oncoming traffic.

7. Conclusion based upon the appropriate appellate standard of review: The stop was adequately supported by the evidence introduced at the motion to suppress hearing.

In conclusion, Respondent has totally ignored the well-settled principle that the trial court's ruling comes to this Court "clothed with a presumption of correctness," requiring that the evidence be interpreted and reasonable inferences and deductions be made "in a manner most favorable to sustaining the trial court's ruling." Owen, 560 So. 2d at 211. In contrast, Daniel has

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supervising patrol sergeant" would have stopped him. One might wonder about the dilemma posed if the supervisors were corporals or lieutenants. Also, what if the other supervisors were significantly less experienced than Sergeant Deal? Does the shift of supervision make a difference, for example, where the day shift may be less busy with felonies, thereby providing more opportunities for enforcing traffic laws? Does it make a difference if the supervisor's area of supervision recently had a serious traffic accident caused by faulty equipment, whereas other areas of the city had no such recent accident? ... The list of complications posed by lawful, real-world police work may be endless.

[3] The Sergeant suggested that the police rarely saw cars with the windshield wiper stuck in the upright position. (See T 19)

interpreted the evidence and inferred facts that are unfavorable to the trial court's ruling. A fortiori, he has **inferred** unfavorable facts when there is evidence explicitly to the contrary. Petitioner adheres to the evidence and reasonable inferences from it that are favorable to the trial court's ruling, as discussed above and in the Initial Brief (IB 13-14). These facts adequately support the reasonableness of the stop – a question of law to which the discussion now turns.

B. Respondent-Daniel's Answer Brief would radically expand the prerequisites for a lawful traffic stop.

As demonstrated in the above discussion, in Petitioner's Initial Brief, and in the First District Court of Appeals decision, there was no pretext here. Daniel's argument, therefore, essentially requests that this Court apply the requirements for pretextual stop situations to all traffic stops.

1. Daniel's request to expand Kehoe v. State, 521 So. 2d 1094 (Fla. 1988), is unsupported by authority.

Daniel admits that Kehoe's analysis was predicated on a situation where "the officer has an ulterior motive for the stop" (AB 4), but then he jumps to the conclusion that Fourth Amendment reasonableness requires that the Kehoe rule be expanded to all

"minor" traffic stops (AB 5-6).[4] Instead of offering any case whatsoever as precedent for such a broad expansion of the law, Daniel conjectures that a failure to expand Kehoe will result in "unconstrained discretion" (AB 6). His argument neglects three compelling facts:

a. In a non-pretext situation, requiring that an officer have a reasonable suspicion or probable cause that a motorist committed a traffic violation (See IB 26) does not vest the officer with "unconstrained discretion."

b. It is well-settled that reasonable suspicion and probable cause tests constitute the general litmus for determining the Fourth Amendment constitutionality of a stop and arrest, respectively. See, e.g., Cresswell v. State, 564 So. 2d 480 (Fla. 1990)(following too closely; "law enforcement officer is clearly entitled to stop every vehicle for a traffic violation"); Hansbrough v. State, 509 So. 2d 1081 (Fla. 1987)(illegal turn and broken windshield; "minor traffic infraction for which any citizen could be stopped"); N.Y. v. Class, 475 U.S. 106, 106 S.Ct. 960, 89 L.Ed.2d 81 (1986)(cracked windshield and

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[4] Petitioner will contest infra his characterization of "minor" (Also, see IB 22-26), and Petitioner will contend infra that his blanket expansion of the Kehoe rule would transform this and other Courts into "superlegislatures."

speeding; analysis of VIN inspection premised upon implicit assumption of lawful traffic stop); Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977)(expired tag; order for driver to get out of car "after the driver was lawfully detained"); discussion at IB 17-18, 20-22.

c. In all of the cases cited in the preceding paragraph, the lawfulness of a traffic stop was explicitly or implicitly determined by the facts within the stopping officer's knowledge constituting reasonable suspicion or probable cause that a traffic violation occurred.[5] None of them remotely suggests that any more than these well-settled tests is required to justify a stop where there is no evidence of an ulterior, non-traffic police motive.

In other words, Daniel's position that would add Kehoe's reasonable-officer-would-have-stopped test to reasonable suspicion and probable cause in non-pretext situations is devoid of merit as a matter of policy and law.

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[5] Thus, contrary to Daniel's assertion (AB 8), the circumstances of each case, not a per se rule, determine whether there is reasonable suspicion or probable cause.

2. Daniel's trivializes the enforcement of Florida traffic laws regulating equipment, the obstruction of the driver's view, and the licensing of drivers.

Throughout his Answer Brief, Daniel trivializes the nature of these traffic violations, yet Daniel cannot overcome the simple fact that Sergeant Deal, at the point that he stopped Daniel, had at least a reasonable suspicion that Daniel was driving a motor vehicle not "equipped in proper condition and adjustment" §316.610, Fla. Stat. It is also clear that Section 316.610, Fla. Stat., includes defective windshield wipers, See §316.610(2)("windshield wipers"), and that a windshield with a crack in the middle so visible that it can be seen by an oncoming car is not in "proper condition," §316.610, Fla. Stat.; See §316.2004, Fla. Stat. and other statutes cited at IB 19. Daniel protests that it was not raining at the time of the stop (AB 13), but this argument, at most, only entitles him to a "written notice to require proper repair and adjustment ... within 48 hours" §316.610(2). It does not prohibit the initial stop. It does not prohibit law enforcement from attempting to remedy a condition that would become dangerous in inclement weather.

Daniel protests that he was asked for his driver's license (AB 12-13), but he neglects to point out how the Sergeant might give him a warning without knowing Daniel's name, and Daniel neglects

the general right of the police to ask to see a driver's license upon lawfully stopping a motorist. See, e.g., Mimms, supra (police observed expired tag and stopped Mimms' car; police order to Mimms to step out of car to produce owner's card and operator's license, upheld as reasonable).

3. Daniel's request would transform this Court into a superlegislature.

Daniel's protests of this Sergeant taking steps to implement Florida Statutes amount to a request that this Court demarcate an area of Florida statutory law as "minor" traffic. Daniels would **routinely** require an additional burden to enforce violations of these so-called "minor" Florida statutes. This additional burden would be imposed **in all cases** falling within the demarcated area. Its application would not depend upon a showing of an ulterior police motive. Its application would totally depend upon the demarcation of these laws as somehow inferior to other laws, even though he offers no evidence to substantiate how an obstructed view while driving a "dangerous instrumentality" (See IB 22-25) merits inferior treatment in the law. In essence, he asks this Court to set itself up as a "superlegislature" to rank traffic laws as "minor" ones that are inferior and others as ones that merit fuller enforcement. This Court has properly rejected the role of

"superlegislature." See, e.g., Florida Patients Compensation Fund v. Von Stetina, 474 So. 2d 783, 789 (Fla. 1985). It should reject it here.

Well-settled requirements of reasonable suspicion and probable cause provide Fourth Amendment protection for non-pretextual traffic stops, not Daniel's superimposition of yet another layer of law to his superlegislative classifications of Florida statutes.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court answer the certified question in the negative, disapprove the decision of the First District Court of Appeal, and direct that the trial court's denial of the motion to suppress be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S REPLY ON THE MERITS has been furnished by U.S. Mail to Mr. Abel Gomez, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 23rd day of February, 1995.

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