IN THE SUPREME COURT OF FLORIDA

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BARBARA GAYLE HOLLAND,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

/

CASE NO. 88,995

INITIAL BRIEF OF PETITIONER

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

DAVID P. GAULDIN
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IN THE SUPREME COURT OF FLORIDA

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Respondent.

_____/

INITL BRIEF OF P ITIO!

PRELIMI STATEMENT

References to the record on appeal shall be by the letter "R" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

By amended information, Petitioner, Barbara Gayle Holland, was charged with the possession of crack cocaine on June 10, 1993. (R-2).

On February 28, 1994, a hearing was held on Holland's motion to suppress.

Evidence adduced at that hearing included the following:

On May 25, 1993, Don Duell, of the narcotics division, was assigned to work with the Esoambia County Sheriff's Department. (R-142). Duell was positioned in such a way that he could observe traffic coming in and out of the Moreno Courts apartment complex for the purpose of observing narcotics transactions. (T-142). Duell

observed Holland, a passenger in the truck in which she was riding, and the male driver drive up to the complex to the parking lot area whereupon a black male ran up to the driver's side of the vehicle and exchanged something with the driver. (T-143). Duell had observed this black male make other exchanges with other vehicles that day. (T-143).

Duell advised by radio Jimmy James of the Escambia County Sheriff's Office what he had seen. (T-151).

Both Duell and James were in (separate) unmarked cars and street clothes. Duell advised James of what had occurred in order to allow James to stop Holland's vehicle. (T-149-150).

In the meantime, James had apparently also been watching Holland and the driver of the truck in which she was in. James, like Duell, had observed the black man walk up to the driver of Holland's vehicle, exchange something, and run off. (T-152).

As Holland and the driver of her truck left, James observed the driver run the stop sign which was immediately by Moreno Courts. (T-152).

At the hearing held on the motion to suppress, James testified that it was always his policy to stop drivers that ran stop signs although he did not always write them a ticket. (T-152).

Both Duell and James talked to the driver and Holland, and after asking, the driver gave his permission to search the truck. The officers found a knife on the seat of the truck which, when opened, exhibited a white powder residue on it. A field test indicated positive results for cocaine residue. (T-153).

James admitted that he did not have probable cause to stop Holland's vehicle absent the vehicle running the stop sign. **(T-157).** James also admitted that normally traffic stops were not made with the unmarked vehicles used in this case and he did not write the driver of the vehicle in which Holland rode a ticket for allegedly not stopping at the stop sign. **(R-154; 156).** Whether James requested to search the vehicle depended upon whether he believed the driver or passenger in the vehicle had been involved in some kind of narcotic violation. **(R-158-159).**

Under questioning by the court, James admitted that a marked patrol car was used to stop a vehicle if it involved **"...a** pure traffic **stop...." (R-162).** James admitted that this case did not involve "...a pure traffic **stop." (R-162).**

Duell, like James, did not believe that probable cause existed to stop the driver of the vehicle (absent the alleged stop sign violation). **(R-145;154).**

The following exchange occurred between the court and Officer James:

> THE COURT: 9:00 at night. Pensacola is a dangerous place. That area of town is a dangerous place. You know, most people, most citizens, and I'm not telling you anything yon don't know, most citizens see a blue light coming up behind them and don't see any markings of a cruiser car, if -- I personally think they are stupid to stop.
>
> **THE WITNESS:** I do, too. [Emphasis **added;** R-**161].**

The court then went on to state:

> I mean, yon know, I mean somebody could have a blne light to rob them or all kind of bad things could happen. Of course, that's for the protection of the public as well as for the protection of the officer. Yon know, some officer getting out that's in plain clothes can get shot. I can't understand why if it's, you know, if it's purely a traffic matter, why a cruiser car for officer safety is not called as opposed to putting yourself in danger and putting the public in danger for somebody panicking, taking off trying to get to a lighted convenience store or something like that. Don't you think it's more dangerous to do it the way yon all do it than to call a cruiser car if it's a pnre traffic stop?
>
> THE WITNESS: If it's a pure traffic stop, yes.
>
> **THE COURT:** But it's not a pare traffic! stop.
>
> **THE WITNESS: No, sir. [R-162].**

In granting the Petitioner's motion to suppress, the trial court stated:

> Well, I think that's all a fraud, personally. And I think they [the law enforcement officers] sit here and testify -- they got smirks on their faces when they are testifying. He did himself. This officer did himself when he was asked questions about it. They know what they are doing. Yon know what they are doing. I know what they are doing. They are stopping people and using this excuse or reason to stop them when they have no other reason to stop them. And that's exactly what we are not supposed to do. **[T-171].**

The trial court then ordered the transcripts from two other

similar cases be attached to this record on appeal.'

Notice of appeal was timely filed on or about March 8, 1994. (R-177).

On August 23, 1996, the Florida First District Court of Appeal issued its opinion in this case. The majority, in light of the U.S. Supreme Court's opinion in Whren v. United States, ___ U.S. ___, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996), reversed the trial court's Suppression order and certified the following question to this Court as one of great public importance:

> WHETHER WHREN V. UNITED STATES, U.S. , 116 S.CT. 1769, L.ED.2D (1996), OVERRULES STATE V. DANIEL, 665 SO.2D 1040, 1046 (FLA. 1995), AND WHETHER THE PRESENT SUPPRESSION ORDER SHOULD BE REVERSED.

In his concurring opinion, Judge Van Nortwfck answered the "hypothetical" question whether reversal would be required under Daniel if Daniel were still good law. Van Nortwick concluded that it would not be required.

Notice to invoke discretionary jurisdiction was filed on or about September 20, 1996.

SUMMARY OF TEE ARGUMENT

There are two parts to the certified question. The first part to the certified qnestion should be answered no if this Court is willing to adopt the dissenting views in Perez v. State, 620 So.2d

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[1] The transcripts of these hearings start at page 5 of the record and at page 68 of the record.

1256 (Fla. 1993). The second part of the certified question should also be answered in the negative because regardless of how this Court answers the first question, the stop in this case was a pretextual fraud which endangered the safety of the defendant.

ARGUMENT

ISSUE

WHETHER WHREN V. UNITED STATES, U.S. , 116 S.CT. 1769, L.ED.2D (1996), OVERRULES STATE V. DANIEL, 665 SO.2D 1040, 1046 (FLA. 1995), AND WHETHER THE PRESENT SUPPRESSION ORDER SHOULD BE REVERSED.

There are two parts to the certified question. The first part asks whether Whren v. United States overrules State v. Daniel, 665 So.2d 1040, 1046 (Fla. 1995). The second part of the certified qnestion asks whether the suppression order issued by the trial court should be reversed. Each of the parts of the certified question will be answered separately.

Insofar as the answer to the first part of the certified question, frankly, it depends upon whether this court has the, courage to do the right thing and to adopt the dissenting opinions in Perez v. State, 620 So.2d 1256, 1262-1273 (Fla. 1993). The reasoning for doing so is well aired in these dissenting opinions and Petitioner will not belabor the Court with repeating those reasons here bnt will adopt them in total.

Thns, the answer to the first part of the certified question is no, if the dissenting opinion becomes the majority opinion of

Perez.

Insofar as the second part of the question is concerned, assuming that Whren v. United States, supra, does not overrule State v. Daniel, supra, then the order of suppression should be affirmed for the same reasons expressed by Judge Van Nortwick in his concurring opinion.

However, assuming, for the sake of argument, that Whren v. United States, does overrule State v. Daniel, the second part of the certified question should be answered in the negative (i.e., the suppression order of the trial court should still not be reversed).

The U.S. Supreme Court recognized one significant exception to the rule announced in Whren:

> Where probable cause has existed, the only cases in which we have found it necessary actually to perform the "balancing" analysis involved searches or seizures conducted in an extraordinary manner, unusually harmful to an individual's privacy or even physical interests -- such as, for example seizure by means of deadly force, see Tennessee v. Garner, 471 U.S. 1, 85 L.Ed.2d 1, 105 S.Ct. 1694 (1985), unannounced entry into a home, see Wilson v. Arkansas, 514 U.S. , 131 L.Ed.2d 976, 115 S.Ct. 1914 (1995), entry into a home without a warrant, see Welsh v. Wisconsin, 466 U.S. 740, 80 L.Ed.2d 732, 104 S.Ct. 2091 (1984), or physical penetration of the body, see Winston v. Lee, 470 U.S. 753, 84 L.Ed.2d 662, 105 S.Ct. 1611 (1985). The making of a traffic stop out-of-uniform does not remotely qualify as such an extreme practice, and so is governed by the usual rule that probable canse to believe the law has been broken "outbalances"

> private interest in avoiding police contact. [Id. at 135 L.Ed.2d 89].

Here, however, under the circumstances of this case (because of the danger imposed to Holland) the officer's stop of the truck in which Holland was riding out-of-uniform using an unmarked car was such an extreme practice excepted by Whren v. United States.

The factual sitnation in this case was significantly different than the factnal situation in Whren. Here, even the officer who stopped Holland's vehicle thought that it was **"stupid"** of the driver of her vehicle to stop under the circumstances because of the danger that it imposed to the vehicle's occupants. **(R-161).** The record discloses that this stop occurred at 9:00 at night in a dangerous area, and as such, this created the very dangerous exception which is the one exception to the rule established in Whren.

The Fourth Amendment to the **U.S.** Constitution and Article I, Section 12, do not sanction unreasonable searches and seizures. In the constitutional sense, the stop of the vehicle in which Petitioner was riding was unreasonable because it resulted in the infliction of potential great danger or harm to the occupants of the vehicle.

The procedure in this case was a sham, a fraud, and an unwise policy that subjected citizens to real and imminent danger. Saeh a policy cannot and should not be countenanced by this Court, and the smirks on the officers' faces must be permanently wiped off with a resounding decision affirming the trial court's order granting the motion to suppress.

CONCLUSION

For the reasons expressed in this brief, the order on the motion to snppress by the trial court should be affirmed.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been forwarded by delivery to the Office of the Attorney General, The Capitol, Plaza Level, Tallahassee, Florida, this 21st day of October, *1996*.

Respectfully submitted,

NANCY A. DANIELS
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COUNSEL FOR PETITIONER

IN THE SUPREME COURT OF FLORIDA

BARBARA GAYLE HOLLAND,	:	
Appellant,	:	
v.	:	**CASE NO. 88,995**
STATE OF FLORIDA,	:	
Appellee.	:	
_____/		

APPENDIX

PD

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

STATE OF FLORIDA,

Appellant,

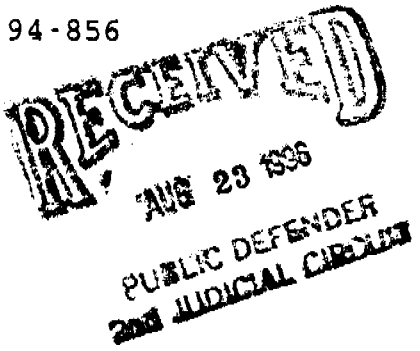
vs.

BARBARA GAYLE HOLLAND,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND -DISPOSITION THEREOF IF FILED.

CASE NO. 94-856



Opinion filed August 23, 1996.

An appeal from the circuit court for Escambia County, Frank Bell, Judge.

Robert A. Butterworth, Attorney General, and Thomas Crapps, Assistant Attorney General, Department of Legal Affairs, Tallahassee, Attorney for Appellant.

Nancy A. Daniels, Public Defender, and David P. Gauldin, Assistant Public Defender, Tallahassee, Attorney for Appellee.

BOOTH, J.

This cause is before us on appeal from an order granting Appellee Holland's motion to suppress a knife with cocaine residue on its blade, which police seized from a vehicle in which Holland was a passenger. The trial court ruled that the stop of the vehicle was pretextual under Kehoe v. State, 523 So. 2d 1094 (Fla. 1988). We reverse and remand.

During the pendency of this appeal, the United States Supreme Court rendered its decision in Whren v. United States, _____ U.S. _____, 116 S. Ct. 1769, _____ L. Ed. 2d _____ (1996), applying an objective test to uphold a search and seizure under similar facts. In Whren, the Court specifically, rejected the reasonable officer test that the Florida Supreme Court recently applied in State v. Daniel, 665 So. 2d 1040, 1046 (Fla. 1995). Reversal of the order below is compelled under the objective test set forth in Whren, supra.

Even applying the reasonable officer test set forth in Daniel, we would reverse the suppression ruling below. In the case before us, it is undisputed that immediately prior to the stop, the subject vehicle ran a stop sign.[1] Running a stop sign is a direct violation of Florida's traffic laws,[2] and is a valid reason for police to stop a vehicle. See State v. Renda, 553 So. 2d 373, 374-75 (Fla. 2d DCA 1989)(reversing order granting defendant's motion to suppress cocaine, finding under Kehoe that "the cocaine was

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[1] The vehicle ran the stop sign immediately after being involved in an apparent drug transaction. We note, without belaboring the facts or deciding the issue, that the apparent drug transaction may have in and of itself provided a legitimate basis for the stop, regardless of the subsequent running of the stop sign. See Brandin v. State, 669 So. 2d 280, 282 (Fla. 1st DCA 1996); State v. Renda, 553 So. 2d 373, 374 (Fla. 2d DCA 1989).

[2] See §§ 316.072(2) & 316.123(2) (a), Fla. Stat. (1993) (requiring drivers to stop at intersections marked with a stop sign, and rendering the failure to do so unlawful); see also State v. Carmody, 553 So. 2d 1366, 1367 (Fla. 5th DCA 1989) (holding that running a stop sign is an offense "for which a law enforcement officer is authorized to make a warrantless arrest, when the offense is committed in the officer's presence.").

found as part of a legitimate traffic stop" for running a stop sign).[3] As recently held in a similar context in State v. Everett;, 671 So. 2d 161 (Fla. 2d DCA 1996):

> [T]he Florida Supreme Court recently opined that once the state establishes that a traffic stop was legally authorized, then any legitimate doubt whether the state has met its burden that the stop was not pretextual should be resolved in favor of the state. State v Daniel, 665 So. 2d 1040 (Fla. 1995). In this instance, the state presented unrefuted testimony indicating [the defendant] made a right hand turn without signalling. [The defendant's] action was a violation of section 316.155, Florida Statutes (1993). Consistent with Daniel, (the defendant's] action gave the officer the right to initiate a traffic stop.

It is also undisputed in the present case that, once stopped, the driver consented to the search of the subject vehicle. See State v. Cromatie, 668 So. 2d 1075, 1077 (Fla. 2d DCA 1996) (holding in context of vehicle that had run a stop sign and had an improperly operating left rear brake light that "[d]uring a valid traffic stop, . . . there is no reason a law enforcement officer cannot ask for consent to search."); see also State v. Lagree, 595 So. 2d 1029, 1031 (Fla. 1st DCA) ("A mere passenger normally does

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[3] See also R.H. v. State, 671 So. 3 d DCA 1 9 9 6) ; State v. Velez., 649 So. 2d 310 (Fla. 3d DCA 1995); State v. Banfield, 614 So. 2d 551, 552-53 (Fla. 2d DCA), rev. denied, 626 So. 2d 203 (Fla. 1993): State v. Rodriguez, 542 So. 2d 454, 455-56 (Fla. 3d DCA 1989). Pre-Kehoe cases likewise hold that running a stop sign or stop light is a valid reason for police to stop a vehicle. See Ferrara v. State, 101 So. 2d 797, 798 (Fla. 1958); McClendon v. State, 440 So. 2d 52, 53-54 (Fla. 1st DCA 1983); Crummie v. State., 367 So. 2d 1106, 1107 (Fla. 3d DCA 1979). Nothing in Kehoe rendered the running of a stop sign or stop light a trivial traffic offense. Indeed, such an offense is a moving violation that potentially threatens life and limb.

not have standing to contest the search of a car in which he is riding."), rev. denied, 601 So. 2d 553 (Fla. 1992).

Finally, it is also undisputed that the police involved in this case, members of a specialized street crimes unit, normally stop vehicles for running stop signs and other traffic infractions, and request the drivers' consent to search the vehicles.[4] As held by the Florida Supreme Court in Daniel, 665 So. 2d at 1046, "a stop is permissible if effected by specialized officers properly acting within the scope of their usual duties and practices . . . ."

It is important to note that the trial court in the present case did not reject the officers' testimony pertaining to the usual, police practice; rather, the trial court found the practice itself to be objectionable because the trial court believed that the officers' primary motive in stopping for traffic violations was to search vehicles for drugs.

The "primary motivation" rationale employed by the trial court here has already been rejected under strikingly similar facts in State v. Renda, 553 So. 2d 373 (Fla. 2d DCA 1989). In Renda, as in the present case, officers of "a special investigations unit

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[4] This "usual police practice" testimony from the officers at issue distinguishes the present case from Hills v. State, 629 So. 2d 152 (Fla. 1st DCA 1993), rev. denied, 639 So. 2d 981 (Fla. 1994), and Monroe v. State, 543 So. 2d 298 (Fla. 5th DCA 1989). In neither of those cases did the narcotics officers testify that they usually stopped vehicles for failing to use a turn signal and making a sudden lane change (Hills) or for having a bald tire (Monroe). Moreover, unlike the present case, both Hills and Monroe involved narcotics officers following a specific suspect vehicle, just "waiting for an opportunity to make a stop" based on a traffic infraction. Monroe, 543 so. 2d at 299.

targeted primarily at drug-related crimes" noticed the suspicious activity of a certain vehicle in a neighborhood known for high levels of crime and drug abuse, and thereafter stopped that vehicle when it "proceeded through a stop sign at approximately five miles per hour without stopping." 553 So. 2d at 374. The trial court in Renda suppressed cocaine seized as a result of the stop, holding that it was "not believable that the primary reason for stopping the Defendant was his traffic violation. . . . The stop of the vehicle would not have occurred absent the suspicion of drug activity." Id. at 374-75. The appellate court reversed, holding (Id. at 375):

> [The trial court's] interpretation of the Kehoe standard erroneously turns on the officers' primary motive, not on whether a reasonable officer would have made the stop.
>
> This court has already rejected such an approach. In Moreland v. State, 552 So. 2d 937 (Fla. 2d DCA 1989), this court said:
>
> > We do not agree with the defendant's argument that the stop was an invalid pretextual stop. While there was evidence indicating invalid subjective pretextual motives of the officers, there was also evidence of valid objective bases for the stop. . . . Each officer testified that he would have stopped any driver under the circumstances.
>
> Moreland, 552 So. 2d at 938[, rev. denied, 562 So. 2d 346 (Fla. 1990)]. In Moreland, the defendant was clocked at sixty-two miles per hour in a fifty-five miles per hour zone and was weaving on the road. Here, the defendant travelled through a stop sign. In both cases officers testified that they would issue citations for such violations.

Likewise, as held under similar facts in State v. Velez, 649 So. 2d 310, 311 (Fla. 3d DCA 1995):

[I]t does not matter that the officer in question -- who in this case was a narcotics investigator -- might or even, as the trial court held, would have detained the occupants [of a vehicle that had run a red light and travelled 60 miles per hour in a 30 mile-per-hour zone] if no infraction had taken place at all. Although State v. Irvin, 483 So. 2d 461[, 462-631 (Fla. 5th DCA 1986), review denied, 491 So. 2d 279 (Fla. 1986) was decided pre-Kehoe, it is based on Kehoe principles and is almost directly on point:

> [T]hat the police may have wished or even intended to detain a suspect for another reason does not invalidate an apprehension which follows the commission of a traffic or other offense which would subject any member of the public to a similar detention. Applying these principles, we reverse the order under review which, on, the finding that the officers would have (unjustifiably) detained the appellant driver for questioning on drug charges in any event, suppressed contraband found in the car after it was stopped for going 70 miles per hour in a SO-mile-per-hour zone. (footnotes omitted) (citations omitted)
>
> * * * * *
>
> Regardless of what they would have done, the police could validly have stopped the defendant only if he committed an illegal act. On the other hand, since Irvin in fact did so, he may not be excused from that misconduct merely because the officer might have arrested him anyway. [(Emphasis original, footnote and citations omitted).']

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[5] See also State v. Rarrio, 619 So. 2d 389 (Fla. 1st DCA 1993) (reversing order granting defendant's suppression motion, holding that stop of vehicle travelling eight miles per hour over the speed limit was not pretextual, even where officer had drug dog, only issued a few tickets in previous months, and conceded that his purpose in being at the place and time in question with a drug-sniffing dog in his car was to locate drugs: "[T]he stop for speeding was not rendered invalid because the officer was also seeking to apprehend drug carriers."); State v. McNeal, 666 So. 2d 229, 230-31 (Fla. 2d DCA 1995) (reversing order granting defendant's motion to suppress drugs and drug paraphernalia where "Street Narcotics Task Force" officer testified that underlying stop of

In short, under either the reasonable officer test Set forth in Daniel, supra, or the objective test of Whren, supra, we reverse the suppression order under review and remand for further proceedings. we certify the following question of great public importance to the Florida Supreme Court:

> WHETHER WHREN V. UNITED STATES, _____ U.S. _____, 116 S. Ct. 1769, _____ L. Ed. 2d _____ (1996), OVERRULES STATE, 665 So. 2d 1040, 1046 (Fla. 1995), AND WHETHER THE PRESENT SUPPRESSION ORDER SHOULD BE REVERSED.[6]

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS; QUESTION **CERTIFIED.**

LAWRENCE, J., CONCURS; VAN NORTWICK, J., CONCURS WITH WRITTEN OPINION.

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vehicle with suspect tag and inoperable tag light was consistent with his uniform practice of stopping such vehicles), rev. denied, so. 2d (Fla. 1996); Springle v. State, 613 So. 2d 65, 67 (Fla. 4th DCA) (holding that stop of vehicle for travelling eight miles per hour over the speed limit was not improper, even though officers had drug dog and admitted that their main purpose was to, *inter* alia, search the vehicle and pat down the occupants: "[U]nder Kehoe, a non-pretextual stop is not rendered invalid because the officers in reality have another purpose in mind."), rev. dismissed, 626 So. 2d 208 (Fla. 1993): State v. Russell, 557 so. 2d 666, 667 (Fla. 2d DCA 1990) (reversing order granting defendant's motion to suppress marijuana where underlying stop for inoperable tag light was made by officers with drug dog, who were admittedly patrolling the interstate for the purpose of narcotics interdiction through the use of probable cause traffic stops: "[A]lthough the officers were primarily concerned with narcotics interdiction, there was evidence of a valid basis for the stop. The officers noticed the traffic violation and had not been looking for a reason to stop this particular person or vehicle.").

[6] See Art. I, § 12, Fla. Const. ("This right [to be free from unreasonable searches and seizures] shall be construed in conformity with the Fourth Amendment to the United States Constitution, as interpreted by the United States Supreme Court.").

VAN NORTWICK, J., concurring.

I concur because I believe Whren v. United States, ___ U.S. ___, 116 S. Ct. 1769, ___ L. Ed. 2d ___ (1996), has overruled State v. Daniel, 665 So. 2d 1040 (Fla. 1995), and compels reversal in the instant case. I write solely because I disagree with the majority's conclusion, although somewhat hypothetical in view of Whren, that reversal would be required here even under the so-called "reasonable officer test" applied in Daniel.

The trial court below in effect applied the Daniel reasonable officer test, finding that the specialized narcotics officers who made the traffic infraction stop would not have effected the stop under their usual police practices absent a motive to search for illegal drugs. Because the trial court's determination is supported by competent substantial evidence, as I read Daniel, under the reasonable officer test we would have been obligated to uphold the instant suppression order.

In Daniel, the court described the reasonable officer test as "asking whether the stop · if occasioned by a minor infraction · was of a kind falling within the usual practices of the same or similar agencies." Id. at 1041-1042. The test involves an objective "individualized inquiry . . . [asking] whether the usual police practice would be to effect a stop when confronted with a particular kind of minor infraction. In sum, would the officer have effected the stop absent any improper motive." Id. at 1043 (emphasis theirs). Thus, under Daniel, the reasonable officer test means that:

> [A] stop for a minor infraction cannot be deemed pretextual on appeal where (1) the officer was acting with the proper scope of lawful authority, and (2) the record below contains competent substantial evidence that the stop was not objectively pretextual without regard to any subjective intentions, as demonstrated by the fact it was a usual police practice, and (3) the trial court has so found.

Id. at 1044 (footnote omitted).

The Daniel court expressly rejected both the so-called "subjective test," which "attempts to. inquire into the actual subjective reasons why the officer made the stop," id. at 1041, and- the so-called "objective test," now adopted by the United States supreme Court in Whren. Whren, 116 S. Ct. at 1772 ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."). Daniel described the objective test as a "could arrest" approach asking "only if the officer was objectively authorized and legally permitted to make the stop in question without regard to any pretextual motive." Daniel, 665 so. 2d at 1041. The Daniel court rejected the objective test because that test "would authorize stops for the subject infractions however unrelated those infractions may be to the true motive for the stop," id. at 1042; gee also, Kehoe v. State, 521 so. 2d 1094, 1097 (Fla. 1988), and it "clearly fails to address the problems that sometimes will arise with specialized officers." Daniel, 665 So. 2d at 1046, n.6.

Also of assistance to an analysis of the application of the reasonable officer test to the instant case is the Daniel court's

express recognition of Monroe v. State, 543 So. 2d 298 (Fla. 5th DCA 1989) and Hills v. State, 629 So. 2d 152 (Fla. 1st DCA 1993) as in accord with Daniel's reasonable officer test. Daniel, 665 So. 2d at 1045. In Monroe, the Fifth District addressed a situation where, as here, an officer on narcotics patrol stopped the defendant for a minor traffic infraction (in Monroe, because the defendant's vehicle had a "bald tire"). In reversing the denial of a suppression motion, the Monroe court ruled that the state had failed to carry its burden of demonstrating that "a reasonable officer on drug patrol would have made a traffic stop for a bald tire, absent another invalid purpose, under the facts and circumstances present here." Monroe, 543 So. 2d at 299.

In Hills, this court also reversed the denial of a motion to suppress, finding an impermissible pretext where, following the stop, the officers had failed to cite the defendant for the minor traffic offenses in question and had followed the defendant's vehicle for five miles or more after the infraction occurred. Hills, 629 So. 2d at 154. The Hills court emphasized the importance to its analysis of the usual roles and practices of specialized officers, stating:

> [The officer] testified that he would have stopped [defendant's] vehicle for such infractions when he was a patrol officer. The evidence did not establish, however, that the officers, while engaged in their duties as narcotics investigators, would have stopped a car for these minor traffic infractions.

Id.

Here, the trial court granted the suppression motion because it found that the specialized police officers, narcotics officers in a street crimes unit operating-in an unmarked car, under their usual police practices would not have made the instant stop absent an invalid motive to search for drugs. The trial court in effect found that the pretext of the stop was, in the language of Daniel, "transparently obvious." Daniel, 665 So. 2d at 1043. Even though a police officer testified below that he "always" stopped people who run, stop signs, the trial court in effect rejected that testimony as lacking credibility. The trial court in the instant case based its findings on the usual practice of the specialist narcotics officers (as in Monroe and Hills), the lack of credible evidence to support a finding that narcotics officers would under their usual practice make a traffic stop for running a stop sign absent an invalid motive (as in Monroe and Hills), the failure of the officers to issue .a traffic citation after the stop (as in Hills), and the court's observation of the demeanor and credibility of the officers who testified at the suppression hearing. At the time it granted the suppression motion, the trial court stated its findings and reasons on the record, in part as follows:

> THE COURT: . . . [T]here's no question that this street crime organization is out there for drug purposes.
>
> * * *
>
> They admit that. In other transcripts where we've asked them a lot of questions they admit that that's what they are out there for. They stop people for minor traffic

offenses for the purpose of searching. That's what they do it for.

* * *

I just don't think there's any question, there's no question in my mind as to how they have previously testified as to how they operate that what they are doing is using minor traffic, stops for the sole purpose of searching people. In this particular case they didn't even write the ticket.

* * *

Well, I think that's all a fraud, personally. And I think they sit here and testify -- they got smirks on their faces when they are testifying. He did himself. This officer did himself when he was asked questions about it. They know what they are doing. You know what they are doing. I know what they are doing. . . .

I find the instant facts and circumstances to be very similar to the facts and circumstances supporting suppression in Monroe and Hills. Here, however, unlike Monroe and Hills, we are reviewing the trial court's determination after an evidentiary hearing that the stop was pretextual. I conclude that in granting the suppression motion the trial court correctly applied the Daniel reasonable officer test to the facts. Although the facts in the record may also have supported a different result, as the Daniel court noted, "the question is for the trier of fact where the record adequately supports both theories of the case." Daniel, 669 So. 2d at 1047. Because a trial court's ruling on a suppression motion is presumptively correct, J.L.K. v. State, 474 So. 2d 390, 392 (Fla. 1st DCA 1985), and competent, substantial evidence supports the findings of the trial court below, Daniel, 665 so. 2d at 1046-1047; Thomas v. State, 583 So. 2d 336, 338

(Fla. 5th DCA 1991), I would have affirmed the instant case under Daniel.