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FILED
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CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,

v.

JOCELYN PIERRE,
Respondent.

Case No. 95,222

ON DISCRETIONARY REVIEW
FROM THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

BRIEF OF THE RESPONDENT ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

The state omits a critical fact from its statement of the facts: the police officer who ordered Mr. Pierre from his car testified that Mr. Pierre was free to leave after the officer returned his license and registration. Only after the police officer had determined that Mr. Pierre was free to leave did the officer then request unqualified consent to search the vehicle for drugs and weapons.

The state's statement of the facts to this Court includes numerous facts which were not included in the opinion of the Second District, yet fails to include the single most important and distinguishing fact. Further, the extraneous facts serve only to raise the potential for confusion, as this Court's jurisdiction vis-a-vis any factual matters must be confined to the four corners of the Second District opinion, not additional facts provided by the state. Respondent is not suggesting that the additional facts are necessary to find conflict, as there is no conflict regardless of whether the Court looks beyond the face of the opinion. However, the omission of the critical fact of freedom-to-leave does eliminates a distinction which clearly distinguishes the instant case from *State v. Dilyerd*, 467 So.2d 301 (Fla. 1985). Also, while the state's rendition of the facts is consistent with its rendition in the briefing to the Second District, it is biased in favor of the state. To counterbalance the state's version of the facts, the respondent offers the following abbreviated rendition of Mr. Pierre's statement of the facts from his initial brief to the Second District.

Jocelyn Pierre was stopped by uniformed Tampa Police officer Mark Montague at about 6:30 p.m. on July 27, 1997. R65. Officer Montague stated that he observed Mr. Pierre, driving at 10 miles per hour, pass through a stop sign as he turned right. R132. He followed Mr. Pierre for a couple of blocks to stop him until Mr. Pierre had a place to turn off. R134. Mr. Pierre turned onto the side road when Officer Montague turned on his overhead lights and came to a stop. R135. Mr. Pierre gave Officer Montague the identification requested and Officer Montague ran a check on the ID. R137.

While the ID check was being made, two other patrol cars with uniformed officers pulled and stopped behind Officer Montague's vehicle. R137. The driver's license and the license plate check were fine. R138. During the check, Officer Montague testified he observed Mr. Pierre appear to reach under his seat with his right hand, and at some point half-looked back at the Officer. R138-39. Officer Montague said he asked Mr. Pierre to exit for officer safety, and Mr. Pierre promptly complied. R139. Officer Montague also asked Mr. Pierre to turn off his engine, and he also complied immediately with that instruction. R147. Meanwhile, another patrol officer had arrived. R139.

Officer Montague told Mr. Pierre the license check was fine. R139. He returned the license and, at that point, Officer Montague stated [in his deposition, not to Mr. Pierre] that Mr. Pierre was free to leave. R141-42. Officer Montague had no intention to issue a citation for the traffic infraction when he returned the license. R142. The officer then asked Mr. Pierre

if he could search his vehicle for guns and drugs. Officer Montague testified that Mr. Pierre said "Sure, go ahead," motioned with his hand towards the car, and made a wide turn as he walked away from Officer Montague. R139, 141. Montague asked Pierre to stand with Officer MacFarlane, and Mr. Pierre said "Yes." R139. As Montague approached the car, he turned to make sure Mr. Pierre was not close, and he saw Mr. Pierre run away down the street. R139. The police gave chase, including Officer Montague, who got in his patrol car to assist. R139. Officer McFarlane caught Mr. Pierre and brought him back to the car. R156.

Officer Montague and Officer Prebich then searched the car. Montague found hard cocaine under the front seat, but it was not visible from outside the car or from sitting in the driver's seat. R143-44. Officer Prebich found a gun in the arm rest area of the back seat. R146.

Officer's Montague and McFarlane testified by depositions which were submitted to the court and considered on the motion to suppress. Officer Prebich testified at the motion hearing. Officer Prebich testified, contrary to the testimony of Officer Montague, that Officer Montague had already begun the search by entering the vehicle when Mr. Pierre ran. R181. Officer Prebich also testified, contrary to Montague's testimony, that Montague stayed with the car during the chase. R182.

Judge Espinosa ruled that Mr. Pierre was detained at the time of the search. R188. However, he found that Mr. Pierre had consented to the search of his car. R188. When Mr. Pierre ran,

Judge Espinosa held that Mr. Pierre withdrew any consent to search his person, but that he abandoned his car when he ran, which did not constitute revocation of his consent to search the car. R189. Judge Espinosa also held that the search began after Mr. Pierre consented but before he ran.[1] R193. At the hearing on the motion for reconsideration, Judge Espinosa ruled that Mr. Pierre was illegally detained when he was arrested after he ran from the scene. R201. He further ruled that the car was on a public roadway and that Mr. Pierre relinquished any expectation of privacy when he ran away. R202.

SUMMARY OF THE ARGUMENT

The critical distinguishing fact in this case is the testimony of the officer who purportedly had a concern for officer safety that Mr. Pierre was free to leave after the officer returned his identification documents. The case law cited by the state involves circumstances where the suspects were not free to leave because the police had not completed their investigation or satisfied themselves that the suspect posed no danger. In this case, the officer's testimony that Mr. Pierre was free to leave inherently includes the officer's conclusion that he no longer had a reasonable concern for his safety requiring an involuntary search of the vehicle. This is buttressed by the fact that the

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[1] Although not argued in the facts in the brief to the Second District, respondent cited the irrefutable case law, conceded by the state, that consent may be withdrawn after a search has started. The ruling regarding the start of the search is therefore irrelevant other than to suggest the trial court may have grounded its ruling on matters which, in fact, had no bearing on the legality of the search.

officer's next act was to seek an unqualified consensual search of the vehicle for drugs as well as weapons. Had the officer had a continuing concern for safety, he would have conducted an involuntary weapons search of the vehicle rather than unnecessarily seeking the consensual search for drugs.

ARGUMENT

ISSUE

THERE IS NO CONFLICT WITH *STATE V. DILYERD*, 467 SO.2D 301 (FLA. 1985). THE FACTS GIVEN IN THE LOWER COURT DECISION CLEARLY SHOW THAT THE OFFICER HAD RESOLVED ANY SAFETY CONCERN BEFORE SEEKING CONSENT TO SEARCH. INVOLUNTARY SEARCHES ARE PERMITTED ONLY WHEN THE OFFICER HAS A REASONABLE CONCERN FOR SAFETY AT THE TIME HE MAKES THE SEARCH.

The facts of this case are distinguishable from the facts of *State v. Dilyerd*, 467 So.2d 301 (Fla. 1985). In *Dilyerd*, the facts show that a deputy detained two teenagers found trespassing in a car on private property. He had initially intended to send the teenagers off the property with a warning, but he observed the passenger make a furtive movement under the seat. Apparently in response to this move, the officer called for back up. He waited until the back up officer arrived before he ordered the two occupants from the car. This apparently was for the sole purpose of searching the car for weapons before continuing the encounter. The officer found contraband and the encounter turned into an arrest.

In the instant case, the encounter was completed when Officer Montague returned the identification documents. Officer Montague testified that Mr. Pierre was free to leave at that

moment. Only after the line had been drawn, that Mr. Pierre was free to leave, did Officer Montague then seek a consensual search of the car for drugs and weapons.

Officer Montague's request that Mr. Pierre exit his vehicle might be compared to the right of any officer to order a traffic offender from his vehicle for officer safety. This right to order an exit when there is a reasonable concern for officer safety is well-recognized in Florida, based on the Supreme Court precedent of *Pennsylvania v. Mimms*, 434 U.S. 106 (1977). *See, e.g., Howell v. State*, 725 So.2d 429 (Fla. 2nd DCA 1999) (recognizing *Mimms* but holding subsequent pat-down search of occupants illegal when there was no reasonable suspicion the occupants were armed).

However, an officer may order an occupant of a vehicle stopped for a traffic infraction from the vehicle only when there is a reasonable concern for safety. In *R.H. v. State*, 671 So.2d 871 (Fla. 3d DCA), *rev. denied*, 677 So.2d 841 (Fla. 1996), the officer ordered an occupant from the car because he vocally expressed a hostile attitude during a traffic stop. Citing to various Florida cases relying on the *Mimms* decision to find various exits to be legal, the court held:

> Even if these authorities, however, correctly reflect the law - which we do not directly hold - they do not apply in this case. This is simply because safety had nothing to do with the command in question. Unlike the officers involved in many of the cited cases, Orenstein did not even suggest that it did. More important, **he did not initially make such an order** and never disturbed the two rear-seat passengers at all. It is therefore obvious that the order was issued to R.H. alone only because of his "hostile attitude." This is not constitutionally enough.

> **Although perhaps de minimis, *see Mimms*, 434 U.S. at 111, an order to exit a vehicle is a Fourth Amendment seizure**, *see Popple v. State*, 626 So.2d 185 (Fla.1993); *Cooper v. State*, 584 So.2d 1124 (Fla. 4th DCA 1991), which must be supported - in the absence of a valid safety concern - by a founded suspicion of criminal activity which did not exist here. *See also Evans v. State*, 546 So.2d 1125 (Fla. 3d DCA 1989) (order to remove hands from pocket is seizure). Thus, in the almost identical situation presented in *Cooper*, the court suppressed contraband dropped by a passenger who had been ordered out of a properly stopped vehicle because his **erratic actions provided no reasonable basis either for the officer's professed concerns for his safety or for a suspicion of unlawful conduct.**

671 So.2d at 872 (emphasis added). *R.H.* relies on *Cooper v. State*, 584 So.2d 1124 (Fla. 4th DCA 1991). In *Cooper*, the suspect was sitting in the back seat, bouncing front to back and not sitting still. The officer stated he had concern for his safety. The *Cooper* court rejected such concern, finding the officer's fears were raised solely by the rocking motion, which was not enough to justify a seizure by compelling an exit from the vehicle. The court held:

> We have not ignored the officer's testimony of fear for his safety, nor have we disregarded our concern for that safety about which we have expressed ourselves in other decisions. Nevertheless, it is incumbent upon a reviewing court to examine the facts - aside from such statement - in the light of a citizen's constitutional protection. We are less likely to lose such protection by cataclysm as we are by erosion in a case by case progression.

584 So.2d at 1125-26.

Cooper, in turn, relied on *L.W. v. State*, 538 So.2d 523 (Fla. 3d DCA 1989):

> At approximately 10:55 on the night of February 19, 1988, a police officer pulled alongside a car occupied by four black males at a North Miami intersection. The defendant, L.W., was in the right rear seat and appeared nervous, according to the officer's testimony. The car pulled away from the intersection slow-

> ly, traveling approximately 20 m.p.h. in a 35 m.p.h. zone, which led the officer to believe that the driver might be under the influence of alcohol or drugs. The officer also observed a temporary tag inside the rear window. He testified that he could not read the expiration date on the tag, and that he believed that Florida law requires that a temporary tag be displayed on the rear bumper. He also testified that, as he followed the car, the occupants continued to turn around to look at him. The officer decided to pull the car over and, having so decided, **he then observed L.W. move in a manner which caused him to think that L.W. was hiding something under the rear seat.** The officer called for backup. When he stopped the car, he checked the driver's license and registration with the tag, and, while doing so, observed that the back seat was moved forward somewhat. The driver's documents proved to be in order, and no traffic citations were issued. When backup finally arrived, the officer ordered all occupants out of the vehicle, lifted the rear seat, and found a loaded firearm under L.W.'s seat. All of the occupants of the car were arrested. The Petition was filed and, in due course, appellant's motion to suppress was heard and denied by the court.
>
> As far as the officer's right to initiate or conduct an investigatory stop is concerned, the observations relied upon by the officer were not sufficient to form a founded suspicion that criminal activity existed. *See Kehoe v. State*, 521 So.2d 1094 (Fla.1988). **We find that whatever justification the officer had to make the initial traffic stop, based upon his inability to read the tag's expiration date, dissipated once the officer determined that the driver's license and registration documents were in order. At that point, L.W. should have been allowed to proceed on his way.** The evidence derived from the search at issue should have been excluded, and the trial court erred in denying appellant's motion to suppress.

538 So.2d at 524-25 (emphasis added).

Thus, even when an officer observes a nervous suspect make a furtive movement, the officer is not necessarily justified in ordering the individual from the vehicle. *R.H.*, *Cooper*, and *L.W.* all involve circumstances where the officer's suspicions were aroused near the end of the encounter, just as in this case,

where the alleged concern for officer safety purported to justify an order to exit solely to end the encounter.

In the instant case, Judge Espinosa correctly ruled that Mr. Pierre was detained when he was ordered from his car. However, he had to have been free to leave at the time he consented to the search of his car, or his consent would have been coerced, the search noncensensual. Thus, Officer Montague believed he had to testify that Mr. Pierre was free to leave after he returned the identification. He had no right to have ordered Mr. Pierre from the car, based on the rationale of *L.W.* It is difficult to believe that the officer ever had any concern for safety after the initial stop, since several marked patrol cars and a greater number of armed and uniformed police officers were at the scene. Any possible concern for safety which could conceivably have justified the order to exit the car was dissipated once the officer returned the identification. In his own mind, Mr. Pierre was free to leave, and, in his own mind, the only way he could then search the car was to get the consent of Mr. Pierre to do so. He testified that he sought and received the consent (from a Haitian native who required a translator at every court hearing).

The state now seeks to have the cake, eat it, and own the bakery as well. The officer testified Mr. Pierre was free to leave, a necessary prerequisite to rendering the consent voluntary. Such release was never communicated to Mr. Pierre. Now the state wants to ignore the "mental release" Officer Montague undertook in his own mind, and argues that no such release existed, that a valid concern for safety remained, and that the

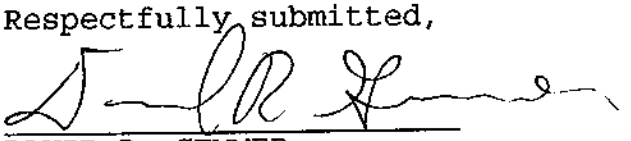
search of the vehicle could have been justified on that ground alone.

None of this was argued in the Second District, as the state failed to make any concerted argument vis-a-vis officer safety. Not a single case was cited to justify the search on the basis of officer safety. The only legitimate inference from the facts of this case is that Officer Montague no longer had a concern for the safety of himself or others at the moment he decided Mr. Pierre was free to leave, or he would have testified that Mr. Pierre was not free to leave because of the continuing concern for officer safety which could only be dispelled by an involuntary search of the vehicle. Obviously, Officer Montague in this case knew or should have known that the circumstances at the scene were closer to *R.H.*, *Cooper*, and *L.W.*, rather than *Dilyerd*, and that consent was required to conduct the search.

CONCLUSION

If the defendant must live with the fiction that Mr. Pierre was free to leave when the officer returned the identification papers, then the state must live with the fiction as well. No justice will be served by taking jurisdiction in this case, no conflict resolved. This Court should decline to take jurisdiction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail this date, May 7, 1999, to 19

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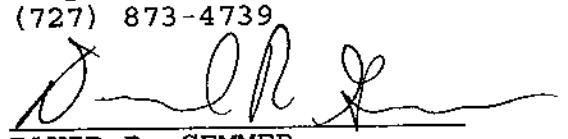

DAVID R. GEMMER
Counsel for Petitioner

Slip Copy
24 Fla. L. Weekly D604
(Cite as: 1999 WL 104408 (Fla.App. 2 Dist.))

Jocelyn PIERRE, Appellant,
v.
STATE of Florida, Appellee.

No. 98-01217.

District Court of Appeal of Florida,
Second District.

March 3, 1999.

Defendant was convicted in the Circuit Court, Hillsborough County, Jack Espinosa, J., of trafficking in cocaine, obstructing officer without violence, and carrying concealed firearm. Defendant appealed. The District Court of Appeal held that: (1) defendant's act of running following valid traffic stop was nonverbal withdrawal of consent to search vehicle; (2) police officers did not have probable cause to chase and apprehend defendant; and (3) warrantless search of vehicle was not permissible under theory of abandonment.

Reversed and remanded with directions.

[1] AUTOMOBILES k349(2.1)
48Ak349(2.1)
Police officer had legal basis to stop defendant's vehicle for running stop sign. West's F.S.A. § 316.640.

[2] AUTOMOBILES k349(16)
48Ak349(16)
Police officer did not violate defendant's Fourth Amendment rights against unreasonable searches and seizures by asking defendant to exit vehicle following valid traffic stop. U.S.C.A. Const.Amend. 4.

[3] AUTOMOBILES k349(10)
48Ak349(10)
"Consensual encounter" between police officer and defendant occurred when officer asked for permission to search defendant's vehicle following valid traffic stop, as defendant was free to leave.

See publication Words and Phrases for other judicial constructions and definitions.

[3] SEARCHES AND SEIZURES k171
349k171
"Consensual encounter" between police officer and defendant occurred when officer asked for permission to search defendant's vehicle following valid traffic stop, as defendant was free to leave.
See publication Words and Phrases for other judicial constructions and definitions.

[4] SEARCHES AND SEIZURES k186
349k186
Defendant's act of running following valid traffic stop was nonverbal withdrawal of consent to search vehicle.

[5] AUTOMOBILES k349(8)
48Ak349(8)
Police officers did not have probable cause to chase and apprehend defendant who ran following valid traffic stop and prior to search of vehicle, and thus, defendant's arrest for obstructing officer without violence could not stand.

[6] AUTOMOBILES k349.5(1)
48Ak349.5(1)
Warrantless search of defendant's vehicle was not permissible under theory of abandonment, after officers apprehended defendant, who ran following valid traffic stop, and returned defendant to vehicle.

Appeal from the Circuit Court for Hillsborough County; Jack Espinosa, Jr., Judge.

David R. Gemmer, St. Petersburg, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Erica M. Raffel, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

*1 Jocelyn Pierre appeals the final judgment imposed after he pleaded nolo contendere to trafficking in cocaine, obstructing an officer without violence, and carrying a concealed firearm. We reverse.

The State charged Pierre with these three crimes; thereafter, Pierre filed a motion to suppress the evidence. At the suppression hearing, the following evidence was adduced.

Officer Montague stopped Pierre's vehicle at 6:30 p.m., for passing through a stop sign. Upon request,

Pierre gave Officer Montague his driver's license. Officer Montague ran a computer check on the driver's license and possibly a check on the vehicle registration.

While the computer check was being made, two other patrol cars with uniformed officers arrived for back-up. Officer Montague told the other officers that Pierre seemed to be nervous. Officer Montague observed Pierre appear to reach under his seat with his right hand, and look back at the officer. When the computer check was completed, Officer Montague went back to Pierre's car and asked him to turn off the engine and to exit the vehicle. Officer Montague requested Pierre to exit his vehicle for officer safety because he saw Pierre reach under his seat. Pierre promptly complied, at which time, Office Montague noted that Pierre was visibly shaking.

Officer Montague testified that he advised Pierre that the license check was fine. Additionally, he had no intention of issuing a citation for the traffic infraction when he returned the license to Pierre. When he returned the license to Pierre, he was free to leave in his vehicle. However, Officer Montague then asked Pierre if he could search his vehicle for guns and drugs. Pierre said, "[s]ure, go ahead," and motioned with a hand gesture toward the car to indicate consent.

Officer Montague instructed Pierre to stand by Officer McFarlane. As Officer Montague approached the vehicle to start the search, Pierre ran.

The officers chased Pierre and eventually apprehended him and returned him to the vehicle. Officer Montague and Officer Prebich then searched the vehicle. Officer Montague found hard cocaine under the front seat, and Officer Prebich found a firearm in the arm rest area of the back seat.

In his motion to suppress, Pierre swore under oath that the vehicle did not belong to him. After the trial court denied the motion, Pierre entered a nolo contendere plea to the charges, reserving the right to appeal the denial of his motion to suppress.

[1][2][3] The single issue to resolve in this case is whether there was a legal basis to conduct a warrantless search of the vehicle. We agree with the trial court that there was a legal basis to stop Pierre's vehicle for running a stop sign. See § 316.640, Fla. Stat. (1997). Also, Officer Montague did not violate Pierre's Fourth Amendment rights by asking him to exit the vehicle following a valid traffic stop. See Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977). Because Pierre was free to leave when the officer asked for permission to search the vehicle, we conclude that at this point in the exchange there was only a consensual encounter between Officer Montague and Pierre. See State v. Albritton, 664 So.2d 1049 (Fla. 2d DCA 1995).

*2 [4][5] However, after Pierre consented to the search he ran, which requires a determination of whether he withdrew his consent. The supreme court has concluded that running constitutes a nonverbal withdrawal of consent to search. See Jacobson v. State, 476 So.2d 1282 (Fla.1985). See also Nease v. State, 484 So.2d 67 (Fla. 4th DCA 1986). If Pierre withdrew his consent to search when he ran, we know of no existing probable cause present at that moment to permit the officers to chase Pierre and take him into custody. Therefore, we conclude that Pierre's arrest for obstructing an officer without violence cannot stand.

Next, we must consider whether the search of the vehicle was proper under a theory of abandonment of the vehicle. In State v. Wynn, 623 So.2d 848 (Fla. 2d DCA 1993), this court addressed when a defendant could, through abandonment of a vehicle, forfeit his right to an expectation of privacy in the vehicle. In Wynn, the defendant left his vehicle unlocked and illegally parked for forty-five minutes. See id. There was no record of the license tag, which indicated to the officer that the vehicle might be stolen. See id. at 849. This court held that when a car is voluntarily abandoned and is illegally parked, the officer is allowed to search the car and "seize any illegal substance whether it was in plain view or not." Id.

In State v. Lawson, 394 So.2d 1139 (Fla. 4th DCA 1981), the Fourth District Court concluded that a defendant's act of leaving a vehicle parked in a "no loitering" zone without saying a word to an officer who was present sufficiently evidenced the defendant's intention to abandon the vehicle. Therefore, it was proper for the officer to search the vehicle for ownership papers and to seize any illegal substance. See id. at 1140.

The issue in this case is whether a search is proper under a theory of abandonment after the officers apprehended Pierre and returned him to the vehicle. Unlike Wynn, there is no indication that this vehicle was stolen, nor was there any indication from the police department computer that Pierre had any outstanding warrants. If Pierre had failed to return to the vehicle or the officers had failed to apprehend him and return him to his vehicle which was stopped on the street, appar-

ently with the keys in the ignition, then Wynn would support a search of the vehicle.

Other states have recognized that an abandoned vehicle may be searched without a warrant. In Thom v. State, 248 Ark. 180, 450 S.W.2d 550 (1970), the court stated:

> Sometimes an automobile takes on the characteristics of a man's castle. Other times an automobile takes on the characteristics of an overcoat-that is, it is movable and can be discarded by the possessor at will. If appellant in his endeavors to avoid the clutches of the law had discarded his overcoat to make his flight more speedy, no one would think that an officer was unreasonably invading his privacy or security in picking up the overcoat and searching it thoroughly. In that situation most people would agree that the fleeing suspect had abandoned his coat as a matter of expediency as well as any rights relative to its search and seizure. What difference can there be when a fleeing burglar abandons his automobile to escape from the clutches of the law? We can see no distinction and consequently hold that when property is abandoned in making a search thereof do no violate any rights or security of a citizen guaranteed under the Fourth Amendment.

*3 450 S.W.2d at 552. [FN1] See also United States v. Walton, 538 F.2d 1348, 1354 (8th Cir.1976) (held that a warrantless search was not unreasonable when the occupants fled the vehicle when it was approached by the police officer, thus abandoning the car); Hudson v. State, 642 S.W.2d 562, 565 (Tex.App.1982) (car was deemed abandoned and subsequent car search not unreasonable where driver consented to a search of the trunk of his car and thereafter ran away).

[6] We reverse the trial court's order denying the motion to suppress because Pierre withdrew his consent when he ran. Thereafter, when Pierre was returned to his vehicle, it could no longer be said that he had abandoned his vehicle. Accordingly, because there was no probable cause to detain Pierre prior to the search, nor after he was returned, but for the illegal arrest and detention of Pierre, the search of the vehicle could not proceed.

The irony is that had Pierre managed to get away, this search and contraband seizure could have been sustained under a theory of abandonment. See Wynn. Furthermore, if the officers had not caught Pierre, they could have impounded the vehicle, and the subsequent discovery of the cocaine and the firearm during an inventory search upon impoundment would have been admissible against Pierre. See State v. Wells, 539 So.2d 464, 469 (Fla.1989).

We reverse with directions to the trial court to dismiss the obstruction charge and to grant the motion to suppress. Upon remand, the trial court must address whether this court's decision affects Circuit Court Case No. 97- 16862, another case in which Pierre is the defendant.

PARKER, C.J., and BLUE and NORTHCUTT, JJ., Concur.

> FN1. In LaFave, Search and Seizure, § 2.5(a) (1996), in commenting upon Thom, it states: The Thom reasoning overshoots the mark somewhat, and thus should not be taken to mean that a vehicle is abandoned in the sense in which that word is here being used, whenever it is left parked in the vicinity of the place where a crime was committed. The fact of the matter is that a car and an overcoat are different; one can hardly expect privacy in an overcoat left on the street, but cars are regularly parked on the street for brief periods of time without an expectation that they will thereby be subject to entry.

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RE: STATE OF FLORIDA
V.
JOCELYN PIERRE

CASE NO. 95,222

I have this date received the below-listed pleadings or documents:

BRIEF ON JURISDICTION (Original & 5)

Brief of the Respondent on Jurisdiction is too long. Please file an amended brief (Original & 5) immediately. (Please see Rule 9.210(a)(5))

Please make reference to the case number in all correspondence and pleadings.

Most cordially,

Debbie Causseaux

Acting Clerk
Supreme Court

ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

DC/bhp

cc: Ms. Erica M. Raffel
Mr. Robert J. Krauss

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

JOCELYN PIERRE,

Respondent.

Case No. 95,222

CERTIFICATE OF TYPEFACE AND STYLE

I HEREBY CERTIFY that the Respondent's Answer Brief on Jurisdiction was prepared in WordPerfect 8 using Courier at 10 pitch, pursuant to *In Re: Briefs in the Supreme Court of Florida Administrative Order* of this Court dated 7/13/1998.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail this date, May 26, 1999, to

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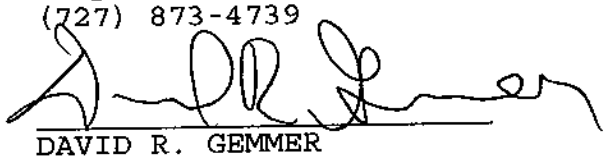

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