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IN SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, v. KERICK VAN TEAMER, Respondent.	Case No. SC13-318

PETITIONER'S INITIAL BRIEF

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Kerrick Van Teamer, the Appellant in the First District Court of Appeal and the defendant in the trial court, will be referenced in this brief as Respondent or his proper name.

The record on appeal consists of two (2) volumes, which will be referenced as "RI," and "RII," respectively, followed by any appropriate page number, as well as three (3) supplemental volumes, which will be referenced as "SRI," "SRII," and "SRIII," respectively, followed by any appropriate page number.

All emphasis through bold lettering is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

On June 22, 2010, Deputy Christopher Knotts, with the Escambia County Sheriff's Office, was traveling westbound on a public thoroughfare, with a bright green Chevy vehicle traveling in front of him. (RI 21). The bright green Chevy pulled into a parking lot of a business and Deputy Knotts proceeded on his way. (RI 22). A brief time later, Deputy Knotts once again encountered the bright green Chevy and ran the tag of the vehicle through his computer database with the Department of Highway Safety and Motor Vehicles. (RI 22-23). Deputy Knotts testified at the

suppression hearing that the information he received on the tag was that it belonged to a blue Chevrolet. (RI 23). Noting that the colors were inconsistent, Deputy Knotts also acknowledged that in his training and experience he has encountered individuals that will switch tags on vehicles, and that from his vantage point he could not determine whether or not the tag that was on the vehicle was actually registered to that vehicle. (RI 23). At that point, Deputy Knotts effectuated a traffic stop of the vehicle. (RI 24).

Deputy Knotts approached the vehicle on the driver's side and told the driver, later identified as Respondent, that the tag did not match the vehicle. (RI 24). As he was speaking with Respondent, Deputy Knotts noticed an odor emanating from the vehicle that smelled like marijuana. (RI 24-25). In speaking with Respondent, Deputy Knotts was provided an explanation by Respondent as to the reason for the color discrepancy, which was that he had just recently painted the vehicle. (RI 25). Deputy Knotts acquired Appellant's registration, returned to his patrol vehicle and requested a second deputy to respond to the scene. (RI 25). As for his reason in calling for a second officer to assist, Deputy Knotts testified that it was his intention to initiate a probable cause search of the vehicle based upon the odor of marijuana emanating therefrom. (RI 25).

Once the backup officer arrived, Deputy Knotts returned to Respondent, issued him a warning for the variance in color from what was listed on the registration, and also informed him about the odor he detected. (RI 26).

Respondent responded to Deputy Knotts by stating that he had smoked marijuana earlier. (RI 36). Deputy Knotts then proceeded to search Respondent, who had no contraband on his person, but did possess a large amount of U.S. currency, approximately over $1,100. (RI 26). At that point, a passenger in Respondent's vehicle was also asked to step out of the vehicle. (RI 26). Deputy Knotts then proceeded to search the vehicle, which revealed the presence of narcotics inside the center console cup, specifically marijuana and crack cocaine. (RI 27, 52).

Respondent was subsequently arrested and charged via Amended Information with Trafficking in Cocaine (Count One), Possession of a Controlled Substance (Count Two) and Possession of Drug Paraphernalia (Count Three). (RI 3). On October 4, 2010, Respondent filed a Motion to Suppress Evidence, and a hearing was held on December 9, 2010. (RI 8-68). The trial court denied Respondent's Motion to Suppress through written order on March 13, 2012. (SRII 180). On June 16, 2011, following a jury trial, Respondent was convicted as charged and was sentenced to a term of six (6) years incarceration as to Count One and time served as to Counts Two and Three. (RI 116-122).

An appeal to the First District Court of Appeal followed. The First District reversed the denial of Respondent's motion to suppress, holding that a discrepancy between a vehicle's actual color and the color associated with the tag attached to the vehicle at the time of a stop did not constitute reasonable suspicion of criminal activity. Van Teamer v.

State, 108 So.3d 664 (Fla. 1st DCA 2013). The First District also certified conflict with the Fourth District's decision in Aders v. State, 67 So.3d 368 (Fla. 4th DCA 2011).

The State now petitions this Court for review of the First District's decision in the instant case.

SUMMARY OF ARGUMENT

The trial court did not err in denying Respondent's motion to suppress. Deputy Christopher Knotts had reasonable suspicion of possible criminal activity based on the difference between the color of Respondent's vehicle and the color of the vehicle to which Respondent's tag was registered. When the officer expected the color of the vehicle to match the color associated with its tag, such a discrepancy was an articulable fact which gave rise to a suspicion that crime may be afoot. Thus, the trial court did not err in denying Respondent's motion to suppress, nor did the Aders court err in affirming the denial of a motion to suppress under similar facts.

By departing from the prescribed reasonable suspicion analysis followed by the trial court and the Aders court, the First District erred in the instant case. Despite impliedly recognizing that any discrepancy between a vehicle and its registration gives rise to reasonable suspicion, the First District held that no reasonable suspicion existed based on a concern that innocent activity would form the basis for a temporary investigative detention. This concern has been rejected by the United States Supreme Court and the risk that those who commit no crimes may be temporarily detained is a risk that the Fourth Amendment accepts. Accordingly, the First District's opinion in the instant case should be quashed and the opinion in Aders approved.

ARGUMENT

ISSUE: WHETHER REASONABLE SUSPICION TO JUSTIFY A TEMPORARY INVESTIGATIVE DETENTION AROSE BASED ON A COLOR DISCREPANCY BETWEEN A VEHICLE AND THE COLOR ASSOCIATED WITH TAG ATTACHED TO THE VEHICLE, WHEN SUCH COLOR DISCREPANCY WAS INDICATIVE OF VIOLATIONS OF FLORIDA'S CRIMINAL TRAFFIC LAWS? (RESTATED)

Standard of Review

Because a trial court's ruling on a motion to suppress involves a mixed question of law and fact, appellate courts must follow a mixed standard of review. See Seibert v. State, 923 So. 2d 460, 468 (Fla. 2006), citing Fitzpatrick v. State, 900 So. 2d 495, 510 (Fla. 2005)("Because a trial court's ruling on a motion to suppress is a mixed question of law and fact, we defer to the trial court on the factual issues but consider the constitutional issues de novo."). Analogous to a motion for judgment of acquittal, the reviewing court examines the evidence adduced at the suppression hearing "in the light most favorable to sustaining the trial court's ruling." State v. Moore, 791 So. 2d 1246, 1247 (Fla. 1st DCA 2001), citing San Martin v. State, 705 So. 2d 1337 (Fla. 1997), cert. denied, 525 U.S. 841 (1998).

Equally analogous, the appellate court must affirm the trial court's factual findings if competent and substantial evidence supports those findings. See Wheeler v. State, 956 So. 2d 517, 520 (Fla. 2d DCA 2007), citing Caso v. State, 524 So. 2d 422 (Fla. 1988)("The trial court's factual findings must be affirmed if supported by competent, substantial

evidence..."); see also Ornelas v. United States, 517 U.S. 690, 699 (1996):

> A trial judge views the facts of a particular case in light of the distinctive features and events of the community; likewise, a police officer views the facts through the lens of his police experience and expertise. The background facts provide a context for the historical facts, and when seen together yield inferences that deserve deference.

However, the appellate courts must apply the de novo standard when reviewing the trial court's application of the law to those facts. See Wheeler at 520, citing Ornelas ("... while the trial court's application of the law to those facts is reviewed de novo."); see also Moore at 1247 ("While the reviewing court is required to accept the trial court's determination of the historical facts surrounding the challenged seizure and/or search, it reviews de novo the application of the law to the historical facts.").

This bifurcated review allows the appellate court to accomplish three tasks: (1) defer to the trial court's ability "to evaluate and weigh the testimony and evidence based upon its observation of the bearing, demeanor, and credibility"; (2) ensure that trial courts apply the law uniformly "in decisions based on similar facts"; and (3) protect the Constitutional rights of the defendant. Conner v. State, 803 So. 2d 598, 607-608 (Fla. 2001), quoting Stephens v. State, 748 So. 2d 1028, 1032 (Fla. 1999).

Preservation

Pursuant to well-settled authority, Respondent preserved this issue in the trial court.

Merits

1. The color discrepancy between Respondent's vehicle and the vehicle to which his tag was registered created a reasonable suspicion of criminal activity.

Respondent's position in both the trial court and the district court was that an officer who discovers that a vehicle's color does not match the color of the vehicle to which the plate is assigned does not have reasonable suspicion to perform a temporary investigative stop to ascertain whether criminal activity is afoot. The State, however, respectfully disagrees. The discrepancy in color between the observed vehicle and the vehicle to which the plate was registered represented potential illegal activity that the officer was warranted in temporarily stopping the vehicle to investigate. Thus, the trial court did not err in denying Respondent's motion to suppress.

Initially, the State notes that pursuant to Article I, section 12 of the Florida Constitution, this Court shall interpret search and seizure issues in conformity with the Fourth Amendment to the United States Constitution, as interpreted by the Supreme Court of the United States. See Doorbal v. State, 837 So. 2d 940, 952 n.32 (Fla. 2003) ("We are required to follow the United States Supreme Court's interpretations of the Fourth Amendment."); see also Bernie v. State, 524 So. 2d 988, 991 (Fla. 1988) ("With this amendment, however, we are bound to follow the interpretations of the United States Supreme Court with relation to the fourth amendment, and provide no greater protection than those interpretations.").

The State also notes that there are three levels of police-citizen encounters, the second level being an investigatory stop in which a police officer may detain a citizen temporarily if the officer has reasonable suspicion to believe the person has committed, is committing, or is about to commit a crime. See Popple v. Florida, 626 So. 2d 185, 186 (Fla. 1993); see also § 901.151(2), Fla. Stat. When determining whether there is an articulable reasonable suspicion, the court must look at the totality of the circumstances. See United States v. Arvizu, 534 U.S. 266, 273 (2002); see also State v. Pye, 551 So. 2d 1237, 1238 (Fla. 1st DCA 1989).

In Ornelas v. United States, 517 U.S. 690, 695-96 (1996), the United States Supreme Court observed:

> Articulating precisely what 'reasonable suspicion' and 'probable cause' mean is not possible. They are commonsense, nontechnical conceptions that deal with "'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" Illinois v. Gates, 462 U.S. 213, 231, 103 S.Ct. 2317, 2328, 76 L.Ed.2d 527 (1983) (quoting Brinegar v. United States, 338 U.S. 160, 175, 69 S.Ct. 1302, 1311, 93 L.Ed. 1879 (1949)); see United States v. Sokolow, 490 U.S. 1, 7-8, 109 S.Ct. 1581, 1585-1586, 104 L.Ed.2d 1 (1989). As such, the standards are 'not readily, or even usefully, reduced to a neat set of legal rules.' Gates, supra, at 232, 103 S.Ct., at 2329. We have described reasonable suspicion simply as 'a particularized and objective basis' for suspecting the person stopped of criminal activity, United States v. Cortez, 449 U.S. 411, 417-418, 101 S.Ct. 690, 694-695, 66 L.Ed.2d 621 (1981), and probable cause to search as existing where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found, see Brinegar, supra, at 175-176, 69 S.Ct., at 1310-1311; Gates, supra, at 238, 103 S.Ct., at 2332. We have cautioned that these two legal principles are not 'finely-tuned standards,' comparable to the standards of proof beyond a reasonable doubt or of proof by a preponderance of the evidence. Gates, supra, at 235, 103 S.Ct., at 2330-2331. They are instead fluid concepts that take their substantive content from the particular contexts in which the

> standards are being assessed. Gates, supra, at 232, 103 S.Ct., at 2329; Brinegar, supra, at 175, 69 S.Ct., at 1310 ('The standard of proof [for probable cause] is ... correlative to what must be proved'); Ker v. California, 374 U.S. 23, 33, 83 S.Ct. 1623, 1630, 10 L.Ed.2d 726 (1963) ("This Cour[t] [has a] long-established recognition that standards of reasonableness under the Fourth Amendment are not susceptible of Procrustean application'; '[e]ach case is to be decided on its own facts and circumstances' (internal quotation marks omitted)); Terry v. Ohio, 392 U.S. [1, 29 (1968)], 88 S.Ct., at 1884 (the limitations imposed by the Fourth Amendment 'will have to be developed in the concrete factual circumstances of individual cases').

Id. at 695-696. In particular, the Court further noted:

> The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause.

Id. at 696. In United States v. Cortez, 449 U.S. 411(1981), the Court said of the requirements necessary for an officer to conduct a lawful stop:

> Courts have used a variety of terms to capture the elusive concept of what cause is sufficient to authorize police to stop a person. Terms like 'articulable reasons' and 'founded suspicion' are not self-defining; they fall short of providing clear guidance dispositive of the myriad factual situations that arise. But the essence of all that has been written is that the totality of the circumstances--the whole picture--must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.

Id. at 417-418. In particular, the Court further noted that the determination of whether an officer had an articulable reasonable suspicion is to be made from the totality of the circumstances. Specifically, the Court stated:

> The idea that an assessment of the whole picture must yield a particularized suspicion contains two elements, each of which must be present before a stop is permissible. First, the assessment must be

> based upon all of the circumstances. The analysis proceeds with various objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers. From these data, a trained officer draws inferences and makes deductions -- inferences and deductions that might well elude an untrained person.

Id.

Additionally, the Court concluded in Terry v. Ohio, 392 U.S. 1 (1968), that an officer could, without violating the protections of the Fourth Amendment, conduct a brief investigatory stop. The officer, in order to conduct such a stop, must have a reasonable suspicion that "criminal activity may be afoot." Id. In United States v. Arvizu, 534 U.S. 266, 274, the Court stated that "[a]lthough an officer's reliance on a mere 'hunch' is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required for probable cause." See also Illinois v. Wardlow, 528 U.S. 119, 123 (2000)(describing reasonable suspicion as a "less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence ....".).

In United States v. Sokolow, 490 U.S. 1, 10 (1989), the Court further stated:

> We noted in Gates, 462 U.S., at 243-244, n. 13, that "innocent behavior will frequently provide the basis for a showing of probable cause," and that "[i]n making a determination of probable cause the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of noncriminal acts." That principle applies equally well to the reasonable suspicion inquiry.

Further elucidating its acceptance of the risk of innocent behavior forming the basis for reasonable suspicion, the United States Supreme Court

explained,

> Respondent and *amici* also argue that there are innocent reasons for flight from police and that, therefore, flight is not necessarily indicative of ongoing criminal activity. This fact is undoubtedly true, but does not establish a violation of the Fourth Amendment. Even in *Terry,* the conduct justifying the stop was ambiguous and susceptible of an innocent explanation. The officer observed two individuals pacing back and forth in front of a store, peering into the window and periodically conferring. 392 U.S., at 5–6, 88 S.Ct. 1868. All of this conduct was by itself lawful, but it also suggested that the individuals were casing the store for a planned robbery. *Terry* recognized that the officers could detain the individuals to resolve the ambiguity. *Id.,* at 30, 88 S.Ct. 1868.
>
> In allowing such detentions, *Terry* accepts the risk that officers may stop innocent people. Indeed, the Fourth Amendment accepts that risk in connection with more drastic police action; persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent. The *Terry* stop is a far more minimal intrusion, simply allowing the officer to briefly investigate further. If the officer does not learn facts rising to the level of probable cause, the individual must be allowed to go on his way. But in this case the officers found respondent in possession of a handgun, and arrested him for violation of an Illinois firearms statute. No question of the propriety of the arrest itself is before us.

Wardlow, 528 U.S. 119 at 125-26. Thus, facts that may be ambiguous and susceptible of innocent explanations are properly accepted as the basis for a reasonable suspicion. In State v. Stevens, 354 So. 2d 1244, 1247 (Fla. 4th DCA 1978), the court gave examples of possible factors which may be useful in a reasonable suspicion analysis:

> Certain factors might then be evaluated to determine whether they reasonably suggested the suspect's possible commission, existing or imminent, of a crime: The time; the day of the week; the location; the physical appearance of the suspect; the behavior of the suspect; the appearance and manner of operation of any vehicle involved; **anything incongruous or unusual in the situation as interpreted in the light of the officer's knowledge**.

(emphasis added).

In Whren v. United States, 517 U.S. 806 (1996), the United States Supreme Court held that a temporary stop and detention of a motorist is valid under the Fourth Amendment where probable cause exists to believe that there was a violation to traffic laws. Additionally, the subjective intentions of the officer making the stop are irrelevant in determining its validity; rather, the test is objective, whether probable cause exists under the facts that could justify a traffic stop. See Holland v. State, 696 So. 2d 757, 758 (Fla. 1997). When a suspected violation at issue is to a criminal traffic law, then the standard applied to a traffic stop is the same as to any other temporary investigative detention, that of reasonable suspicion of criminal activity. See State, Dep't of Highway Safety & Motor Vehicles v. DeShong, 603 So. 2d 1349, 1352 (Fla. 2d DCA 1992).

In Aders v. State, 67 So.3d 368 (Fla. 4th DCA 2011), the Fourth District Court of Appeal dealt with the same scenario as at issue in the case sub judice. In Aders, the defendant's vehicle was stopped when a deputy learned, via a law enforcement database, that the color of the vehicle was listed differently on the vehicle's registration. Id. at 369. At that point the deputy stopped the vehicle, was given consent to search the vehicle, upon which he discovered drug paraphernalia inside. Id. At trial, the defendant moved to suppress the discovery of the paraphernalia on the basis that the deputy had insufficient justification to stop the vehicle based on the change in color. The trial court ruled the stop was

proper, as did the Fourth District Court of Appeal in affirming the trial court's decision.

Specifically, the Fourth District held that "a color discrepancy between a car and its computer registration creates sufficient reasonable suspicion to justify a traffic stop for further investigation." Id. at 371. The Court acknowledged that there was no legal requirement for a person to update his registration to indicate a vehicle has received a new color. However, the Court also noted that the mere fact that there was a discrepancy in the vehicle's color was not the sole concern. To the contrary, it was what the discrepancy represented, namely, the possibility that the license plate may have been improperly transferred. Such an action would have been violative of Section 320.261, Florida Statutes. Id. "A color discrepancy is enough to create a reasonable suspicion in the mind of a law enforcement officer of the violation of this criminal law." Id. (citing Smith v. State, 713 N.E. 2d 338, 341 (Ind.Ct.App.1999)(traffic stop valid where computer check on vehicle's license plate revealed that the plate was registered to a yellow vehicle, rather than blue and white); Andrews v. State, 658 S.E.2d 126, 127-28 (2008)(reasonable suspicion existed to stop vehicle where computer check revealed license registered to a silver vehicle, not the green-gold vehicle observed)).

In the instant case, Deputy Knotts testified at the suppression hearing that when he ran the tag number of the vehicle being driven by Respondent through the Department of Highway Safety and Motor Vehicles database, which

revealed the vehicle to which the registration belonged was different in color from the vehicle driven by Respondent. (RI 23). Deputy Knotts also testified that while the database provided the make of the vehicle, it did not provide the model. (RI 30). Deputy Knotts noted that he was aware that "it's illegal to make a false application regarding information on a vehicle for the registration of said vehicle." (RI 32). Thus, this discrepancy constituted a fact which was incongruous or unusual in the officer's experience. Based on this information provided, Deputy Knotts stopped Appellant's vehicle. Thus, it was not solely the fact that the color listed in the database for Appellant's vehicle was different, but, instead, it was what the discrepancy in the two colors represented in the mind of Deputy Knotts. Specifically, the fact that Appellant may have falsely provided inaccurate information in the registering of his vehicle represented possible criminal activity. Moreover, under the objective test of Whren, the possible violation of §320.261, Fla. Stat., for switching the license plate to a vehicle of the same make but a different color provided reasonable suspicion for the stop. Consequently, the trial court did not err in denying the motion to suppress.

Here, as in Aders, Deputy Knotts did not stop Respondent's vehicle solely because there was a discrepancy in the color of the vehicle, but, instead, it was because of what that discrepancy represented. As was discussed during Deputy Knott's testimony, the fact that the computer database listed Respondent's vehicle as being a color different than that

which Deputy Knotts was observing constituted an incongruous or unusual fact, and went against the expectation that the registration information for a tag will match the vehicle to which it is attached. Thus, this fact provided the reasonable suspicion that there could have been illegality with respect to the vehicle related to that discrepancy. While the failure to update a vehicle registration to reflect a new color is not in specific violation of a Florida law, the improperly licensing and providing of false information in the registering of a vehicle is prohibitive of Chapter 320, Florida Statutes, in particular Sections 320.06 and 320.061, Florida Statutes, and switching tags between vehicles is a violation of §320.261, Fla. Stat. Thus, the trial court did not err in determining that Deputy Knotts had the requisite reasonable suspicion to stop Respondent's vehicle given that the facts available to him would lead an objective officer to suspect the possibility of a violation of the criminal traffic laws.

2. The First District Court of Appeals decision vs. Aders.

The First District Court of Appeals reversed the trial court's denial of Respondent's motion to suppress. The First District's decision is flawed because it failed to adhere to the mandated analysis for determining whether reasonable suspicion existed to justify the temporary detention of Respondent.

Specifically, the First District explicitly acknowledged that "any discrepancy between a vehicle's plates and the registration may legitimately raise a concern that the vehicle is stolen or the plates were

swapped from another vehicle." Van Teamer v. State, 108 So. 3d 664, 667 (Fla. 1st DCA 2013). In the context of the reasonable suspicion analysis, a fact which legitimately raises a concern of criminal activity, such as vehicle theft or plate switching, is precisely the kind of fact that supports a reasonable suspicion to justify a temporary detention. Despite recognizing that not just color, but any discrepancy between the registration plates of a vehicle and the vehicle itself was sufficient to create a legitimate concern of criminal activity, the First District declined to hold that reasonable suspicion existed in the instant case. Id. The court thus based its decision not on a determination of whether facts existed to raise a reasonable suspicion of criminal activity, but a concern that innocent motorists may be temporarily detained. Id. The United States Supreme Court has accepted the risk that innocent individuals will be temporarily detained based on facts that are equally, or more, consistent with innocent behavior than criminality. See Sokolow, 490 U.S. 1 at 10; see also Wardlow, 528 U.S. 119 at 123. Consequently, individuals innocent of any wrongdoing will be temporarily detained under the reasonable suspicion standard, such a result is to be expected, and so any concern for that risk is alien the correct analysis. Rather, what matters is whether articulable facts exist which support a reasonable suspicion of criminal activity from the viewpoint of an objectively reasonable officer. See Ornelas, 517 U.S. 690 at 696.

The First District cited to State v. Diaz, 850 So. 2d 435 (Fla. 2003),

for the proposition that facts which would give rise to reasonable suspicion might still not be sufficient to justify a temporary investigatory detention when innocent behavior could be subject to such a detention. Specifically, the First District took a quote from Diaz regarding the general rule that Fourth Amendment analysis was based on reasonableness and used it to justify altering the reasonable suspicion analysis to make the outcome more "reasonable". Van Teamer, 108 So. 3d 664 at 667. Diaz stands for no such proposition. The full quote from Diaz is as follows:

> The Fourth Amendment mandates that citizens remain free from unlawful searches and seizures by law enforcement officers. The real test is one of reasonableness, which involves balancing the interests of the State with those of the motorist. Here, the basis for the stop—regulation of motor vehicle operation—satisfied a legitimate state interest.

Diaz, 850 So. 2d 435 at 439. Consequently, Diaz's specific holding is at odds with the First District's in Van Teamer, for in Diaz, this Court held that the general test of reasonableness was satisfied by the State's legitimate purpose in enforcing the traffic laws, a purpose also present in the instant case. Id. It was only the continuation of the detention after the officer was satisfied no criminal activity was present that this Court held to be unreasonable. Id. Notably, the continuation was unreasonable for the precise reason that the reasonable suspicion which allowed the temporary detention had been dispelled by the officer's investigation, not because of a balancing between existing reasonable suspicion and the possibility of innocent activity.

The First District criticized the opinions relied upon by the Aders court as either not truly holding that a color discrepancy alone gave rise to a reasonable suspicion of criminal activity, or that they were flawed. Specifically, the First District claimed that Smith, 713 N.E. 2d 338, actually held that a color discrepancy combined with a suspicion of gang affiliation, not a color discrepancy alone, amounted to a reasonable suspicion of criminal activity. To justify this conclusion, the First District pointed to a footnote in the opinion which noted that the stopped vehicle was initially suspected of gang involvement. Van Teamer, 108 So. 3d 664 at 667. However, this fact was never included as part of the reasonable suspicion analysis in Smith, as illustrated by the following passage from the opinion:

> Here, the evidence was uncontroverted that the license plate on Smith's blue and white car was registered to a yellow car. Upon conducting a computer check, Sergeant Henson had reasonable suspicion to believe that Smith's vehicle had a mismatched plate, and as such, could be stolen or retagged. Sergeant Henson's traffic stop was valid and comported with the mandates of the Fourth Amendment.

Smith, 713 N.E.2d 338 at 342. Because the Smith court never considered any fact outside of the color discrepancy in its reasonable suspicion analysis, Smith truly holds that a color discrepancy alone, regardless of additional information of criminal activity, justifies a temporary detention.

The First District pointed to a number of cases, including U.S. v. Cooper, 431 Fed. Appx. 399 (6th Cir. 2011) and U.S. v. Clarke, 881 F. Supp. 115 (D. Del. 1995), to support their position that color alone cannot allow

for a traffic stop. However, while Cooper and Clarke both deemed a color discrepancy plus some other factor to sufficiently establish reasonable suspicion, it does not logically follow that color discrepancy alone would be insufficient, nor do these cases so hold. Additionally, while U.S. v. Rodgers, 656 F.3d 1023, 1027 (9th Cir. 2011), contains a statement that a color discrepancy plus a high-crime location may provide only a thin basis for reasonable suspicion, the court reversed on other grounds and so never reached that issue, rendering the statement mere dicta.

As for the First District's reliance on Commonwealth v. Mason, No. 1956-09-2, 2010 WL 768721 (Va.Ct.App. Mar 9, 2010), an unpublished opinion, it is misplaced because Mason's rationale is flawed. First, it is worth noting that the court took the facts and their inferences in the light most favorable to the defendant, and so the facts in Mason were viewed from the opposite perspective of the facts in the instant case. Id. at 2. Moreover, the court in Mason ignored the meaning which a color discrepancy carries in terms of possible criminal activity. Id. at 3. Instead, the court concerned itself with the potential for innocent activity forming the basis for reasonable suspicion, not fully recognizing that reasonable suspicion is a very low standard. Id. This concern over innocent activity is precisely that which the United States Supreme Court has determined should not play a part in the reasonable suspicion analysis. See Sokolow, 490 U.S. 1 at 10; see also Wardlow, 528 U.S. 119 at 123. Consequently, Mason is at odds with controlling precedent, and the First District's

reliance on it was misplaced.

The First District also analogized cases holding that simply because a person has a temporary tag on their vehicle, and a temporary tag might make it easier to drive on an expired permit or drive a stolen vehicle, it does not follow that reasonable suspicion exists to justify a temporary stop. Van Teamer, 108 So. 3d 664 at 669. This analogy is flawed because simply having a temporary tag on a vehicle does not mean anything other than that a temporary tag is present, with no indication that anything might be amiss. Conversely, a tag that is registered to a vehicle of a color other than that of the vehicle to which it is attached indicates that something may be amiss by virtue of the colors not matching when an objectively reasonable officer would expect them to match. The First District recognized as much when it explicitly held that any discrepancy between the registration and the vehicle to which it is attached gives rise to a legitimate concern of criminal activity. Id. at 667.

It is also worth noting that the exclusionary rule must serve a deterrent value, in accordance with Herring v. U.S., 555 U.S. 135 (2009) and Hudson v. Michigan, 547 U.S. 586 (2006). Application of the exclusionary rule would serve little purpose in the instant case. At the time of the traffic stop, Aders was the only opinion in Florida which dealt with the issue, and Aders was controlling authority on every trial court. Thus, the law available to the officer indicated that he acted legally in stopping Respondent. Indeed, not only did the officer have a good faith

belief, but he was supported by a Florida appellate court. The exclusionary rule would not provide deterrence in the instant case because the officer in the instant case relied on the legal authority of the Fourth District and could not anticipate the law would change.

In contrast to the First District's opinion in the instant case, the opinion of the Fourth District in Aders adheres to the consistently prescribed analysis for determining whether reasonable suspicion existed to support an investigative detention; namely, whether, from an objective standpoint, an officer would suspect the possibility of criminal activity based on the known facts. Aders, 67 So. 3d 368 at 371. Because a color discrepancy represented the possibility that a tag was switched between vehicles in violation of the criminal traffic laws, the color discrepancy provided the officer with reasonable suspicion to conduct a temporary investigative detention. Id.

By injecting a concern about possibly innocent behavior forming the basis for a temporary investigative detention, which concern has been rejected by the United States Supreme Court in Sokolow and Wardlow, the First District failed to adhere to the correct analysis for determining reasonable suspicion. It is the First District's failure to adhere to this analysis which mandates that the opinion in the instant case be quashed, and the opinion in Aders be approved.

CONCLUSION

Based on the foregoing, the State respectfully submits the decision of

the First District Court of Appeal reported at 108 So. 3d 664 should be quashed, the decision of the Fourth District Court of Appeal reported at 67 So.3d 368 should be approved, and the judgment entered in the trial court should be affirmed.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by electronic mail on July 8, 2013: Richard Summa, Esq., at richard.summa@flpd2.com.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12 point font.

Respectfully submitted and certified,
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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, v. KERICK VAN TEAMER, Respondent.	Case No. SC13-318

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