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IN SUPREME COURT OF FLORIDA

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

PETITIONER'S REPLY BRIEF

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PRELIMINARY STATEMENT

Parties (such as the State and Respondent, Kerrick Van Teamer), and the record on appeal will be designated as in the Initial Brief, and "IB" will designate Petitioner's Initial Brief, "AB," will designate Respondent's Answer Brief, each followed by any appropriate page number in parentheses.

STATEMENT OF THE CASE AND FACTS

The State relies upon the Statement of the Case and Facts as set out in the State’s Initial Brief.

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)

Merits

Respondent raises a number of assertions in answer to the State's initial brief, all of which are flawed due to a misapprehension of the standard for conducting a temporary detention. The correct standard for determining the validity of a temporary detention, as discussed in the initial brief, is whether an officer has, "a particularized and objective basis for suspecting the particular person stopped of criminal activity." United States v. Cortez, 449 U.S. 411, 417-418 (1981). This standard does not take into account the likelihood of whether conduct is innocent or guilty, "but the degree of suspicion that attaches to particular types of noncriminal acts." United States v. Sokolow, 490 U.S. 1, 10 (1989), quoting Illinois v. Gates, 462 U.S. 213, 243-244 n.13 (1983). Wholly innocent activity may justify a stop based on the reasonable suspicion that arises from that activity, and despite any wholly reasonable innocent inferences and explanations for the activity. Illinois v. Wardlow, 528 U.S. 119, 125-126 (2000). The following explanation on this point from the United States Supreme Court bears repeating:

> 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.

Id. Had the likelihood of innocence entered into the analysis for reasonable suspicion, then Terry v. Ohio, 392 U.S. 1 (1968), would have been decided rather differently. The inference of innocent activity, which in that case would have been window shopping based on walking back and forth in front of a shop window, is rather high, and the innocent inference is particularly reasonable. Yet the likelihood of innocent activity was not taken into account when determining whether reasonable suspicion existed; as explained above, it is irrelevant to the analysis. Rather, what matters is whether an officer can point to a particularized and objective fact which reasonably supports their suspicion. See Cortez, 449 U.S. 411 at 417-418.

In light of the correct standard, Respondent's discussion of various statutes in determining the reasonableness of suspicion is particularly flawed. Just as the theft statute in Terry did not need to specify that walking back and forth in front of a store window constitutes reasonable suspicion of criminal activity, no Florida statute needs to address what is reasonable and what is not. As the United States Supreme Court has explained, the concept of reasonable suspicion is a "commonsense, nontechnical" concept. Ornelas v. United States, 517 U.S. 690, 695-696 (1996). Given that each case must be decided on its own facts and circumstances, resort to the legislature as to what constitutes reasonable suspicion of a criminal violation is wholly unhelpful. Moreover, many of Respondent's assertions regarding the purpose of motor vehicle registration and notably lacking in citation to authority and should be disregarded for that reason.

Respondent has also advanced what he acknowledges to be a "slippery slope" argument. Aside from "slippery slope" arguments being a long-recognized logical fallacy, Respondent's "slippery slope" assertions are without merit. Respondent makes a false analogy in each hypothetical in his series of dangerous future cases. Respondent's hypothetical cases do not concern attributes of a vehicle, but rather, circumstances surrounding a vehicle, whereas the instant case is concerned only with reasonable suspicion arising from an irregularity in an attribute of the vehicle itself.

This is particularly important when each of Respondent's hypotheticals demonstrate situations where there is no discrepancy between the observed facts and the registration information. A registration designates who owns a vehicle, not who drives a vehicle; thus, that a male drives a vehicle owned by a female is not contrary to the information in the registration. Further, a registration designates the address of one who owns a vehicle, not where that vehicle is currently located; thus, that a vehicle is located away from the address of its owner is not contrary to the information in the registration. It is because of the lack of discrepancy that there is no basis to suspect criminal activity in any of Respondent's hypotheticals, not because each contains an innocent inference. In contrast, the instant case involved the vehicle's actual color contradicting the color contained in the registration. Such a contradiction between what was expected and occurred is precisely the kind of particular, objective facts which support a finding of reasonable suspicion. When Deputy Knotts observed the contradiction, it was reasonable for the deputy to suspect that criminal activity was afoot and investigate further to "resolve the ambiguity." See Wardlow, 528 U.S. 119 at 125-126.

Respondent also asserts that the State has engaged in mischaracterization of the First District's opinion in the instant case. However, it is not disputed that the First District stated the following:

> As a preliminary matter, we acknowledge 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). The word "legitimate" is defined in part as, "reasonable; logically correct *[a legitimate inference]*." Webster's New World College Dictionary 819 (4th ed. 2010). Thus, if a discrepancy legitimately raises a concern of certain criminal activity, such a phrase is synonymous with a reasonable concern (or suspicion) of criminal activity. Contrary to Respondent's assertion, no mischaracterization is present in the State's position. Rather, the State has correctly represented the inherent contradictions in the First District's opinion.

While it appears that Respondent is correct that Aders v. State, 67 So.3d 368 (Fla. 4th DCA 2011), was not issued at the time of the traffic stop, it is worth noting that even the First District in Van Teamer acknowleged the lack of guidance in this State's caselaw for officers in Deputy Knotts' position. Id. at 667. Given that the Fourth District in Aders later found an officer's determination under similar facts to be reasonable, and that other cases, such as Smith v. State, 713 N.E. 2d 338, 341 (Ind.Ct.App.1999), were consistent with the Aders court and were issued prior to the traffic stop in the instant case, there appears to be a lack of police culpability in the instant case. Since Deputy Knotts arrived at a conclusion shared by non-binding courts in other jurisdictions, and later shared by the Fourth District, the good faith exception should still apply in the instant case. As for Respondent's argument of waiver in regard to

the good faith exception, Respondent has failed to apprehend that an appellate court must affirm the judgment of a trial court if the judgment is legally correct for any reason. See Dade County School Bd. v. Radio Station WQBA, 731 So. 2d 638, 645 (Fla. 1999).

Respondent's position is that Deputy Knotts had nothing but a hunch in the instant case, and so was not justified in temporarily detaining Respondent. Respondent's position ignores that the deputy did not rely on a hunch, but on specific facts; namely, the color indicated on the vehicle's registration and the actual color of the vehicle. The significance of these facts is that they contradict each other, revealing that everything was not as it should be and that criminal activity involving improperly licensing and providing of false information in the registering of a vehicle, switching tags between vehicles, and vehicle theft may have occurred.

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 August 28, 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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