IN THE SUPREME COURT OF FLORIDA

Jeffrey Williams,

Appellant,

v. CASE NUMBER: SC16-451

State of Florida,

Appellee.

_____/

ON PETITION FOR DISCRETIONARY REVIEW OF A DECISION OF THE FIRST DISTRICT COURT OF APPEAL 1D14-5510

INITIAL MERITS BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

Mr. Williams is the Defendant in a felony criminal prosecution in Leon County, Florida. He was the appellee in the First District court of appeal in State v. Williams, 184 So.3d 1205 (Fla. 1st DCA 2016). He is the Appellant in this Court. He will be referred to as the Defendant, appellant, or by his proper name. All references to the record will be "R" followed by the page number, in parentheses. The decision of the First District on review is referenced by "App" and the page number in reference to its attachment as the appendix of the jurisdictional brief.

STATEMENT OF THE CASE

The Appellant, Jeffrey Williams, is the defendant in a criminal trial court proceeding in the circuit court of the second judicial circuit in Leon County. The trial court entered an order, after hearing, suppressing evidence. The prosecuting authority appealed the court's ruling to the First District Court of Appeal. The First District reversed the trial courts order suppressing the evidence. Mr. Williams appealed the decision of the First District to this Honorable Court, which entered its order accepting jurisdiction.

STATEMENT OF THE FACTS

At the motion to suppress hearing Investigator Daryl Morris testified that in an attempt to deliver a package addressed to 1600 Bainbridge Road, apartment

422, postal inspectors were notified that the name on the package was for a person who did not reside in the apartment complex.(RIII.471)

Both the sender and recipient's names on the package were not able to be verified, but the recipient's physical address was valid. (RIII.471,479). Because the physical address was valid, the package was delivered to apartment 422, where Cynthia Richardson came to the door and said that she was the name on the package. (RIII.471). In fact, the package was addressed to a Key Phillips, and Richardson signed for the package with that name. (RIII.481,473). Richardson admitted to using Key Phillips as an alias. (RIII.496). Richardson explained she was receiving the package for a man named Jeff and she did not know what was in it. (RIII.473). Jeff did not live where the package was being delivered but Richardson did. (RIII.474,476). Prior to the opening of the package is when Ms. Richardson advised she was receiving the package for Jeff. (RIII. 471-472)

Investigator Morris then requested permission to open the package, "and she said yes." (RIII.472,473,497). Investigator Morris searched the package and discovered it contained narcotics. (RIII.482,497) Investigator Morris further testified that after searching the package he was allowed to look through Richardson's phone. (RIII.482). Within Richardson's phone, Investigator Morris located text messages between her and a guy named Jeff. (RIII.482). Next, Investigator Morris asked Richardson to text Jeff, in an attempt to lure Jeff to the

apartment “to identify his true identity.” (RIII.498). Defendant ultimately showed up in response to the text messages, and was arrested prior to entering the apartment or receiving the package.(RIII.498-99).

The only witness to be called at the suppression hearing was Investigator Morris, and the trial court held his testimony was sufficient to establish Defendant’s standing. (RIII.465,488). The court went on to grant the motion to suppress finding Richardson had neither the actual nor apparent authority to consent to the package’s search. (RIII.520). In finding the consent faulty, the court noted that Richardson testified, “I am not Key Phillips[.]” (RIII.520). It is important to note that Ms. Richardson communicated to law enforcement that the package was not hers and that it was Jeffs. (RIII 472). She also indicated that the intention was for Jeff to show up and pick up the package. (RIII 474). The police had no indication that Ms. Richardson had the authority to consent to the opening of the package other than her taking possession of the package. The Officer testified there was no confusion about the package being for Jeffery Williams (RIII 483).

The Trial Court entered a well reasoned order granting the motion to suppress the contents of the package. (RIII 461-463).

SUMMARY ISSUE ONE

The Supreme Court under Art. V, § 3, Fla. Const. (b) (3) May review any decision of a district court of appeal....that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law. The standard of review is *de novo*.

The statement of law the decision of the First District violated is the appellate court, "must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling"

This Court should quash the decision of the First District, as the dissenting opinion noted the majority opinion directly violated this court's decision in Jardines v. State, 73 So.3d 34, 35 (Fla. 2011) and Patrick v. State, 104 So. 3d 1046, 1059 (Fla. 2012). Jardines, Patrick, as well as numerous other cases, too many count, require appellate courts to defer to the trial courts findings of fact so long as they are supported by competent substantial evidence.

The question of consent and standing are both matters of fact. Both findings were made by the trial court against the state. The investigator testified that he knew Ms. Richardson was not Key Phillips, that he was told, by her, that she was receiving the package for Jeff and she didn't know what was in it. The trial court noted that tellingly she was not asked if she had the authority to open the package,

they just asked for consent, and "accepted her consent without question", even though she had told them the package belonged to somebody else. (App. 21).

When an individual tells law enforcement an item in their possession is somebody else's, and law enforcement is seeking consent, the trial court is free to make a factual finding that law enforcement knew, or should have known that statement made to them by the person to be true. Mr. Williams also appeared at the apartment to take possession of the package, which Ms. Richardson said was his, and he did nothing to legally divest himself of a privacy interest in this package.

Not only were the findings not clearly erroneous, they were indisputably correct. To jettison the trial courts findings was a clear recession from the well-established principles of law.

SUMMARY OF ISSUE TWO

This Court has jurisdiction under Art. V, §3, Fla. Const. (b)(3) because the decision of the First District expressly construes a provision of the state or federal constitution specifically standing. The standard of review is de novo

The First District established a three prong test to determine standing for the mail, the effect is it eviscerates the expectation of privacy someone has in first class mail

The three criteria established by the First District are, (1) whether the defendant is listed as the sender or addressee of the package; (2) if there is a fictitious name listed on the package, whether there is a connection between the defendant and the fictitious name; and (3) whether the defendant can demonstrate a legitimate expectation of privacy in the location where the package was delivered.

Judge Benton noted in his dissenting opinion that there are only two ways to interpret the opinion. "First, because some people employ an alias and use the mail illegally, everyone with a legitimate reason to remain anonymous should lose their expectation of privacy in the post. Alternatively, only people using an alias for legitimate reasons may retain an expectation of privacy in their mailings while those who employ an alias for illicit purposes may not. Both constructions turn the Fourth Amendment on its head. Since this three factor test has been established now and anyone unable to meet one of the three factors in Florida is unable to establish standing to contest a search of packages they mail, i.e they have no expectation of privacy.

ARGUMENT ISSUE ONE

As the dissenting opinion in the First Districts decision correctly recognized, under binding precedent, the trial courts findings of fact control absent clear error. All material findings of fact in this case are rock solid.

The trial court relied on numerous factual findings in support of its finding that Mr. Williams had standing and the consent obtained by Ms. Richardson was insufficient to allow law enforcement to search the contents of the package. They are listed below with citations to the record supporting them.

1. The Court found that the name on the package was Mr. Phillips.
    A. This is supported in the record at (Rill.483) that the name on the package was Key Phillips, the trial court may have listed Keith in the order, and it is of no matter.
2. A women named Ms. Richardson accepted the package.
    A. Supported by the record (RIII. 471)
3. Ms. Richardson stated she had accepted the package for a friend.
    A. Supported by the record (RIII.471-472)
4. Ms. Richardson stated her friends name was Jeff.
    A. Supported by the record (RIII. 472)
5. No evidence was offered to show that Ms. Richardson had the express authority to open the package.
    A. Supported by the record (RIII. 473) (no permission from Mr. Williams)
6. No evidence was offered to show that Ms. Richardson had the apparent authority to open the package.

A. Supported by the record (RIII. 504-506)

Additionally even though not stated in the courts written order it is clear the court relied upon other facts in the record:

7. Jeffrey Williams seated in Court is the Jeff stated by Ms. Richardson.
8. That the Officer was told the package was Jeffs.

   A. Supported by the Record (RIII. 504)

9. That the Officer did not do any follow up when he was told the package was not Ms. Richardson's.

   A. Supported by the Record (RIII. 505)

10. The package was sealed.

    A. Supported by the Record (RIII. 505)

11. The Officer did not ask Ms. Richardson if she had been given permission from Jeff to open the package.

    A. Supported by the Record (RIII.505)

12. The Officer was told by Ms. Richardson she was receiving it for a friend.

    A. Supported by the Record (RIII. 506)

13. The Officer was told by Ms. Richardson she did not know what was inside of the package.

    A. Supported by the Record (RIII. 506)

14. A reasonable person would not have considered that Ms. Richardson had the ability to open the box.

A. Finding by the Court based on the totality of circumstances (RIII. 520).

An appellate court "'must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling,'" Patrick v. State, 104 So. 3d 1046, 1059 (Fla. 2012) (quoting Rolling v. State, 695 So. 2d 278, 291 (Fla. 1997)), not jettison the trial court's explicit findings in favor of its own inferences and speculation. See State v. Setzler, 667 So. 2d 343, 346 (Fla. 1st DCA 1995) ("A reviewing court is bound by the trial court's findings of fact—even if only implicit—made after a suppression hearing, unless they are clearly erroneous.").

The state's burden of proof on the issue of consent as an exception to the warrant requirement includes foundationally the burden to prove authority to consent. "The state has the duty to prove through specific facts that the third party has the authority over the particular object to be searched." Kelly v. State, 77 So. 3d 818, 825 (Fla. 4th DCA 2012). To determine whether an officer's reliance on consent based on apparent authority was reasonable, courts presume that the officer was familiar with the applicable law. Then, the proper inquiry is whether a reasonable person familiar with the applicable law would have believed the third

party had common authority over the premises or item searched. If the basis for the asserted authority is unclear, the officer must conduct further inquiry before relying on the third party's representations." *State v. Young*, 974 So. 2d 601, 610 (Fla. 1st DCA 2008) (citations omitted).

In the present case, the trial court concluded, no evidence was presented to show that Ms. Richardson had either express authority or apparent authority to either open the package or give law enforcement the authority to open the package. The trial court also observed, "Tellingly, Officer Tabb never asked Ms. Richardson if she had the authority to open the package." Instead, "the officers accepted her consent without question," even though she had told them the package belonged to somebody else. State v. Williams, 184 So. 3d 1205, 1214-15 (Fla. 1st DCA 2016)(J. Benton dissenting).

The legal principle is fairly straight forward, we assume the trial court is correct when they make a ruling, especially a well thought out one with a detailed written order after a hearing where both parties presented evidence and had an opportunity to be heard. The reviewing court will review the record and determine if the record supports the ruling, but in doing so, assumes all reasonable inferences from the evidence were interpreted in a way to support the trial court's ruling. The First District in this case instead of assuming a typographical error, and an isolated one at that, assumed the trial court was mistaken. That's wrong.

The trial court additionally found Mr. Williams had shown standing, a finding the District Court disagreed with as well which is addressed in more detail in ground two of this brief.

Since the First District failed to give deference to the factual findings of the trial court it failed to follow this Courts directives in Patrick and Jardines and must be reversed.

ARGUMENT ISSUE TWO

The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. (emphasis supplied). See also Art. I, § 12, Fla. Const. ("The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures . . . shall not be violated. . . ." (Emphasis supplied.) "Even if government agents have probable cause to believe that there is contraband in a container sent by mail or common carrier, they generally cannot search it unless they first obtain a warrant, or unless some exception to the warrant requirement applies." United States v. Villarreal, 963 F.2d 770, 774 (5th Cir. 1992). See Ex parte Jackson, 96 U.S. 727, 735 (1877) ("Regulations excluding matter from the mail cannot be enforced in a way which would require or permit an examination into letters, or sealed packages subject to

letter postage, without warrant, issued upon oath or affirmation, in the search for prohibited matter."); United States v. Richards, 638 F.2d 765, 770 (5th Cir. 1981) ("Sealed mail historically has been considered to have a high degree of privacy, and government intrusion into mailed parcels is limited by the fourth amendment.").

Whether the owner of the good has a legitimate expectation of privacy in the area searched" is "a factual finding." United States v. Salvucci, 448 U.S. 83, 92, 100 S. Ct. 2547, 65 L. Ed. 2d 619 (1980). See United States v. Matlock, 415 U.S. 164, 177 n.14, 94 S. Ct. 988, 39 L. Ed. 2d 242 (1974) ("[T]he controlling burden of proof at suppression hearings should impose no greater burden than proof by a preponderance of the evidence."). State v. Williams, 184 So. 3d 1205, 1217 (Fla. 1st DCA 2016)(J. Benton Dissenting)

The trial court made a factual finding that Mr. Williams did have a legitimate expectation of privacy in the area searched. The First Districts decision could only be upheld if this court were to find that under the facts of Mr. Williams's case, a citizen could never have an expectation of privacy as a bright line rule of law.

The majority opinion of the First District relied on decisions where letters or packages were addressed to actual persons who did not themselves challenge the search or seizure. Merely entrusting a parcel or other container to another does not

forfeit the owner's right to freedom from arbitrary governmental search of the contents. See generally United States v. Canada, 527 F.2d 1374, 1378 (9th Cir. 1975) ("She did not relinquish her protectable interest, nor her standing to object, by sharing access and control of the suitcase with her companion.") State v. Taylor, 114 Nev. 1071, 968 P.2d 315, 320-21 (Nev. 1998) (holding airline traveler had standing as to his suitcase even though his niece, traveling with him, had checked it in her own name and retained the baggage claim ticket).

As Judge Benton recognized, "Stepping back from the context of drug investigations, there are many situations in which a person may have perfectly legitimate reasons for arranging to have correspondence or packages shipped to him through another person he trusts. . . . Consider, for example, a celebrity's interest in avoiding harassment or intrusion, or a controversial public official's interest in the security of packages or envelopes, or a business executive involved in sensitive merger negotiations who wishes to ensure the secrecy of papers that could give a recipient the ability to take unfair advantage in securities markets. If the privacy of such a package were breached, surely the courts would allow the true owner, whom the courts would treat as a real party in interest, to assert those privacy interests in a civil claim against someone who caused injury by violating the privacy of the package. State v. Williams, 184 So. 3d 1205, 1219-20 (Fla. 1st DCA 2016).

The Supreme Court has held that anonymity of an author is not a sufficient reason to exclude literary works or political advocacy from the protections of the First Amendment. McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 341-43, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995). As the Court noted there, an author may decide to remain anonymous for fear of economic or official retaliation, out of concern for social ostracism, or merely because of a desire to preserve as much of one's privacy as possible. State v. Williams, 184 So. 3d 1205, 1219 (Fla. 1st DCA 2016).

Stepping back for a second and thinking about this situation, America (including north and north central Florida) is filled with small one light one post office towns. If someone orders something from a company such as a medical device manufacture specializing in impotence and it has a return label on it for "penis pump direct to you" and the postal worker at the one post office in a town with a population of less than 500, that could be embarrassing. If the person ordering the device has it shipped directly to their house with an alias, the one postal worker (and potentially the whole town depending on how discrete this postal worker is), would know to whom the package is intended.

The key kicker to this entire case, the thing that is so scary and why the first district is wrong, is this is not a case where law enforcement had probable cause and exigency, or a warrant. The three part test they established means anytime

someone receives a package for a friend, all that law enforcement needs to do is walk up to the person receiving the package for the friend grab it from there hands and search it with the owner of the property having no recourse. Why even go that far? Law enforcement could just run the label on the package at the postal facility, find that the name on the package is an alias (not hard to do since it was done in the case at bar) go to the delivery location, ask if the alias person actually lives there and if the answer is no (even if the resident is going to sign for it) search it without even asking for consent, or even allowing the package to leave the station. Orwellian? Sad that we as a nation would be willing to give up our privacy in our mail to allow law enforcement to peek without probable cause.

Luckily, the learned trial judge was not willing to make 1984 slip into a reality. As a factual matter, the trial court ruled, Mr. Williams's expectation of privacy was both subjectively and objectively reasonable. The trial court found he had made arrangements designed to prevent the package, although addressed to the fictitious "Key Phillips," from being opened by anyone else. Ms. Richardson understood and agreed that, when she received a package addressed to Key Phillips, it was for the appellant and him alone, or so the trial court was permitted to find on this record. There is nothing inherently wrong with a desire to remain anonymous when sending or receiving a package, and thus the expectation of privacy for a person using an alias in sending or receiving mail is one that society

is prepared to recognize as reasonable. The majority opinion held that the fourth amendment's protections do not apply under the facts of this case, and anyone similarly situated. It must be reversed for the reasons above and all of the eloquent reasons stated by Judge Benton in his dissent. State v. Williams, 184 So. 3d 1205, 1218 (Fla. 1st DCA 2016)(J. Benton dissenting[1])

CONCLUSION

Based on the foregoing argument made in this Initial Brief, this Court should reverse the decision of the First District Court of Appeal and reinstate the Order granting suppression issued by the trial court.

CERTIFICATE OF SERVICE

I HEREBY certify that a copy hereof has been furnished to the Office of the Attorney General at Crimapptlh@myfloridalegal.com via email delivery on December 28, 2016.

[1] The undersigned is not nearly as eloquent a writer as Judge Benton, as such he has borrowed heavily from his opinion in authoring this brief.

CERTIFICATE OF COMPLIANCE

I CERTIFY that this response complies with the font requirements of Florida Rule of Appellate Procedure 9.210

Respectfully Submitted,

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