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IN THE SUPREME COURT OF FLORIDA

Jeffery Williams,

Appellant,

v. CASE NUMBER: SC16-451

State of Florida,

Appellee.

_____/

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

(CONFLICT AND CONSTRUCTION OF THE STATE OR FEDERAL CONSTITUTION)

INITIAL BRIEF ON JURISDICTION OF APPELLANT

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STATEMENT OF THE CASE AND FACTS

In this case the trial court granted defendants motion to suppress marijuana seized from a third party finding invalid third party consent, and finding the defendant had standing to contest the search. The First District Court of Appeal in a divided decision reversed the trial court's ruling. The Honorable Judge Benton dissented authoring a 20 page opinion, an opinion written with a level of eloquence the undersigned knows he is unable to match and utilizes large amounts of it in this initial brief. Judge Benton wrote that, "Under binding precedent, the trial courts findings of fact control absent clear error. All material findings of fact are rock solid" Appellant urges this court to find that the First Districts decision is in clear contravention of Jardines v. State, 73 So.3d 34,35 (Fla. 2011), and other black letter law requiring deference to the trial courts findings. The majority decision failed to affirm the trial court's decision when its decision was both legally correct, and the findings made were supported by competent substantial evidence.

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 Key Phillips, and Richardson signed for the package with that name. (RIII.481,473). 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 she advised she was receiving the package for Jeff. (RIII. 471-472). Ms. Richardson communicated to law enforcement the package was not hers. (RIII. 472). That the package was Jeff's (RIII. 472). Also the intention was that Jeff show up and pick up the package (RIII 474). Investigator Morris then requested permission to open the package, "[a]nd she said yes." (RIII.472,473,497). Investigator Morris searched the package and discovered it contained narcotics. (RIII.482,497). 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 that package. ((RIII.483) The officer also testified in response to the question that there was no confusion about the package being for Jeffery Williams. Investigator Morris further testified that after searching the package he was allowed to look through Richardson's phone. (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).

The trial court, in a lengthy well written order, went through a proper factual analysis of the testimony, applied the correct legal standard, and granted the motion. The state then appealed to the First District. The First District found that Mr. Williams did not have standing and held as a matter of law. That because the package was mailed to Richardson's alias, and her address, Mr. Williams lacked a legitimate privacy interest in the package, ergo he lacked standing. The Dissent in a scathing opinion disagreed with the majority analysis, this appeal followed.

SUMMARY OF ARGUMENT 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.

This Court should accept jurisdiction 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, 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 she 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 to be true. Not only was the finding not clearly erroneous, it was indisputably correct.

SUMMARY OF ARGUMENT TWO

The Supreme Court under Art. V, § 3, Fla. Const. (b) (3) May review any decision of a district court of appeal that expressly construes a provision of the state or federal constitution. This Court should accept jurisdiction to review this decision because it interprets the Fourth Amendment to the United States

constitution (and the analogous Florida Constitutional provision), specifically standing. The First District's majority opinion also reversed the trial courts correct judgment that Mr. Williams had standing to contest the search. As the dissent stated, "When an individual asks someone else to receive mail for him, he does not by that fact alone surrender a reasonable expectation of privacy" (App. 34). The concurring opinion stated that "as a matter of public policy, society should not be willing to recognize a reasonable expectation of privacy in a mailed package unless a person asserting standing can meet one of the three criteria laid out in the majority opinion" (App. 15)

Those three criteria 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. (App. 7).

As the dissent correctly stated 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, this is a direct interpretation of the fourth amendment, requiring this courts guidance.

ARGUMENT ISSUE ONE

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) (App. 16).

In this case, "Under binding precedent, the trial court's findings of fact control, absent clear error. All the material findings of fact are rock solid." (App. 16) The trial court did not find reasonable or good faith reliance on third party consent, and as the dissent stated, "How could it? Officers knew that Ms. Richardson was not "Key Phillips," the fictitious addressee named on the package.

After she signed for the package, Investigator Morris "talked to her about the package, asked her who she was getting it for, what was in it. She said she was receiving it for a guy named Jeff. She didn't know what was in it." Without anything more, he asked for her permission to open the package. (App. 24). See United States v. Infante-Ruiz, 13 F.3d 498, 504-05 (1st Cir. 1994) (holding that when third party consent to search vehicle and trunk is qualified by a warning that the briefcase belonged to another, officers could not assume without further inquiry that the consent extended to the briefcase); United States v. Salinas-Cano, 959 F.2d 861, 862-63 (10th Cir. 1992) The trial court's finding that officers "obviously knew" that Ms. Richardson was not the addressee is plainly correct. The record indicates the package was addressed not to her, but to the fictitious "Key Phillips." Apartment complex managers had already told them nobody named Key Phillips lived in the complex. The trial court found police knew she was not "Key Phillips" because she informed them, before they asked her for consent to open the package that the package belonged to "Jeff." See Evans v. State, 989 So. 2d 1219, 1222 (Fla. 5th DCA 2008) ("When a third party informs the officer that a closed container belongs to another person, it is not objectively reasonable for the officer, without making further inquiry, to search the container."). The majority opinion arbitrarily rejects well supported findings of fact, in contravention of well-established black letter law from this Honorable

Court.

ARGUMENT AS TO ISSUE TWO

The First District announced a new bright line three prong rule to establish standing to contest government intrusion in the mail. At the trial court level, on the standing issue too—and based on even more evidence—the trial court decided the factual questions against the state. Again, the package was addressed to a fictitious, not to a real, person, which officers testified they knew before delivering the package. Investigator Morris testified without contradiction that Ms. Richardson told him the package belonged to the appellant. This testimony came in without hearsay or other objection. Information on her cellphone corroborated his ownership. There is no evidence that Mr. Williams ever disavowed ownership of the package or its contents. On the contrary, he arrived promptly at Ms. Richardson's apartment to pick up the parcel. The trial judge's finding that the appellant was the intended recipient of the package mailed to a fictitious addressee has ample support in the record

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) ("[R]egulations 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) ("[S]ealed mail historically has been considered to have a high degree of privacy, and government intrusion into mailed parcels is limited by the fourth amendment.").

The majority opinion 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) ("[S]he did not relinquish her protectible interest, nor her standing to object, by sharing access and control of the suitcase with her companion." 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 amendments protections do not apply under the facts of this case, and anyone similarly situated. It must be reversed.

CONCLUSION

This Honorable Court should accept jurisdiction so that it can reverse the decision of the First District Court of Appeal and adopt the well-reasoned dissent authored by Judge Benton.

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 April 25, 2016.

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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