IN THE SUPREME COURT OF FLORIDA

GREGORY PRESLEY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC16-2089

ON DISCRETIONARY REVIEW FROM THE FIRST DISTRICT COURT OF APPEAL

ANSWER BRIEF OF RESPONDENT

PAMELA JO BONDI
ATTORNEY GENERAL

SAMUEL B. STEINBERG
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0104820

TRISHA MEGGS PATE
TALLAHASSEE BUREAU CHIEF,
CRIMINAL APPEALS
FLORIDA BAR NO. 0045489

OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300
(850) 922-6674 (FAX)

COUNSEL FOR APPELLEE

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PRELIMINARY STATEMENT

Petitioner, Gregory Presley, was the defendant in the trial court and the appellant in the First District Court of Appeal. This brief will refer to Petitioner, as such, Defendant, or by proper name. Respondent, the State of Florida, was the prosecution in the trial court and appellee in the First District Court of Appeal. This brief will refer to Respondent as such, the State, or the government.

The record from the First District Court of Appeal consists of multiple volumes, and a DVD of the traffic stop. "R." will refer to the original volumes while "SR." will refer to the supplemental volumes. All record citations will include the volume and page numbers.

The DVD of the traffic stop will be referred to as "DVD". References will include the real time as indicated by the top left corner of the video.

"IB." will refer to the initial brief in this case. The citation will be followed by a page number. The issue statement has been reformulated.

The statement of facts comes from the record and from Presley v. State, 204 So. 3d 84 (Fla. 1st DCA 2016).

STATEMENT OF THE CASE AND FACTS

After a January 29, 2015 traffic stop, the State charged Petitioner with violating his drug offender probation in multiple cases. (R.I. 65). Prior to the violation of probation hearing, Petitioner filed a motion to suppress evidence from the traffic stop. (SR.I. 324). The motion argued that officers unlawfully detained Petitioner after he identified himself. (SR.I. 324).

At a joint suppression hearing and violation of probation evidentiary hearing, the State presented evidence that Gainesville Police Officer Tarik Jallad stopped a vehicle for running a stop sign and faulty taillights around midnight on January 29, 2015. (SR2. 237, 240). The vehicle contained three occupants. (SR. 238). Petitioner was one of the two passengers along with a driver. (SR. 238). As Officer Jallad pulled up to the vehicle, passenger Joshus Foster attempted to flee before Officer Jallad apprehended him. (SR. 199, 238, 240-41). Foster yelled at Officer Jallad. (DVD 0:11-13). Backup officers John Pandak and Joshua Meurer arrived as Officer Jallad tried to calm down Foster. (SR2. 197-98, 227-29).

Petitioner was standing outside the vehicle when Officer Pandak engaged him in a casual conversation with no weapons displayed. (SR2. 202, 214); (DVD 00:12-17). Petitioner provided his identifying information. (SR2. 207). He refused the officer's request to search. (SR. 208-09). Petitioner explained that he had no drugs, but that he had been drinking alcohol at his aunt's house. (DVD 00:10-18); (SR2. 203, 207-211, 216); Presley, 204 So. 3d at 86. Petitioner said he had nothing illegal on him. (DVD. 0:15). He refused a request for a search. (DVD. 0:15). Petitioner admitted he had too much to

drink. (DVD 0:15-16).

A few minutes into the conversation, Officer Pandak told Petitioner that he was not free to leave in response to a question by Petitioner. (DVD 00:17); (SR2. 217-19). Officer Pandak said, "We're just talking man. You cannot go anywhere because you were a part of the stop. We're just having a conversation man." (DVD 0:17:39). Petitioner also asked the Officer Pandak why he had to put out a cigarette, and the officer responded that it was for officer safety. (DVD 00:18). The officer then conducted a background check. (DVD 00:18-24).

During the background check on Petitioner, a woman approached the stop in a vehicle, got out, and yelled at police along with Foster. (DVD 00:19-25); (SR2. 215). Officers had to order her into a vehicle. (DVD 00:24).

The background check revealed that Petitioner was on drug-offender probation and was prohibited from using drugs or alcohol. (DVD 00:24); (SR2. 211). Officers arrested Petitioner. (SR2. 211-212, 214). Petitioner resisted the arrest by flailing around and trying to prevent a search. (SR2. 212-13, 232-33). Officers eventually secured and searched Petitioner. (SR2. 213). The search revealed that Petitioner possessed a bag of cocaine. (SR2. 213, 247).

At the hearing, Officer Pandak testified that he worked for the Gainesville Police Department for 11 years. (SR2. 198). The officer testified that when he approached the vehicle, he was suspicious that a crime was occurring due to Foster's attempted flight. (SR2. 216-17). Officer Pandak testified that "based on the circumstances, somebody left the vehicle, we are in a high-crime, high-drug area.... [T]here were two officers dealing

with someone who was being belligerent, and there was one officer with [appellant], which was me, one officer with the other person; at that point, it wasn't a safe situation. So I wasn't comfortable with letting someone leave the scene of a possible crime worrying maybe about my safety or the destruction of possible evidence." (SR2. 218).

Officer Pandak testified that when he told Petitioner that he could not leave, he did not know what type of criminal activity that Petitioner had been involved in. (SR2. 217). Officer Pandak explained that "[v]ery often times, any crime that's committed within a vehicle does not go ... unnoticed by other people in the vehicle. So it's very reasonable to believe that if someone was committing a crime in a vehicle and trying maybe to get away from it, that everyone else in the vehicle is likely aware of it. So yes, I believe Mr. Presley was associated somehow with whatever crime that the other person might have been committing." (SR2. 219). Although he did not know what crime had been committed, Officer Pandak testified that the handcuffing of Foster indicated that the vehicle and its occupants were involved in a crime. (SR2. 220-21). He added that there were "numerous other people walking around" and it was a matter of "officer safety ... for me to feel comfortable with this person leaving a potential crime scene in getting away with something, and/or destroying evidence, or coming back to harm me and my fellow officers." (SR2. 222).

The trial court denied the motion to suppress and found that Appellant violated his probation. (SR2. 269-75). The trial court found that Petitioner was lawfully detained during an investigatory stop based upon reasonable

suspicion. (SR2. 270-273). The trial court found:

> THE COURT: . . . I do view that what's happened here, based upon the testimony of the police officers is, we have an investigative detention here, I don't believe that we have a full-blown-arrest type of detention. We have the police investigating a situation that from the video, appeared to be fairly chaotic involving at least three suspects that were in a car. One of the suspects is yelling very loudly, resisting the police apparently, running away, cursing, and swearing.
>
> We have Mr. Presley who's another person who's approached by one of the officers who's simply standing there outside of the car at the time the second group of officers arrives. And apparently, there was a third person who was suspected to be the driver, who was being interrogated by a third police officer.
>
> I think what we have here is fairly -- from a law enforcement perspective, could fairly be described as a chaotic situation in the middle of the night on the side of the street. I do believe that the nature of the contact between the officers and Mr. Presley in this case was truly an investigative detention. They were questioning him not in a very direct way regarding what happened, what he was doing out there that night. He was told by the officer on at least two occasions that he was - that I saw on the tape, that he was not free to leave at that point in time, so there isn't an element of custody that's involved here.
>
> But I do think that under the cases involving investigative detentions, the police officers – law enforcement is given some leeway in terms of being able to temporarily detain someone to investigate whether or not they have some reasonable belief that criminality may be afoot, or that there may be a crime to investigate. I think that is what the first officer in this case, Officer Pandak, was attempting to do.
>
> My understanding of the cases that come under that investigative detention, that is as long as the detention does not unreasonably interfere with the liberty interest of the suspect, i.e., that he's not detained for too long roadside, that that does not amount to a Fourth Amendment violation.
>
> I would note in this case that from the time that officers arrived and began talking to Mr. Presley, to the time that they got the teletype back confirming that he was on probation, which would develop their probable cause to arrest him at that point, only a matter of minutes had passed.

> So number one, I'm going to make a finding for the record that the roadside investigative detention that was performed against Mr. Presley did not significantly interfere with his Fourth Amendment liberty interest, in that it was a shorter period of time, or an acceptable period of time that the officers had him roadside. In fact, the arrest was effectuated or the search was begun, in my view from the tape, as soon as they received information back from the teletype operator that Mr. Presley was in fact on probation.
>
> That, in conjunction with the statement he made that he had been drinking all day and he certainly would not have been driving a car, because he doesn't do that when he drinks; those two factors together would allow the police to develop probable cause to arrest him at that point.
>
> So I'm going to find that there is no Fourth Amendment violation because of the shortness of the detention, and the limited nature of the investigative detention that was conducted upon Mr. Presley.

(SR2. 270-273).

The First District Court of Appeal upheld the trial court's ruling by holding that officers may detain passengers during the regular course of a traffic stop without reasonable suspicion. Presley, 204 So. 3d at 87-89. The Court held the reasonable need for safety outweighed the limited intrusion on a passenger's liberty due to the dangerousness of traffic stops. Id. at 87-89. The First District certified conflict with the Fourth District's decision in Wilson v. State, 734 So. 2d 1107 (Fla. 4th DCA 1999). Id. at 89. This Court accepted discretionary jurisdiction. (Order January 24, 2017).

SUMMARY OF ARGUMENT

JURISDICTIONAL ARGUMENT

While this Court initially accepted jurisdiction in this case on the basis of express and direct conflict with Wilson v. State, 734 So. 2d 1107 (Fla. 4th DCA 1999), this Court should conclude that no conflict exists because Brendlin v. California, 551 U.S. 249 (2007) and Arizona v. Johnson, 555 U.S. 323 (2009) superseded Wilson v. State's holding that officers need additional cause or reasonable suspicion to detain a passenger. Wilson v. State was decided when debates existed on whether passengers were even seized during a traffic stop and whether they possessed legal standing to challenge the stop. Brendlin and Johnson resolved these debates by holding that passengers are seized during a traffic stop, passengers possess standing, and the seizure of passenger remains reasonable for the duration of the traffic stop without any additional cause or suspicion. In Presley v. State, 204 So. 3d 84 (Fla. 1st DCA 2016), the First District relied upon Brendlin and Johnson to find that officers need not have any additional cause or reasonable suspicion to order passenger to stay at the traffic stop due to the need for safety. 204 So. 3d at 89-90. Presley's reliance on Brendlin and Johnson resolves any direct conflict between the decisions of Presley and Wilson v. State. Therefore, this Court should dismiss this case.

MERITS ARGUMENT

To ensure the safety of officers, drivers, passengers, and bystanders during a traffic stop, this Court should affirm the decision in Presley by holding that officers may take the reasonable safety measure of detaining

passengers during a traffic stop without additional reasonable suspicion. Since passengers are already stopped during a traffic stop and pose the same risk to safety as drivers, the need for safety during a traffic stop far outweighs the minimal intrusions to a passenger's movement by a request to stay at the traffic stop. Unlike Wilson v. State, 734 So. 2d 1107 (Fla. 4th DCA 1999), Presley conforms to the United States Supreme Court's opinions of Pennsylvania v. Mimms, 434 U.S. 106 (1977), Maryland v. Wilson, 519 U.S. 408 (1997), Brendlin, Johnson, and Rodriguez v. United States, 135 S.Ct. 1609 (2015).

Pursuant to United States Supreme Court precedent, this Court should hold that, even without additional reasonable suspicion, the brief detention and questioning of passengers constitutes reasonable safety measure directly related to an officer's mission of ensuring safety during a traffic stop and a minimal intrusion upon a passenger's rights. Therefore, this Court should affirm the holding of Presley while disapproving of Wilson v. State.

ARGUMENT

ISSUE: WHETHER AN OFFICER MAY DETAIN A PASSENGER DURING A TRAFFIC STOP TO ENSURE SAFETY?

STANDARD OF REVIEW

"'The ruling of the trial court on a motion to suppress comes to [this Court] clothed with a presumption of correctness and we must interpret the evidence and reasonable inference and deductions in a manner most favorable to sustaining the trial court's ruling.'" Johnson v. State, 608 So. 2d 4, 9 (Fla. 1992) (quoting Owen v. State, 560 So. 2d 207, 211 (Fla. 1990)). "The standard of review for motions to suppress is that the appellate court affords a presumption of correctness to a trial courts findings of fact but reviews de novo the mixed questions of law and fact that arise in the application of the historical facts to the protections of the Fourth Amendment." Wyche v. State, 987 So. 2d 23, 25 (Fla. 2008). The Florida Constitution requires all Florida courts to interpret search and seizure issues in conformity with the Fourth Amendment of the United States Constitution as interpreted by the United States Supreme Court. Art. I, § 12, Fla. Const.; State v. Butler, 655 So. 2d 1123 (Fla. 1995).

JURISDICTIONAL ARGUMENT

While this Court initially accepted jurisdiction in this case on the basis of express and direct conflict with Wilson v. State, 734 So. 2d 1107 (Fla. 4th DCA 1999), this Court should conclude that no real conflict exists because Brendlin v. California, 551 U.S. 249 (2007) and Arizona v. Johnson, 555 U.S. 323 (2009) supersede Wilson v. State's holding that officers need additional

cause or reasonable suspicion to detain a passenger. When an alleged district court conflict can be resolved due to a superseding change in controlling law occurring between the issuance of opinions, then there is no conflict. State v. De Abreu, 613 So. 2d 453, 453 (Fla. 1993) (holding no case conflict due to a superseding rule change).

Here, the conflict between Presley and Wilson v. State can be resolved by the fact that Wilson v. State predates Brendlin and Johnson, in which the United States Supreme Court held that both drivers and passengers are seized during a traffic stop, passengers possess standing, and the seizure of passenger remains reasonable for the duration of the traffic stop without any additional cause. Brendlin, 551 U.S. at 255, 257-59; Johnson, 555 U.S. at 326, 333. In Wilson v. State, the court reasoned that that officer needed to acquire the "requisite founded suspicion of criminal activity" to order a passenger back to a vehicle during a traffic stop. Wilson v. State, 734 So. 2d at 1110. Wilson v. State was decided when debates existed on whether passengers were even seized during a traffic stop and whether they possessed legal standing to challenge the stop. Brendlin and Johnson resolved these debates by clarifying the law.

In Brendlin, the United States Supreme Court held that passengers possess standing to challenge the lawfulness of a traffic stop and that regardless of any question of reasonable articulable suspicion, "during a traffic stop an officer seizes everyone in the vehicle, not just the driver." Brendlin, 551 U.S. at 255; see also Berkemer v. McCarty, 468 U.S. 420, 436-37 (1984). The Court held passengers would reasonably expect that an officer would not

allow them to move freely around in ways that could jeopardize safety. Brendlin, 551 U.S. at 257-58.

After Brendlin, the Court in Johnson Court held that an officer could reasonably detain a passenger for the duration of the traffic stop by clarifying that the "temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop." Id. at 333. The Johnson Court clarified that in Brendlin it "recently confirmed, a police officer effectively seizes 'everyone in the vehicle,' the driver and all passengers." Johnson, 555 U.S. at 326 (citing Brendlin, 551 U.S. at 255). The Court added that a "stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave." Id. at 333 (citing Brendlin, 551 U.S. at 258). The Court held: "The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity." Id.

Johnson's holding that officers "need not have, in addition, cause" to justify a detention of a passenger supersedes Wilson v. State. In Presley, the First District relied on Brendlin and Johnson to hold that an officer need not have additional cause or reasonable suspicion to order a passenger to stay at the traffic stop due to the need for safety. Presley, 204 So. 3d at 89-90. Presley's reliance on Brendlin and Johnson resolves any apparent conflict between Presley and Wilson v. State. Therefore, this Court should dismiss this case for lack of jurisdiction.

MERITS ARGUMENT

To ensure the safety of officers, drivers, passengers, and bystanders during a traffic stop, this Court should uphold the decision in Presley v. State, 204 So. 3d 84 (Fla. 1st DCA 2016) by holding that officers may take the reasonable safety measure of detaining passengers during a traffic stop without violating the Fourth Amendment. The United States Supreme Court's precedent in Pennsylvania v. Mimms, 434 U.S. 106 (1977); Maryland v. Wilson, 519 U.S. 408 (1997); Brendlin v. California, 551 U.S. 249 (2007); Arizona v. Johnson, 555 U.S. 323 (2009); and Rodriguez v. United States, 135 S.Ct. 1609 (2015), support the holding and reasoning of Presley. Therefore, this Court should uphold and adopt the reasoning from Presley v. State, 204 So. 3d 84 (Fla. 1st DCA 2016) while disapproving of the Fourth District Court of Appeal's opinion in Wilson v. State, 734 So. 2d 1107 (Fla. 4th DCA 1999).

A. THE LAW

Without challenging the legality of the initial traffic stop, Petitioner relies on Wilson v. State, 734 So. 2d 1107 (Fla. 4th DCA 1999) and Faulkner v. State, 834 So. 2d 400 (Fla. 2d DCA 2003) to argue that officers need additional "cause" or "reasonable suspicion" to detain a passenger for the regular length of a traffic stop. (IB. 5, 19). Petitioner's argument conflicts with United States Supreme Court precedent establishing an officer reasonably detains all vehicle occupants for the duration of the traffic stop, all occupants pose the same safety risks to officers, the conditions of a traffic stop are akin to stop pursuant to Terry v. Ohio, 392 U.S. 1 (1968), and the officer may request identification from all occupants due to the risks posed

to officer safety during a traffic stop.

To resolve the conflict between Presley and Wilson v. State, this Court must first analyze United States Supreme Court precedent because the Florida Constitution requires all Florida courts to interpret search and seizure issues in conformity with the Fourth Amendment of the United States Constitution as interpreted by the United States Supreme Court. Art. I, § 12, Fla. Const.; State v. Butler, 655 So. 2d 1123, 1125 (Fla. 1995). When this Court defers to the United States Supreme Court's interpretation regarding how officers may control drivers and passengers during traffic stops, then this Court must hold that officers may briefly detain passengers during the regular course of the stop without any additional suspicion because legitimate and weighty safety concerns far outweigh any minimal inconvenience to passengers.

"The touchstone of [any] analysis under the Fourth Amendment is always 'the reasonableness in all circumstances of the particular governmental invasion of a citizen's personal security[.]'" Mimms, 434 U.S. at 108-09. (quoting Terry, 392 U.S. at 19). Reasonableness "depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.'" Id. at 109 (quoting United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975)). When a court evaluates an officer's actions during a traffic stop, a court conducts a two-step analysis that requires it to determine whether the initial stop was valid before evaluating the reasonableness of the officer's actions during the stop. Id. at 109; see also United States v. Pack, 612 F.3d 341, 349-50 (5th Cir. 2010)

(explaining that after a court finds a traffic stop was initially valid, then the court examines whether the officer's subsequent actions were reasonably related in scope to the circumstances that caused him to stop the vehicle in the first place absent reasonable suspicion).

In Mimms, Maryland v. Wilson, Brendlin, Johnson, Rodriguez, and other cases, the United States Supreme Court recognized that traffic stops are especially fraught with danger and the government possesses a legitimate and weighty interest in allowing officers to take certain minimal precautions to ensure safety due to possible danger from drivers and passengers. Mimms, 434 U.S. at 110-11; Maryland v. Wilson, 519 U.S. at 414-15; Brendlin, 551 U.S. at 257-59; Johnson, 555 U.S. at 330-31; Rodriguez, 135 S.Ct. at 1616. "It would seem that the possibility of a violent encounter stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact that evidence of a more serious crime might be uncovered during the stop." Maryland v. Wilson, 519 U.S. at 414.

In Mimms, the Court assessed the validity of an officer's routine direction to order all drivers out of the vehicle without reasonable suspicion. Mimms, 434 U.S. at 110-11. The Court conducted a balancing test between the need for safety against the intrusion upon a driver's rights. Id. at 110-11. The Court held that due to "legitimate and weighty" safety concerns including a risk that drivers might employ violence against the officer or the threat of possible injury from roadside traffic, the officer's order for a driver to step outside the vehicle was reasonable. Id. at 110-11. The Court held that since the driver was already stopped, any "additional

intrusion can only be described as *de minimis*." Id. at 111. The Court found that the balancing test weighed in favor of officer safety and that "[c]ertainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties." Id. (quoting Terry, 392 U.S. at 23). Under Mimms, the protections of the Fourth Amendment do not mean that officers must make themselves susceptible to an ambush.

In Maryland v. Wilson, the Court again sided in favor of safety in evaluating whether an officer' order for a passenger to stand outside the vehicle complied with the Fourth Amendment. 519 U.S. at 414-15. The Court held that due to the possibility of danger stemming from a traffic stop involving both a driver and a passenger, any "risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation." Id. at 414 (quoting Michigan v. Summers, 452 U.S. 692, 702-03 (1981)). Consequently, the Court held that an officer may order a passenger outside a vehicle during a traffic stop without reasonable suspicion. Id. at 414-15.

The Court reasoned "the motivation of a passenger to employ violence to prevent apprehension of such a crime is every bit as great as that of the driver." Id. "Indeed, the danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car." Id. at 408. The Court held that since passengers "as a practical matter" are stopped during a traffic stop, then the "only change in their circumstances which will result from ordering them out of the car is that they will be outside of, rather than inside of, the stopped car." Id. at 414.

The Court held that the risk to officer safety made an officer's command controlling the passenger's movements reasonable and that the "additional intrusion on the passenger is minimal." Id. at 414-15.

In Brendlin, the Court held that passengers possess standing to challenge the lawfulness of a traffic stop and held that regardless of any question of reasonable articulable suspicion, "during a traffic stop an officer seizes everyone in the vehicle, not just the driver." Brendlin, 551 U.S. at 255; see also Berkemer v. McCarty, 468 U.S. 420, 436-37 (1984). The Court held passengers would reasonably expect that an officer would not allow passengers to move freely around the area in ways that could jeopardize safety. Brendlin, 551 U.S. at 257-58. The Brendlin Court explained:

> An officer who orders one particular car to pull over acts with an implicit claim of right based on fault of some sort, and **a sensible person would not expect a police officer to allow people to come and go freely from the physical focal point of an investigation into faulty behavior or wrongdoing. If the likely wrongdoing is not the driving, the passenger will reasonably feel subject to suspicion owing to close association; but even when the wrongdoing is only bad driving, the passenger will expect to be subject to some scrutiny, and his attempt to leave the scene would be so obviously likely to prompt an objection from the officer that no passenger would feel free to leave in the first place.** Cf. Drayton, supra, at 197-199, 203-204, 122 S.Ct. 2105 (finding no seizure when police officers boarded a stationary bus and asked passengers for permission to search for drugs).
>
> **It is also reasonable for passengers to expect that a police officer at the scene of a crime, arrest, or investigation will not let people move around in ways that could jeopardize his safety.** In Maryland v. Wilson, 519 U.S. 408, 117 S.Ct. 882, 137 L.Ed.2d 41 (1997), we held that during a lawful traffic stop an officer may order a passenger out of the car as a precautionary measure, without reasonable suspicion that the passenger poses a safety risk. Id., at 414-415, 117 S.Ct. 882; cf. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977) (per curiam) (driver may be ordered out of the car as a matter of

> course). In fashioning this rule, we invoked our earlier statement that "'[t]he risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation.'" Wilson, supra, at 414, 117 S.Ct. 882 (quoting Michigan v. Summers, 452 U.S. 692, 702–703, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981)). **What we have said in these opinions probably reflects a societal expectation of "'unquestioned [police] command'" at odds with any notion that a passenger would feel free to leave, or to terminate the personal encounter any other way, without advance permission.** Wilson, supra, at 414, 117 S.Ct. 882.

Id. at 257-59 (emphasis added) (footnote omitted). Brendlin's discussion solidifies that the safety of everyone is best protected when an officer exercises command of a traffic stop, an officer exercises command when he can control the movements of both drivers and passengers, and there is no reasonable societal expectation that would permit passengers to leave the scene of a traffic stop without obtaining an officer's permission. Id.; see also Aguiar v. State, 199 So. 3d 920, 928 (Fla. 5th DCA 2016), rev. denied No. SC16–633, 2016 WL 3459769 (Fla. June 24, 2016).

In Johnson, the Court clarified that in Brendlin it "confirmed, a police officer effectively seizes 'everyone in the vehicle,' the driver and all passengers" during a traffic stop. Johnson, 555 U.S. at 326 (quoting Brendlin, 551 U.S. at 255). The Johnson Court explained that a traffic stop begins with the seizure of all occupants and the "temporary seizure of driver and passengers ordinarily continues, and **remains reasonable**, for the duration of the stop." Id. at 333 (emphasis added). "[A] traffic stop of a car communicates to a reasonable passenger that he or she is not free to terminate the encounter with the police and move about at will." Id. at 333. The Court added that a "stop ends when the police have no further need to control the

scene, and inform the driver and passengers they are free to leave." Id. at 333 (citing Brendlin, 551 U.S., at 258). The Court held: "**The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity.**" Id. (emphasis added).

Notably, the Johnson Court recognized that an officer's power to take precautionary safety measures during a traffic stop is not unlimited. Relying on Maryland v. Wilson, the Johnson Court held an officer may order a passenger out of a vehicle as a safety measure although a patdown or Terry frisk may only be based on reasonable, articulable suspicion that the passenger - like the driver - is armed or possesses contraband. Johnson, 555 U.S. at 333.

However, the Johnson Court opined that while passengers are seized, an officer may make inquiries into matters unrelated to the stop if these inquires do not unreasonably lengthen the stop's duration. Id. 333-34. "An officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." Id. at 333 (citing Muehler v. Mena, 544 U.S. 93, 100–101 (2005)).

Importantly, the Johnson Court compared the conditions of a traffic stop to a Terry stop and expressly held that an officer need not possess reasonable suspicion or additional cause to detain a passenger. Id. at 327. The Court held that "the first Terry condition — a lawful investigatory stop — is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation." Id.

Consistent with Johnson, the United States Supreme Court recognizes that a brief "routine traffic stop is 'more analogous to a so-called 'Terry stop' ... than to a formal arrest.'" Knowles v. Iowa, 525 U.S. 113, 117 (1998) (quoting Berkemer, 468 U.S. at 439). Thus, in Rodriguez v. United States, 135 S.Ct. 1609 (2015) the Court held that "[l]ike a Terry stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend **to related safety concerns.**" 135 S.Ct. at 1614 (emphasis added) (citations omitted). Rodriguez confirmed that safety is part of a traffic stop's main mission and that officers need only to possess at least reasonable suspicion when the stop is extended beyond the time needed to accomplish the stop's main mission. Id. at 1614-15.

Importantly, Rodriguez reaffirmed that officer safety interests allow officers to take certain precautions including a warrant check to ensure officer safety. 135 S. Ct. at 1616. The majority explained:

> Unlike a general interest in criminal enforcement, however, the government's officer safety interest stems from the mission of the stop itself. Traffic stops are "especially fraught with danger to police officers," Johnson, 555 U.S., at 330, 129 S.Ct. 781 (internal quotation marks omitted), so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely. Cf. United States v. Holt, 264 F.3d 1215, 1221–1222 (10th 2001) (en banc) (recognizing officer safety justification for criminal record and outstanding warrant checks), abrogated on other grounds as recognized in United States v. Stewart, 473 F.3d 1265, 1269 (10th Cir. 2007).

Id. at 1619. The above quotation shows that the Court considers a warrant or background check a "negligibly burdensome precaution" that an officer may use to ensure safety during a traffic stop.

In Hibel v. Sixth Judicial Dist. Court, 542 U.S. 177 (2004) the Court explained that "questions concerning a suspect's identity are a routine and accepted part of many Terry stops." 542 U.S. at 186. The Hibel court noted that "[o]btaining a suspect's name in the course of a Terry stop serves important government interests" because "[k]nowledge of identity may inform an officer that a suspect is wanted for another offense, or has a record of violence or mental disorder." 542 U.S. at 186.

The Court's opinions in Mimms, Brendlin, Johnson, Maryland v. Wilson, Knowles, Hibel, and Rodriguez establish that since the conditions of a traffic stop are akin to a Terry stop and all vehicle occupants are seized, then an officer may request all vehicle occupants to stay at the scene and request identification as safety precautions without unreasonably prolonging the traffic stop. This conclusion has support from a majority of pre-Johnson, post-Johnson, and even post-Rodriguez cases that hold that an officer may ask a passenger for identification and conduct a background check during a traffic stop without reasonable suspicion. See generally State v. Shearin, 612 S.E.2d 371, 377 (N.C. Ct. App 2005) ("[T]he United States Supreme Court has held that a police officer may order a passenger to exit a vehicle, as a safety precaution, without any suspicion that the individual has committed a crime. The same rationale may be applied when an officer orders an individual to remain in a vehicle."); People v. Bowles, 226 P.3d 1125, 1129 (Colo. App. 2009) (holding that under pre-Brendlin case law, a traffic stop constitutes a seizure of the passenger); United States v. Fernandez, 600 F.3d 56, 60-61 (1st Cir. 2010) (holding officers may ask a passenger for identification and

conduct a warrant check) ("The precedent leading to the Court's decision in Johnson establishes that the 'unrelated' matters an officer may probe include the identity of the detained individuals."); United States v. Rice, 483 F.3d 1079, 1084 (10th Cir. 2007) ("[B]ecause passengers present a risk to officer safety equal to the risk presented by the driver, an officer may ask for identification from passengers and run background checks on them as well."); United States v. Rodriguez-Hernandez, 353 F.3d 632, 635 (8th Cir. 2003) ("[Officer] could ask the driver and passengers to produce identification."); Rogala v. District of Columbia, 161 F.3d 44, 53 (D.C. Cir. 1998) (holding could order a passenger ordered to get back into the vehicle that she voluntarily exited because "a police officer has the power to reasonably control the situation by requiring a passenger to remain *in* a vehicle during a traffic stop") (emphasis in original); United States v. Moorefield, 111 F.3d 10, 13 (3d Cir. 1997) (holding that passenger who attempted to voluntarily exit a lawfully stopped vehicle was not unreasonably seized when the officer ordered him to get back into the automobile and keep his hands in the air).

In State v. Allen, 779 S.E. 2d 248 (Ga. 2015), the Supreme Court of Georgia held that even under Rodriguez, an officer's request for a passenger's identification and the running of background check "was an ordinary officer safety measure incident to the mission of the traffic stop, and it therefore could permissibly extend the stop for a reasonable amount of time." Allen, 779 S.E. at 258. "Asking a passenger for identification and then running a computer records check on the identity provided also is unlike a dog sniff

because it is squarely related to an officer's safety while completing the mission of the traffic stop." Id. at 256. The Allen court held "neither asking the detained passenger for identification nor running a computer records check on a person is an act that itself infringes on Fourth Amendment rights." Id. at 255. Allen and United States Supreme Court precedent establish that detaining a passenger during an initial lawfully traffic stop, asking the driver and the passenger questions without unreasonably prolonging the stop and conducting a background check on all vehicle passengers constitute reasonable safety precautions that do not violate the Fourth Amendment. Id.

The main problem with Wilson v. State and Faulkner is that those cases undervalue the dangerousness of traffic stop and disregard the Court's holding in Maryland v. Wilson, that any "**risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation**." Id. at 414. However, even assuming for argument that Wilson v. State and Faulkner constituted good law when published, these opinions have been superseded by the later decisions of Brendlin, Johnson, and Rodriguez.

In Wilson v. State, a Palm Beach deputy initiated lawful traffic stop and the vehicle pulled into a bar parking lot. Wilson v. State, 734 So. 2d at 1108-09. As the deputy approached the vehicle, passenger Wilson got out of the vehicle and started walking towards the bar. Id. at 1109. When Wilson was about ten feet away from the vehicle, the deputy asked Wilson to return the vehicle and Wilson complied. Id. The deputy testified that the order was

made to ensure safety, especially since the bar had a reputation for violence. Id. The deputy admitted that there no reason to suspect that Wilson had committed a crime or possessed weapons or contraband. Id. On appeal, the Fourth District Court Appeal reversed the denial of the motion to suppress by holding that "a command preventing an innocent passenger from leaving the scene of a traffic stop to continue on his independent way is a greater intrusion upon personal liberty than an order simply directing a passenger out of the vehicle." Id. at 1111–12. The court reasoned that that officer needed to acquire the "requisite founded suspicion of criminal activity" to order Wilson back to the vehicle. Id.

The decision in Wilson v. State conflicts with Maryland v. Wilson by improperly shifting control of the traffic stop from the officer to a passenger by allowing a passenger to decide when or if they were seized during traffic stop. This shift in power jeopardizes the safety of everyone by creating an impediment to an officer's control of a traffic stop and the impression that passengers are free to leave at any time without an officer's consent. "Allowing a passenger, or passengers, to wander freely about while a lone officer conducts a traffic stop presents a dangerous situation by splitting the officer's attention between two or more individuals, and enabling the driver and/or the passenger(s) to take advantage of a distracted officer." United States v. Williams, 419 F.3d 1029, 1034 (9th Cir. 2005).

Relying on Wilson v. State, the Second District Court of Appeal in Faulkner held that a deputy's order without reasonable suspicion that prevented passenger Faulkner from leaving a vehicle impermissibly intruded

upon Faulkner's rights. Faulkner, 834 So. 2d at 402-03. The Faulkner Court found that despite the fact that Faulkner was already detained by virtue of a traffic stop, that the order requiring him to remain inside a vehicle was an impressible intrusion upon his already restrained liberty. Id. at 403.

Both Wilson v. State and Faulkner run afoul of the decisions in Mimms and Maryland v. Wilson, by failing to recognize that both passengers and drivers are seized during a traffic stop, passengers pose the same safety risk to officers as drivers, and an officer may control everyone's movements to ensure safety during a traffic stop. See Commonwealth v. Pratt, 930 A.2d 561, 567 (Pa. Super. Ct. 2007)(disapproving of Wilson v. State while holding "pursuant to Mimms and Maryland v. Wilson, a police officer may lawfully order a passenger who has exited and/or attempted to walk away from a lawfully stopped vehicle to re-enter and remain in the vehicle until the traffic stop is completed, without offending the passenger's rights under the Fourth Amendment."). Under Mimms and Maryland v. Wilson, passengers are lawfully seized during a valid traffic stop and an officer need not have additional suspicion to control a passenger's movements during a traffic stop.

The decisions of Brendlin and Johnson after Wilson v. State prove Wilson v. State has at least been superseded by the United States Supreme Court. Petitioner's claim that Wilson v. State's holding can be reconciled with the Court's precedent (IB. 16-17) overlooks that Brendlin abrogated an almost identical holding from the Washington State Supreme Court in State v. Mendez, 970 P.2d 722 (Wash. 1999). Brendlin, 551 U.S. at 259, n. 5. Like the court in Wilson v. State, the Washington Supreme Court in Mendez held that an

officer needed reasonable suspicion to order a passenger back into the car after a passenger attempted to walk away from a traffic stop. Mendez, 970 P.2d at 723-24. The Brendlin Court noted that Mendez was against a "tide of authority." Brendlin, 551 U.S. at 259, n. 5. Washington courts recognized that Brendlin's holding that both the driver and the passengers are lawfully seized abrogated Mendez. State v. Mann, 237 P.3d 966, 970 (Wash. Ct. App. 2010). The abrogation of Mendez means that Wilson v. State and Faulkner do not comply with the United States Supreme Court's precedent.

Moreover, Wilson v. State's result of allowing passengers to decide when they are seized during a traffic stop also conflicts with Brendlin's holding that passengers possess standing to challenge a traffic stop due to the seizure and that "[i]t reasonable for passengers to expect that a police officer at the scene of a crime, arrest, or investigation will not let people move around in ways that could jeopardize his safety." Brendlin, 551 U.S. at 257-59. If a reasonable person would feel free to disregard officers and go about his or her business, then that means an encounter is a consensual encounter as oppose to a seizure. See generally Florida v. Bostick, 501 U.S. 429, 434 (1991) (explaining that consensual encounters will not trigger Fourth Amendment scrutiny). A consensual encounter "will not trigger Fourth Amendment scrutiny unless it loses its consensual nature." Id. at 434 (1991). If passengers can walk away at any time, then that would mean that they are not seized. See id. Without a seizure, passengers would not have standing to challenge a traffic stop. Id. However, Brendlin and Johnson establish that passengers possess standing to challenge a traffic stop due to the seizure

of the vehicle and the detention of passengers remains reasonable for the stop's brief duration while officers are diligently attending to the traffic stop's missions of investigating a traffic violation and ensuring safety. Johnson, 555 U.S. at 326 (citing Brendlin, 551 U.S. at 255).

The Johnson Court extinguished any doubt regarding whether an officer could reasonably detain a passenger for the duration of the traffic stop by holding that, during an initially lawful traffic stop, the "temporary seizure of driver and passengers ordinarily continues, and **remains reasonable**, for the duration of the stop." Id. at 333 (emphasis added). As previously explained, the Johnson Court clarified that in Brendlin it "recently confirmed, a police officer effectively seizes "everyone in the vehicle," the driver and all passengers." Johnson, 555 U.S. at 326 (citing Brendlin, 551 U.S. at 255). The Court added that a "stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave." Id. at 333 (citing Brendlin, 551 U.S. at 258). The Court held: "**The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity.**" Id.

Johnson's statement that officers "need not have, in addition, cause" to justify a passenger's brief detention refutes Petitioner's argument that officers need additional cause or reasonable suspicion to detain a passenger. Compare Id. at 327, 33 with (IB. 15-17). Petitioner misinterprets Johnson by overlooking that Justice Ginsburg clearly wrote that officers only need to possess "reasonable suspicion" "to justify a patdown of the driver or passenger during a traffic stop" but do not require additional cause or

suspicion to justify their detention during the stop. Id. at 327.

Decisions such as Wilson v. State cannot be reconciled with Brendlin and Johnson because the United States Supreme Court's precedent invalidates any notion that an officer must possess additional cause or reasonable suspicion to detain a passenger in the regular course of a traffic stop. Aguiar, 199 So. 3d at 927. Johnson, Brendlin, Maryland v. Wilson, and Mimms establish that officer may routinely control the movements of all vehicle occupants to ensure the safety and that that any intrusion upon a passenger's rights is minimal because they were stopped as a result of the traffic stop. See also Coffey v. Morris, 401 F. Supp. 2d 542, 546 (W.D. Va. 2005) (("It is reasonable under the Fourth Amendment for an officer to order a passenger to remain in an automobile due to the generalized concerns for officer safety discussed in [Maryland v.] Wilson, and the need for officers to exercise control during a traffic stop."). Johnson and Brendlin crystalize that all occupants are reasonably seized during a traffic stop and that there is no societal expectation that would allow passengers to unilaterally terminate an encounter at a risk of safety. Aguiar, 199 So. 3d at 930.

Wilson v. State, and Faulkner drastically undervalue the inherent dangerousness of traffic stops. In Mimms, the Court recognized that it "think it too plain for argument that the State's proffered justification — the safety of the officer—is both legitimate and weighty." Mimms, 434 U.S. at 110. The risk of injury stems from both intentional violence directed at officers and a traffic stop's proximity to traffic. Id. at 110-11. The Mimms Court noted that according to a 1960s study, approximately 30 percent of

police shootings occurred during traffic stops or pursuits. Id. (citation omitted). Likewise, in Maryland v. Wilson, the Court reiterated these concerns in Mimms by noting that the Federal Bureau of Investigation's Uniform Crime Reports showed that in in 1994 alone, there were 5,762 officer assaults and 11 officers killed during traffic pursuits and stops. Maryland v. Wilson, 519 U.S. at 413-14 (citing Federal Bureau of Investigation, Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted 71, 33 (1994)).

In United States v. Robinson, 846 F.3d 694 (4th Cir. 2017), the Fourth Circuit Court of Appeals explained that the Federal Bureau of Investigation's "more recent statistics, unfortunately, remain as grim." 846 F.3d 694 at 699 "Of the 51 law enforcement officers feloniously killed in the line of duty in 2014, 9 officers (or 18%) were fatally injured during traffic pursuits or stops." Id. (citing Federal Bureau of Investigation, Uniform Crime Reports, 2014). The Robinson Court did not mention that there were 4,022 officer assaults during traffic stops and pursuits in 2014. Federal Bureau of Investigation, Uniform Crime Reports, Tables 74 & 75, 2014, https://ucr.fbi.gov/leoka/2014/home.

The Federal Bureau of Investigation's 2015 Uniform Crime Reports indicate than in 2015, there were 3,972 assaults and 6 officers killed during traffic stops or pursuits. Federal Bureau of Investigation, Uniform Crime Reports, 2015, https://ucr.fbi.gov/leoka/2015/home. From 2006 to 2015, a total of 83 officers were killed during violent encounters during traffic stops or pursuits. Id. at Table 23. From 2006 to 2015, 28 officers were accidently struck by vehicles during traffic stops or roadblocks. Id. at Table 64; see

Mimms, 434 U.S. at 111 ("The hazard of accidental injury from passing traffic to an officer standing on the driver's side of the vehicle may also be appreciable in some situations.").

In summary, statistics support decisions allowing officers to take negligibly burdensome precautions to protect themselves and others from possibly dangerous occupants or conditions. Moreover, when individuals have discretion to flee without officer's permission, bystanders and suspects are put at danger. California v. Hodari D., 499 U.S. 621 (1991). "Street pursuits always place the public at some risk, and compliance with police orders to stop should therefore be encouraged." Hodari D., 499 U.S. at 627. Wilson v. State and Faulkner endanger public safety by permitting passengers to unilaterally decide when they can leave a scene. Additionally, in situations in which there is no roadside shoulder, a passenger's decision to leave or change positions may put the passenger and officer in danger of being hit by traffic. Furthermore, when an officer feels that they are not in control of the situation due to uncontrolled movements by a passenger or driver, the risk of an injury or a fatality increases due to the increased stress level of an encounter and the possibility of an overreaction. Given the many dangers of a traffic stop, the need for safety far outweighs any minimal intrusion caused by a request for a passenger to stay at a brief traffic stop.

In Aguiar, an *en banc* Fifth District Court of Appeal explained that a passenger who departs the scene creates a safety risk because of the possibility that the passenger could turn and attack from a concealed location, and a departing passenger would distract an officer. Aguiar, 199

So. 3d at 925–26. The Court explained:

> When an officer approaches any vehicle stopped for a traffic infraction, the officer needs to be on vigilant alert, ready to react to violence that could come from any occupant inside the vehicle. A departing passenger is a distraction that divides the officer's focus and thereby increases the risk of harm to the officer. As that passenger moves further from the vehicle, it becomes impossible for the officer to watch the departing passenger and the remaining occupants. If the officer focuses on the potential threat from the passenger, violence could erupt from an occupant—robbing the officer of any meaningful opportunity to react. If the officer focuses instead on the occupants, the departing passenger could turn and attack. Even when the departing passenger is out of sight, the passenger could pose a risk of harm to the officer. Especially if armed, that person could easily attack from a concealed location away from the vehicle. A careful officer would be cognizant of this potential threat from the moment that the departing passenger was out of sight. This distraction would increase the risk to the officer, even if the passenger did not return.

Id. at 925-26; see also Johnson, 555 U.S. at 334 ("Officer Trevizo surely was not constitutionally required to give Johnson an opportunity to depart the scene after he exited the vehicle without first ensuring that, in so doing, she was not permitting a dangerous person to get behind her."); United States v. Williams, 419 F.3d at 1034.

In Aguiar, Aguiar, a front seat passenger, exited the passenger-side door at the start of a traffic stop in a restaurant parking lot. Aguiar, 199 So. 3d at 922. The officer ordered Aguiar back into the vehicle and Aguiar complied before the officer found cocaine. Id. The Fifth District Court of Appeal unanimously concluded that the analysis in Wilson v. State was flawed because its balancing test failed give sufficient weight to the government's strong interest ensuring officer safety. Id. at 923. The Aguiar court was concerned that a careful officer would be distracted by a passenger who left

the scene. Id. at 925-26. The Aguiar court held that the possibility that a passenger could return to the scene and attack from a concealed location tilted the balancing test in favor of safety. Id. at 925-926.

The Aguiar Court held that "even if detaining a passenger who desires to leave is more burdensome than directing a stopped passenger to step out of the vehicle, the infringement is minimal in light of the fact that: (1) the passenger's planned mode of travel has already been lawfully interrupted; (2) the passenger has already been "stopped" due to the driver's lawful detention; and (3) routine traffic stops are brief in duration." Id. at 925. The Aguiar Court held that Brendlin and Maryland v. Wilson reinforced the ideas that: "(1) the public interest concern of officer safety (at issue in our case) is best addressed by a blanket rule that allows the officer to always exercise command of the scene during a traffic stop; and (2) an officer cannot exercise unquestioned command of the scene unless he or she can direct the movements of a passenger—even when the passenger wants to walk away." Id. at 928. The court concluded that the officer's direction for Aguiar to return was a reasonable safety measure and that decisions such as Wilson v. State cannot be reconciled with Brendlin and Johnson. Id. at 927, 930.

In the instant case, the First District Court of Appeal agreed with Aguiar's conclusion that under Brendlin and Johnson, all vehicle occupants may be seized during the normal course of a traffic stop without reasonable suspicion. Presley, 204 So. 3d at 84. Based on the previously discussed United States Supreme Court precedent, the First District concluded that Officer Pandak did not need reasonable suspicion to detain Petitioner during

the chaotic traffic stop. Id. at 87-89. The court concluded that the need for safety outweighs any minimal intrusion to the few passengers who would want to leave a scene. Id. at 85-86.

Petitioner challenges Presley by asserting that Presley "adopted a bright line standard, ruling that police may in all circumstances and without reason treat every individual who occupies a vehicle the same because they are all seized." (IB. 17-18). Even if Petitioner's assertion is true, Presley's holding that "an officer may, as a matter of course, detain a passenger during a lawful traffic stop without violating the passenger's Fourth Amendment rights" mirrors the Johnson Court's holding that during a traffic stop, the "temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop." 555 U.S. at 789.

Presley is fully consistent with United States Supreme Court precedent and other courts' decisions that specifically address Brendlin and Johnson. See Allen, 779 S.E. 2d 248; Cortes v. State, 260 P.3d 184, 188-89 (Nev. 2011) (holding that under Johnson and Terry, a passenger was lawfully seized for the duration of a traffic stop). Presley properly balances the risk to safety verse the minimal intrusion to passenger by holding that an officer may order a passenger to stay at the scene of traffic stop for the reasonable duration of the traffic stop without reasonable suspicion.

In accordance with United States Supreme Court precedent and to ensure the safety of everyone at a traffic stop, this Court should adopt the holding and reasoning in Presley while disapproving of Wilson v. State and its progeny. This Court should hold that during a lawfully initiated traffic

stop, an officer may order a passenger to stay at the scene until the stop's conclusion unless an officers' actions go beyond traffic stop's main missions of investigating a traffic violation and ensuring safety. Only when the stop's duration extends beyond the time needed to accomplish its main missions, then officers need to possess at least reasonable suspicion or probable cause to justify further detention of the driver and passengers.

B. APPLICATION OF LAW TO THE FACTS

Application of United States Supreme Court's balancing test from Mimms, Maryland v. Wilson, Brendlin, and Johnson to the chaotic traffic stop in this case prove that Officer Pandak's order for Petitioner to stay at the scene was entirely reasonable, a minimal intrusion to Petitioner's already restrained movement, and justified by the need for safety. Even without reasonable suspicion, Officer Pandak's order that Petitioner was not free to leave was a permissible safety measure under the Fourth Amendment directly related to the traffic stop's mission of ensuring safety.

The totality of the circumstances demonstrate why the Constitution gives officers leeway to control all vehicle occupants' movements to ensure safety. The stop occurred close to midnight in a high-crime area of Gainesville with numerous people walking around. (SR2. 222). When the vehicle was stopped, passenger Foster attempted to leave the scene before he was apprehended. Foster then yelled at the officers. (DVD 0:11-13). When backup officers Pandak and Mearer arrived, Jallad tried to calm Foster. (SR2. 197-98, 227-29). Officer Pandak testified that there were "numerous other people walking

around" and it was a matter of "officer safety ... for me to feel comfortable with this person leaving a potential crime scene in getting away with something, and/or destroying evidence, or coming back to harm me and my fellow officers." (SR2. 222). Given the dangerous conditions of this specific traffic stop and the potential for violence to erupt at traffic stops in general, Officer Pandak's statement that Petitioner was not free to leave was a reasonable safety measure directly related to the mission of the traffic stop. The order was akin to orders asking individuals to stay inside or outside a vehicle or for information for a background check. Thus, the order constituted only a *de minimis* intrusion on Petitioner rights, since he was already stopped for all practical purposes.

In accordance with United States Supreme Court precedent and decisions such as Allen, Officer Pandak's initial requests for Petitioner to stay, and for identification were a permissible and ordinary safety measure incident to the main mission of the traffic stop. Officer Pandak needed the information to assess the risk of danger. See United States v. Soriano-Jarquin, 492 F.3d 495, 500 (4th Cir. 2007) ("If an officer may 'as a matter of course' and in the interest of personal safety order a passenger physically to exit the vehicle, he may surely take the minimally intrusive step of requesting passenger identification."). Any inconvenience caused by Officer Pandak's requests for Petitioner to stay at the scene and for his identification was negligible especially since another passenger was belligerent and no officer needlessly prolonged the encounter. Therefore, Officer Pandak's initial requests for the passenger's identification and subsequent background check

were constitutional and did not violate Appellant's rights.

As previously noted, during a traffic stop "an officer. . . may conduct certain unrelated checks during an otherwise lawful traffic stop" but "he [or she] may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." Rodriguez, 135 S. Ct. at 1614-15; See also Illinois v. Caballes, 543 U.S. 405, 407 (2005) ("A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission."). An officer must exercise reasonable diligence when conducting any checks and ensuring safety with the reasonableness of the seizure depending on what police do as oppose to time alone. Rodriguez, 135 S. Ct. at 1616.

In the instant case, the short duration of the conversation and the traffic stop support the conclusion that Officer Pandak and other officers diligently performed their duties throughout the stop, especially since Foster was belligerent and a bystander also yelled at officers. See (DVD) The totality of the circumstances prove that the officers were lawfully performing their traffic stop related duties when they developed probable cause to arrest Petitioner for violating his probation.

Moreover, Petitioner's brief detention was also justified based on a reasonable suspicion due to passenger Foster's unprovoked flight and the stop's location in a high-crime area. Unprovoked, headlong flight in a high-crime area is generally sufficient to constitute a reasonable suspicion of criminal activity. Illinois v. Wardlow, 528 U.S. 119, 124-25 (2000) (holding

a suspect's unprovoked flight in a high-crime area provided officers with reasonable suspicion to justify an investigatory detention). At the time of the hearing, Officer Pandak was with the Gainesville Police Department for 11 years. (SR2. 198). "It's my suspicion that the crime was occurring, or a crime was occurring with that vehicle," testified Officer Pandak. (SR2. 217). Officer Pandak added that "based on the circumstances, somebody left the vehicle, we are in a high-crime, high-drug area.... [T]here were two officers dealing with someone who was being belligerent, and there was one officer with [Petitioner], which was me, one officer with the other person; at that point, it wasn't a safe situation. So I wasn't comfortable with letting someone leave the scene of a possible crime worrying maybe about my safety or the destruction of possible evidence." (SR2. 218).

The totality of the circumstances provided Officer Pandak with reasonable suspicion that Foster committed a crime and that Petitioner would have some knowledge of any wrongdoing based on Petitioner's association with the vehicle. Therefore, even if reasonable suspicion was required to justify an investigatory encounter, this Court should affirm. However, the officer did not need to possess reasonable suspicion when he told Petitioner not to leave, since ensuring safety was part of the traffic stop's main mission.

United States Supreme Court precedent and the totality of the circumstances confirm that the request for Petitioner to stay at the scene and the background check constituted reasonable measures to ensure the safety of the traffic stop. Therefore, this Court should affirm Presley, which protects the safety of all individuals involved in a traffic stop.

CONCLUSION

Based on the foregoing discussions, this Court should either approve of Presley or conclude that it does not possess express and direct conflict jurisdiction. If this Court exercises jurisdiction, then it should approve of Presley by holding that officers may order a passenger to briefly remain at a lawfully commenced traffic stop until the stop's conclusion without reasonable suspicion unless the officers' actions go beyond the traffic stop's main objectives of investigating a traffic offense and ensuring safety. In accordance with United States Supreme Court precedent, this Court should adopt the holding and reasoning in Presley while disapproving of Wilson v. State and its progeny. Wherefore, the State requests that this Court affirm the First District's opinion.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished by electronic mail on March 13, 2017 to Assistant Public Defenders Laurel Cornell Niles, Esquire; Steven Lauren Seliger, Esquire; and Joel Arnold, esquire at Laurel.Niles@flpd2.com, Steven.Seliger@flpd2.com, and Joel.Arnold@flpd2.com.

CERTIFICATE OF COMPLIANCE

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

Respectfully submitted and certified,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Samuel B. Steinberg
By: SAMUEL B. STEINBERG
Assistant Attorney General
Samuel.Steinberg@myfloridalegal.com
Florida Bar No. 0104820

/s/ Trisha Meggs Pate
By: TRISHA MEGGS PATE
Assistant Attorney General,
Tallahassee Bureau Chief,
Criminal Appeals
Florida Bar No. 0045489

Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300 (VOICE)
(850) 922-6674 (FAX)
[AGO #L16-1-15019]

Attorneys for the State of Florida