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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	**:**	
PETITIONER,	**:**	
vs.	**:**	**Case No. SC22-524**
JOSHUA LYLE CRELLER,	**:**	
RESPONDENT.	**:**	

ON PETITION FOR REVIEW FROM THE SECOND DISTRICT COURT OF APPEAL, STATE OF FLORIDA CASE NUMBER 2D19-3085

ANSWER BRIEF ON THE MERITS

HOWARD L. "REX" DIMMIG, II
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

PAMELA H. IZAKOWITZ
Assistant Public Defender
FLORIDA BAR NUMBER 0053856

Public Defender's Office
Polk County Courthouse
P.O. Box 9000-Drawer PD
Bartow, FL 33831
(863) 534-4200
appealfilings@pd10.org
CClark@pd10.org
Pamizakowitz@gmail.com

ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE CASE AND FACTS[1]

On December 20, 2018, Gustavo Diaz, a police officer with the Tampa Police Department, was working undercover on the narcotics tactical team and was driving an undercover car (T.127-128).

Officer Diaz saw a vehicle make a right turn into a gas station. The vehicle slowed and then continued through the gas station and exited onto the street (T.128-129). The officer believed that the vehicle drove into the gas station and onto the street to avoid the red light at the corner, a violation of § 316.074(2), Florida Statutes (2018), which prohibits a person from driving any vehicle from a roadway to another roadway to avoid a traffic control device (T.130).

Officer Diaz radioed for a marked unit with lights and siren to conduct a traffic stop because his undercover car had no lights or siren. A uniformed officer arrived in a car with lights and siren and conducted a traffic stop on the vehicle. Both officers approached

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[1]The record on appeal will be designated as follows:
(R. ___) records and pleadings filed in the circuit court, including the motion to suppress hearing;
(T. ___) transcript of the trial proceedings.

the vehicle, one on either side. Officer Diaz held up his badge as he made contact with Respondent, Mr. Creller, and identified himself. Mr. Creller, who was alone in the car, gave the officer his license, registration, and insurance information (T.130-131). All of Mr. Creller's information was in order. The vehicle he was driving was not stolen and his driver's license was not suspended. Mr. Creller had no outstanding warrants (T.142). Mr. Creller was not ordered out of his car at that time.

Officer Diaz then asked to search the vehicle. Mr. Creller said no. Officer Diaz did not ask Mr. Creller to step out of the vehicle at that time. Instead, he returned to his car and radioed for a K-9 unit to conduct a sweep of the vehicle (T.132-133).

Officer Diaz wanted to search Mr. Creller's car even though he saw no sign of impairment or any criminal activity. The only reason that Mr. Creller's vehicle was stopped was because of the traffic infraction that the officer witnessed (T.143).

Officer Diaz instructed the uniformed officer to write the traffic citation. This officer testified that it takes on average five minutes or so to issue the citation (T.133). At the motion to suppress hearing,

Officer Diaz testified that it took "five to ten minutes" for the K-9 officer to arrive (R.37).

While the officer was completing the citation, the K-9 officer arrived. He identified himself and asked if Mr. Creller had anything illegal in the car and then asked for permission to search the vehicle. Mr. Creller said no (T.133-134). The K-9 officer then asked Mr. Creller to exit the car so that he could conduct a vehicle sweep with his dog. The officer asked Mr. Creller to step out of the car for officer safety, as it is standard procedure to ask all occupants to exit the car. The officer said it also was standard procedure that he didn't need permission from the driver of the car to conduct a vehicle sweep He explained that to Mr. Creller (T.167-171).

The K-9 officer testified why he needed Mr. Creller out of the car during the dog sweep. He said:

> [Creller]'s in possession of his vehicle. I don't know what's in the vehicle…If I'm in the front of the vehicle with my dog, he could put it in drive. My main concern is to watch my dog, to read my dog…I can't be distracted with what the defendant was doing inside the vehicle. So I always tell everybody to exit the vehicle.

(T.168).

At the motion to suppress hearing, the K-9 officer testified that it was possible to issue a traffic citation without someone stepping out of the vehicle (R.59).

Mr. Creller's vehicle was in park and turned off. There was no testimony that the vehicle was still running. The only other stated safety concern was the K-9 officer's safety consideration that he did not know what was in the car.

Mr. Creller did not comply with the demand to exit his car for a vehicle sweep. Mr. Creller was pulled from his car by three police officers. He was placed under arrest for obstruction for not getting out of his vehicle so that the police dog could sweep his car.

Mr. Creller was handcuffed. In a search incident to an arrest, Officer Diaz found a plastic baggie in Mr. Creller's left shirt pocket, containing a crystallized substance that was later identified as methamphetamine. No contraband was found in Mr. Creller's car.

At the motion to suppress hearing, the trial court was confused as to why the police were ordering Mr. Creller out of his car:

> …it doesn't seem logical that, for the purpose of writing a ticket for avoiding a traffic light by cutting through the gas station, that they need a K-9 unit and – to order him

out.

(R. 87-88).

Concluding that the reason was the K-9 officer's safety during the vehicle sweep, the trial court suggested, based on Pennsylvania v. Mimms, 434 U.S. 106, 989 S. Ct. 330, 54 L.Ed. 2d 331 (1977), and Maryland v. Wilson, 519 U.S. 408, 117 S. Ct. 882, 137 L.Ed. 2d 41 (1997), that Mr. Creller's removal from his car required separate justification for the narcotics investigation itself:

> What I heard was we wanted to conduct a narcotics investigation and that's why we ordered him out of the car. It was for officer safety for a narcotics investigation. And [the K-9 officer] said I wanted him out, it's for my safety and for….[the dog's] safety. He said, well, just have the dog sniff around. That's not how it works: I want you out of the car. But it was for a narcotics investigation. And…at this point in the story, there doesn't seem to be any, any reasonable suspicion for a narcotics investigation.

(R.85).

Despite finding no reasonable suspicion for a narcotics investigation, the trial court concluded, relying on Rodriguez v. United States, 575 U.S. 348 (2015), that because the duration of the vehicle sweep did not prolong the traffic stop, Mr. Creller's removal from the vehicle was justified (R.103).

Mr. Creller proceeded to trial and was convicted of possession of a controlled substance and resisting an officer without violence (T.321-322).

The Second District Court of Appeal reversed in Creller v. State, 336 So. 3d 817 (Fla. 2d DCA 2022), finding that the K-9 officer's command for Mr. Creller to exit his vehicle was not necessary for the officers to safely complete the traffic stop. Instead, the Court held that ordering Mr. Creller from his vehicle was random and not motivated by any suspicion of contraband. Removing Mr. Creller from his vehicle was not necessary to ensure officer safety for the purpose of issuing a traffic citation. "The officers made it clear that they asked the driver to step out of the vehicle to accommodate an arbitrary investigative sweep admittedly based on no suspicion of criminal safety whatsoever." Id. at 824.

The Second District certified a conflict with State v. Benjamim, 229 So. 3d 442 (Fla. 5th DCA 2017)**,** which held that following a lawful detention for a traffic infraction, officers can order the driver to exit the vehicle even without a particularized basis to believe the driver was a threat to officer safety. This Court accepted

discretionary jurisdiction on August 3, 2022 in State v. Creller, 2022 WL 3135984 (Fla. S.Ct. August 3, 2022).

SUMMARY OF ARGUMENT

When an officer stops a motorist for a traffic violation, he initiates a "seizure" under the Fourth Amendment. But the seizure is limited. A traffic stop must be brief and reasonably related in scope to the circumstances that justified the stop in the first place. Addressing the traffic violation is the purpose of the stop, the stop may not last longer than necessary to effectuate that purpose.

An officer can use a drug dog during a traffic stop provided the sniff does not delay completion of the tasks related to the traffic infraction. However, an officer may not expand the boundaries of a traffic stop to accomplish the sniff. That "detour" taken to pursue an unrelated issue – a dog sniff-- is impermissible under the Fourth Amendment. "…A dog sniff is not fairly characterized as part of the officer traffic mission." Rodiguez v. United States, 575 U.S. 348, 356, 135 S.Ct. 1609, 1615 (2015). On-scene investigation into other crimes detours from the mission of the traffic stop. Id. 357.

The Rodriguez Court has said that an "unrelated criminal investigation" that lacks "the reasonable suspicion ordinarily demanded to justify detaining an individual" such as a dog sniff

conducted without a particularized basis to suspect illicit drug activity – is beyond the traffic stop's mission. Id. at 355-357. "…safety precautions taken in order to facilitate such detours" cannot "be justified on the same basis" as those taken to ensure officer safety for the purpose of conducting the traffic stop itself. Id. at 356-57.

Once the acts related to the traffic infraction have been completed, the driver must be allowed to be on his way unless the facts support reasonable suspicion of criminal activity. Individualized suspicion is required whenever law enforcement wish to detain someone to investigate ordinary criminal wrongdoing.

These Fourth Amendment principles establish a bright-line rule: a traffic stop ends after an officer has completed the acts related to the traffic violation, and any detention beyond that point, no matter how brief, is unreasonable unless independently justified by individualized suspicion.

The Second District Court of Appeal held that Mr. Creller's forced removal from his vehicle was unnecessary to ensure the safety of the officers to complete the traffic stop. The Court found

that there was no probable cause to believe that drugs would be found in his vehicle and no other justification was argued or supported by the testimony.

The Court held that the vehicle sweep forcing Mr. Creller from his car was random and not motivated by any reasonable suspicion or contraband. It was the traffic infraction that was supported by probable cause, not the existence of illegal drugs in the car. And, the Court found that removing Mr. Creller from his car was not necessary for officer safety for the purpose of issuing a traffic citation.

The Court held that the forced removal of a person from his vehicle before reasonable suspicion of the existence of such contraband has been established, and without any evidence that such seizure is necessary to ensure officer safety during the issuance of a traffic citation, constitutes an unreasonable seizure without justification under the Fourth Amendment.

This Court should uphold the decision below.

STANDARD OF REVIEW

The standard of review for motions to suppress is that the appellate court affords a presumption of correctness to the trial court's 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).

ARGUMENT

MR. CRELLER'S FORCED REMOVAL FROM HIS VEHICLE PROLONGED THE TRAFFIC STOP AND WAS NOT NECESSARY TO ENSURE THE SAFETY OF THE OFFICERS TO COMPLETE THE TRAFFIC STOP. THE K-9 OFFICER'S COMMAND TO EXIT THE CAR NEEDED TO BE JUSTIFIED BY REASONABLE SUSPICION TO BELIEVE THAT NARCOTICS WOULD BE FOUND IN THE CAR, BUT THERE WAS NO SUCH JUSTIFICATION.

A traffic stop must be justified at its inception and limited in duration and scope. Florida v. Royer, 460 U.S. 491, 500 (1983). The officer's investigation must be brief and carefully tailored to the reason the driver was stopped in the first place. Knowles v. Iowa, 525 U.S. 113, 117-118 (1998); Royer, 460 U.S. at 500. When justified "solely by the interest in issuing a warning ticket to the driver," the stop may not be "prolonged beyond the time reasonably required to complete that mission." Illinois v. Caballes, 543 U.S. 405, 407, 125 S. Ct. 834, 160 L.Ed. 2d 842 (2005).

Even if the original basis for the stop was justified, the scope and duration of the stop is limited to its initial purpose and may not be prolonged for unrelated reasons, absent reasonable suspicion of other illegal activity.

In order to extend the initial stop, law enforcement must develop additional reasonable suspicion of another crime unrelated to the traffic stop. The officer must support that suspicion with articulable facts that a crime has been or is being committed. United States v. Santiago, 310 F.3d 336, 342 (5th Cir. 2002). Only then may the detention continue until the new reasonable suspicion has been dispelled or confirmed. Id.

When the tasks related to the purpose of the traffic stop have been completed, the authority to hold the occupants of the vehicle also comes to an end. An officer may not detain the person, even momentarily, without individualized suspicion of criminal activity. Terry v. Ohio, 392 U.S. at 21-23; Royer, 460 U.S. at 498.

There was no individualized suspicion of criminal activity in this case. The police stopped Mr. Creller for a traffic violation and then delayed that traffic stop by acting outside the purpose of that stop. The forced removal of Mr. Creller from his vehicle was based on a random and arbitrary search and violated Mr. Creller's Fourth Amendment rights against unreasonable seizure.

Mr. Creller's case was correctly decided.

In Pennsylvania v. Mimms, 434 U.S. 106 (1977), the United States Supreme Court interpreted the Fourth Amendment to hold that when an automobile is lawfully stopped for a traffic violation, a police officer may, as a matter of course, order the driver to exit the vehicle. Id. at 111, 98 S. Ct. 330. The Court observed that the reasonableness of a search under the Fourth Amendment turns on a balance between the public interest and the individual's right to be free from arbitrary police interference. Id. at 109, 98 S. Ct. 330. On the public interest side, the Court thought that the state's asserted justification for routine exit orders – officer safety – was "both legitimate and weighty." Id. at 110, 98 S. Ct. 330. As against this interest, the Court characterized the intrusion on the driver's personal liberty as "de minimus." Id. The Court ruled that "once a motor vehicle has been lawfully detained for a traffic violation, the police offers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." Id. at 111 n. 6, 98 S.Ct. 330.

The Court extended the rule to approve routine exit orders for passengers based on similar reasoning in Maryland v. Wilson, 519

U.S. 408, 415, 117 S.Ct. 882, 137 L.Ed.2d 41 (1997).

The rationale behind these two decisions is officer safety, specifically in connection with a traffic stop. Mimms, 434 U.S. at 110 (recognizing "the inordinate risk confronting an officer as he approaches a person seated in an automobile,"); Wilson, 519 U.S. at 413 ("[T]he same weighty interest in officer safety is present regardless of whether the occupant of the stopped car is a driver or passenger.")

But Mimms defined the actions available to an officer to extend a stop that should have already ended. The Supreme Court has indicated that "the government's officer safety interest stems from the mission of the [traffic] stop itself, whereas "[o]n-scene investigation into other crimes....detours from that mission" and a seizure would not be justified for that purpose even if necessitated by officer safety." Rodriguez v. United States, 575 U.S. 348, 356-357, 135 S Ct. 1609 (2015).

Here, the officers delayed the traffic stop by acting outside of the purpose of the stop. They created a detour. A dog sniff is not "an ordinary incident of a traffic stop," Id. at 355-356. Inquiries or

actions such as a dog sniff that measurably extend the duration of the stop and are outside of the purpose of the stop's mission must be justified by reasonable suspicion independent of the traffic investigation. Arizona v. Johnson, 555 U.S. 323, 333 (2009).

The facts forming reasonable suspicion must be based on "objective observation," and the inference law enforcement draws from those facts must be "objectively reasonable." United States v. Sigmond-Ballesteros, 285 F.3d 1117, 1123 (9th Cir. 2002).

The focus of the officer's mission in this case detoured from a ordinary traffic stop into a drug investigation without any reasonable suspicion that Mr. Creller was involved in any illegal drugs or drug transactions. As it relates to a dog sniff, the mission must either not delay the traffic stop at all, or if it does, there must be a reasonable suspicion of criminal activity for the delay to be justified. That did not occur in this case. The delay was not justified after the police learned that Mr. Creller was not wanted on any warrants and his documents were in order.

In Rodriguez, the Supreme Court emphasized that "safety precautions taken in order to facilitate unrelated detours are beyond

a traffic stop's scope." The Court said that a stop's legitimate mission has two components: 1) addressing the traffic violation, and 2) attending to related safety concerns. 575 U.S. at 354, 135 S.Ct. 1609.

Related safety concerns include checking the driver's license, determining if there are any outstanding warrants, and inspecting the automobile's registration and proof of insurance. Id. at 535, 135 S.C. 1609. Other activities are not part of a traffic stop's mission. An "unrelated criminal investigation" that lacks "the reasonable suspicion ordinarily demanded to justify detaining an individual" such as a dog sniff conducted without a particularized basis to suspect illicit drug activity –is beyond the traffic stops mission. Id. at 355-357, S.Ct. 1609. A dog sniff is not "fairly characterized as part of [an] officer's traffic mission.").

Mr. Creller was first asked to exit his vehicle to prolong the traffic stop when the K-9 officer asked him to do so so that the dog could conduct a drug sweep around the car. No such request or command was made when Officer Diaz first approached the vehicle or when the K-9 officer arrived and asked Mr. Creller for consent to

search. The only safety concerns asserted by the State were those described by the K-9 officer who wanted to perform a random narcotics sweep that was not supported by reasonable suspicion.

The Second District correctly concluded that the safety issue in Mr. Creller's case was not related to issuing the traffic citation but rather to the vehicle sweep.

Under the Fourth Amendment, a traffic stop "become[s] unlawful if it is prolonged beyond the time reasonably required to complete [its] mission." Illinois v. Caballes, 543 U.S. 405, 407, 125 S. Ct. 834, 160 L.Ed. 2d 842 (2005)

Based on this reasoning, the Second District stated that the officer-safety justification given by the K-9 officer would not make his command for Mr. Creller to exit his vehicle for the sweep constitutionally permissible.

The State argues that the police in this case acted lawfully based on Mimms, which held that officers may "order all drivers out of their vehicles as a matter of course whenever they have been stopped for a traffic violation." Mimms, 434 U.S. at 110, 98 S.Ct. 330. Mimms imposes a per se rule: during a lawful traffic stop, an

officer may order the driver out of the vehicle.

The State argues that Mimms is a "bright-line" rule that gives officers "unquestioned command of a traffic stop, including the ability to order a driver out of a car (Initial Brief at 14).

But Mimms does not mean that police have unfettered ability to do as they wish. Rather, Mimms defines the actions available to an officer conducting a lawful stop. It does not allow the officer to extend that stop that should have already ended. Id. at 11 n.6, 98 S. Ct. 330 ("[W]e do not hold today that "whenever an officer has an occasion to speak with the driver of a vehicle, he may also order the driver out of the car.'").

To the contrary, in Rodriguez, the Supreme Court emphasized that "safety precautions taken in order to facilitate [unrelated] detours" are beyond a traffic stop's lawful scope. 575 U.S. at 356, 135 S.Ct. 1609.

That is precisely what occurred here. An impermissible extension was taken to pursue an unjustified detour.

The Second District Court of Appeal certified a conflict with State v. Benjamin, 229 So. 3d 442 (Fla. 5th DCA 2017), which held

that following a lawful detention for a traffic infraction, officers can order the driver to exit the vehicle even without a particularized basis to believe the driver was a threat to officer safety. The Benjamin case was wrongly decided.

In Benjamin, officers approached a vehicle in a shopping center after they observed its owner driving with what they suspected was an illegal window tint. The officer asked permission to search the vehicle and the driver refused. The officer then requested a K-9 unit to conduct an exterior search of the car. While he was writing the citation, the K-9 unit arrived and told the officer to remove the driver from the car. As the driver stepped out of the car at the officer's direction, the officer saw a firearm under the driver's seat that had been hidden by Benjamin's leg.

The Fifth District concluded that based on Mimms and Wilson the trial court erred in granting the motion to suppress where the command to exit the vehicle occurred while the driver was lawfully detained. Id. at 443-44.

But as the Second District correctly pointed out, the rationale relied upon in Benjamin "essentially stacks the holdings in

Rodriguez and Mimms: 1) vehicle sweeps are permissible when they do not prolong a valid traffic investigation; 2) officers may ask drivers to exit their vehicles during a valid traffic investigation; 3) therefore, as long as it does not prolong the traffic investigation, officers may order drivers to exit their vehicles for the vehicle sweep" Creller v. State, 336 So.3d 817, 823 (Fla. 2d DCA 2022).

The Second District said that this reasoning appears to be an "erroneous extension of the carveouts in Mimms and Rodriguez." Id. at 824. Rodriguez expressly held that a deviation from the mission of the traffic stop such as the K-9 officer's attempted vehicle sweep has no support from Mimms because "safety precautions taken in order to facilitate such detours" cannot "be justified on the same basis" as those taken to ensure officer safety for the purpose of conducting the traffic stop itself. See, Rodriguez, 575 U.S. at 356-57.

The Second District also stated that the Fifth District's stacking "conflates two incompatible rationales without examining their underpinnings, leading to an illogical conclusion" Creller v. State, 336 So. 3d 817, 823-824 (Fla. 2022). Officers may ask drivers

to exit their cars during traffic stops when such removal is justified by officer safety concerns. And, a vehicle sweep during a traffic stop is permissible because the driver is already stopped based on probable cause to believe he committed a traffic infraction.

But in this case, nothing indicated that Mr. Creller's removal from his vehicle was necessary to ensure officer safety to complete the traffic stop. The officer didn't say that his safety was at risk from passing cars, limited visibility or any other hazard. Mr. Creller was alone in the car, did not act nervous, and was not engaged in any criminal activity requiring further investigation outside of his car, such as DUI or any suggestion that he was armed or dangerous. The testimony left no doubt that it was the vehicle sweep alone, not the issuance of the traffic citation, that gave rise to any threat to officer safety.

The State argues that ordering Mr. Creller to exit his car because the traffic stop and dog sniff was lawful (Initial Brief at 13-14). But the police did not order Mr. Creller to exit his car at the time of the traffic stop, and there was no threat to officer safety at that time.

The police had the authority to stop the vehicle based on Mr. Creller's traffic violation. But the traffic violation in an of itself did not provide the officers with carte blanche authority to order Mr. Creller to exit his vehicle.

To understand why a traffic violation did not trigger an automatic order to exit the vehicle, it is important to remember that the principle underlying the exit order is for the protection of the police. See, Wilson, 519 U.S. at 414-415; Mimms, 434 U.S. at 110-111. It is the safety issue, not the traffic violation that governs. In Mimms, the United States Supreme Court permitted the officer to order the driver to exit the car because of officer safety concerns. Id. The Mimms Court determined that if the driver was outside the vehicle, he driver would have the decreased ability to make dangerous movements that the officer cannot see. 434 U.S. at 110-111. As the Second District correctly pointed out, the officer safety issue, however, did not necessitate driver removal until the traffic stop evolved into a drug investigation.

The first point in time at which an officer asked Mr. Creller to exit the vehicle was when the K-9 unit officer asked him to do so out

of concern for the officer's safety and that of his dog so that he could conduct the vehicle sweep. No such request or command was made when the plain clothes officer originally approached the vehicle or when the K-9 unit officer arrived and asked Mr. Creller for consent to search.

The Second District held that the vehicle sweep of Mr. Creller's car was random, and not motivated by any suspicion that there was contraband. It was the traffic infraction that was supported by probable cause, not the existence of illegal drugs in the car.

In Mimms, the Court held that officers may routinely order drivers out of cars as a safety precaution without violating the Fourth Amendment. Mimms involved a routine traffic stop in which officers discovered a gun. The car was stopped because of an expired license plate. One of the officers approached the car and asked the driver to step out and produce his driver's license and registration. When the driver stepped out, the officer noticed a large bulge under the driver's sports jacket. Fearing that the driver may possess a weapon, the officer frisked the driver and discovered a gun.

The driver argued that the officer's request to exit the car violated the Fourth Amendment. The Court balanced the government interests against the extent of the individual intrusion. The Court considered the intrusion that stemmed from the officers's request to exit the car as "de minimis" and a "mere inconvenience," especially since the vehicle was lawfully stopped. On the other side the balancing scale, the Court considered the government's interest in protecting officer safety.

The Court in Mimms, however, assumed that all traffic stops are a danger to police and relied on that assumption. It is that assumption the State has relied on in its Initial Brief to argue the danger to law enforcement.

But the intrusion in Mimms occurred during a stop that was justified by probable cause, at a time when the traffic investigation was not yet complete and the motorist was being subjected to far greater intrusions than the "mere inconvenience" that he was challenging. The Court took great care to limit its analysis to these specific circumstances.

But in this case, there was no evidence that removing Mr.

Creller from his vehicle was necessary to ensure the safety of the officers to complete the traffic stop.

The K-9 officer's command for Mr. Creller to exit his car would have been justified by probable case to believe that drugs would be found in the car. But, that was not argued at the trial level nor supported by testimony.

The evidence here was that the vehicle sweep alone, not the issuance of the traffic citation that gave rise to a threat to officer safety. As the Second District Court said:

> When a driver has already been "validly stopped for a traffic infraction," the "additional intrusion of asking him to step outside his car [is] 'de minimis'" Wilson, 519 U.S. at 412, 117 S. Ct. 882 (quoting Mimms, 434 U.S. at 111, 98 S. Ct. 330). However, even a minor invasion of an "individual's right to personal security free from arbitrary interference by law officers," Id. (quoting Mimms, 434 U.S. at 109, 98 S. Ct. 330) must be justified by **something.**

Creller v. State, 336 So. 3d 817, 824 (Fla. 2d DCA 2022)(emphasis supplied).

The record clearly establishes that Mr. Creller's removal from the vehicle was not necessary to ensure officer safety for the purpose of issuing a traffic citation. The officers made it clear that

they asked the driver to step out of the vehicle "to accommodate an arbitrary investigative sweep admittedly based on no suspicion of criminal activity whatsoever" Id. at 824.

Contrary to the State's argument, upholding Mr. Creller's case does not put police officers at risk during traffic stops. Under the Second District's ruling in Creller, the police are still allowed to order a person him out of his car if doing so is necessary to ensure officer safety during the time it takes to issue a citation after a stop justified by probable cause that a traffic infraction has been committed. And, the police are still allowed to use a drug-sniffing dog to ascertain whether there might be probable cause to believe that illegal narcotics are contained within a vehicle. The Constitution allows for that and the Creller case does not change that.

What police are prohibited from doing during a routine traffic stop is forcibly removing a person from his vehicle before reasonable suspicion of the existence of contraband has been established and without any evidence that such a seizure is necessary to ensure officer safety during the issuance of a traffic citation. That is what

happened to Mr. Creller and that is an unreasonable seizure without any justification under the Fourth Amendment.

Had there been evidence that forcing Mr. Creller from his car was done out of a reasonable concern for the safety of the officer issuing a citation during a stop justified by probable cause to believe that a traffic violation had occurred, then the removal would have been justified. But no such evidence was adduced here.

And, if the evidence supported that forcible removal was necessary to ensure officer safety for a vehicle sweep that itself was justified by probable cause of the presence of contraband, as opposed to a random, arbitrary search like the one in this case, then the removal would constitute a reasonable seizure. But, no such probable cause was argued or supported by the evidence.

The forced removal of Mr. Creller from his vehicle was an unreasonable seizure under the Fourth Amendment.

CONCLUSION

The Creller decision was correctly decided. This Court should approve the decision below.

CERTIFICATE OF SERVICE

I certify that a copy has been E-mailed to Jeffrey Paul DeSousa, Chief Deputy Solicitor General, Office of the Attorney General at jeffrey.desousa@myfloridalegal.com and Robert Schenck, Solicitor General Fellow at robert.schenck@myfloridalegal.com on this 23rd day of January, 2023.

HOWARD L. "REX" DIMMIG, II
Public Defender
Tenth Judicial Cir.

/s/Pamela H. Izakowitz
PAMELA H. IZAKOWITZ
Assistant Public Defender
Florida Bar No. 0053856
P.O. Box 9000-Drawer PD
Bartow, FL 33831
(863) 534-4200
appealfilings@pd10.org
CClark@pd10.org
Pamizakowitz@gmail.com

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this Answer Brief is 14-point Bookman Old Style, in compliance with Fla. R. App. 9.045(e), and contains 5,213 words.

/S/ Pamela H. Izakowitz
PAMELA H. IZAKOWITZ
Assistant Public Defender
Florida Bar Number 0053856
P.O. Box 9000-Drawer PD
Bartow, FL 33831
(863) 534-4200

HOWARD L. "REX" DIMMIG, II
Public Defender
Tenth Judicial Circuit
Florida Bar No. 255491