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SC22-524

In the Supreme Court of Florida

STATE OF FLORIDA,
Petitioner,

v.

JOSHUA LYLE CRELLER,
Respondent.

On Petition for Discretionary Review from the
Second District Court of Appeal
DCA No. 2D19-3085

REPLY BRIEF ON THE MERITS

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TABLE OF CONTENTS

Table of Authorities ii

Argument 1

Police lawfully ordered Respondent to exit the car. 1

A. The officers did not extend the traffic stop and thus did not violate *Rodriguez*. 1

B. *Mimms*' bright-line rule applies. 3

Conclusion 9

Certificate of Compliance 11

Certificate of Service 11

TABLE OF AUTHORITIES

Cases

Cruz v. State,
320 So. 3d 695 (Fla. 2021) 2

Illinois v. Caballes,
543 U.S. 405 (2005) 8

Illinois v. Gates,
462 U.S. 213 (1983) 6

Knowles v. Iowa,
525 U.S. 113 (1998) 7

Maryland v. Wilson,
519 U.S. 408 (1997) 1, 6, 8

Michigan v. Summers,
452 U.S. 692 (1981) 6

Pennsylvania v. Mimms,
434 U.S. 106 (1977) 1, 4, 6, 8

Rodriguez v. United States,
575 U.S. 348 (2015) 1, 2, 3, 4

United States v. Brignoni-Ponce,
422 U.S. 873 (1975) 4

United States v. Robinson,
414 U.S. 218 (1973) 5

Virginia v. Moore,
553 U.S. 164 (2008) 7

Whren v. United States,
517 U.S. 806 (1996) 5

ARGUMENT

Police lawfully ordered Respondent to exit the car.

The United States Supreme Court has long drawn a "bright-line rule" allowing officers to order a motorist out of a car during a lawful traffic stop. *Pennsylvania v. Mimms*, 434 U.S. 106, 109–11 (1977); *Maryland v. Wilson*, 519 U.S. 408, 413 n.1 (1997). That basic safety precaution, the Court explained, is reasonable given the State's need to protect officers, contrasted with the *de minimis* additional intrusion on the motorist of being required to wait outside, rather than inside, the car. The fact that this case involves a dog sniff does not alter that balance. In response, Respondent claims that the officers illegally prolonged the stop under *Rodriguez v. United States*, Ans. Br. 13, 15, and alternatively that the Court should either probe the officers' subjective intentions or inquire whether the exit order was necessary to protect officer safety under these unique facts. Ans. Br. 26–28; *see also* FPDA Br. 2, 7. Both claims fail.

A. The officers did not extend the traffic stop and thus did not violate *Rodriguez*.

Respondent initially argues that "the officers delayed the traffic stop," Ans. Br. 15, violating *Rodriguez v. United States*, 575 U.S. 348

(2015). That case held that officers cannot extend the length of a traffic stop without individualized suspicion. But even the district court—which agreed that Respondent's conviction should be reversed—rejected his delay argument. App'x 10–12.[1] The trial court found that no prolongation occurred. Tr. 103. That factual conclusion is supported by "competent and substantial evidence" and must be upheld. *See Cruz v. State*, 320 So. 3d 695, 712 (Fla. 2021); App'x 11 (noting that the trial court "credited the officers' testimony").

Indeed, neither the dog sniff nor the K-9 officer's exit order extended the stop; the officers instead testified that both occurred while the ticketing officer was still writing Respondent's ticket. *See* Init. Br. 2–4, 23; Tr. 63, 185–86. As *Rodriguez* holds, the "tolerable duration" of a traffic stop "is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop." 575 U.S. at 354. Because that mission had not ended, the sniff and exit order did not extend the stop.

[1] Respondent's amicus, the Florida Public Defender Association, likewise does not join his claim that police unlawfully extended the stop.

Rodriguez therefore does not justify approving the Second District's judgment on different grounds.

B. *Mimms*' bright-line rule applies.

The real heart of this dispute is Respondent's claim, echoed by the Florida Public Defender Association (FPDA), that the fact of the dog sniff takes this case outside *Mimms*' bright-line rule permitting officers to remove motorists from a car during a traffic stop. Their arguments are unpersuasive: *Mimms*' holding directly controls this case; but even if it does not, ordinary Fourth Amendment reasonableness balancing supports the officers' conduct.

1. Respondent and FPDA primarily argue that *Rodriguez* qualified *Mimms*. Seizing on dicta in *Rodriguez*,[2] they contend that police now may order an occupant out of a vehicle only if the order is "related" to the traffic stop's "mission" of addressing an infraction that prompted the traffic stop, or if there is some other justification for

[2] 575 U.S. at 356–57 ("Unlike a general interest in criminal enforcement, however, the government's officer safety interest [in *Mimms*] stems from the mission of the stop itself. . . . Thus, even assuming that the imposition here was no more intrusive than the exit order in *Mimms*, the dog sniff could not be justified on the same basis.").

the order, like reasonable suspicion of another crime. Ans. Br. 8–9; FPDA Br. 6–8.

But that is not what *Rodriguez* held. The point in *Rodriguez* was a narrow one: An officer cannot *extend* a traffic stop through actions unrelated to the stop ("detours") without some justification distinct from the traffic stop's mission. *Rodriguez*, 575 U.S. at 356–57. But where, as here, the officer's action does not extend the stop, *Rodriguez* does not apply. Instead, the relevant constraint on the officer's action is the reasonableness balancing that governs all searches and seizures. *Mimms*, 434 U.S. at 109; *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975) ("[T]he reasonableness of [] seizures depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers."). And here, *Mimms* has already struck that balance for officers present at a lawful traffic stop, holding that they may remove an occupant from a vehicle. 434 U.S. at 109–10; *cf. infra* at 7–8.

What is more, Respondent and FPDA's reading of *Rodriguez* runs headlong into bedrock Fourth Amendment principles. On their view, courts must inspect an officer's true "purpose" for taking an

action and ask whether that purpose was unrelated to the traffic stop's mission. Ans. Br. 9–10, 12–13, 15–16; FPDA Br. 4, 7, 10. In *Whren*, however, the Supreme Court unanimously held that "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." *Whren v. United States*, 517 U.S. 806, 813 (1996). Rather, "the Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent." *Id.* at 814; *see also United States v. Robinson*, 414 U.S. 218, 221 n.1, 236 (1973) (holding that a traffic-violation arrest was valid even if it were "a mere pretext for a narcotics search," and that a lawful post-arrest search was valid even if it were not motivated by the officer-safety concern that justifies such searches). So *Rodriguez* cannot require that courts plumb the inner workings of an officer's mind to discern whether his actions were related to the stop. The question is simply whether "the circumstances, viewed objectively, justif[ied]" the action. *Whren*, 517 U.S. at 813. And *Mimms* makes clear that an objectively reasonable officer could issue the exit order here.

Next, Respondent and FPDA suggest that *Mimms* empowers an

officer to issue an exit order only if the case-specific facts show that the order was needed to ensure the officer's safety. Ans. Br. 10, 17; FPDA Br. 7. But *Mimms* rejects that view. The Court there acknowledged that the officers "had no reason to suspect" a particular safety concern at the traffic stop. *Mimms*, 434 U.S. at 109–10. All the same, it reasoned that officers conducting a traffic stop generally have safety concerns "weighty" enough to justify removing an occupant from a vehicle. *See id.* at 110 (outlining the many risks officers face at a traffic stop). That alone justified *Mimms*' "bright-line rule[]." *Wilson*, 519 U.S. at 413 n.1.

Respondent and FPDA cite nothing from *Rodriguez* that purported to change the results of that balancing. And indeed, their arguments ignore that in the Fourth Amendment realm, the Court does not carve up general rules with "ever-finer distinctions" and refresh the reasonableness balancing in every case. *Illinois v. Gates*, 462 U.S. 213, 265 (1983) (White, J., concurring); *see also Michigan v. Summers*, 452 U.S. 692, 705 n.19 (1981) ("[I]f police are to have workable rules, the balancing of the competing interests . . . must in large part

be done on a categorical basis—not in an ad hoc, case-by-case fashion by individual police officers."). It instead balances the reasonableness of a police action in a typical factual scenario (like a traffic stop), develops a universal rule for that scenario, and then applies that rule across the board, no matter any minor case-specific differences. *E.g.*, *Knowles v. Iowa*, 525 U.S. 113, 118 (1998) (noting that although the search-incident-to-arrest rule rests on "concern for officer safety and destruction or loss of evidence," its applicability does not "depend in every case upon the existence of either concern"). Anything less would undercut the government's "essential interest in readily administrable rules" of criminal procedure. *Virginia v. Moore*, 553 U.S. 164, 175 (2008); *see also* Init. Br. 10. Plus, if *Rodriguez* had worked such a dramatic change to *Mimms*, surely it would be widely reported. Yet a chorus of courts continue to apply *Mimms* in circumstances like these without any hint that *Rodriguez* changed the calculus. Init. Br. 23–24 (collecting cases). The State is aware of no other court in the country finding a Fourth Amendment violation in these circumstances.

2. Finally, even if *Mimms* and *Wilson* somehow do not settle this,

Respondent and FPDA never explain what about the unique facts of this case alters the results of the reasonableness balancing those decisions performed. *Mimms* and *Wilson*, after all, were merely an application of the ordinary balancing test that governs whether a search or seizure is reasonable. *See, e.g.*, *Wilson*, 519 U.S. at 411 ("[R]easonableness 'depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers[.]'" (quoting *Mimms*, 434 U.S. at 109)). Here, just like in those cases, Respondent was "already . . . detained" due to the traffic stop. *Mimms*, 434 U.S. at 111. Forcing him to wait by the side of the road, rather than inside his car, was thus a "mere inconvenience." *Id.* In other words, his privacy and liberty interests were every bit as "*de minimis*" as in *Mimms* and *Wilson*.[3] And just like in those cases, the government's interest in the balance—concern for officer safety—remains "legitimate and weighty." *Id.* at 110. If the facts of his case were somehow so different as to warrant a different result in

[3] This case, unlike *Mimms* and *Wilson*, involved a dog sniff. But a dog sniff "compromises no legitimate privacy interest," so that does not aid Respondent. *Illinois v. Caballes*, 543 U.S. 405, 408 (2005) (quotation omitted).

the balance, Respondent should say so. Yet Respondent and FPDA do not assert, let alone prove, that the officers faced less danger solely because the exit order occurred mid-stop, or because they wished to conduct a dog sniff. So, even on a clean slate, reasonableness balancing supports the commonsense safety precautions the officers took.

CONCLUSION

This Court should quash the decision below and remand with instructions to affirm Respondent's conviction and sentence.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared in 14-point Bookman font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2) and contains 1,675 words.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished via the e-Filing Portal on this **twenty-third** day of February 2023, to the following:

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