

**SC24-1088**

**IN THE SUPREME COURT OF FLORIDA**

STATE OF FLORIDA,  
*Petitioner,*

v.

BRYAN ALLEN REPPLE,  
*Respondent.*

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ON PETITION FOR DISCRETIONARY REVIEW FROM THE  
SIXTH DISTRICT COURT OF APPEAL  
DCA No. 6D23-1448

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**JURISDICTIONAL BRIEF OF RESPONDENT**

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STUART I. HYMAN, ESQUIRE  
**Stuart I. Hyman, P.A.**  
1520 East Amelia Street  
Orlando, Florida 32803  
Telephone: (407) 896-0536  
Florida Bar No. 319945  
Email: shymanlaw@aol.com

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Attorney for Respondent

## **STATEMENT OF THE ISSUES**

The sole and only issue for which there is an express and direct conflict between State v. Torres, 350 So.3d 421 (Fla. 5th DCA 2022) and State v. Repple, 49 Fla. L. Weekly D1296 (Fla. 6th DCA June 14, 2024) that was certified for a decision by this Court, is whether there exists a stand-alone continuing investigation exception to the under color of office doctrine that would allow a municipal police officer to transport an arrested subject outside of their jurisdiction and then exercise the color of their office by reading an implied consent warning under Fla. Stat. 316.1932(1)(a)1.a. to require an individual to submit to a breath test. Neither the Sixth District Court of Appeal in State v. Repple, nor the Fifth District Court of Appeal in State v. Torres, stated any other legal issue to be in express and direct conflict nor was any other legal issue decided by the courts in those decisions to be in express or direct conflict with one another.

Therefore, whether the exclusionary rule extends to require the suppression of evidence obtained extraterritorially in excess of a police officer's statutory authority, is not an issue that the Courts felt to be

in express and direct conflict that is within the discretionary jurisdiction of this Court.

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## **STATEMENT OF THE CASE AND FACTS**

On January 30, 2021, Respondent was stopped for speeding and arrested for the misdemeanor offense of driving under the influence in Maitland, Florida by Maitland municipal police officers. (Pet. App. A) After arrest, Officer Banos, a municipal police officer with the city of Maitland while not in fresh pursuit transported Respondent outside of the city limits of Maitland to a breath testing facility that was also located outside the city limits of Maitland. Id.

At the breath testing center, a breath test was subsequently requested and administered to Respondent after the reading of an implied consent warning by Officer Banos. Id. At the time, Respondent was only in the presence of a civilian employee of the Orange County Sheriff's Office and Officer Banos. Id. The test yielded a claimed breath test result that allegedly exceeded the legal limit. Id. This subsequently led to Respondent being charged with driving under the influence of alcohol to the extent his normal faculties were impaired, and then additionally, after the breath test, with driving

with an unlawful breath alcohol level with both being charged together as DUI. Id.

Before trial Respondent moved to suppress the breath test results by arguing that Officer Banos unlawfully used the color of his office while located outside of his territorial jurisdiction and as a private citizen to obtain evidence, i.e. a breath test result, that was not available to a private citizen by the use of his or her own senses. Id. Following an evidentiary hearing, the trial Court agreed and suppressed the breath test results. Id.

The State timely appealed the ruling of the trial Court to the Sixth District Court of Appeal. Id. In that Appeal, the State raised as a single argument for consideration, the issue of whether a municipal police officer who has lawfully arrested a suspect for committing the offense of DUI within the officer's territorial jurisdiction had the continued authority of his or her office to request that the suspect submit to a breath test under Florida's Implied Consent law when the request and the testing take place outside of the city limits of the officer's municipality. Id.

After conducting a de novo review of the trial Court's suppression ruling, the Sixth District ruled that the trial Court was correct in suppressing the breath test results. Id. In doing so, the Sixth District disagreed with the premise of the State's argument and the reasoning of sister courts that recognized such extraterritorial police powers that were not authorized by the Legislature. Id. It certified express and direct conflict with State v. Torres, 350 So.3d 421 (Fla. 5th DCA 2022).

### **ARGUMENT**

This Court should only exercise its discretionary jurisdiction due to an express and direct conflict between the Sixth District Court of Appeal and the Fifth District Court of Appeal on the sole issue of whether a municipal police officer is authorized to continue his investigation and request a breath test while located outside his or her jurisdiction. It is axiomatic, that for this Court to have jurisdiction pursuant to Article V, Section 3(b)(3) of the Florida Constitution, under an express and direct conflict theory of jurisdiction; there must appear within the four corners of the majority decision under review

an express and direct conflict. Reeves v. State, 485 So.2d 829, 830 (Fla. 1986), Persaud v. State, 838 So.2d 529, 532 (Fla. 2003). It is not necessary that a District Court explicitly identify a conflicting District Court or Supreme Court decision in its opinion in order to create an “express” conflict under Section 3(b)(3). Ford Motor Company v. Kikis, 401 So.2d 1341, 1342 (Fla. 1981).

The Fifth District Court of Appeal admitted in its opinion in State v. Torres, 350 So.3d 421 (Fla. 5th DCA 2022); that “as a general rule, ‘municipal law enforcement officers can exercise their law enforcement powers only within the territorial limits of the municipality’” citing Knight v. State, 154 So.3d 1157, 1159 (Fla. 1st DCA 2014) and State v. Griffis, 502 So.2d 1356, 1357 (Fla. 5th DCA 1987). Id. at 424. The Fifth District in Torres then described the narrow issue that was before it to be, “...whether under the facts of the case Officer Campbell nevertheless retained the power or authority to request that the Defendant submit to a breathalyzer test as part of an ongoing DUI investigation when Campbell was located outside the territorial limits of his municipality. Id. at 424. The Fifth District

further clarified that the simple issue it was deciding, was the validity of the lower Court Order finding that "...'Officer Campbell being 'outside of [his] jurisdiction' was a 'private citizen' and thus under the Florida Implied Consent law, no longer had the authority to make this request." Id. at 424. The Fifth District again reiterated, "The question is whether the breath test evidence was properly suppressed because Campbell, post arrest, while outside of his territorial jurisdiction used the color of his office to obtain this evidence that a private citizen, under the implied consent statute, could not have obtained." Id. at 424.

The Fifth District decided that there existed a stand-alone continuing investigation exception to the under color of office doctrine that "...allows a municipal officer to continue to act or investigate outside of his or her geographic jurisdiction if the subject matter of the officer's investigation originates inside their city limits." Id. at 424. The Fifth District decided that the lower Court's decision to the contrary, that relied upon State v. Phoenix, 428 So.2d 262 app.d 455 So.2d 1024 (Fla. 1984), Mattos v. State, 199 So.3d 416 (Fla. 4th DCA

2016) and State v. Sills, 852 So.2d 390 (Fla. 4th DCA 2003) was wrong. Id. at 425.

The Sixth District Court of Appeal in State v. Repple, 49 Fla. L. Weekly D1296 (Fla. 5th DCA June 14, 2024), subsequently disagreed with the Fifth District Court of Appeal. In doing so, the Sixth District defined the narrow issue it was deciding as follows:

The State's sole argument on appeal is that a municipal officer may, outside his or her territorial jurisdiction, assert official authority to gather evidence not otherwise obtainable by a private citizen when the subject matter of the investigation originated within the officer's territorial jurisdiction. Applying that general premise to the facts of this case, the State contends that because the DUI investigation began in Maitland, a Maitland municipal police officer had the power to use his official authority, outside the city limits of Maitland, to read the defendant the Implied Consent warning in accordance with Section 316.1932 to obtain a breath test. For the following reasons, and after conducting a de novo review of the trial Court's suppression ruling, we disagree with both the premise of the State's argument and the reasoning of our sister courts that have recognized such extra territorial police powers not authorized by the legislature. Consequently, we find that the State had failed to demonstrate that the trial court erred when it suppressed

evidence obtained from a search performed outside the territorial boundaries of the municipal officer's jurisdiction.

Id. at D1296

The Sixth District Court of Appeal reiterated in its Opinion:

In finding that Officer Banos was without power, we are in direct conflict with the Fifth District Court of Appeal, which, in State v. Torres, 350 So.3d 421 (Fla. 5th DCA 2022) recognized a Court created exception to the color of office doctrine.

Id. at D1298

The Sixth District decided that a stand-alone continuing investigation was not an exception to the under color of office doctrine. It found that it was a Court created doctrine that may have inadvertently slid into Florida's jurisprudence despite the jurisdictional warning that was contained in the proviso of State v. Phoenix, 428 So.2d at 266 n.2 that was approved by this Court in Phoenix v. State, 455 So.2d 1024 (Fla. 1984). Id. at D1299.

It is important to note, that neither the Fifth District in Torres or the Sixth District in Repple, ever discussed, decided, took issue with or even certified to be in express and direct conflict any issue of

whether the exclusionary rule extends to require the suppression of evidence obtained extraterritorially in excess of a police officer's statutory authority. This separate issue is being improperly inserted as an issue for which there was no actual express or direct conflict that was certified by either the Fifth District or the Sixth District. This issue should therefore not be the subject of review under the discretionary jurisdiction of this Court.

This Court would have discretionary jurisdiction to address the singular issue of whether a stand-alone continuing investigation creates an exception to the color of office doctrine and extraterritorial jurisdiction that would allow a breath test to be requested by a municipal police officer outside his jurisdiction under Section 316.1932(1)(a)1.a. Fla. Stat. The Sixth District in Repple found that when an officer obtains evidence by using the appearance of official power in a jurisdiction where the officer has no power, the officer is said to be acting under color of office. See State v. Stouffer, 248 So.3d 1165, 1168 (Fla. 4th DCA 2018)(citing State v. Phoenix, 428 So.2d 262, 266 (Fla. 4th DCA 1982) approved 455 So.2d 1024 (Fla. 1984)

The Sixth District found that Officer Banos, a municipal officer for the city of Maitland, illegally asserted his official powers as a police officer while located outside of his territorial jurisdiction when he requested a breath test and gave Respondent the implied consent warning in accordance with Section 316.1932(1)(a)1.a. Fla. Stat.

The Sixth District held, that the State Constitution gave the Florida Legislature the power to establish municipalities, bestow powers upon them and amend their charters Article VIII, § 2(a), Fla. Const. Id. at D1297. The Court found that the Legislature gave this power “for the preservation and enforcement of the law and order **within** said city. Ch59-1475, §50, Laws of Fla.” Id. at D1297 (Emphasis added) The Sixth District found that, nowhere in the special act did the Legislature give the city of Maitland the power to police outside it’s territorial limits, although the Legislature can do so if it desires. Id. at D1297. The Sixth further found that the Legislature has done so in only two instances cited by the State, with the first instance being fresh pursuit and the second instance being a mutual aid agreement both of which were found by the Court not to apply in

this case. Id. at D1297-98. The Sixth District found that the power to grant municipalities extra territorial powers belongs exclusively to the Legislature. Id. at D1298.

Being mindful of the Collins court in excluding evidence obtained based upon color of office, the Sixth found any other rule would undermine “the right of the people to be secure in their persons, houses, papers and effects, and would obliterate one of the most fundamental distinctions between our form of government, where officers are under the law, and the police-state where they are the law.” See Collins v. State, 143 So.2d 700, 707 (Fla. 2d DCA 1962).

Though not additionally required for this Court’s jurisdiction, the decision by the Fifth District in Torres also seemingly expressly and directly conflicts with Mattos v. State, 199 So.3d 416, 421 (Fla. 4th DCA 2016), State v. Sills, 852 So.2d 390, 393 (Fla. 4th DCA 2003), State v. Phoenix, 428 So.2d 262, 266 (Fla. 4th DCA 1982) approved 455 So.2d 1024 (Fla. 1984) and the Fifth District’s own decision in State v. Griffis, 502 So.2d 1356, 1357 (Fla. 5th DCA 1987) on this issue.

The decision by the Fifth District Court of Appeal in Torres created for the first time, a police “color of office” jurisdictional search exception in DUI cases that is a legally unsupported exception to police search jurisdiction restrictions and Section 316.1932(1)(a)1.a., Fla. Stat. The decision of the Fifth District Court in Torres rocks the foundation of and constitutes an extreme reordering of Florida jurisdictional search case law and jurisprudence not only in DUI cases but other extraterritorial search cases as well.

Section 316.1932(1)(a)1.a. Fla. Stat. implicitly recognizes and accepts the restrictions of the “under color of office” doctrine when it requires by its express language “...the chemical or physical breath test must be incidental to a **lawful arrest** and administered at the request of a **law enforcement officer...**” (Emphasis added) The implied consent statute is required to be strictly construed. State v. Demoya, 380 So.2d 505 (Fla. 3d DCA 1980) There exists no exception in the express language of the statute to the requirement that the request for a breath test be made by a “law enforcement officer”. Similar to the search warrant statute in State v. Griffis, the phrase

“law enforcement officer” as used in Section 316.1932(1)(a)1.a. should also be construed to mean only a police officer with “power to act.”

In State v. Sobrino, 587 So.2d 1347 (Fla. 3d DCA 1991) the Court recognized that the powers wielded by police officers are vast and subject to abuse. Id. at 1348. Such power has been restricted by strict construction, limited exceptions, and harsh remedies for violations of police powers. Id. at 1348. The Court also found that “because abuses of police powers diminish our individual and collective civil rights, the penalty for any violation is one of the most serious...suppression.” Id. at 1348.

In State v. Bender, 382 So.2d 697, 699 (Fla. 1980) this Court held that the breath test results are admissible into evidence under the Implied Consent law only upon compliance with the **statutory provisions** and the administrative rules enacted by their authority. (Emphasis added) In the instant case, the State is relying upon the implied consent law by utilizing Section 316.1932(1)(a)1.a., Fla. Stat. to require a breath test. The “law enforcement officer” statutory request requirement of Florida Statute 316.1932(1)(a)1.a. was violated

by Officer Banos which makes the test results statutorily inadmissible under Bender. See also Robertson v. State, 604 So.2d 783,790 (Fla. 1992)(recognizing ...”the exclusionary rule of the Implied Consent law...” This Court held in Sambrine v. State, 386 So.2d 546, 547 (Fla. 1980) that the State of Florida has the right to extend to its citizenry protections against unreasonable searches and seizures by statute, greater than those afforded by the Federal Constitution.

The Sixth District followed Collins and found that the Fourth Amendment right to be free from unreasonable searches and seizures was an inalienable right and must be protected at the risk that an individual criminal may go without punishment. Id. at 1297.

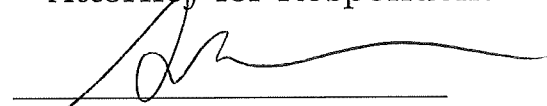
### **CONCLUSION**

The Court should grant review only on the issue of the continuing investigation exception.

Dated: August 15, 2024

Respectfully submitted,

Stuart I Hyman  
Attorney for Respondent



STUART I. HYMAN, ESQUIRE

**Stuart I. Hyman, P.A.**

1520 East Amelia Street

Orlando, Florida 32803

Telephone: (407) 896-0536

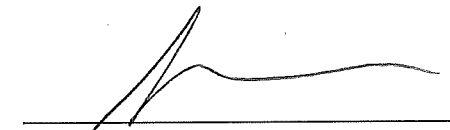
Attorney for Respondent

Florida Bar No. 319945

Email: shymanlaw@aol.com

**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 2492 words.



Stuart I Hyman  
Attorney for Respondent

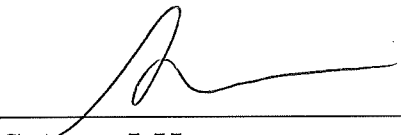
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I certify that a copy of the foregoing was furnished via the e-Filing Portal on this 15th day of August 2024, to the following:

Ashley Moody  
*Attorney General*  
Henry C. Whitaker  
*Solicitor General*  
Jeffrey Paul DeSousa  
*Chief Deputy Solicitor General*  
Darrick W. Monson  
*Assistant Solicitor General*  
Rebecca Rock McGuigan  
*Chief Assistant*  
Richard A. Pallas, Jr.  
*Assistant Attorney General*

Office of the Attorney General  
The Capital, PL-01  
Tallahassee, Florida 32399  
(850) 414-3300  
darrick.monson@myfloridalegal.com  
jenna.hodges@myfloridalegal.com

Counsel for State of Florida

  
\_\_\_\_\_  
Stuart I Hyman  
Attorney for Respondent