IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, v. JOHNNY DIAZ, Respondent.	Case No. SC01-2779

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

PETITIONER'S INITIAL BRIEF ON THE MERITS

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STATEMENT OF THE CASE

Respondent was charged by information with driving while his license was revoked as a habitual traffic offender under Section 322.264, Florida Statutes (1999), in violation of Section 322.34(5), Florida Statutes (1999) (R 14-15). He filed a motion to suppress the evidence against him on the ground that the traffic stop of the automobile he was driving was illegal (R 19-21), which the trial court denied after hearing (R 32, T 15). Respondent then pled nolo contendere, reserving his right to appeal the denial of his dispositive motion to suppress (R 33-34, T 20-22). The trial court adjudicated Respondent guilty, gave him a 24-month prison sentence, and placed him on probation for 24 months (R 39-42). Respondent appealed (R 38, 43), and the Second District Court of Appeal reversed his conviction, certifying conflict with *State v. Bass*, 609 So. 2d 151 (Fla. 5th DCA 1992), and *State v. Wikso*, 738 So. 2d 390 (Fla. 4th DCA 1999). *Diaz v. State*, 26 Fla. L. Weekly D2679 (Fla. 2d DCA Nov. 14, 2001). The State has now sought review by this Court of the Second District's decision.

STATEMENT OF THE FACTS

Deputy Bruce Crumpler of the Hillsborough County Sheriff's Office testified that, on February 14, 2000, at 8:42 p.m., he was approximately 2-3 car lengths, perhaps 50 feet, away from Respondent's car when he noted the temporary tag on the back rear window of Respondent's 1988 Oldsmobile to be unreadable; he could not read the expiration date on the tag (T 4-5, 7-8). Crumpler therefore stopped the car (T 5, 7). The tag was unreadable until Crumpler walked up to the car and reached the car's bumper because the writing on the tag was not clear, and the expiration date was written in pen and was not dark enough to read (T 5-6, 8-9).

Crumpler's criminal report affidavit stated that Respondent was stopped for the traffic infraction of improper display of a license tag and did not mention that the expiration date on the tag was unreadable (R 10, T 10-11). Crumpler explained that what he meant in his report when he noted improper display of the tag was that the tag was unreadable (T 12-13).

Crumpler went up to the car and came in contact with the driver, who handed him a Florida ID card and stated that his driver's license was suspended (R 10, T 6). Crumpler admitted that, before stopping Respondent, he had not seen Respondent commit a traffic infraction other than having an unreadable tag and had not seen any kind of criminal activity (T 11-12).

SUMMARY OF THE ARGUMENT

Because Respondent's temporary tag was not clearly visible, the traffic stop of Respondent's vehicle was valid, and the deputy had the right to ask Respondent for his license and registration. Moreover, even if the deputy did not have the right to ask Respondent for his license and registration, he needed to make contact with Respondent to tell Respondent why he had stopped him, and when he made contact with Respondent, Respondent handed the deputy his Florida identification card and admitted that his license was suspended. Furthermore, the delay between the deputy's determination that Respondent's temporary tag was a valid one and the deputy's making contact with Respondent and learning that Respondent's driver's license was suspended was very brief and was, if anything, a de minimis intrusion into Respondent's liberty interest that did not infringe upon his Fourth Amendment rights. Accordingly, the trial court correctly denied Respondent's motion to suppress the evidence against him, and the Second District Court of Appeal erred in reversing the judgment and sentence in this case.

ARGUMENT

THE JUSTIFICATION FOR THE STOP OF RESPONDENT'S CAR WAS VALID AND CONTINUED AFTER THE DEPUTY GOT CLOSE ENOUGH TO READ THE THERETOFORE UNREADABLE TEMPORARY TAG.

A trial court's factual findings on a motion to suppress evidence are clothed with a presumption of correctness and will not be overturned if there is competent, substantial evidence which would support the decision under the correct analysis. *E.g.*, *Caso v. State*, 524 So. 2d 422, 424 (Fla.), *cert. denied*, 488 U.S. 870, 109 S. Ct. 178, 102 L. Ed. 2d 147 (1988) (issue was whether a suspect was in custody); *Acensio v. State*, 497 So. 2d 640, 642 (Fla. 1986) (motion to suppress a confession). Application of the law to the facts as found by the trial court is a mixed question of law and fact and is reviewed de novo. *Ornelas v. United States*, 517 U.S. 690, 696-697, 116 S. Ct. 1657, 1661-1662, 134 L. Ed. 2d 911, 919 (1996).

"The initial stop was valid because a law enforcement officer is clearly entitled to stop a vehicle for a traffic violation." *Cresswell v. State*, 564 So. 2d 480, 481 (Fla. 1990). Respondent's vehicle was in violation of Section 316.605(1), Florida Statutes (1999), which states that the lettering on a license tag must "be plainly visible and legible at all times 100 feet from the rear" of the vehicle, and Section 320.131(4), Florida Statutes (1999), which requires that temporary tags "be conspicuously displayed in the rear license plate bracket or

attached to the inside of the rear window in an upright position so as to be clearly visible from the rear of the vehicle." Even assuming that, as the Fifth District held in *Sands v. State*, 753 So. 2d 630 (Fla. 5th DCA), *review denied*, 773 So. 2d 56 (Fla. 2000), *cert. denied*, ___ U.S. ___, 121 S. Ct. 1155, 148 L. Ed. 2d 1016 (2001), Section 316.605(1) is not applicable to temporary tags, a license tag is not clearly visible if it cannot be read unless the observer is standing at the rear bumper of the vehicle. Thus, Respondent's vehicle was in violation of Section 320.131(4) and was therefore properly stopped by Deputy Crump.

Both the Fourth and Fifth Districts have held that, where a law enforcement officer appropriately exercised his jurisdiction by stopping a vehicle with a temporary tag that he could not read, the officer could ask to see the driver's license and registration even though the officer was able to read the tag upon approaching the vehicle. *State v. Bass*, 609 So. 2d 151 (Fla. 5th DCA 1992); *State v. Wikso*, 738 So. 2d 390 (Fla. 4th DCA 1999). The Second District, however, held in *Palmer v. State*, 753 So. 2d 679 (Fla. 2d DCA 2000), upon which Respondent relied below, that the law enforcement officer was not authorized to ask to see the driver's license and registration after a valid stop, and it followed *Palmer* in the instant case.

The Second District's opinion in this case is wrong for three reasons. Firstly, as noted *supra*, the Second District

overlooks the fact that the drivers in both of these cases and in *Bass* and *Wikso* were in violation of Sections 316.605(1) and 320.131(4) at all relevant times, inasmuch as their temporary tags were not readable until the law enforcement officers involved were much closer to their vehicles than one would be while driving behind another vehicle in traffic, which violates the intent and purpose of the applicable statutes.

Secondly, even assuming arguendo that the purpose of the stop *had* been effectuated when the deputy who had made the stop got close enough to Respondent's vehicle to read its temporary tag, the deputy nevertheless needed to make contact with Respondent to tell Respondent why he had stopped him and to inform him that he was free to go. When the deputy made contact with Respondent, Respondent handed the deputy his Florida identification card and admitted that his license was suspended. Accordingly, the deputy's actions were lawful and proper and did not violate Respondent's Fourth Amendment rights.

Finally, the delay between the deputy's determination that Respondent's temporary tag was a valid one and the deputy's making contact with Respondent and learning that Respondent's driver's license was suspended was very brief—a matter of a few moments. The delay here was, if anything, a de minimis intrusion into Respondent's liberty interest that did not infringe upon his Fourth Amendment rights. *State v. Williams*, 565 So. 2d

714 (Fla. 3d DCA 1990), *review denied*, 576 So. 2d 295 (Fla.), *cert. denied*, 500 U.S. 955, 111 S. Ct. 2265, 114 L. Ed. 2d 717 (1991). Thus, the trial court correctly denied Respondent's motion to suppress, and the Second District's opinion reversing the trial court's ruling must be quashed.

CONCLUSION

Petitioner respectfully requests that this Honorable Court quash the opinion of the Second District Court of Appeal and remand this case with instructions to reinstate Respondent's adjudication of guilt and placement on probation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Carol J.Y. Wilson, Assistant Public Defender, P.O. Box 9000—Drawer PD, Bartow, Florida 33831-9000, this 8th day of January, 2002.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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Criminal law -- Felony driving with suspended license -- Search and seizure -- Vehicle stop -- Where officer initiated traffic stop when he could not read temporary tag in rear window of vehicle, but officer was able to read tag as he approached the vehicle after the stop and saw that nothing was improper, there was no longer a justification for the stop, and defendant should have been free to leave -- Trial court erred in denying defendant's motion to suppress identification evidence which defendant presented to officer after officer walked up to driver's side of vehicle -- Conflict certified

JOHNNY DIAZ, Appellant, v. STATE OF FLORIDA, Appellee. 2nd District. Case No. 2D00-3542. Opinion filed November 14, 2001. Appeal from the Circuit Court for Hillsborough County, Cynthia A. Holloway, Judge. Counsel: James Marion Moorman, Public Defender, Bartow, and Carol J. Y. Wilson, Assistant Public Defender, Bartow, for Appellant. Robert A. Butterworth, Attorney General, Tallahassee, and Susan D. Dunlevy, Assistant Attorney General, Tampa, for Appellee.

(DAVIS, Judge.) Johnny Diaz challenges his conviction and sentence for felony driving with a suspended license. He argues that the trial court erred in denying his motion to suppress the identification evidence he provided the police when stopped. We agree and reverse.

A Hillsborough County Deputy Sheriff observed a vehicle driven by Diaz pass by with a temporary tag on the top of the rear window. Because he could not read the tag, the deputy initiated a traffic stop. At the suppression hearing, the deputy testified that as he approached the car he could clearly read the tag including the expiration date and found nothing improper. He walked up to the driver's side of the car and obtained information from Diaz, the driver, which ultimately led to the charge against Diaz of felony driving with a suspended license.

These facts are almost identical to those in *Palmer v. State*, 753 So. 2d 679 (Fla. 2d DCA 2000), in which this court determined that once the officer found the temporary tag to be proper, no further stop or inquiry was justified. The court there stated: ``However, once Deputy Harris determined that Palmer's license tag had not expired, the justification for the stop ended, and Palmer should have been free to leave. Palmer's continued detention after the justification for the stop ended was illegal." *Id.* at 680. Accordingly, we reverse Diaz's conviction.

However, because the Fourth District in *State v. Wikso*, 738 So. 2d 390 (Fla. 4th DCA 1999), and the Fifth District in *State v. Bass*, 609 So. 2d 151 (Fla. 5th DCA 1992), appear to have reached a conclusion contrary to our decision in *Palmer*, we also certify conflict with *Bass* and *Wikso*.

Reversed. (PARKER, A.C.J., and SALCINES, J., Concur.)

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