IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, **CASE NO. SC03-1528**

Petitioner, **LT Case No. 4D02-1875**

v.

ANTHONY FRIERSON,

Respondent.

****

ON DISCRETIONARY REVIEW FROM THE FOURTH DISTRICT COURT OF APPEAL

****

PETITIONER'S INITIAL BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Cited **Page Number**

Florida Statutes Cited

PRELIMINARY STATEMENT

Petitioner, State of Florida, was the prosecution in the trial court and Appellant the Fourth District Court of Appeal. Petitioner will be referred to herein as “the Petitioner” of “State”. Respondent, Anthony Frierson, was the defendant in the trial court and Appellant in the Fourth District Court of Appeal. Respondent will be referred to as “the Respondent” or “Frierson”.

The following symbols will be used:

R = Record on Appeal

T = Transcript of Trial Court Proceedings

STATEMENT OF THE CASE AND FACTS

The Respondent was charged, by information, with Felon in Possession of a Firearm (R 9). He filed a motion to suppress evidence (R 28-33) and a supplemental motion to suppress (R 48-53); several evidentiary hearings were held on the motions and the trial court - - in a written order - - denied the Respondent's motion to suppress[1] (R 81-91). The Respondent then filed a motion for reconsideration (R 92-95), which was denied by the trial court (R 96-98). Thereafter, the Respondent pled "nolo contendere" to the offense, reserving his right to appeal the order of the trial court (R 103-105; T 243-265, plea hearing). The trial court specifically found that the motion was dispositive (T 263), adjudicated the Respondent guilty and sentenced him to 3 years in the Department of Corrections, staying imposition of the sentence pending appeal (R 99-101; T 257-263). The Respondent appealed and the Fourth District Court of Appeal ("Fourth District") found that the trial court should have granted the motion to suppress and reversed the Respondent's conviction and sentence. Frierson v. State, 851 So. 2d 293 (Fla. 4th DCA 2003). Conflict with State v. Foust, 262 So. 2d 686 (Fla. 3d DCA 1972) was certified. Frierson at 300.

[1] The trial court originally granted the Respondent's motion (R 75-78), but then vacated that order upon the State's motion for reconsideration (R 80).

In its opinion, the Fourth District set forth the findings of fact made by the trial court after the evidentiary hearings:

> [O]n July 8, 2001, the defendant was driving an automobile at the intersection of Old Dixie Highway and Northlake Boulevard in Lake Park, Florida. The vehicle in which the defendant was riding was stopped at a traffic light facing north on Old Dixie Highway. Officer Steven Miller was stopped behind the defendant's vehicle. Upon the traffic light turning green, the defendant made a left hand turn onto Northlake Boulevard. Officer Miller testified that the defendant did not use a left turn signal prior to or during the left hand turn. Officer Miller also testified that neither he nor the drivers of other vehicles were affected by the defendant's failure to use a turn signal while making that turn. The officer's testimony also indicated that he observed a white light emanating from a crack in the plastic lens covering the tail light of the left rear of the defendant's vehicle. Officer Miller acknowledged that the plastic lens was cracked, but that the light was operating.
>
> Because the defendant failed to use a turn signal in making his left hand turn and because white light was emanating from a crack in the plastic lens covering the taillight, Officer Miller effected a traffic stop of the defendant's vehicle. Upon being stopped by Officer Miller, the defendant provided the officer with identification. Officer Miller ran a check on the defendant, and learned that there was an outstanding warrant for the defendant's arrest for failure to appear in another proceeding. As a result of the outstanding warrant, the defendant was arrested. A search incident

> to the defendant's arrest revealed the firearm which formed the basis of the charge against him in this case. A subsequent investigation determined that the warrant which provided the basis for the defendant's arrest was issued due to another person's failure to appear. Someone other than the defendant was issued a notice to appear in the other case and wrongfully gave the issuing officer the defendant's name and date of birth. A fingerprint was taken of the individual to whom the notice to appear was issued. It is undisputed the print taken did not match that of the defendant's.

Frierson at 295-295.

The trial court found that based on this Court's decisions in Doctor v. State, 596 So. 2d 442 (Fla. 1992), and State v. Riley, 638 So. 2d 507 (Fla. 1994), that the traffic stop was illegal (R 82-84). However, the court, citing Foust, in addition to Wong Sung v. United States, 371 U.S. 471 (1963), and United States v. Green, 111 F. 3d 515 (7th Cir. 1997), found that "the fact that the defendant was illegally stopped by the arresting officer does not require suppression of the seized evidence because of the outstanding warrant for the defendant's arrest" (R 87). The trial court also found that even though the warrant was issued as a result of a person falsely providing the Respondent's name, "the arresting officer acted in good faith in acting upon the outstanding warrant for the defendant's arrest" (R 91). The trial court concluded that the evidence should not

be excluded since the warrant, albeit erroneous, " . . . was not issued through police misconduct or negligence"; "[r]ather it was through the wrongful actions of a private citizen" (R 91).

The Fourth District, in the instant decision, agreed with the trial court that the stop was without legal basis, adopting the trial court's reasoning that Doctor and Riley - - with "nearly identical" facts - - necessitated that conclusion. Frierson at 295-296. The Fourth District also agreed with the trial court that the arresting officer justifiably relied on the outstanding, but erroneously issued, warrant in arresting the Respondent. Id. at 297-299. However, the Fourth District disagreed with the trial court that the existence of the outstanding warrant attenuated the illegality of the traffic stop, and found "that the trial judge should have granted the motion to suppress the firearm because the initial traffic stop was not supported by reasonable cause." Id. at 300.

SUMMARY ARGUMENT

Point I. The trial court and the Fourth District incorrectly concluded that the stop of the Respondent was without lawful basis. Officer Miller had reasonable cause to believe that the Respondent's turn signal was broken based on the Respondent's failure to use the signal and visible damage to the lens on the taillight. Miller was authorized to stop the Respondent pursuant to section 316.610 in order to submit the vehicle to an inspection. Additionally, the Respondent was in violation of section 316.234(1) since a white - - rather than a red or amber - - light emanated from the brake lights of his vehicle.

This Court's decision in Doctor is clearly distinguishable and was misapplied by the lower courts. In Doctor, law enforcement did not have a basis to stop the defendant because a traffic violation was not observed. However, in the instant case, Officer Miller observed a traffic violation and had reasonable cause to believe that the Respondent's turn signal was not in proper repair as required by law.

Point II. Even assuming the traffic stop was without lawful basis, the Respondent's motion to suppress was properly denied by the trial court. Officer Miller relied in good faith on the outstanding warrant for the Respondent's arrest. The warrant

was issued as a result of the misconduct of a private citizen, not through the error of law enforcement. Furthermore, the trial court properly found that the existence of this warrant attenuated the taint of the arguably illegal stop of the Respondent and the Fourth District erred in reversing the order of the trial court.

Conflict should be resolved in favor of Foust. The trial court and the special concurrence in Frierson correctly recognize that there is no "but for" test for suppression of evidence seized as a result of an unlawful stop. Rather, the issue is whether there is an intervening event - - such as an outstanding warrant - - which attenuates the taint of the illegal stop. An application of the factors outlined in the Green decision favors the admission of the firearm which was seized from the Respondent as a result of his arrest on the outstanding warrant. The decision of the Fourth District should therefore be reversed.

ARGUMENT

Point I

THE TRIAL COURT AND THE FOURTH DISTRICT INCORRECTLY CONCLUDED THAT THE TRAFFIC STOP WAS WITHOUT A LAWFUL BASIS; DOCTOR WAS MISAPPLIED BY THE LOWER COURTS

The Petitioner respectfully submits that the conclusions reached by the trial court and the Fourth District that the traffic stop in the instant case was without a legal basis was incorrect. The trial court made the correct factual conclusion that Officer Miller stopped the Respondent's car because the Respondent "did not use a left turn signal prior to or during the left hand turn" and that the officer "observed a white light emanating from the crack in the plastic lens covering the tail light of the left rear of the [Respondent's] vehicle." Frierson at 294. These are valid reasons to stop a motorist in Florida. "Any police officer may at any time, upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, require the driver to stop and submit the vehicle to an inspection . . ." Section 316.610(1), Florida Statutes. Based upon the Respondent's failure to use a turn signal, combined with obvious damage to the tail light, Officer Miller had reasonable cause to believe that the turn signal was not in

proper repair.

In Florida, an officer may make a traffic stop for inoperable tail lights and damaged equipment. See, State v. Snead, 707 So. 2d 769 (Fla. 2d DCA 1998)(officer has probable cause to stop based on improper or unsafe equipment, namely, an inoperable tail light); Scott v. State, 710 So. 2d 1378 (Fla. 5th DCA 1998)(officer has probable cause to stop for inoperable turn signal even if defendant testifies that the turn signal was working); Smith v. State, 735 So. 2d 570 (Fla. 2d DCA 1999)(a cracked windshield may justify a traffic stop).

The Petitioner respectfully submits that the trial court, as well as the Fourth District, incorrectly applied this Court's decision in Doctor in concluding that the traffic stop in the instant case was without lawful basis. In Doctor, this Court concluded that the stop was illegal; the state troopers in that case stopped Doctor's car because of defective taillights and relied on section 316.610, Florida Statutes. This Court found that this section, in that particular case, must be read in conjunction with section 316.221(1) which specifies that every motor vehicle shall be equipped with at least two taillamps mounted on the rear, which, when lighted, emit a red light plainly visible. In that case:

> The evidence at trial revealed that

> Doctor's vehicle was equipped with two sets of rear lights consisting of a signal light on the outside of the light bank, then a brake light, then a reverse light, and finally a lens cover, or reflector. (FN3) **It was the reflector that was cracked, rather than one of the lights.** Trooper Burroughs confirmed that the vehicle had taillights shining on each side of the rear of the vehicle, despite the cracked lens cover, at the time of the stop. Thus, as Trooper Burroughs conceded, the vehicle had "at least two taillamps" in working order when it was pulled and was not in violation of the law.

Id. at 446-447 (emphasis added). In the footnote, this Court observed that the cracked reflector "was not designed to cover a lighting apparatus, but was merely a reflector to reflect rather than emit light." This Court concluded that a "reasonable officer would have known the statutory requirements for taillights" and that Doctor's vehicle "was in compliance with the law since red taillights were visible on both ends of the vehicle." Id. at 447. Consequently, there was no valid basis for the traffic stop. Id.

However, in the instant case, there was a "crack in the plastic lens covering the tail light of the left rear of the defendant's vehicle", and "white light was emanating from this crack." Frierson at 294. Unlike Doctor, this lens was designed to cover a light; it was not "merely a reflector". Doctor at 447. In the instant case, it was the combination of the cracked

left taillight and the Respondent's failure to use his left hand turn signal which caused Officer Miller to stop him. Frierson at 294.

> Q: . . . Now what did you observe that basically struck your eye?
>
> A: . . . I was behind the vehicle and noticed that the equipment in the back, the brake light area, the taillight area was damaged. And also that he was making a left hand turn to turn on to Northlake Boulevard. There was no signal.
>
> Q: . . . Could you be a little more specific as to how the turn signal was damaged?
>
> A: Well, I don't know if the signal was actually damaged or if he failed to put it on, but there was no signal activated when he took the turn.
>
> Q: But was there something wrong with the light itself?
>
> A: The lenses were all cracked up in the back.
>
> Q: What do you mean, the lenses; you mean the red glass that covers the light?
>
> A: Yes.
>
> Q: The turn signal?
>
> A: Yes, sir. It was on the left-hand side of the vehicle.
>
> Q: . . . So was it removed completely, was it cracked or was it - -
>
> A: They weren't removed completely, they were just damaged. I don't know if it was

> weather or just from a accident or whatnot, but whatever the case was, that's the reason why I stopped the vehicle to inquire about it.

(T 12-14; Direct Examination of Officer Miller). Therefore, it was the combination of the lack of use of the turn signal (albeit not legally required) and the visible damage to the turn signal lens which gave Miller reasonable cause to believe that the Respondent's vehicle had equipment which was not in proper adjustment or repair and could be stopped for inspection pursuant to section 316.610(1). Furthermore, turn signals are required by sections 316.222(2) and 316.234(2), Florida Statutes.

The record also establishes that there was a white light emanating from the vehicle's brake lights in violation of section 316.234(1), Florida Statutes, which requires that stop lamps in the rear of the vehicle shall display a red or amber light:

> Q: Were you able to tell whether Mr. Frierson was going to continue straight or was going to turn left?
>
> A: I could not.
>
> Q: Why could you not tell that?
>
> A: There was no turn signal on his vehicle.
>
> * * *

Q: All right. Can you describe the rear of the vehicle where the left turn signal is located on Mr. Frierson's vehicle, the condition it was when this was taking place to His Honor?

A: It is of a square, elongated box set of lights and it stops by the licence plate and continues to the other side. The actual tail light section, brake light section and then reverse lights section which would be white and then the red color.

Q: So you are saying there is a red color lens?

A: Correct.

Q: Now, was there in fact a red colored lens cover - - that section on Mr. Frierson's vehicle?

A: Yes, but it wasn't complete. There was a white light illuminating from stepping on the brakes, there was white light illuminating the brake lights more which should be red.

Q: So the left side of Mr. Frierson's vehicle there was no red light illuminating from that taillight section?

A: That is correct. It was daytime so the taillights weren't on but when you step on the brakes the brake light comes on, **there is a white light illuminating from that area which should have been red.**

Q: There is a red light on the other side of the vehicle?

A: Yes, there was.

* * *

> Q: And could you tell His Honor what was the basis of the traffic stop?
>
> A: For both of the reasons I just said because of the signal and because of the fact that that white light was illuminating as opposed to the red light.

(T 115-118)(Direct Examination of Officer Miller)(emphasis added). Clearly, the Respondent was in violation of section 316.234(1), Florida Statutes, which requires that vehicles "shall be equipped with a stop lamp or lamps in the rear of the vehicle which shall display a red or amber light . . ." Since the Respondent's car emitted a white - - rather than a red or amber - - light from his brake lights, he was in actual violation of the traffic laws. Consequently, Doctor cannot control, and the lower courts erred in their reliance on that decision.

The lower courts also relied on this Court's decision in State v. Riley, 638 So. 2d 507 (Fla. 1994). However, Riley holds that the use of turn signal is only required whenever other vehicles may be affected by the turn. Id. at 508. Although the Respondent may not have been legally required to use his turn signal in this case, his lack of the use of a turn signal in a situation where a signal would normally be used, taken in combination to the visible damage to the taillights, gave Officer Miller reasonable cause to believe that the

Respondent's turn signal was inoperable. Therefore, Riley is clearly not controlling.

In the instant case, Officer Miller had reasonable cause to stop the Respondent based on the Respondent's failure to use a turn signal coupled with the fact that the rear lights of the Respondent's vehicle were obviously damaged. These facts gave Officer Miller reasonable cause to believe that the Respondent's vehicle was not in proper repair. Furthermore, the white light which emanated from the Respondent's brake lights was a clear violation of section 316.234(1), Florida Statutes. Unlike Doctor, the Respondent was in violation of Florida traffic laws. Consequently, Doctor was misapplied in the instant case. The decision of the Fourth District holding that the stop of the Respondent was without legal basis should therefore be reversed.

Point II

EVEN ASSUMING THE STOP OF THE RESPONDENT WAS WITHOUT LEGAL BASIS, THE RESPONDENT WAS PROPERLY ARRESTED ON THE OUTSTANDING WARRANT AND IT WAS ERROR TO SUPPRESS THE FIREARM DISCOVERED AS A RESULT OF A SEARCH INCIDENT TO THE ARREST; CONFLICT SHOULD BE RESOLVED IN FAVOR OF FOUST

In the instant case, the Fourth District correctly found that Officer Miller justifiably relied on the outstanding warrant in arresting the Respondent - - notwithstanding the fact

that the warrant was issued because another person gave the Respondent's name as his own. Frierson at 297. The record established that the person who was previously stopped did not have a driver's license and gave the Respondent's name, address, and date of birth as his own. Id. A computer check at the time revealed that this information matched the information on the Respondent's driver's license record and that the Respondent's license was currently suspended. Id. This person was issued a uniform traffic citation and notice to appear and a thumbprint was taken; when this person failed to appear for court, an arrest warrant was issued for the Respondent. Id.

The trial court and the Fourth District cited the Supreme Court of the United State's decisions in United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405 (1984), and Arizona v. Evans, 514 U.S. 1, 115 S. Ct. 1185 (1995), in concluding that:

> When one applies the factors considered by the [United States Supreme] Court in Leon and Evans, it is clear that the good faith exception should apply in the instant case . . . the exclusionary rule was designed to deter police misconduct. Any misconduct in the present case stemmed from the actions of a private citizen, not the actions of individuals or entities associated with the state. Excluding the evidence in the present case will not have a deterrent effect on private citizens who falsely identify themselves to the police. Nor could the threat of exclusion of the evidence under these facts be expected to

> deter private individuals from continuing to provide false information upon encounters with the police.

Frierson at 298-299. This holding is correct and should be affirmed. However, the Fourth District held that suppression of the firearm was required under Kimbrough v. State, 539 So. 2d 619 (Fla. 4th DCA 1989), Solino v. State, 763 So. 2d 1249 (Fla. 4th DCA 2000), and Rollins v. State, 578 So. 2d 850 (Fla. 2d DCA 1991). Frierson at 300. It is the Respondent's position, that these cases are either distinguishable, or incorrectly decided, and should not have lead to a reversal of the trial court's order denying the Respondent's motion to suppress.

In Kimbrough, unlike the instant case, there was no "founded suspicion" to stop the defendant; he was merely sitting in a car which was legally parked and was stopped for no apparent reason. Id. Likewise, in Solino, the defendant was stopped based upon a statement from an "unidentified motorist" that a beer bottle had been thrown from a vehicle matching the description of the vehicle in which Solino was driving with three friends; the court concluded that "there was not sufficient basis to establish a reasonable suspicion for [law enforcement] to make an investigatory stop" and "[s]ince the investigatory stop was unlawful, the information obtained by [law enforcement] that led to the arrest was 'fruit of the poisonous tree' and should have

been suppressed." Id. at 1252.

In contrast to Solino, the officer in the instant case actually observed the traffic violation which gave rise to the stop; the stop was not based on information provided by an anonymous motorist. Moreover, although the Solino court cited Wong Sun v. United States, 371 U.S. 471, 83 S. Ct. 407 (1963), that decision actually favors the admission of the firearm in the instant case:

> We need not hold that all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is 'whether granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'

83 S. Ct. at 417. Here, the trial court properly found that the existence of the outstanding warrant cured, or purged, the taint of the illegal stop (R 85). The trial court specifically concluded that Solino was distinguishable since it did not address the existence of an outstanding warrant (R 97). The trial court also found that if Solino were binding it would lead to absurd results and offered two compelling hypothetical situations. In the first situation, a police officer illegally stops a vehicle and learns that the driver has an outstanding

warrant. Before the driver is arrested, the officer discovers that the original stop was illegal. Under the Respondent's interpretation of Solino, the officer must release the driver and then later re-arrest him under circumstances unrelated to the illegal stop (R 97-98). In the second scenario, an arresting officer illegally stops the driver of a vehicle and again learns that there is a warrant for the driver's arrest; the driver is so advised and then shoots (and wounds) the officer and escapes. Under the Respondent's interpretation of Solino, the officer's testimony concerning the shooting would have to be suppressed (R 98).

The trial court properly rejected the Respondent's interpretation of Solino as well as the Respondent's argument that the existence of the outstanding warrant could not purge the taint of an illegal stop. In addition to Wong Sun, the trial court relied upon United States v. Green, 111 F. 3d 515 (7th Cir. 1997) (R 85-86). In Green, which is cited with approval in the special concurrence in the instant case, law enforcement officers approached a car in which Green was a passenger and obtained his identification. Within a few minutes, the officers were informed that there was a outstanding warrant for the defendant and they placed him under arrest; a search incident to the arrest lead to the discovery of a gun in

a gym bag under the passenger's seat. 111 F. 3d at 517. The appeals court, in affirming the district court's denial of the defendant's motion to suppress, rejected Green's argument that his illegal stop required suppression of the evidence which was discovered incident to the arrest, and held that:

> Evidence may be "sufficiently distinguishable to be purged of the primary taint' if 'the causal connection between [the] illegal police conduct and the procurement of [the] evidence is 'so attenuated as dissipate the taint' of the illegal action.'"
>
> * * *
>
> It would be startling to suggest that because the police illegally stopped an automobile, they cannot arrest an occupant who is found to be wanted on a warrant - - in a sense requiring an official call of "Olly, Olly, Oxen Free." Because the arrest is lawful, a search incident to the arrest is also lawful. The lawful arrest of [the defendant] constituted an intervening circumstance sufficient to dissipate any taint caused by the illegal automobile stop.
>
> * * *
>
> Where a lawful arrest pursuant to a warrant constitutes the "intervening circumstance" (as in this case), it is an even more compelling case for the conclusion that the taint of the original illegality is dissipated.

Id. at 521-522. Based upon this decision, as well as on State v. Foust, 262 So. 2d 686 (Fla. 3d DCA 1972) and Wigfall v. State,

323 So. 2d 587 (Fla. 3d DCA 1975), the trial court correctly concluded that the arguably illegal stop did not require suppression of the evidence (R 85-87). In Foust, the Court found that although there was no probable cause to stop the defendant, the defendant was properly arrested when it was subsequently discovered that there was a warrant for his arrest. The Court reversed the trial court's granting of Foust's motion to suppress evidence which was revealed in a search incident to the arrest. Id. at 187-188.

The Wigfall Court reached a similar conclusion; in affirming the trial court's denial of the defendant's motion to suppress, the court held "that the arrest of [Wigfall] was valid under the outstanding bench warrant . . . It is also our view that the reasonableness of the search and seizure after arrest was not affected by the fact that the original stopping of [Wigfall] may have been without probable cause." Id. at 589-590 (internal citation omitted).

The Fourth District has certified conflict with Foust. Frierson at 300. The Petitioner respectfully submits that this conflict must be resolved in favor of Foust in order to avoid the absurd results described in the order of the trial court.

In Rollins, the Second District cited the Fourth District's decision in Kimbrough and reversed the decision of the trial

court denying the defendant's motion to suppress. The Rollins court held that the trial court should have determined whether the arresting officer had a reasonable belief that he observed a traffic violation before stopping the vehicle in which the defendant was a passenger. Id. at 851. Rollins was found to have an outstanding warrant for his arrest and drug paraphernalia was discovered in a search of the vehicle incident to his arrest. Id. The Rollins court did not consider the effect of Wong Sun in reaching its conclusion that an intervening valid arrest could not remove the taint of an invalid stop. Like Solino, a strict adherence to this holding leads to the untenable results discussed in the order of the trial court.

The Petitioner would request that this Court accept the reasoning of the special concurrence in the instant case. If not for the decisions in Kimbrough and Solino, the Court "would affirm the ruling of the trial court that 'the existence of a valid outstanding warrant discovered in the course of an illegal traffic stop' sufficiently attenuated the connection between the illegal stop and the search incident to the arrest so as to render the firearm found during the search admissible in evidence." Frierson at 300-301 (Gross, J., concurring specially). Rather that exclude all evidence discovered as a

result of an illegal stop, "[a] court may admit evidence that would not have been uncovered but for police misconduct if the causal connection between the illegal conduct and the discovery of the evidence is sufficiently attenuated." Id. at 301. "In Wong Sun, the Supreme Court indicated that the proper inquiry is whether the evidence was obtained through exploitation of the initial constitutional violation or by other means sufficiently attenuated from the primary illegality so as to purge the evidence of its taint." Id. Judge Gross noted that in Brown v. Illinois, 422 U.S. 590, 603-04, 95 S. Ct. 2254 (1975), "the [United States] Supreme Court set forth three factors for determining whether the causal chain has been sufficiently attenuated to dissipate the taint of the illegal conduct: (1) the time elapsed between the illegality and the acquisition of the evidence; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct." Frierson at 301. Judge Gross also noted that the Green decision applied the principles of Wong Sun and Brown and that Green recognized that the United States Supreme Court "did not establish a 'but for' test that would render inadmissible any evidence that comes to light after an illegal stop." Frierson at 301. Rather, an intervening circumstance (such as the existence of an outstanding warrant) may dissipate the taint of illegal

stop absent evidence of bad faith on the part of law enforcement. Id.

The application of the principles of Wong Sun, Brown, and Green to the instant case clearly favors the admission of the firearm seized incident to the Respondent's arrest, since:

> There is no indication of bad faith on the part of Officer Miller in this case. A finding of no reasonable suspicion to make a traffic stop requires a close reading of the traffic statutes and applicable case law. It is not unusual to find police officers who are unable, on the street, to parse the nuances of statutes with the precision of trained jurists. The officer did not "exploit the stop in order to search the automobile." Green, 111 F. 3d at 523. The search came only after the officer learned of the outstanding warrant. But for Kimbrough, Solino, and Rollins, I would follow Green and its progeny and find the intervening circumstances in this case dissipated any taint of the evidence that arose from the illegal stop of the vehicle.

Frierson. Even assuming that the initial stop was without a lawful basis (contrary to the Petitioner's position in issue 1), the firearm was discovered as a result of the outstanding warrant, not as a result of police misconduct. An adoption of the reasoning of the trial court and of the specially concurring opinion in this case avoids the untenable results described in the order of the trial court if the Respondent's interpretation of Solino, Kimbrough, and Rollins is accepted. Conflict should

be resolved in favor of Foust and the decision of the Fourth District should accordingly be reversed.

CONCLUSION

WHEREFORE based on the foregoing arguments and authorities cited herein, the Respondent respectfully requests this Honorable Court reverse the decision of the lower court and resolve conflict in favor of Foust.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of hereof has been furnished by U.S. mail to: Marcy K. Allen, Assistant Public Defender, 421 Third Street, West Palm Beach, FL 33401, on this ____day of _____, 2003.

_____
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Assistant Attorney General
Bureau Chief

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DANIEL P. HYNDMAN
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared with Courier New 12 point type and complies with the font requirements of Rule 9.210.

_____
Of Counsel