IN THE SUPREME COURT OF FLORIDA

LORENZO GOLPHIN,

Petitioner,

v. CASE NO.: SC03-554

STATE OF FLORIDA, DCA case no.: 5D02-1848

Respondent.

_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON THE MERITS

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STATEMENT OF CASE AND FACTS

The State offers the following facts in support of its brief:

Officer Deschamps and Officer Doemer were driving in their patrol car when they saw a group of people gathered on the sidewalk. (R 5, 24-25). Officer Doemer testified that initially there were more than four people there as the officers drove past and that the officers turned the car around and parked. (R 24-25). Officer Deschamps who was driving testified that she parked across the street. (R 73).

As the officers approached the group, a couple of them left with no interference from the officers. (R 5). Officer Deschamps testified as follows:

> Q. Explain to the court how when you stopped the car and got out you approached the individuals.
>
> A. If I could say I guess nonchalantly, Guys, what's up? What are you doing? Well, there's an apartment complex right on the corner of Taylor and Ridgewood, and a couple of guys came out from underneath. There's a little alleyway. A couple of guys walked from there. We asked them if they lived there. Nobody lived there, and we asked for ID.
>
> Q. Was the defendant one of those individuals?
>
> Q. Yes, sir.

(R 6-7). Officer Doemer who had the majority of the contact

with Petitioner also stated that the officers asked if anyone was visiting anyone at the apartments and no one was. (R 40).

Officer Doemer asked Petitioner for his identification which she stated he freely gave upon her initial request. (R 27, 45). Officer Doemer stated several times that Petitioner was free to ignore her request but did not. (R 45, 48-49). She then ran a computer check on Petitioner. (R 27). She testified that while waiting for the background check she talked to Petitioner. (R 27-28, 50-51). Officer Doemer described Petitioner as very polite and cooperative stating that Petitioner was joking around with her while they talked. (R 28). While Officer Doemer was running the identification through the teletype, Petitioner told her he had a history of arrests including one for aggravated battery with permanent disfigurement and said that "...he probably had something open...an open warrant." (R 27).

There was an open warrant found, the officers got Petitioner's social security number to verify that the warrant information was correct, then they arrested Petitioner. (R 29-30). He was searched incident to the arrest, and items were seized which led to Petitioner being charged with unlawful possession of a controlled substance (cocaine) and possession of drug paraphernalia. (R 104).

The defense filed a motion to suppress at which the two officers and Petitioner testified. (R 1-101). The defense's position at the hearing was that as soon as Petitioner voluntarily produced his identification the encounter became a stop. (R 77-79). Interestingly, defense counsel also argued that because Petitioner had been "trained to submit to authority" the encounter was elevated to a stop. (R 79). Upon being asked if it was a subjective analysis, defense counsel admitted it was not. (R 86). Controlling case law was discussed in detail by the court, the defense and the prosecutor.[1] Near the end of the suppression hearing, the judge said he had a credibility issue with Petitioner's version of events. (R 80-86, 95). The trial court judge summarized part of his holding by stating:

> And the question here is under the totality of the circumstances was there a show of police authority to the extent

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[1] Primarily discussed was the case Baez v. State, 814 So. 2d 1149 (Fla. 4th DCA 2002), which at that time had not been reviewed by this Court (quashed and remanded, State v. Baez, 29 Fla. L. Weekly S663 (Fla. Nov. 10, 2004)) and Lightbourne v. State, 438 So. 2d 380 (Fla. 1983).

> that a reasonable person would not feel free to not engage the police officers and basically turn around and walk away. And the Court finds that that is not the case.
>
> The Court does not find a – based upon the totality of the circumstances a show of police authority that would cause a reasonable person to believe that he was not free to walk away. And in fact the credible testimony is that this was a casual encounter where casual conversation occurred, I.D. was produced, a warrants check run, warrant came back, defendant arrested, and a search incident to arrest occurring.
>
> ...
>
> So the long and short of all this is I find this to be a consensual encounter and find that the motion to suppress should be denied. ...

(R 97).

Petitioner pled no contest and reserved the right to appeal the denial of his motion to suppress. (R 144). The Fifth District Court of Appeal affirmed the trial court's ruling and certified conflict with Baez.

SUMMARY OF ARGUMENT

The issue before this Court is whether a consensual encounter between law enforcement and a person is elevated to a seizure when the person voluntarily provides identification upon the officer's request and a computer check is run on that identification. It is the State's position that the facts of

this cases show a consensual citizen encounter with law enforcement.

ARGUMENT

POINT OF LAW

WHETHER A CONSENSUAL ENCOUNTER BETWEEN LAW ENFORCEMENT AND A PERSON IS ELEVATED TO A SEIZURE WHEN THE PERSON VOLUNTARILY PROVIDES IDENTIFICATION UPON THE OFFICER'S REQUEST AND A COMPUTER CHECK IS RUN ON THAT IDENTIFICATION.

Petitioner's position seems to be that routine encounters with law enforcement are restricted by the Fourth Amendment. Additionally, Petitioner submits that asking someone for his identification during a consensual encounter elevates the exchange to a stop and seizure requiring a reasonable suspicion. The State disagrees with both of these points.

However, before addressing the merits of Petitioner's claim, the State would submit to this Court that jurisdiction no longer should exists in this Court. The Fifth District Court expressly recognized conflict with Baez v. State, 814 So. 2d 1149 (Fla. 4th DCA 2002). It was based upon this conflict that Petitioner invoked this Court's jurisdiction, but this Court recently quashed the opinion from the Fourth District Court of Appeal. State v. Baez, 29 Fla. L. Weekly S663 (Fla. Nov. 10, 2004). On January 5, 2005, the motion for rehearing was denied, and mandate is scheduled to be issued on January 21, 2005.

Therefore, given that there is no longer conflict between the opinions, it is the State's position that this Court should find that no jurisdiction exists.

If this Court finds it still does have jurisdiction, this is a review of a motion to suppress. This Court has clearly set out that a trial court's ruling on a motion to suppress comes to the appellate court clothed with a presumption of correctness, and the reviewing court must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling. See Pagan v. State, 830 So. 2d 792, 806 (Fla. 2002). The reviewing court is bound by the trial court's factual findings if they are supported by competent, substantial evidence. Id. However, a trial court's determination of the legal issue of probable cause is subject to the *de novo* standard of review. See Ornelas v. United States, 517 U.S. 690 (1996); Connor v. State, 803 So. 2d 598 (Fla. 2001).

The trial court expressly found in this case that the evidence showed that the encounter was consensual. Specifically, at the conclusion of the hearing, the trial court summarized its findings:

> And the question here is under the totality of the circumstances was there a show of police authority to the extent that a reasonable person would not feel

> free to not engage the police officers and basically turn around and walk away. And the Court finds that that is not the case.
>
> The Court does not find a – based upon the totality of the circumstances a show of police authority that would cause a reasonable person to believe that he was not free to walk away. And in fact the credible testimony is that this was a casual encounter where casual conversation occurred, I.D. was produced, a warrants check run, warrant came back, defendant arrested, and a search incident to arrest occurring.
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> ...
>
> So the long and short of all this is **I find this to be a consensual encounter** and find that the motion to suppress should be denied. ...

(R 97) (emphasis added).

Case law holds that an officer does not violate the Fourth Amendment by approaching a person on the street and asking questions or even asking for identification. Terry v. Ohio, 392 U.S. 1, 31-33 (1968).[2] Id. at 31-33. The Court wrote that "there is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets." Id. at 34.

The United States Supreme Court also has held that a person is seized only when physical force or a show of authority restricts his freedom of movement. See U.S. v. Mendenhall, 446

[2]By reason of the 1982 amendment to article I, section 12 of the Florida Constitution, this Court is bound to follow United States Supreme Court precedent on the Fourth Amendment. Bernie

U.S. 544 (1980). In Mendenhall, the Court held that a defendant was not seized when the officers, based on a profile, encountered the defendant on a concourse, asked to look at her license and ticket, and upon returning these items, asked the defendant to accompany them to an office upstairs in the airport where they asked for permission to search her person. The Court wrote

> [A]s long as the person to whom questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person's liberty or privacy as would under the Constitution require some particularized and objective justification.
>
> Moreover, characterizing every street encounter between a citizen and the police as a 'seizure,' while not enhancing any interest secured by the Fourth Amendment, would impose wholly unrealistic restrictions upon a wise variety of legitimate law enforcement practices. The Court has on other occasions referred to the acknowledged need for police questioning as a tool in effective enforcement of the criminal laws. 'Without such investigation, those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved. In short, the security of all would be diminished.

Id. at 554.

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v. State, 524 So. 2d 988 (Fla. 1988).

Clearly, the officers[3] could approach Petitioner and ask him questions without any constitutional violation occurring. The officers stated that everyone was free to leave, and in fact, some did upon the officers approach without being stopped or hindered. (R 5). The testimony was that the encounter involved "casual conversation" between the officers and those there. Petitioner was described as "very polite" and "very cooperative." (R 28). While Petitioner seems to attempt to characterize the encounter as a non-consensual stop at its inception, there are no facts to support such a claim.[4] In fact, there is no evidence of any facts occurring during this encounter which would induce a reasonable person to believe he was not free to leave or that he was confined. Therefore, the question becomes whether the officer asking Petitioner for his identification and running a background check on that

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[3]Interestingly, it is written in the initial brief that three officers with a police dog confronted Petitioner; however, such facts are not found in the record portions cited. Instead, Officer Doemer testified that a third officer - Officer Eisen - arrived after she had approached Petitioner and perhaps even after the open warrant was discovered. (R 29-30).

[4]Petitioner submits that the United States Supreme Court has held that "the authority of the police to stop pedestrians and 'request' identification is limited to the context of a legitimate Terry stop." (Initial brief at pp. 11-12). Petitioner cites the syllabus in Hiibel v. Sixth Judicial District Court of Nevada, 124 S. Ct. 2451, at 2453 (2004), for this position. Later in the initial brief, Petitioner takes express exception to this Court's rulings in State v. Baez, 29 Fla. L. Weekly S663 (Fla. Nov. 10, 2004); and Lightbourne v.

information somehow enhances the encounter to a stop.

The United States Supreme Court has held that "[I]nterrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure." I.N.S. v. Delgado, 466 U.S. 210, 216 (1984). In fact, the Court found that I.N.S. agents could individually approach workers in a factory and ask for proof of residency and citizenship without implicating the Fourth Amendment even though factory workers would have to walk away from the inspecting officers and past two more officers standing at the door of the factory in order to leave. Id. at 217-218.

Delgado was followed in Florida v. Bostick, 501 U.S. 429 (1991), in which the Court rejected a *per se* rule finding a stop under facts where police approached an individual on a bus who they have no suspicion of having committed a crime, asked him questions, asked to examine his identification, and asked to search his luggage. Such conduct would be legal so long as mandatory compliance with these requests was not conveyed to a reasonable person by the officers' actions.

This Court in Lightbourne v. State, 438 So. 2d 380 (Fla. 1983), upheld the checking of the defendant's license as not in violation of the Fourth Amendment, even though it was not

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State, 438 So. 2d 380 (Fla. 1983). (Initial brief at page 16).

contended that the officer had reasonable suspicion to believe an offense had been committed. This Court wrote:

> Officer McGowan simply approached the parked car, asked defendant a few simple questions as the reason for his presence there, his current address, and then ran a routine check on defendant's car and identification. Surely the average, reasonable person, under similar circumstances, would not find the officer's actions unduly harsh. There is nothing in the record that would indicate that prior to defendant voluntarily relinquishing his driver's license to Officer McGowan he was not free to express an alternative wish to go on his way.

438 So. 2d at 387-388. (emphasis supplied).

Of course, such facts are very similar to those in the instant case. Officers approached Petitioner, asked him if he lived there or was visiting friends, and then asked for any identification. The facts support and the trial court found that Petitioner voluntarily relinquished his identification, and upon running a routine check, an outstanding warrant for his arrest was found.

Lightbourne was expressly followed in this Court's recent case of Baez. The Baez holding in the Fourth District Court's opinion was the case which was discussed and rejected by the trial court at the suppression hearing in the instant case. See Baez v. State, 814 So. 2d 1149 (Fla. 4th DCA 2002); see also (R

80-97). The State pointed out that Baez was in conflict with Lightbourne, and the trial court agreed. Justice Wells wrote in a concurrence in Baez joined by Justice Bell:

> What can be reasonably concluded in this case is that this law enforcement officer followed routine police procedure. After Baez voluntarily exited his car, the law enforcement officer asked for identification. Baez gave the officer his driver's license. **Certainly, the officer could do the computer check of the information Baez gave the officer.** Unless Baez raised some objection or the check took an unreasonable length of time, which did not happen, there was nothing which converted this consensual encounter and routine law enforcement procedure into a seizure.
>
> ...
>
> Certainly, under the circumstances of the present case, in which Baez consensually gave his identification to the law enforcement officer, the officer could perform a computer check on Baez's license.

(emphasis added).

Of course, the above facts are very similar to the instant case. The evidence showed that two officers engaged in a casual conversation with Petitioner during which he was asked for some identification. The trial court found Petitioner voluntarily gave the identification to the officer, the officer said that Petitioner could have refused the request and was free to leave,

a computer check was run,[5] and an outstanding warrant was discovered. Based upon this information which was verified, Petitioner was arrested.

Lastly, the State would again submit that the initial conflict with the Fourth District Court of Appeal has been recently eliminated by this Court's quashing of that opinion. Therefore, there is no longer a need to resolve conflict; however, if this Court does retain jurisdiction, the State would request that the decision of the Fifth District Court of Appeal be affirmed.

[5]No argument has ever been made as to any unreasonable delay of time relating to the computer check.

CONCLUSION

Based on the arguments and authorities presented above, the State respectfully prays this Honorable Court affirm the decision of the Fifth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF 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).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Merits Brief has been furnished by delivery via the basket of the Office of the Public Defender at the Fifth District Court of Appeal to Noel A. Pelella, counsel for the Petitioner, 112 Orange Ave. Ste. A., Daytona Beach, FL 32114, this _____ day of January 2005.

_____

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