IN THE SUPREME COURT OF FLORIDA

LORENZO GOLPHIN,	)	
	)	
Petitioner,	)	
	)	CASE No.: SC03-554
vs.	)	Lower Tribunal No. 5D 02-1848
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
_____	)	

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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TABLE OF CONTENTS

TABLE OF CITATIONS

OTHER AUTHORITIES CITED:

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STATEMENT OF THE CASE

The Petitioner was arrested by Daytona Beach police officers in November of 2001, and was charged with the unlawful possession of cocaine, and the possession of drug paraphernalia.[1] The warrantless search which revealed the aforesaid contraband occurred during a "field interview" which began when three police officers approached the Petitioner and two other men on a public street, and questioned the men as to their identity, and their reason for being in the area. (R 4-8,23-26,102-104) The Petitioner filed a motion to suppress the evidence obtained

[1] In this brief, the symbol "R" will be used to designate references to the record on appeal.

as a result of the search, and hearings on the motion were conducted on April 30, and May 31, of 2002. (R 1,3,114,115) The trial court denied the motion to suppress, based upon a finding that the officers, when they first approached the Petitioner, had not made a show of authority sufficient to constitute a seizure of the Petitioner's person. (R 96-100,135,143) On June 5, 2002, the Petitioner plead no contest to both of the aforesaid charges, reserving the right to appeal the denial of his motion to suppress. (R 144) He was sentenced to fifteen months of imprisonment for cocaine possession. For the paraphernalia possession conviction, he was sentenced to a term of incarceration equivalent to the time served awaiting disposition of this case. (R 149)

The Petitioner's direct appeal was heard in the Fifth District Court, and the trial court ruling was affirmed by the district court on March 7, 2003.[2] In its' decision, the district court certified conflict with the decision of the Fourth District Court, in ***Baez v. State, 814 So. 2d 1149 (Fla. 4th DCA 2002)***. The Petitioner filed a Notice to Invoke the discretionary jurisdiction of this Court, and on September 3, 2003, this Court ordered that a ruling on jurisdiction in this case was deferred, pending this Court's disposition in ***State v. Baez, Case No. SC02-1173***.

[2] A copy of the opinion is attached as in the Appendix to this brief.

On November 10, 2004, this Court issued its' Opinion in the ***Baez*** case. On November 5, 2004, the Court issued an Order accepting jurisdiction in this case, and dispensing with oral argument. The instant brief on the merits follows.

STATEMENT OF THE FACTS

The events at issue occurred at approximately 11:00 p.m., on the evening of November 13, 2001. At that place and time, three Daytona Beach police officers, in uniform, and in marked patrol cars, confronted the Petitioner and the group of men he was with, in order to conduct a "field interview." (R 4-6,23-25,60) The Petitioner turned over his Florida ID card upon the officers' request, and a check by radio revealed an open warrant. (R 45,58-60) The Petitioner was then arrested and searched. The defense moved to suppress the contraband seized as a result of the warrantless search, and the motion came before the trial court on April 30, 2002, and on May 13, 2002. (R 3,10-14,49,50,75,76,114, 115) Evidence adduced at that hearing was as follows:

Officers Deschamps and Doemer were patrolling Ridgewood Avenue, and noticed a group of about five men on the sidewalk in front of an apartment building. Because the area was known for drug and prostitution activities, the officers

stopped their car, got out, and approached the men[3] to find out "what they were up to." (R 4,5,24,25) One or two men walked away and the rest remained, including the Petitioner.[4] When the officers first approached the Petitioner, they had no particularized suspicion that the Petitioner was involved in criminal activity, nor any particularized suspicion that he was armed. (R 17-20,22,39,40, 95) The men were immediately asked whether they lived in the apartment house, and what they were doing in the area. They were then asked to produce identification. (R 4-7,20,22,25-27,54-58) Officer Doemer took possession of the Petitioner's Florida ID card; and it was never returned to the Petitioner during the encounter. (R 45,46,58-60) The officer held the Petitioner's ID card while continuing to interrogate him,[5] and waited for a response to a radio check for outstanding warrants. During this interrogation, the Petitioner responded to one particular inquiry by saying that he did not have any weapons or drugs on his person.

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[3] A third officer, (a "K-9" unit, with a police dog) arrived within two minutes, in a separate patrol car, and joined the "field interview." (R 9,12,55-57)

[4] Two of the men, (not the Petitioner), complained that the police were "harassing" them. (R 7,12)

[5] The officer asked the Petitioner "about his life" while holding the Petitioner's ID card, and asked if the Petitioner had ever been arrested. (R 27,28) The officer became "very interested" and "questioned him more" after the Appellant responded to inquiries about his criminal history. (R 28,31)

Approximately two minutes after his ID card was surrendered, after the officer "ran his name" to check for outstanding warrants, the Petitioner stated that he might be the subject of an outstanding warrant. (R 26-30,45-48) When the police dispatch response confirmed an outstanding warrant, the Petitioner was formally arrested and a search of his person was conducted, revealing the contraband at issue. (R 10-15,29,30,48-50,75,76) One of the arresting officers testified that the Petitioner "had no choice" but to consent to a search of his person, as he was a "detainee" - he had been arrested before the search took place. (R 12,13,15,29) The search of the Petitioner's person occurred after the Petitioner had been formally arrested. (R 13-15,30)

Officer Doemer's "suspicion" was initially based on "past knowledge" of drug activity in the area, and because the Petitioner was "alone by himself in a darkened alleyway." (R 39) Officer Doemer became "really suspicious" when the men responded to questioning by saying that they did not live in the area. According to Doemer, that meant that the men "had no reason to be in that area." (R 40,43)

The K- 9 unit which arrived moments after the field interview began, was summoned because the officers anticipated a search of the Petitioner's person. (R 9,12,15,30,55, 57)

SUMMARY OF ARGUMENT

The Petitioner was confronted by officers while he was standing on the street in a public place. He had done nothing to indicate criminal activity was afoot - he was confronted by three armed police officers and a police dog, and was detained for questioning. The officers admitted their investigation was not founded on any objective suspicion of criminal activity. The Petitioner did not agree to answer questions, his ID card was held while he was interrogated in a manner that suggested he was a suspect, and the Petitioner was never advised of his right to refuse initially, or to end the encounter once it had begun. One officer held the Petitioner's license even after the Petitioner responded to the interrogation by stating he was not involved in any criminal activity.

In such circumstances, no reasonable person would feel free to simply walk away from a police officer - an officer who had never sought nor obtained the citizen's consent to submit to interrogation. Nothing about the "encounter" at issue was consensual - it is pure legal and logical fiction to characterize it as such. Moreover, this sort of police/citizen confrontation is not acceptable simply because

it is "routine". The Constitution does not permit the police to confront pedestrians, demand proof of identification, and subject them to interrogation absent any founded suspicion of criminal activity, and without first obtaining consent to initiate the "encounter". A finding that consent may be implied under such circumstances ignores the reality of contemporary society, and is contrary to the long-standing presumption that any warrantless seizure the person is presumed unlawful. The Petitioner therefore respectfully submits that the rulings of the trial court and the district court be reversed.

ARGUMENT

IT WAS ERROR TO DENY THE PETITIONER'S MOTION TO SUPPRESS, WHERE THE PETITIONER WAS SUBJECTED TO AN INVESTIGATORY DETENTION ABSENT ANY REASONABLE BELIEF THAT HE WAS INVOLVED IN CRIMINAL ACTIVITY.

In Florida, the scope of the Fourth Amendment's protection against unreasonable searches and seizures is determined by the decisions of the United States Supreme Court. ***Art. I, Section 12 Fla. Const.; Miller v. State, 403 So. 2d 1307,1310,1313 (Fla. 1981)***

In defining the line between a mere consensual encounter and a seizure; the United States Supreme Court has ruled as follows:

> To constitute a seizure of the person, just as to constitute an arrest--the quintessential "seizure of the person" under Fourth Amendment jurisprudence--there must be *either* the application of physical force, however slight, *or,* where that is absent, submission to an officer's "show of authority" to restrain the subject's liberty.

California v. Hodari D., 499 U.S. 621 (1991)

In the instant case, the show of authority was as follows: Three uniformed, armed officers, with a police dog, confronted the Petitioner on a public street, in order to find out "what [he was] up to." (R 4,5,24,25) The Petitioner and two men

with him were immediately asked whether they lived in the adjacent apartment house, and what they were doing in the area. The men were then asked to produce identification. Officer Doemer took possession of the Petitioner's ID card, and held it while continuing to interrogate the Petitioner, and while waiting for a response to a radio/computer check for outstanding warrants. The officers involved all testified they had no reason to suspect that the Petitioner or any of the men with him were involved in criminal activity.

The State's position, throughout the trial and appellate phases of this case, has been that the aforesaid facts describe a consensual encounter - that the Petitioner was never seized until a radio check confirmed an outstanding warrant. Therefore, according to the State, no objective, reasonable suspicion was necessary to justify the police action at issue. The Petitioner maintains that upon the aforesaid facts, it is impossible to conclude that the situation in which the Petitioner found himself was consensual. No matter what label the officers might ascribe to the field "interview" at issue, it was conducted over the vocal objection of at least one of the so-called "consenting" individuals - and more important - was carried out in a way that made response to the officer's inquiries appear to be compulsory, not voluntary.

For example, the circumstances under which the Petitioner was confronted are not analogous to the operative facts in ***Lightbourne***[6] - the decision which the majority relied upon in ***State v. Baez, 2004 WL 2534352 (Fla. 11-10-04)***. That is, no vehicle was involved here. The Petitioner was not found slumped over the steering wheel of a parked car. The Petitioner was not detained for issuance of a traffic citation. The Petitioner was not trespassing. (R 18) Officer Doemer therefore had no legal authority to require the Petitioner to produce a driver's license. ***Delaware v. Prouse, 440 U.S. 648, 658 (1979)*** Standing on a street corner is no crime. That activity does not subject citizens to the burden of compliance with traffic regulations, vehicle registration requirements, or driver licensing laws. The Petitioner was required only state his name; but he was not obligated to produce and surrender his ID card. ***Hiibel v. Sixth Judicial Dist. of Nevada, 124 S. Ct. 2451, 2453 (2004)***

Officer Doemer was not investigating a citizen's complaint or a suspicious vehicle; he was not "investigating" anything. Officer Doemer, by his own admission, lacked the reasonable suspicion necessary for a Terry[7] stop. But that is

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[6] ***Lightbourne v. State, 438 So. 2d 380 (Fla. 1983)***

[7] ***Terry v. Ohio, 392 U.S. 1 (1968)***

precisely what the so-called consensual encounter in this case amounted to, and that is why the search of the Appellant's person was unlawful: it was the product of an unlawful detention. ***Illinois v. Wardlow, 528 U.S. 119 (2000)***; ***Florida v. J. L., 529 So. 2d 266,268 (2000)*** Therefore, the facts here are more analogous to those in ***Diaz***; another decision cited by this Court in ***Baez***. Here as in ***Diaz***, there was no legal basis for any detention:

> We note that this case is also not controlled by our recent decision in *State v. Diaz, 850 So.2d 435 (Fla.2003)*. [...] [...] There, we held that based upon the totality of the facts presented, "the law enforcement officer ... had no justification for continuing the restraint of [the] motorist and obtaining information from him after it was clearly determined that no question remained concerning a violation of law or the validity of the car's temporary license plate."

Baez, supra, 2004 WL 2534352, at pg. 2.

In the instant case the "field interview" was initiated absent any reason to believe criminal activity was afoot. The officers, in their own words, wanted to see "what was up." This was a true "fishing expedition." In some circumstances, that sort of police conduct may be constitutionally permissible - but not in the circumstances that prevailed here.

According to the United States Supreme Court, the authority of the police to

stop pedestrians and "request" identification is limited to the context of a legitimate Terry stop. ***Hiibel, supra, 124 S. Ct., at 2453***. Here, the Petitioner was unquestionably detained, but not because of a legitimate investigation or upon a reasonable suspicion. And, most important, the detention was not consensual.[8] That is, the determination as to whether a particular encounter was consensual cannot be not founded upon the subjective opinions of the police or the prosecutor.[9] An encounter is consensual only when a citizen ***agrees*** to submit to questioning:

> officers do not violate the Fourth Amendment by merely ***approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen*** [.] (Emphasis added.)

Florida v. Bostick, 501 U.S. 429,434 (1991)

The Petitioner was not asked if he would agree to answer questions; nor did he ever express any such agreement. He was confronted by three uniformed officers and a police dog, was "asked" to explain his presence in the area, and was

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[8] Indeed, one of the men protested that the officers were harassing them for no good reason. (R 7,12)

[9] ***United States v. Mendenhall, 446 U.S. 544, at 555, n.6 (1980)***

then “asked” to supply documentation of his identity. He was interrogated about his criminal history while his ID card was being held. The identification he supplied, and his answers to interrogation, were sought and obtained in anticipation of the Petitioner’s arrest, and the subsequent search of his person. (R 9,12,15,30,55,57) The best evidence of the ***non***-consensual nature of this “field interview” is seen in the fact that the detention did not end - the Petitioner’s ID card was not returned - even after the Petitioner said he was not carrying weapons or drugs on his person. (R 27,46) Indeed, the Petitioner was detained, (his ID card was being held), even after the Petitioner stated he was not subject to any open warrants. (R 46,48) No reasonable person would feel free to simply walk away under such circumstances, unless he had first been expressly advised that compliance was not mandatory:

> The State proffers three reasons for holding that when Royer consented to the search of his luggage, he was not being illegally detained. ***First, it is submitted that the entire encounter was consensual and hence Royer was not being held against his will at all. We find this submission untenable***. Asking for and examining Royer’s ticket and his driver’s license were no doubt permissible in themselves, but ***when the officers identified themselves as narcotics agents, told Royer that he was suspected of transporting narcotics, and asked him to accompany them to the police room, while retaining his ticket and driver’s***

> ***license and without indicating in any way that he was free to depart, Royer was effectively seized for the purposes of the Fourth Amendment***. These circumstances surely amount to a show of official authority such that "a reasonable person would have believed he was not free to leave." (Emphasis added.)

Royer, supra, 460 U.S., at 501-502.

Like Royer, the Petitioner did not agree to answer questions, his ID card was held while he was interrogated in a manner that suggested he was a suspect, there was a significant show of authority, and the Petitioner was never advised of his right to refuse initially, or to end the encounter once it had begun. The officer held the Petitioner's license even after the Petitioner stated he was not involved in any criminal activity. Viewed objectively, these facts show that the only thing "communicated" to the Petitioner was that he was not free to end the encounter an walk away:

> As we have explained, ***no seizure occurs*** when police ask questions of an individual, ask to ***examine the individual's identification***, and request consent to search his or her luggage--***so long as the officers do not convey a message that compliance with their requests is required***. ***Here, the facts recited by the Florida Supreme Court indicate that the officers*** did not point guns at Bostick or otherwise threaten him and ***that they specifically advised Bostick that he could refuse consent***. (Emphasis added.)

Bostick, supra, 501 U.S., at 437.

Officer Doemer did not advise the Petitioner that he was free to leave,[10] nor did he "examine" the Petitioner's ID card and then return it. The officer seized the ID card, which is a crucial distinction. There was no initial consent to the questioning - the Petitioner surrendered his ID card in response to interrogation, and in the context of an intimidating show of authority.[11] Once he relinquished his ID card, and was questioned as to his criminal history even after he had said he was not carrying drugs or weapons, any semblance of a consensual encounter vanished entirely:

> After ***returning the ticket and driver's license to her***, one of the agents asked respondent if she would accompany him to the airport DEA office for further

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[10] The Petitioner does not suggest that express advice as to the right of refusal is a pre-requisite to a finding that an encounter was consensual. Such advice is but one factor to be considered. ***Schneckloth v. Bustamonte, 412 U.S. 218,248,249 (1973)*** But here, none of the indicia of true consent were present; and, "where the validity of a search rests on consent, the State has the burden of proving that the necessary consent was obtained and that it was freely and voluntarily given, a burden that is not satisfied by showing a mere submission to a claim of lawful authority." ***Royer, supra, 460 U.S., at 497***.

[11] The petitioner said that he turned over his ID card because he felt he had no choice, given the presence of three officers and a dog. (R 55,58,59) While the Petitioner's subjective impression is not dispositive, it comports with the record evidence in this case that suggests there was a "threatening presence of several officers;" one form of objective evidence of a seizure, as stated in ***Mendenhall***.

> questions, and respondent did so. [...]
>
> Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be ***the threatening presence of several officers***, the ***display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that***
>
> ***compliance with the officer's request might be compelled***. (Citations omitted, emphasis added)

Mendenhall, supra, 446 U.S., at 548,554.

In ***U.S. v. Mendenhall***, the officers returned Mendenhall's ticket and license before asking her to accompany them to an office. ***She was specifically told*** that she had the right to refuse the search, and she twice consented to the search. ***Id***. at ***548***. None of those indicia of a consensual encounter were present here. Indeed, the facts here suggest nothing but coercion.

The Petitioner respectfully disputes the majority's legal conclusion as expressed in ***Baez*** and ***Lightbourne***, that the Fourth Amendment is not implicated by field interrogations such as this, because this sort of encounter is "routine" police practice.[12] The abuses of the king's men in the colonies were no doubt

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[12] According to this Court, "the average, reasonable citizen [...] would not find the officer's actions unduly harsh." ***Lightbourne, 438 So. 2d at 387,388***; ***Baez, pg. 2***. There is evidence in the instant case which refutes the Court's assumption: Several men walked away in order to avoid confrontation, and of those

routine; but their offensiveness was not lessened by repetition. Rather, the routine practice of warrantless searches and seizures fomented revolution, and gave impetus to the drafting of the Constitution - the same document which is not even implicated, according to this Court, when police officers randomly detain and interrogate citizens in the admitted absence of any reasonable belief that criminal activity is afoot. The Petitioner submits that the Fourth Amendment is squarely implicated when the law purports to grant such sweeping police powers. Indeed, as Chief Justice Pariente noted in the ***Baez*** dissenting opinion, it is pure "fiction," and a "charade," to conclude that "encounters" like the one in this case are consensual:

> In a Fourth District decision following *Baez,* which he authored, Judge Klein elaborated on his reasoning as to why a police officer's retention of a driver's license turns a consensual encounter into a detention for Fourth Amendment purposes:
> I, for one, despite my law school education, had no idea there was such a thing as a consensual encounter until I became a judge. ***Because police officers are, in our society, charged with maintaining order and enforcing the law, it would never have occurred to me that I could insist on the return of my license before the officer was finished with it. Nor would it***

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who remained, two complained of police harassment. It should not be inferred from the Petitioner's silence and submission, that he or any other reasonable person would "not find the officer's actions unduly harsh."

> ***occur to any other person unversed in search and seizure law***. As Professor LaFave has written, "[i]t is nothing more than fiction to say that all of these subjects have consented to the confrontation." [...] In addition to the cases we relied on in *Baez,* appellant has cited several recent cases from other states in which the courts have refused to go along with this charade. [...]:
> 'Without his identification, Daniel was effectively immobilized. ***Abandoning one's identification is simply not a practical or realistic option for a reasonable person in modern society. [...] Contary to the State's assertion, when an officer retains a person's identification for the purpose of running a computer check for outstanding warrants, no reasonable person would believe that he or she could simply terminate the encounter by asking the officer to return the identification***.' [...] (Citations omitted, emphasis added.)

State v. Baez, 2004 WL 2534352, pp. 7-8 (Fla. 11-10-04)

The Petitioner was not driving a car. He was simply standing on the street in a public place. He had done nothing to indicate criminal activity was afoot - he was simply detained in order for Officer Doemer to investigate an unfounded suspicion about "what was up." The arresting officers admitted their investigation was not founded on any objective suspicion of criminal activity. Therefore, by adhering to the legal fiction that such confrontations are acceptable because they are "routine," the courts participate, albeit unwittingly, in the erosion of civil liberties:

> I concur in the majority decision. Law enforcement has a vital need to engage citizens on the street and to conduct field interrogations. Citizens should be encouraged to cooperate with such encounters. The methods demonstrated in this case, however, by which an initial encounter subtly evolves into an oral cavity search, serve to discourage reasonable, law-abiding citizens from cooperating during a field interrogation. Neither the Fourth Amendment nor the policies of neighborhood policing should authorize this method. ***I am inclined to believe that our case law explaining consensual encounters is unintentionally expanding the parameters of these encounters beyond the "minimal police contact" authorized by the supreme court*** in *Popple v. State, 626 So.2d 185, 186 (Fla.1993). (Emphasis added.)*

Smith v. State, 753 So.2d 713,716 (Fla. 2nd DCA 2000)

The United States Supreme Court, in striking Jacksonville's vagrancy ordinance, recognized that the Constitution is offended by any routine police practice which allows police officers, on a whim, to interfere with the freedom of all citizens to simply walk the streets:

> Walkers and strollers and wanderers may be going to or coming from a burglary. Loafers or loiterers may be 'casing' a place for a holdup. [...] [...]
> The difficulty is that these activities are historically part of the amenities of life as we have known them. They are not mentioned in the Constitution or in the Bill of Rights. These unwritten amenities have been in part responsible for giving our people the feeling of independence and self-confidence, the feeling of creativity. These amenities have dignified the right of

> dissent and have honored the right to be nonconformists and the right to defy submissiveness. They have encouraged lives of high spirits rather than hushed, suffocating silence.

Papachristou v. City of Jacksonville, 405 U.S. 156, at 164 (1972)

> ***Another aspect of the ordinance's vagueness appears when we focus, not on the lack of notice given a potential offender, but on the effect of the unfettered discretion it places in the hands of the Jacksonville police***. Caleb Foote, an early student of this subject, has called the vagrancy-type law as offering 'punishment by analogy.' [...] Such crimes, though long common in Russia, [...] are not compatible with our constitutional system. We allow our police to make arrests only on 'probable cause,' [...] a Fourth and Fourteenth Amendment standard applicable to the States [...] as well as to the Federal Government. ***Arresting a person on suspicion, like arresting a person for investigation, is foreign to our system, even when the arrest is for past criminality***. Future criminality, however, is the common justification for the presence of vagrancy statutes. [...] Florida has, indeed, construed her vagrancy statute 'as necessary regulations,' inter alia, 'to deter vagabondage and prevent crimes.'

Papachristou, 405 U.S., at 168-169.

> ***A direction by a legislature to the police to arrest all 'suspicious' persons*** [...] would not pass constitutional muster. A vagrancy prosecution may be merely the cloak for a conviction which could not be obtained on the real but undisclosed grounds for the arrest.

Papachristou, 405 U.S., at 169-170.

> Those generally implicated by the imprecise terms of the ordinance--poor people, nonconformists, dissenters, idlers--may be required to comport themselves according to the life style deemed appropriate by the Jacksonville police and the courts. ***Where, as here, there are no standards governing the exercise of the discretion*** granted by the ordinance, ***the scheme permits and encourages an arbitrary and discriminatory enforcement of the law. It furnishes a convenient tool for 'harsh and discriminatory enforcement by local prosecuting officials***, against particular groups deemed to merit their displeasure.' [...] ***It results in a regime in which the poor and the unpopular are permitted to 'stand on a public sidewalk . . . only at the whim of any police officer***.' (Citations omitted, emphasis added.)

Papachristou, 405 U.S., at 170.

In sum, the Petitioner respectfully submits that the ***Baez*** decision, irrespective of this Court's intentions, will lead to an extension of police powers that would be inconsistent with the intent of the Fourth Amendment. Chief Justice Pariente has best articulated the reasons for avoiding such an extension:

> Because the officer lacked a well-founded, articulable suspicion of criminal activity at the point when he returned to his patrol car to run a warrants check on the driver's license, and because a reasonable person in Baez's position would conclude that he or she was not free to end the encounter and depart when the

> officer retained his license for a warrants check, suppression of the evidence seized pursuant to the resulting arrest was required. I therefore dissent from the majority's decision to the contrary in this case. Finally, because the majority diverges from our Fourth Amendment precedent, [...] I view the Court's decision as an aberration from our Fourth Amendment jurisprudence. The majority's conclusion that the officer had a "reasonable basis and reasonable suspicion to investigate Baez further" should be confined to the unique facts of this case. (Citations omitted.)

State v. Baez, 2004 WL 2534352, 10 -11 (Fla. 11-10-04)

The Petitioner therefore submits that the trial court's denial of the Petitioner's motion to suppress should be reversed.

CONCLUSION

Based upon the foregoing arguments, and the authorities cited therein, the Petitioner respectfully requests that the rulings of the trial court and the district court in this case be reversed, and that the Petitioner's judgment and sentence be vacated.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been delivered to the Honorable Charles Crist, Attorney General, 444 Seabreeze Blvd., 5th Floor, Daytona Beach, FL 32118, in c/o the Fifth District Court of Appeal, and was mailed to Mr. Lorenzo Golphin, 551 El Dorado Street, Daytona Beach, FL 32114, on this 30th day of November, 2004.

_____
NOEL A. PELELLA
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of type used in this document is proportionally spaced 14 pt. Times New Roman.

_____
NOEL A. PELELLA
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

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APPENDIX