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

SUPPLEMENTAL RESPONDENT'S BRIEF ON THE MERITS

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SUMMARY OF ARGUMENT

The issue before this Court is whether a consensual encounter between law enforcement and a person is elevated *per se* 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 case simply 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.

This Court has ordered both parties to address the application of State v. Frierson, 31 Fla. L. Weekly S81 (Fla. Feb. 9, 2006), to the facts of this case. It is the State's position that Frierson further validates the legality of the arrest in the instant case.

As noted in Respondent's merits brief, the trial court expressly found in this case that the evidence showed that the encounter was consensual. Officers approached Petitioner, asked him if he lived there or was visiting friends, and then asked for any identification. The facts demonstrate and the trial court found that Petitioner voluntarily relinquished his identification, and upon running a routine check,[1] an outstanding warrant for his arrest was found.

The State would submit that this was clearly a consensual encounter case when the officers initially engaged Petitioner. An officer can approach someone on the street and ask them

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[1] Interestingly, evidence showed that Petitioner even told the officer that there was probably an open warrant for his arrest while she was running the check. (R 49). This alone created at least a reasonable suspicion even before the verification there was a warrant.

questions or even ask for identification. See Florida v. Bostick, 501 U.S. 429 (1991); I.N.S. v. Delgado, 466 U.S. 210 (1984); United States v. Mendenhall, 446 U.S. 544 (1980). Therefore, the only issue in dispute is whether the officer retaining the identification long enough to run a background check on Petitioner somehow enhanced the encounter into a stop.

In Delgado, the immigration agents entered a factory and posted officers at the doors. Delgado, 466 U.S. at 212-213. The agents, then, would engage the workers by conducting factory surveys. Id. During these encounters, the agents would ask the workers for their immigration papers. Id. The United States Supreme Court found these facts did not create a detention. The Court wrote 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." Delgado, 466 U.S. at 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.

Again, the Court rejected a *per se* rule in Bostick, finding a legal encounter under facts where police approached an individual on a bus who they had no suspicion of having

committed a crime, asked him questions, asked to examine his identification, and asked to search his luggage. Such conduct was legal so long as mandatory compliance with these requests was not conveyed to a reasonable person by the officers' actions.

The instant case is even less intrusive. Petitioner was not in a secure factory or on a bus; he was on the street. The facts showed that as the officers initially approached, people were free to leave, and at least one individual did. (R 44). Given that an officer can request to examine someone's license or identification, the only issue left to address is whether running a check on the identification somehow enhances the encounter to a stop.

Respondent acknowledges that during a traffic stop an officer may not detain the driver of an automobile beyond the time it took to resolve the purpose of the detention. State v. Diaz, 850 So. 2d 435 (Fla. 2003). However, unlike such a situation as in Diaz, Petitioner's encounter was consensual; whereas, in Diaz, the traffic stop was not. Additionally, Petitioner has never raised an issue as to the length of time his identification was retained by law enforcement. His argument appeared to be simply that his handing over his identification to the officer *per se* escalated his encounter to a detention. The State disagrees.

However, if this Court does find that the totality of the facts show a detention occurred, the State would assert that

any concerns of the legality of this detention would be purged by the intervening warrant. The court in United States v. Green, 111 F.3d 515 (7th Cir.), cert. denied, 522 U.S. 973 (1997), held that even if there is an illegal stop a search could still be valid, and the court provided a three factor test to apply to such situations:

> (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.

Green, 111 F.3d at 521.

This Court applied the Green analysis in Frierson and found that although the initial traffic stop was illegal the subsequent discovery of a warrant[2] validated the search which was conducted pursuant to the arrest. The State would also note that none of the factors above are in and of themselves dispositive. The time lapse in Frierson was only five minutes; however, the existence of a warrant and the lack of flagrancy of the officer were found to purge any illegality and to legitimize the subsequent arrest and search.

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[2] As an aside, the warrant had been erroneously issued; however, the officer was found to be acting in good faith.

As noted above, the initial encounter can in no way be found to be improper. Therefore, the only possible illegal conduct was in detaining the identification of Petitioner long enough to run a computer check (or until informed by Petitioner himself that there was a warrant). Such conduct, if illegal, was even less egregious than the act of improperly stopping an automobile and checking the license of the driver. A driver can not legally depart without his license; whereas, Petitioner was a pedestrian and the identification he handed to the officer was not even his driver's license.[3]

Then, like in Frierson, the officer in the instant case determined there was an outstanding warrant for Petitioner's arrest, the officers executed that warrant, and in a search incident to that arrest, the officers found cocaine on Petitioner. While the time lapse in the instant case appears to be similar to that in Frierson, the warrant clearly served as an intervening circumstance, and the actions of the officer were not flagrant at all. The officer was informed there was a warrant, at which point she had a right and a duty to arrest Petitioner. The evidence was legally seized in the search pursuant to that arrest.

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[3] It was a Florida identification card which it appears had an address for Petitioner at which he had not lived for over five years. (R 65).

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 SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Supplemental 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, 444 Seabreeze Blvd., Suite 210, Daytona Beach, FL 32118, this __________ day of April 2006.

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).

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