IN THE SUPREME COURT OF THE STATE 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 SUPPLEMENTAL BRIEF ON THE MERITS

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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SUMMARY OF ARGUMENT

According to this Court's decision in ***State v. Frierson, 31 Fla. L. Weekly S81 (Fla. Feb. 9, 2006)***, the fruits of an unlawful detention and search must be suppressed unless it can be shown that the officers in question acted in good faith, and did not deliberately exploit an unlawful detention in order to effect a random check for outstanding arrest warrants.

Here, the record makes it abundantly clear that the officers who detained the Petitioner did so in bad faith. There was no basis for the initial detention - it was, in the arresting officers' own words, a roundup of persons who exhibited no apparent signs of involvement in any criminal activity. That initial illegality was immediately exploited in order to compel the Petitioner to produce identification, explain his presence in a public place, and to submit to interrogation regarding the possession of contraband or outstanding warrants. Therefore, the search at issue was undertaken in a flagrant and deliberate exploitation of official misconduct. The Petitioner respectfully submits that this Court's decision in ***Frierson***, cannot be harmonized with the Fourth Amendment if the decision is interpreted so as to permit broad dragnets of innocent citizens to check for outstanding warrants.

ARGUMENT

THE DECISION OF THIS COURT IN ***State v. Frierson***, 31 Fla. L. Weekly S81 (Fla. Feb. 9, 2006), SUPPORTS THE APPELLANT'S ARGUMENT THAT HE WAS UNLAWFULLY SEIZED AND INTERROGATED. NEITHER ***Frierson***, NOR ANY OTHER PRECEDENT PERMIT AN UNLAWFUL DETENTION TO BE JUSTIFIED BY THE FRUITS IT PRODUCES.

The Petitioner has been asked by this Court to address "the impact of this Court's [...] decision in decision in ***State v. Frierson, 31 Fla. L. Weekly S81 (Fla. Feb. 9, 2006)***". That decision requires the following review of a search and seizure conducted as a product of an unlawful detention:

> In determining whether statements and other evidence obtained after an illegal arrest or search should be excluded, the question 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; to properly undertake this inquiry, court must consider (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, 2006 WL 300660 (Fla. 2-9-06)

The record here demonstrates that the arresting officers acted in bad faith, by deliberately exploiting an unlawful detention in order to check for outstanding warrants. Thus, if the aforesaid "***Frierson*** test" is applied to the facts in the instant

case, the decision of the district court cannot be upheld:

1. THE TIME ELAPSED BETWEEN THE ILLEGALITY AND THE ACQUISITION OF THE EVIDENCE

Here, testimony at the suppression hearing indicated the Petitioner's identity card was surrendered at the inception of the unlawful detention, and it was never returned. The surrender of his identity card was immediately followed by interrogation and a computer check for outstanding warrants. [1](R 26-29,31,45,46, 48-51,58-60,69) The Appellant was then detained further, after the radio check indicated an outstanding warrant, in order to confirm the existence of a warrant.(R 50) Once the warrant was confirmed, the Appellant was arrested, and then searched. (R 13,14,29,30,79,80,96,97)

[1] In its Opinion, the Fifth District Court stated that the check for warrants "took no longer than a couple of minutes". ***Golphin v. State, 838 So. 2d 705, 706 (Fla. 5th DCA 2005)***. However, the record in this case does not support that factual finding. That is, Officer Doemer testified that it was "at least a couple of minutes" between the time he first asked the Petitioner to produce identification, and the time the Petitioner first mentioned that he might be the subject of an outstanding warrant.(R 50,51) The Petitioner's statements occurred while the check for warrants was ongoing, therefore, it cannot be said, based on the instant record, exactly how long it took to complete the check for warrants. Nor can the length of the detention be determined.

As Justices Anstead and Pariente noted in ***Frierson***, the fact that the initial illegal detention here was deliberately undertaken without any founded suspicion, and was then immediately followed by interrogation and a warrant check, the discovery of a warrant cannot cure the initial illegality:

> [Had the present case involved ***the illegal detention of a pedestrian*** or the exploitation of an illegal detention by searching a vehicle rather than the person arrested, ***there may very well have been a different outcome resulting from a balancing of the competing concerns set out above.*** (Emphasis added.)

Frierson, 2006 WL 300660, at pg. 6.

> [Should a law enforcement officer be found to have made an illegal stop just to check for warrants, such conduct would clearly be sufficiently egregious and any search would constitute "exploitation of initial illegality" in violation of *Wong Sun.*

Frierson, 2006 WL 300660, at pg. 7.

> ***The close temporal proximity between police illegality and the discovery of evidence in this case reflects a close causal proximity***. The United States Supreme Court has observed that "***[when there is a close causal connection between the illegal seizure and the confession, not only is exclusion of the evidence more likely to deter similar police misconduct in the future, but use of the evidence is more likely to compromise the integrity of the courts***. [...] [...]
> Thus, ***the factor of temporal proximity weighs***

> ***strongly against a finding of attenuation***. (Emphasis added.)

Frierson, 2006 WL 300660, at pg. 12.

The record here does not clearly reveal the length of time that elapsed between the initial unlawful detention and the discovery of an outstanding warrant. However, for the purposes of this discussion, the Petitioner submits that the length of the unlawful detention is irrelevant, because an unlawful detention cannot be rendered lawful simply because it is brief. Indeed, as Justice Pariente noted in ***Frierson***,[2] there is no legal justification for any detention, however brief, once the purpose of a ***lawful investigatory detention*** has been satisfied. ***Florida v. Royer, 460 U.S. 491, 500 (1983); McNicoll v. State, 899 So.2d 1197, 1199 (Fla. 5th DCA 2005)***

If a ***lawful*** detention cannot be extended, even for a moment, beyond the length of time necessary to accomplish the purpose of the initial intrusion, then, certainly, no unlawful detention can be excused simply because it was relatively brief. Indeed, the Fourth Amendment exists in order to prohibit unreasonable intrusions upon privacy and freedom of movement - and that prohibition is not

[2] ***Frierson, 2006 WL 300660, at pg. 15***.

limited to intrusions of great length:

> The Fourth Amendment, of course, "applies to all seizures of the person, ***including seizures that involve only a brief detention*** short of traditional arrest. [...] '[***Whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person,'*** [...] ***and the Fourth Amendment requires that the seizure be 'reasonable***.'

(Citations omitted, emphasis added.) ***Brown v. Texas, 443 U.S. 47, at 50 (1979)***

2. THE PRESENCE OF INTERVENING CIRCUMSTANCES

Regarding this second factor in the ***Frierson*** analysis, it is undisputed here that at the time he was unlawfully detained, the Petitioner was subject to arrest pursuant to an outstanding warrant. However, given the third prong of the ***Frierson*** test, and the evidence in this case, the Petitioner's arrest on an outstanding warrant cannot possibly be called an intervening circumstance which purged the taint of the initial illegal detention.

3. THE PURPOSE AND FLAGRANCY OF THE OFFICIAL MISCONDUCT

This third factor in the analysis under ***Frierson*** requires a determination as to "whether the purpose and flagrancy of the official misconduct [...] [...] outweighs the intervening cause of the outstanding arrest warrant." The Petitioner submits that because the "purpose" of the initial unlawful detention was entirely

illegitimate, and because the official misconduct was so egregious, the existence of an outstanding warrant did not outweigh the deliberate abuse of police powers.

There was no legitimate purpose for the illegal detention at issue. The officers in question all testified that they intentionally detained a group of pedestrians, absent any reason whatsoever to believe that such persons were engaged in unlawful activity. The officers sought to disguise this blatantly unlawful conduct by characterizing it as a so-called "consensual encounter", and therein lies the most crucial and dispositive aspect of this case. This is not a case like ***Frierson***, in which officers acted in good faith, based upon an innocent misinterpretation of traffic laws. On the contrary; these officers acted in bad faith: They observed nothing that they believed to be a violation of the traffic laws - they observed no commission of any civil infraction. Instead, they deliberately mis-used their authority to round up a group of pedestrians, in order to determine which of them might be subject to outstanding warrants. The officers may have known that some of the men would walk away, but they also knew that some would remain when confronted by the sudden appearance of several armed officers. The fact that some of the men chose to walk away, does not change the fact that the officers were acting in bad faith. Rather, it reveals the deliberate calculation the officers undertook, in order to circumvent the Fourth Amendment's

limitations on police procedure:

Police officers are presumed to understand search and seizure law. And, it is apparent from there testimony below that the officers in this case knew that if they had approached the Petitioner and uttered a command to stop, their totally unfounded detention would be deemed unlawful by any reviewing court. So, they employed a subterfuge, and relied upon the appearance of their uniforms and weapons to convey a silent, but nonetheless coercive command to stop.[3] Their express intention was "to see what was up"; i.e., to interrogate any of the men who remained. The officers' intent was not to alleviate any reasonable suspicion of criminal activity - they admitted that no such reasonable suspicion existed. Thus, the only "purpose" served by the unlawful detention was to detain pedestrians and check for the existence of outstanding warrants. The deliberate exploitation of that illegality requires a reversal in this case:

> In its analysis, ***the court found the third Brown factor, regarding the purpose and flagrancy of police misconduct, to be the most significant,*** and, when combined with the first factor, dictated that the

[3] ***Popple v. State, 626 So. 2d 185,188 (Fla. 1993)***, (Whether characterized as a request or an order, officer's statements amounted to a seizure, because a reasonable person under the circumstances would believe that he should comply.)

> evidence be suppressed, despite the discovery of a warrant.[...] The court concluded that ***the evidence was obtained by exploiting the original illegality of the stop, and that the suppression of the evidence would further the goal of the exclusionary rule,*** since "***it appears to be the only way to deter the police from randomly stopping citizens for the purpose of running warrant checks.***" [...] [...]
> The court concluded that ***since the interaction between the police and Sanchez constituted nothing more than an investigatory stop without any reasonable suspicion, the evidence of the marijuana should have been excluded as fruit of the poisonous tree***.
> [...] [...]
> It is often difficult to determine when a traffic stop is pretextual or in bad faith, and we are justifiably reluctant to question the motives of our law enforcement officers. Nonetheless, ***because this traffic stop was unquestionably invalid, and because the officer immediately deviated from the purpose for the stop, this is a scenario in which the deterrent purpose of the exclusionary rule would be well served by suppression***. (Citations omitted, emphasis added.)

Frierson, 2006 WL 300660, at pp. 7,8.

> [T]he ***officers stopped defendant for no apparent reason other than to run a warrant check on him***. Thus, the purpose of the stop in this case was directly related to the arrest of defendant, which then led directly to the search of defendant. (Emphasis added.)

Frierson, 2006 WL 300660, at pg. 14.

> ***Here, no violation occurred, trivial or otherwise***. ***Knowledge of the traffic laws as interpreted by the courts should be imputed to law enforcement officers charged with enforcing those laws.*** Further, it ***appears that the officer exploited the stop by focusing on the warrants check***. A detention must be tailored in scope to its underlying justification, and "last no longer than is necessary to effectuate the purpose of the stop."[...] [...] [***T***]***he invalid stop led directly to the warrants check, arrest on an outstanding warrant, search incident thereto, and discovery of the gun. In light of the deterrent purpose of the exclusionary rule, the officer's conduct in this case at least borders on bad faith***. (Citations omitted, emphasis added.)

Frierson, 2006 WL 300660, at pp. 14,15.

Clearly, where the initial detention is illegal by virtue of the fact that it had no legitimate purpose; it therefore has no relationship to any subsequent "intervening circumstance". The United States Supreme Court would agree:

> ***In Brown v. Texas,*** [...] the Court invalidated a conviction for violating a Texas stop and identify statute on Fourth Amendment grounds. ***The Court ruled that the initial stop was not based on specific, objective facts establishing reasonable suspicion to believe the suspect was involved in criminal activity.*** [...] ***Absent that factual basis for detaining the defendant, the Court held, the risk of "arbitrary and abusive police practices" was too great and the stop was impermissible.*** (Citations omitted, emphasis added.)

Hiibel v. Sixth Judicial Dist. of Nevada, 542 U.S. 177, 184-187 (2004)

There is little doubt, after ***Hiibel***, that random detentions for identity/immigration status checks serve no legitimate public purpose. Similarly, judicial approval of random sweeps for warrant checks would amount to a declaration that the ends justify the means - that an arrest on an outstanding warrant can retro-actively justify the patently unlawful methods employed in order to discover the existence of a warrant.[4] Such a holding would be totally inconsistent with Fourth Amendment jurisprudence.

Indeed, this Court recognized long ago that an unlawful search cannot be legitimized by the fruits it produces. ***Brown v. State, 62 So. 2d 348,349 (Fla. 1953)*** Any departure now from that fundamental principal would constitute a dangerous step toward unbridled police power. If the discovery of an outstanding warrant can excuse detentions absent reasonable suspicion or probable cause, the police will be encouraged to undertake broad sweeps among the public at large, in order to discover which citizens, if any, are the subject of an arrest warrant.

[4] The courts have condemned such "pre-emptive strikes" in which the ends are said to justify the means. *See*, ***Smith v. State, 592 So. 2d 1206 (Fla. 2nd DCA 1992)***, (Illegal search cannot be justified by exigent circumstances, where those circumstances would not have arisen absent the initial police misconduct.)

Again, while it might be tempting to approve such police procedures, such procedures are not constitutionally permissible:

> We are unwilling to let the Border Patrol dispense entirely with the requirement that officers must have a reasonable suspicion to justify roving-patrol stops. [...] [...] ***To approve roving-patrol stops of all vehicles in the border area, without any suspicion that a particular vehicle is carrying illegal immigrants, would subject the residents of these and other areas to potentially unlimited interference with their use of the highways, solely at the discretion of Border Patrol officers***. (Emphasis added.)

U.S. v. Brignoni-Ponce, 422 U.S. 873, 881-887 (1975)

A random sweep of the citizenry to check for outstanding warrants is no different from a sweep for illegal aliens - neither is permitted, because the Constitution forbids such tactics. The Petitioner therefore submits that this Court's decision in ***Frierson*** requires a reversal of the decision of the district court in this case.

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,
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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 c/o George Riley, 551 El Doredo Street, Daytona Beach, Florida 32114 on this date of April 25, 2006.

_____
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