IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

FRED O. BURKE,

Respondent.

CASE NO.: SC05-1173

L.T. NO.: 4D03-4879

****

ON DISCRETIONARY REVIEW FROM THE FOURTH DISTRICT COURT OF APPEAL

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PETITIONER'S INITIAL BRIEF

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, is the prosecution in the trial court and was the appellant in the Fourth District Court of Appeal. Petitioner will be referred to herein as "petitioner" or "the State." Respondent, Fred O. Burke, is the defendant in the trial court and was the appellee in the Fourth District Court of Appeal. Respondent will be referred to as "respondent."

In this brief, the following symbols will be used:

R = Record on Appeal

T = 11/21/03 Hearing Transcript

SR = Supplemental Record

SUMMARY ARGUMENT

The trial court's ruling on petitioner's motion to suppress, and the Fourth District's affirmance thereof, was erroneous because section 316.610 of the Florida Statutes expressly permits a law enforcement officer to stop and inspect a vehicle if there is reasonable cause to believe its "equipment is not in proper adjustment or repair." In this case, the deputies had "reasonable cause" to stop the vehicle driven by respondent based upon the vehicle's cracked windshield and its broken taillight. Thus, the Fourth District's decision in this case should be reversed and remanded for entry of an order denying petitioner's motion to suppress.

STATEMENT OF THE CASE AND FACTS

Respondent was charged with possession of heroin and driving with a suspended license. (R. 2-3). Respondent filed a motion to suppress physical evidence, seeking to suppress the heroin and drug paraphernalia that was recovered, as well as the observations made by the police officers after the stop. (R. 9-11). An evidentiary hearing was held on respondent's motion. The trial court granted respondent's motion to suppress, and the State appealed. (R. 12). The Fourth District affirmed the trial court's ruling in State v. Burke, 902 So. 2d 955, 956 (Fla. 4th DCA 2005), and set forth the following:

A detective and his partner, who were driving behind defendant, pulled him over after observing a cracked taillight and a crack in the windshield. When they discovered that defendant did not have a valid driver's license, they arrested him and, during a search incident to the arrest, found drugs in his pocket. They did not issue a ticket for the broken taillight or the crack in the windshield.

At the suppression hearing one of the detectives first testified that the windshield was badly cracked and that it was very noticeable, but on cross-examination he was unable to say where on the windshield the crack was located or the length, size or shape of the crack. He concluded his testimony by saying that he had "made so many stops on cracked windshields and seen so many cracked windshields, I didn't note it in the report. So I just remember it was cracked." The second detective remembered that there was a crack in the windshield but he was unable to recall any other detail about it. The owner of the car testified[1] that there was a very small crack on the passenger side of the windshield.

The trial court concluded that the state had not met its burden of demonstrating that the crack in the windshield was a safety problem, that the crack was accordingly not a proper basis for the stop, and suppressed the evidence which resulted from the search.

As to the crack in the taillight, the court found that, although there was a crack in the red lens which was emitting white light, the red lens still partially covered the taillight and the stop for the cracked taillight was improper under Frierson v. State, 851 So. 2d 293 (Fla. 4th DCA 2003), rev. granted State v. Frierson, 870 So. 2d 823 (Fla. 2004). We conclude without further discussion that the trial court

[1] The State would note the vehicle's owner, Mr. McCreed, did not appear at the hearing. (T. 1-41). However, Mr. McCreed "testified" when his deposition was admitted into evidence. (T. 23). The trial court "totally discount[ed]" Mr. McCreed's testimony and found that "the officers' testimony is accurate with regard to [the cracked windshield]." (T. 39).

> properly applied Frierson and next address whether the crack in the windshield was a proper basis for the stop.

The Fourth District's decision in Burke also certified conflict with the Second District's *en banc* decision in Hilton v. State, 901 So. 2d 155 (Fla. 2d DCA 2005). The State sought review of the decision in Burke, and this Court ordered briefing on the merits.

ARGUMENT

THE FOURTH DISTRICT'S DECISION IN STATE V. BURKE, 902 SO. 2D 955 (FLA. 4TH DCA 2005) SHOULD BE REVERSED BECAUSE (1) THE CRACK IN THE WINDSHIELD GAVE LAW ENFORCMENT OFFICERS REASONABLE CAUSE TO STOP THE VEHCILE FOR A SAFETY INSPECTION PURSUANT TO SECTION 316.610 OF THE FLORIDA STATUTES, AND (2) THE CRACK IN THE RED LENS OF THE TAILLIGHT ALSO GAVE LAW ENFORCMENT OFFICERS REASONABLE CAUSE TO STOP THE VEHCILE

When reviewing an order on a motion to suppress, "[a]ppellate courts should continue to accord a presumption of correctness to the trial court's rulings on motions to suppress with regard to the trial court's determination of historical facts, but appellate courts must independently review mixed questions of law and fact that ultimately determine constitutional issues arising in the context of the Fourth and Fifth Amendment and, by extension, article I, section 9 of the Florida Constitution." Nelson v. State, 850 So. 2d 514, 521 (Fla. 2003)(quoting Connor v. State, 803 So. 2d 598, 608 (Fla. 2001)).

Cracked Windshield Issue

In this case, the evidence showed there was a crack in the windshield of the vehicle operated by respondent. (T. 7-8, 23). The crack in the windshield was "very noticeable," and Detective Carter observed the crack from his vehicle. (T. 7, 39). Despite these facts, the trial court granted respondent's motion to suppress because it could not find "based upon [Detective Carter's] testimony that this crack resulted in any inherent danger to the driver or the occupants of the vehicle nor to anyone else. Nor was it an impediment to the driver's vision such that it would cause a safety problem for anyone else." (T. 40). For the reasons set forth below, the trial court's ruling in this case, and the Fourth District's affirmance thereof, should be reversed.

Section 316.610(1) of the Florida Statutes (2002) states:

> (1) **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 of the vehicle to stop and submit the vehicle to an inspection and such test with reference thereto as may be appropriate.

(emphasis added). The plain language of section 316.610 expressly permits a law enforcement officer to stop and inspect a vehicle if there is reasonable cause to believe its "equipment is not in proper adjustment or repair." Id.; Scott v. State,

710 So. 2d 1378, 1379 (Fla. 5th DCA 1998)(section 316.610 authorizes police officers to stop any vehicle that has equipment not in proper adjustment or repair); Dep't of Highway Safety & Motor Vehicles v. Thompson, 622 So. 2d 1169, 1170 (Fla. 5th DCA 1993)(section 316.610 authorizes any police officer to stop a vehicle at any time upon reasonable belief that the vehicle's equipment is not in proper repair). Since section 316.2952(1) of the Florida Statutes (2002) requires vehicles to have windshields, a law enforcement officer is authorized to stop and inspect a vehicle if there is reasonable cause to believe the vehicle's windshield "is not in proper adjustment or repair." § 316.610(1), Fla. Stat. (2002); Hilton, 901 So. 2d at 157 ("we conclude that an officer may stop a vehicle with a visibly cracked windshield regardless of whether the crack creates any immediate hazard"); Howard v. State, 909 So. 2d 390 (Fla. 5th DCA 2005)(deputy, who observed a crack in the windshield, had an objective reasonable suspicion to stop the vehicle and inspect the windshield; agreed with Hilton and reversed the trial court's order on a motion to suppress); Ivory v. State, 898 So. 2d 184 (Fla. 1st DCA 2005)(deputy's observation of a windshield crack provided "objective reasonable suspicion" to stop the vehicle); State v. Breed, 30 Fla. L. Weekly D1457 (Fla. 5th DCA June 10, 2005)("The trial court

properly applied the law when it concluded that the initial stop for the cracked windshield was a valid stop.").

This Court has routinely held legislative intent is the "polestar that guides the Court's inquiry" into the meaning of a statute. Florida Convalescent Center v. Somberg, 840 So. 2d 998, 1000 (Fla. 2003). Such intent is derived primarily from the language of the statute. State v. Bodden, 877 So. 2d 680, 684 Fla. 2004). "It is 'axiomatic that in construing a statute courts must first look at the actual language used in the statute'." Id. (quoting Woodham v. Blue Cross & Blue Shield of Florida, 829 So. 2d 891, 897 (Fla. 2002)). The plain meaning of the word "repair" as used in section 316.610(1) is "a relative condition with respect to soundness or need of repairing," or "the state of being in good or sound condition." Webster's Ninth New Collegiate Dictionary, Merriam-Webster, Inc., 1985. Since the equipment of the vehicle driven by respondent, i.e., the windshield, was not in "the state of being in good or sound condition," the vehicle stop was permissible under Florida law. Id.; § 316.610(1), Fla. Stat. (2002); (T. 7-8, 23, 39).

The Legislature authorized law enforcement officers to stop vehicles where there is "reasonable cause to believe a vehicle is unsafe or not equipped as required by law, **or that its equipment is not in proper adjustment or repair**." § 316.610(1),

Fla. Stat. (2002)(emphasis added). Such a stop is for the purpose of conducting an inspection of the vehicle in order to determine if the vehicle is, in fact, unsafe. If the vehicle is found to be in unsafe condition, the officer may order the vehicle be immediately repaired or removed from use, or allow 48 hours for repair, depending on the nature and extent of the unsafe condition. § 316.610 (2), Fla. Stat. (2002).

In this case, the trial court ruled the stop of respondent's vehicle was improper because the State did not prove that the crack in the windshield obstructed respondent's vision or caused a safety hazard to anyone else. (T. 40). The trial court's ruling on this matter was erroneous because it utilized an improper standard. The appropriate standard for determining the propriety of the stop was not whether the crack in the vehicle's windshield actually obstructed respondent's vision; the proper standard is whether the deputies had "reasonable cause" to conduct the stop for a traffic infraction. § 316.610(1), Fla. Stat. (2002); Hilton; Howard; Ivory; Breed; United States v. Cashman, 216 F.3d 582, 587 (7th Cir. 2000)(officer stopped defendant for crack in windshield; "For purposes of probable cause analysis, we are not concerned with the precise length or position of the crack. The propriety of the traffic stop does not depend, in other words, on whether

Cashman was actually guilty of committing a traffic offense by driving a vehicle with an excessively cracked windshield. The pertinent question is whether it was reasonable for Trooper Spetz to believe that the windshield was cracked to an impermissible degree.").

It is undisputed in this case that (1) there was a crack in the windshield of the vehicle operated by respondent, and (2) Detective Clark was able to observe the windshield crack from his vehicle. (T. 7, 39). Assuming, *arguendo*, that a cracked windshield must obstruct a driver's vision to constitute a violation under Florida law, the deputies in this case would clearly have "reasonable cause" to stop respondent's vehicle to investigate whether the crack actually obstructed respondent's vision.[2] See Hilton; Howard; Ivory; Breed. Courts from other jurisdictions addressing this issue have held that a law enforcement officer's observation of a cracked windshield provides a sufficient predicate for a traffic stop and justifies further investigation. See Cashman; United States v. Davis, 905 F. Supp. 16, 18 (D.C. 1995)("since driving with a cracked

[2] The Fourth District receded from its statement in Burke that an equipment violation must cause a "safety problem" to justify a stop under section 316.610(1). See State v. Schuck, 913 So. 2d 69 (Fla. 4th DCA 2005)(the Legislature did not limit the authority of the police to stop vehicles under section 316.610(1) "to only those cases in which the equipment created some immediate or heightened level of risk.").

windshield is a traffic violation, a reasonable officer 'could have' stopped defendant's car if he 'could have' seen the crack in the windshield before he stopped the car."); Arizona v. Vera, 996 P.2d 1246 (Ariz. Ct. App. 1999)(in case where it was undisputed that there was a crack in the windshield, the officer had a legitimate reason to stop defendant's vehicle to investigate the adequacy of the windshield (even though no Arizona statute specifically forbade driving a vehicle with a cracked windshield)); Muse v. State, 807 A.2d 113, 119 (Md. Ct. Spec. App. 2002)(officer entitled to stop vehicle to investigate crack in windshield for the purpose of writing an equipment repair order); Darby v. State, 492 S.E.2d 438, 440-441 (Ga. Ct. App. 1999)(officer stopped vehicle based solely upon crack in windshield; officer's observation of crack in windshield, which turned out to be much smaller than officer initially believed, gave him a specific, articulable reason to investigate whether the crack violated state law); People v. Jones, 565 N.E.2d 240, 241 (Ill. App. Ct. 1990)(officer stopped defendant for cracked windshield and defendant argued stop was improper because there was no evidence to suggest that crack materially impaired defendant's vision; "the evidence is incontroverted that the windshield of the vehicle defendant was driving was cracked. This fact supports the conclusion that the stop was justified

and not merely pretextual, a problem of concern to reviewing courts."). Accordingly, the trial court's ruling in this case was erroneous because it was based upon whether the crack in the windshield actually impaired respondent's vision, not whether the crack provided the deputies with "reasonable cause" to stop the vehicle to investigate the matter further.

In addition to the necessity to adhere to the plain meaning of the statute, "a basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless." State v. Goode, 830 So. 2d 817, 823 (Fla. 2002). Pursuant to subsection 316.610(2), if after inspection law enforcement determines continued operation of the vehicle would be "unduly hazardous," the vehicle can be impounded. If continued operation would not present unduly hazardous operating conditions, law enforcement can issue a citation requiring "proper repair and adjustment" of the equipment within 48 hours. Id. The Fourth District's interpretation of the statutes would render sections 316.610(1) and (2) meaningless in that an officer would not be able to stop a vehicle with a cracked windshield in order to submit it to an inspection to determine whether the vehicle is, in fact, unsafe. According to the opinion in Burke, that determination must be

made by an officer prior to stopping the vehicle. Such a position is contrary to common sense, and the plain language of sections 316.610(1) and (2) of the Florida Statutes.

Other practical considerations justify stopping a vehicle when an officer observes a cracked windshield. A vehicle's windshield is an important structural element for roof integrity and strength. Eigen, Ana Maria "Examination of Rollover Crash Mechanisms and Occupant Outcomes" National Center for Statistical Analysis - National Highway Traffic and Safety Administration, December 2003. A damaged windshield may present an unsafe condition even if the damage does not impair the driver's view. The Florida Legislature has recognized the inherent dangers of any windshield crack by enacting a statute stating "[t]he deductible provisions of any policy of motor vehicle insurance ... providing comprehensive coverage or combined additional coverage **shall not be applicable to damage to the windshield** of any motor vehicle covered under such policy." § 627.7288, Fla. Stat. (2002)(emphasis added). Assuming, *arguendo*, that a cracked windshield must be "dangerous" or "unsafe" in order to constitute a violation under Florida law, the State maintains that any windshield crack would qualify as being "dangerous" or "unsafe."

The State respectfully requests this Court to reject the Fourth District's erroneous decision in Burke and endorse the well-reasoned opinion in Hilton.[3] In Hilton, the Second District addressed an identical issue and held "that an officer may stop a vehicle with a visibly cracked windshield regardless of whether the crack creates any immediate hazard." Hilton, 901 So. 2d at 157. The decision in Hilton is squarely on point, and even the Fourth District acknowledged that "[i]f the majority opinion in Hilton is correct, it would follow that the stop in the present case for the crack in the windshield was proper." Burke, 902 So. 2d at 957. Every District Court of Appeal in Florida, except the Fourth District, has embraced the decision in Hilton, and the State submits this Court should adopt the judicious analysis set forth by the Second District in Hilton. See Howard; Ivory; Breed; State v. Perez-Garcia, 30 Fla. L. Weekly D2397 (Fla. 3d DCA Oct. 12, 2005); D.E.M. v. State, No. 3D05-1208 (Fla. 3d DCA Dec. 14, 2005); but see Burke.

Cracked Taillight Issue

In this case, the trial court found that (1) the vehicle driven by respondent had a broken taillight, (2) a white light was being emitted from the broken taillight, and (3) "there was

[3] The Second District's decision in Hilton is currently before this Court in case number SC05-438. In addition, the First District's decision in Howard is also before this Court in case number SC05-1486.

remaining a partial red covering on the taillight." (T. 37-38). The trial court ruled the deputies' observation of the broken taillight did not provide them with a sufficient basis to stop the vehicle based upon the decisions in Doctor v. State, 596 So. 2d 442 (Fla. 1992), and Frierson v. State, 851 So. 2d 293 (Fla. 4th DCA 2003), rev. granted State v. Frierson, 870 So. 2d 823 (Fla. 2004). For the reasons set forth below, this Court should reverse the Fourth District's holding in Burke regarding this issue.

The State respectfully submits that the conclusions reached by the trial court and the Fourth District regarding the traffic stop and the broken taillight was incorrect. The trial court in this case found that the deputies stopped the vehicle based upon the broken taillight and the cracked windshield. These are valid reasons to stop a motorist in Florida because "[a]ny 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 . . ." § 316.610(1), Fla. Stat. (2002). Since the deputies had reasonable cause to believe that the taillight was not in proper repair, the stop in this case was permissible. Id.

The State contends 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 a 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 of the 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.

Doctor, 596 So. 2d 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.

In the instant case, however, there was a "crack in the red lens which was emitting white light," and "the red lens still partially covered the taillight." Burke, 902 So. 2d at 956. Unlike Doctor, this lens was designed to cover a light; it was not "merely a reflector". Doctor at 447. Thus, it was the cracked taillight, combined with the cracked windshield, which gave the deputies reasonable cause to believe that the vehicle driven by respondent had equipment which was not in proper adjustment or repair and could be stopped for inspection pursuant to section 316.610(1). Accordingly, the trial court's ruling, and the Fourth District's opinion in Burke, should be reversed.

CONCLUSION

WHEREFORE based on the foregoing arguments and authorities cited herein, the State respectfully requests this Honorable Court to reverse the decision of the Fourth District Court of Appeal and adopt the reasoning of the Second District's decision in Hilton.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of hereof has been furnished via courier to: Marcy K. Allen, Assistant Public Defender, 421 3rd Street, West Palm Beach, FL on December 27, 2005.

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RICHARD VALUNTAS
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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.

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