IN THE SUPREME COURT OF FLORIDA

TOMESHA MARIE HOWARD,

Petitioner,

v. **CASE NO. SC05-1486**
L. T. 1D04-5295

STATE OF FLORIDA,

Respondent.
_____/

REPLY BRIEF

PRELIMINARY STATEMENT

References to the State's brief shall be by the letters "SB" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

Petitioner will rely upon her initial statement of the case and facts.

ISSUE

THE TRIAL COURT DID NOT ERROR IN GRANTING PETITIONER'S MOTION TO SUPPRESS THE EVIDENCE BY FINDING THAT THE INITIAL STOP OF THE VEHICLE IN WHICH SHE WAS A PASSENGER FOR A CRACKED WINDSHIELD WAS UNLAWFUL BECAUSE IT DID NOT PRESENT A SAFETY HAZARD.

Essentially, the State argues that regardless of whether the windshield was safe, because it had a crack in it, it was reasonable for the deputy to stop the vehicle in order to perform a safety inspection to determine whether its required equipment was in proper adjustment or repair. The State also argues that the reflector in Doctor v. State, 596 So. 2d 442 (Fla. 1992), was not "required equipment," and that the legislature has deemed windshields so important that it has exempted the repair of a windshield from the deductable provisions of any policy of motor vehicle insurance pursuant to Section 627.7288, Fla. Stat.

Section 316.610, Fla. Stat. is entitled: "Safety of Vehicle; Inspection." The whole purpose of this statute is to ensure that a vehicle driven on the roads is safe and does not present a hazard to other vehicles. Thus, whether a vehicle's equipment is in "proper adjustment or repair" is strictly a function of the vehicle's safety, not a dictionary's definition of what constitutes proper adjustment or repair.

While Section 316.2952(1), Fla. Stat. requires a windshield to be in a fixed and upright position and to be equipped with safety glazing, it does not require a windshield to be in pristine condition.

The question, then, in this case comes to this: Do the facts support a reasonable basis for the deputy to have stopped the vehicle in order to perform a safety inspection merely because he observed a crack in the windshield? This becomes a factual determination.

When the deputy was originally deposed in this case, he was unable to describe the crack. (II-12). All the deputy could say was that it was within the four by eight foot windshield. (II-12). On the date of his testimony at the hearing held on the motion to suppress the deputy couldn't describe the crack, all he knew was that it was cracked. (II-13). He did not issue a citation for the cracked windshield nor did he give the driver of the car a citation. (II-16). He allowed someone to drive the vehicle home. (II-17).

He had stopped the vehicle before but he couldn't remember when. He also couldn't remember whether the windshield was cracked at the time. (II-15-16).

Petitioner's witness, her father, testified that the windshield had a hairline crack in it in front of the passenger

but it did not obstruct the passenger's view. (II-25). Petitioner's father had previously sat in the driver's seat and the crack did not interfere with his vision or ability to operate the vehicle. (II-25).

On these facts, the trial court, accepting the testimony of Petitioner's father, found that a safety hazard was not presented and under the circumstances, it was not reasonable for the deputy to have stopped the vehicle.

There is nothing in this record which contradicts the trial court's findings. As such, the deputy had no reasonable basis to believe that a safety inspection was required. The vehicle was not in such a condition as to endanger any person or property, it contained the parts as required by law, and for purposes of safety, the windshield was in proper condition and adjustment even if it was cosmetically flawed.

Again, and at the risk of being repetitious, whether a vehicle's equipment is in proper adjustment or repair is only relevant if it affects the safety of the vehicle.

Here, there was a factual finding by the trial court that it didn't, and that it was unreasonable for the officer to stop the vehicle in order to perform a safety inspection. This is especially true because the deputy had previously stopped the vehicle, and Petitioner's father testified that the crack in the

windshield had existed “[p]robably two plus years prior to ownership, and at least a year after ownership.” (II-23).

If the deputy thought that the crack rendered the vehicle unsafe or that its windshield was not in proper condition or repair, the deputy should not have allowed the vehicle to be driven away the first time that he stopped it, much less the second time that he stopped it.

In light of this argument, the distinction made by the State relative to Doctor is irrelevant. While Doctor may have involved a reflector (equipment not required by law) the difference between Doctor and this case is without distinction. What is relevant here is whether the crack in the windshield gave the deputy a reasonable belief to require the stop of the vehicle in order to perform a safety inspection. Under the facts in this case it did not.

Finally, the State’s reliance upon Section 627.7288, Fla. Stat., is a red herring. The State has merely assumed that because the legislature has provided that the deductible provisions of any policy of a motor vehicle’s insurance shall not be applicable to damage to the windshield means that the Florida legislature is especially concerned about windshield cracks. This is shear speculation on the part of the State, and it is equally likely or even more likely that the Florida

Legislature is concerned about eliminating the unnecessary caseload of the small claims courts in this state as a result of motorists filing small claim court cases in order to recover their deductibles.

CONCLUSION

Based on the foregoing arguments and authorities in both this brief and the initial brief, the order granting the motion to suppress in this case should be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to ROBERT WHEELER, Assistant Attorney General, The Capitol, Criminal Appeals, PL01, Tallahassee, FL 32399-1050; and to Ms. Tomesha Howard, 22437 SE 62nd Avenue, Hawthrone, FL 34640, on this date, February 7, 2006.

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that pursuant to Rule 9.210(a)(2), Fla. R. App. P., this brief was typed in Courier New 12 point.

Respectfully submitted,

NANCY DANIELS
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