

IN THE SUPREME COURT OF FLORIDA

MATTHEW PAUL, :
 :
 Petitioner, :
 :
 vs. : Case
 : No.
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

TIMOTHY J. FERRERI
Assistant Public Defender
FLORIDA BAR NUMBER 0774022

Public Defender's Office
Polk County Courthouse
P. O. Box 9000--Drawer PD
Bartow, FL 33831
(863) 534-4200

ATTORNEYS FOR PETITIONER

TOPICAL INDEX TO BRIEF

	<u>PAGE NO.</u>
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	5
<u>ARGUMENT</u>	6
<u>ISSUE</u>	
THE DECISION IN THIS CASE CITES <u>HILTON V.</u>	
<u>STATE</u> , 901 So.2D 155 (FLA. 2D DCA 2005)	
WHICH IS CURRENTLY PENDING BEFORE THIS	
COURT.....	6
CONCLUSION	7
APPENDIX	Error! Bookmark not defined.
CERTIFICATE OF SERVICE	8

TABLE OF CITATIONS

	<u>PAGE NO.</u>
<u>State Cases</u>	
<u>Hilton v. State</u> , 901 So.2D 155 (Fla. 2d DCA 2005)	i, 4, 5, 6
<u>Jollie v. State</u> , 405 So. 2d 41 (Fla. 1981)	6
<u>State Statutes</u>	
§ 322.34(5), Florida Statutes (2002)	1
§ 316.221(1) Florida Statute (2002)	3
§ 316.193(1) and (2)(a), Florida Statutes (2002)	1
§ 322.34(5), Florida Statutes (2002)	1

STATEMENT OF THE CASE AND FACTS

On November 6, 2002, the State Attorney for the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida, filed an information charging the Appellant, MATTHEW SCOTT PAUL, with driving while license suspended (habitual offender) in violation of section 322.34(5), Florida Statutes (2002) and driving under the influence in violation of section 316.193(1) and (2)(a), Florida Statutes (2002). The offenses allegedly occurred on or about October 20, 2002. (R12-16) On November 18, 2002, the Appellant entered a guilty plea to the charged offenses and was sentenced to 24 months probation for the felony offense and concurrent 12 month probation for the misdemeanor offense. (R17-29)

On February 25, 2004, the State Attorney for the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida, filed an information charging the Appellant, MATTHEW S. PAUL, with driving while license suspended (habitual offender) in violation of section 322.34(5), Florida Statutes (2003). The offense allegedly occurred on or about February 10, 2004. (R92-95) An affidavit of violation of probation was filed on February 27, 2004. (R69) The Appellant filed a motion to suppress on May 26, 2004. (R101-103) A hearing was held on the motion to suppress on June 9, 2004, before the

Honorable Ronald N. Ficarrotta, Circuit Judge. (T107-124) The following is elicited from the testimony at that hearing.

Officer Christine Davis of the Tampa Police Department was on patrol on the early morning of February 10, 2004. (T108) The officer was traveling northbound on Nebraska Avenue when a black pick-up pulled out in front of her. She noticed that "the left casing on the tail light was broken and all that was visible from that tail light was a white light. She pulled the black vehicle over and made contact with the driver. The driver, later identified as the Appellant, asked if he was going to jail. (T109) The Appellant indicated he did not have a driver's license, but he provided his name, social security number and date of birth. Based upon the information, the officer determined the Appellant's license had been suspended as a habitual traffic offender. She placed him under arrest. (T110)

The officer testified she could see from four hundred feet that the casing on the left taillight was broken. (T111)

She believed the car was unsafe, as the taillight was not showing any red light. The officer was shown defense exhibit number one, which was the rear of a black Toyota pick-up truck. The tag number was the same as the vehicle that she stopped above. (T112) The picture shows that the casing was not broken any more. (T113)

Ms. Melody Voeltz testified she was the mother of the

Appellant. (T116) She identified State's exhibit number one as a photograph of the rear of her son's vehicle. The picture showed a crack in the tail light on the left side. Defense exhibit number two was a photograph that showed the vehicle with the lights on at night. (T117) Defense exhibit number three was a photograph of the rear light with the brake pedal being pushed. (T118) The taillight was emitting both white and red light. Defense exhibit number five was a photograph in which the brake pedal was not being depressed. (T119) The photographs were taken the day after the Appellant was arrested. The truck had not been altered in any way. (T120)

The trial court denied the motion. (T124) The trial court also found the Appellant guilty of violating conditions three and five of his probation. The trial court sentenced the Appellant to 36 months imprisonment on the violation of probation. (T134) The Appellant entered a plea of no contest to the new offense of driving while license suspended or revoked. The Appellant reserved his right to appeal the denial of the motion to suppress and the trial court found the motion dispositive to the charge. (T135) The trial court accepted the Appellant's plea and sentenced him to one year and a day in Florida State prison. The sentence was to be served concurrently with the sentence on the probation revocation. (T137, R78-84) A timely notice of appeal was filed on July 8, 2004. (R104) Petitioner argued in his initial appeal that

officers had no basis to stop his vehicle as the taillights on the vehicle were properly functioning and did not violate Florida Statute section 316.221(1).

On June 15, 2005, the Second District Court of Appeal issued a per curiam decision affirming petitioner's judgment and sentence. Paul v. State, ___So.2d___. Case No. 2D04-3346 (Fla. 2d DCA June 15, 2005¹). In doing so, the court cited, *inter alia*, Hilton v. State, 901 So. 2d 155 (Fla. 2d DCA 2005). This case is currently pending before this Honorable Court. Hilton v. State, Case No. SC05-438. Petitioner filed his notice of intent to invoke this Court's jurisdiction on September 6, 2005.

¹ A motion for rehearing was denied on August 11, 2005.

SUMMARY OF THE ARGUMENT

The decision in this case cited Hilton v. State, 901 So. 2d 155 (Fla. 2d DCA 2005), is a case now pending in this Court. (Case No. SC05-438). The majority opinion in Hilton holds that section 316.610(1), Florida Statutes permits an officer to stop a vehicle to perform a vehicle inspection based upon reasonable cause to believe the vehicle is unsafe, not equipped as required by law, or its equipment is not in proper adjustment or repair.

ARGUMENT
ISSUE

THE DECISION IN THIS CASE CITES HILTON V. STATE, 901 So.2D 155 (FLA. 2D DCA 2005) WHICH IS CURRENTLY PENDING BEFORE THIS COURT.

In Jollie v. State, 405 So. 2d 418 (Fla. 1981), this court held that similarly situated litigants should have similar avenues of review in the Florida court system. The authority relied on by the Second District Court of Appeal is currently pending before this Court. Hilton v. State, 901 So. 2d 155 (Fla.2d DCA 2005), review granted, Case No. SC05-438. Hilton holds that section 316.610(1), Florida Statutes, authorizes police to stop a vehicle for a cracked windshield even if the crack does not endanger the vehicle's occupants. Petitioner argued in his appeal to the Second District that damage to his vehicle's taillight did not violate the appropriate statute. The second district affirmed on the authority of Hilton, supra.

Pursuant to the procedure in Jollie, this Court should take jurisdiction. The issue argued on the merits in the direct appeal of this case, is also pending review in this court. Hilton v. State, supra. Petitioner is entitled to the same avenue of review.

CONCLUSION

This Court has discretionary jurisdiction to review the decision below and should exercise that jurisdiction to consider the merits of Petitioner's argument.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to William Munsey, Concourse Center #4, 3507 E. Frontage Rd. - Suite 200, Tampa, FL 33607, (813) 287-7900, on this _____ day of September, 2005.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

JAMES MARION MOORMAN
Public Defender
Defender
Tenth Judicial Circuit
(863) 534-4200

TIMOTHY J. FERRERI
Assistant Public
Florida Bar Number 0774022
P. O. Box 9000 - Drawer PD
Bartow, FL 33831

tjf