THE SUPREME COURT OF FLORIDA

MATTHEW SCOTT PAUL, **Petitioner,** **v.** **STATE OF FLORIDA,** **Respondent.**	**Case No. SC05-1636**

ON PETITION FOR REVIEW FROM THE SECOND DISTRICT COURT OF APPEAL, STATE OF FLORIDA

ANSWER BRIEF ON THE MERITS

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

ROBERT J. KRAUSS
Chief Assistant Attorney General
Bureau Chief, Tampa Criminal Appeals
Florida Bar No. 238538

WILLIAM I. MUNSEY, JR.
Assistant Attorney General
Florida Bar No. 0152141
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607-7013
Voice (813)287-7900
Fax (813)281-5500

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

PAGE NO.

TABLE OF CITATIONS

OTHER AUTHORITIES

STATEMENT OF THE CASE

The opinion below *per curiam* affirms Petitioner's conviction; and, that opinion is published as Matthew Scott Paul v. State, 908 So.2d 1071 (Fla. 2D04-3346) (Opinion filed June 15, 2005)[Table Opinion]. The Mandate in that case issued on August 31, 2005. Petitioner has submitted to this Court the slip opinion filed by the Second District which is a "citation PCA". The cited case is Hilton v. State, No. SC05-438 which is active and pending before this Court. On October 17, 2005 this Court stayed proceedings in this case; and, on November 3, 2005 this Court entered a briefing schedule. Petitioner filed his merits brief on November 28, 2005.

STATEMENT OF THE FACTS

On November 6, 2002, the State Attorney in and for the Thirteenth Judicial Circuit filed an Information charging Petitioner [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 occurred on or about October 20, 2002. (R 12-16) On November 18, 2002, Petitioner entered a guilty plea to the charged offenses and was sentenced to 24 months probation for the felony offense and concurrent 12 month probation term for the misdemeanor offense. (R 17-29)

That said, on February 25, 2004, the State Attorney in and for the Thirteenth Judicial Circuit filed an Information charging Petitioner [Matthew Scott Paul] with driving while license suspended (habitual offender) in violation of Section 322.34(5), Florida Statutes (2003). The offense occurred on or about February 10, 2004. (R 92-95) An affidavit of violation of probation was filed on February 27, 2004. (R 69) Petitioner filed a Motion to Suppress on May 26, 2004 (R 101-103) A hearing was held on the Motion to Suppress on June 9, 2004, before the Honorable Ronald N. Ficarrotta, Circuit Judge. (R 107-124)

At the hearing, Officer Christine Davis of the Tampa Police Department testified she was on patrol in the early morning hours of February 10, 2004. (R 108) The officer was traveling northbound on Nebraska Avenue when a black pick-up pulled out in front of her. The officer 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. (R 109) The officer's testimony is not complex:

> Q. And how did you come in contact with Mr. Paul on that morning?
>
> A. About—I pulled out on to Northbound Nebraska Avenue. I was traveling Northbound on Nebraska Avenue and he pulled out in front of me.
>
> Q. And what if anything – describe what kind of vehicle he was driving?
>
> A. He was driving a black pick-up truck Toyota Tacoma.
>
> Q. What if anything drew your attention to the pick-up?
>
> A. The left casing on the tail light was broken and all that was visible from that tail light was a white light.
>
> Q. Okay and what if anything did you do once you observed that?
>
> A. I initiated a traffic stop, and I made contact with the defendant.

Q. Okay. And what if anything happened when you made contact with Mr. Paul?

A. As soon as I made contact with him he asked me if was going to jail. And I told him, well I was not sure yet. We needed to figure out everything. I asked him if he had a driver's license on him he stated that he did not, and I asked him for his information, his identification and he provided me with his name, social security number, and date of birth.

Q. And what did you do with that information?

A. I returned to my police car and a checked his information via our computer system and that resulted in showing that he was a habitual traffic violator.

Q. And what if anything did you do with Mr. Paul at that point?

A. I again made contact with him. I placed him under arrest.

(R 109-110)

The arresting officer testified that she could see from four hundred feet that the casing on the left tail light was broken. (R 111) The officer believed the car was unsafe as the tail light 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. (R 112)

On re-cross examination, the officer was firm in her testimony when shown photographs that the left tail light casing

was broken and emitted white light. (R 115)

Petitioner's mother [Melody Voeltz] testified. She identified Respondent's exhibit number one as a photograph of the rear of Petitioner's vehicle. The picture showed a crack in the tail light on the left side. Petitioner's exhibit number two was photograph that showed the vehicle with the lights on at night. (R 117) Petitioner's exhibit number three was a photograph of the rear light with the brake pedal being pushed. (R 118) Petitioner's mother confirmed the tail light was emitting both white and red light. (R 119) Defense exhibit number five was a photograph in which the brake pedal was not being depressed. (Tr 119) The photographs were taken the day after Petitioner was arrested. Petitioner's mother testified the truck had not been altered in any way. (R 120) These photographs appear in the record. (R 71-75) Mrs. Voeltz did not testify she was present with Petitioner when the stop was made.

The trial court heard argument on the motion. (R 120-124) The motion to suppress was denied from the bench (R 124). Thereafter, the trial court heard testimony from Petitioner's probation officer (R 126-132); and, his probation was revoked. (R 133) Petitioner then entered a plea to the driving while license suspended charge. (R 135-138)

A direct appeal was prosecuted in the Court below where the

trial court's disposition was affirmed on the basis of Hilton v. State, 901 So.2d 155 (Fla. 2d DCA 2005) (en banc). The decision below is reported as Paul v. State, 908 So.2d 1071 (Fla. 2d DCA No. 2D04-3346)(Opinion filed June 15, 2005)[Table Opinion]. This Court has granted review.

SUMMARY OF THE ARGUMENT

There has been no police misconduct. There is a basis for the stop; and, that basis is a broken tail light. To not have stopped Petitioner's automobile would have been less than responsible on the part of Officer Christine Davis. The People of Florida do want and encourage safe automobiles on our state's streets, roads, and highways. This is why Chapter 316, Florida Statutes was promulgated.

The Florida Uniform Traffic Control Law regulates the use of vehicles in this state. Again, this is why Chapter 316, Florida Statutes has been enacted. The requirements of the Uniform Traffic Control Law apply to the operation of vehicles and bicycles and the the movement of pedestrians upon highways maintained by our state government, highways and roads maintained by our county governments, streets and alleys maintained by our city governments; and, wherever vehicles have the right to travel. See, Sec. 316.072(1), Florida Statutes.

To stop and inform an operator of a vehicle with a broken tail light should be appreciated by reasonable drivers. Whether a citizen is one or one hundred years of age, a law enforcement officer is a friend. If lost, an officer can help you find your way. If afraid, a law enforcement officer can protect you.

And, do not law enforcement officers strive to make sure that roads are safe places for all to be? In this case, there is no discord between the Fourth Amendment and a stop for a safety inspection. Here eight {8} minutes elapsed from the moment of “stop” to “arrest”. The intrusion was reasonable. There is no Fourth Amendment Deprivation.

ARGUMENT

MAY A POLICE OFFICER CONSTITUTIONALLY CONDUCT A SAFETY INSPECTION UNDER Section 316.010 AFTER THE OFFICER HAS OBSERVED A BROKEN TAIL LIGHT

(Re-Stated by Respondent)

The Second District filed a *per curiam* affirmance; and, in the slip opinion, published the following: "Affirmed. See Hilton v. State, 30 Fla. L. Weekly D453 (Fla. 2dDCA Feb. 16, 2003)." The Hilton decision is reported as Hilton v. State, 901 So.2d 155 (Fla. 2d DCA 2005) (en banc). In Hilton, the Second District certified the following question as a matter of great public importance: "May a police officer constitutionally conduct a safety inspection stop under Section 316.610 after the officer has observed a cracked windshield, but before the officer has determined the full extent of the crack." As this Court has accepted jurisdiction, Respondent adopts the format of the question certified in Hilton. The Hilton case is presently pending before this Court.

Respondent relies on the majority opinion published in Hilton v. State, 901 So.2d 155 (Fla. 2d DCA 2005)(en banc).

Officer Davis testified that she stopped Petitioner's

vehicle because the casing on Petitioner's left tail light was broken [which she concluded was unsafe equipment] emitting a white light. (R 112) Petitioner introduced a series of photographs which indicated the vehicle had three tail lights. (R 71-75; 119) Respondent would point out that Section 316.610, Florida Statutes (2003) requires an automobile to be equipped with lamps in proper condition or adjustment. Thus, head lights and tail lights are "lamps" which must be maintained. At bar, the stop was permissible as the tail light casing was visibly broken with a white light being admitted. The stop was made in February at 4:32 A.M. (R 63). Thus, the officer was given a night view of the broken tail light.

In the trial court, counsel for Petitioner argued that the Petitioner's vehicle was equipped with three stop lamps. (Tr 121) Counsel noted that Section 316.221(1) only requires that a vehicle be equipped with two tail lights mounted on the rear of a motor vehicle "which when lighted as required shall emit a red light plainly visible from a distance of 1,000 feet." Again, the photographs are part of the record on appeal. (R 70-75) The testimony of the arresting officer establishes that a white light was emitted from the broken tail light casing. (R 109-110; 115)

In the trial court, Petitioner relied heavily on Doctor v. State, 596 So.2d 442, 461 (Fla. 1992). The trial prosecutor distinguished Doctor:

> MR. VEGA: Judge, in the Doctor opinion I want to point out one very important distinction. The Court on the bottom, I don't know if your copy is the same as mine, but my page four it say's (sic) says the evidence at trial revealed that Doctor's vehicle was equipped with two sets of tail lights consisting and it goes into the description of the lights. In the Doctor case it was the reflector that was cracked, not the actual break (sic) brake light casing. In this case, we have a brake light casing that is broken, not a reflector.
>
> And in—specifically in footnote three of the opinion, it says "this was not designed to cover a lighting apparatus, but it was merely a reflector to reflect, rather than emit light. Which is the distinction between Doctor and this case.
>
> So I think the stop was proper under 316.221, which requires the tail lamps. I would argue that the two tail lamps are the ones that are spaced around the back of the vehicle, one on each side, left and right. Not the one that's up at the top. Because the statute specifically says they need to be laterally and levelly placed along each other so I believe the stop was proper and Doctor is clearly distinguished.
>
> (R 122-123)

Stops based on tail light dysfunctions are not uncommon. Simple traffic infractions [standing alone] are rarely subject

to appellate review; and, thus, not reported. The "twist" comes when once stopped, the operator has no valid operator's license; is impaired or under the influence; or, has contraband in plain view. It is then [and only then] that the stop is highlighted as a matter of constitutional significance. See, Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996)[If probable cause exists to stop a person for a traffic violation, the actual motivation of the officer is irrelevant.] and Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)[The Court notes the objective test for probable cause to stop; wherein, would a person or ordinary caution be justified in believing the action was appropriate?]

That said, a broken tail light can serve to identify an automobile when involved in a crime. See, Beck v. State, 181 So.2d 659 (Fla. 2d DCA 1966), Rehearing Denied Jan. 27, 1966; United States v. Aldridge, 719 F.2d 368 (11th Cir. 1983). The absence of tail lights or a broken tail light can give rise to wrongful death litigation. See, Dixie Ohio Express Co. v. Poston, 170 F.2d 446 (5th Cir. 1948). This is why safety inspections are a matter of consequence.

In Roddy v. State, 658 So.2d 144 (Fla. 3d DCA 1995), the Third District held that stop of Alphonso Roddy's automobile for

a broken tail light was not a pretext for an impermissible search even though the prosecution failed to establish that a reasonable police officer would have routinely stopped a motor vehicle for the same violation. There, the officer testified that the stop was a simple stop to investigate a broken tail light. The Third District affirmed and certified the same issue as the one certified in Daniels v. State, 647 So.2d 220, 221 (Fla. 1st DCA 1994). Jurisidction was accepted and this Court addressed how to determine what constitutes an impermissible pretextual traffic stop for Fourth Amendment purposes. And, based on State v. Daniel, 665 So.2d 1040 (Fla. 1995), Rehearing Denied Jan. 4, 1996, this Court approved the Third District's opinion in Roddy. See, Roddy v. State, 668 So.2d 995 (Fla. 1996).

On Motion for Rehearing, the Fourth District determined that a stop based on a "cracked" tail light [which emitted a red light] was without reasonable cause. See, Frierson v. State, 851 So. 2d 293 (Fla. 4th DCA 2003). The Court certified conflict; and, this Court granted review. See, State v. Frierson, 870 So.2d 823 (Fla. 2004)[Table Opinion]. The *Frierson* case remains active in this Court as oral argument was held May 4, 2004 and the case awaits a decision. Here, the

police officer testified that a white light [not a red light] was emitted from the broken tail light. (R 112)

Florida Courts are sensitive to broken tail light stops. The intrusion takes but minutes to issue either a verbal warning or traffic citation. A forty-five (45) minute detention was not possible to justify. See, Blue v. State, 592 So.2d 1263 (Fla. 2d DCA 1992). Respondent would point out that in this case, the stop was made at 4:32 A.M. and the arrest was made eight (8) minutes later at 4:40 A.M. (R 63) An eight (8) minute intrusion is justifiable.

In two conclusions written by Judge Whatley [speaking for the majority in Hilton v. State, 901 So.2d 155, 160 (Fla. 2d DCA 2005)(En Banc)], he opins: "We conclude that the legislature was not required to detail the nature of each and every violation that warrants a notice to repair." And, "We conclude that a statute that authorizes such a limited safety inspection stop when an officer reasonably believes the vehicle to be in violation of the above requirements does not violate the Fourth Amendment."

Respondent urges there has been no constitutional deprivation. Officer Davis made a stop for the welfare of

Petitioner and all other Florida drivers, passengers, and pedestrians who might be placed in jeopardy because of Mr. Paul's broken tail light. There has been a correct application of Fourth Amendment principles in denying suppression; and, the decision below does not hold otherwise. Respondent urges this Court to approve the decision below.

CONCLUSION

Respondent respectfully requests that this Honorable Court hold this case in abeyance pending determination in Hilton v. State, SC05-438; and, then affirm the decision below.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Timothy J. Ferreri, Assistant Public Defender, P.O. Box 9000—Drawer PD, Bartow, FL 33831 on this 12th day of December, 2005.

CERTIFICATE OF FONT 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).

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

_____

ROBERT J. KRAUSS
Chief Assistant Attorney General
Bureau Chief, Tampa Criminal Appeals

Florida Bar No. 238538

_____

WILLIAM I. MUNSEY, JR.
Assistant Attorney General
Florida Bar No. 0152141
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607-7013
(813)287-7900
Fax (813)

COUNSEL FOR RESPONDENT