IN THE SUPREME COURT OF FLORIDA

MATTHEW PAUL,	:	
Petitioner,	:	
vs.	:	Case No. SC05-1636
STATE OF FLORIDA,	:	
Respondent.	:	
	:	

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

INITIAL BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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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) The Second District affirmed the judgment and

sentence by only citing to the case of Hilton v. State, 901 So. 2d 155 (Fla. 2d DCA 2005). That case is pending in this Court in case number SC05-438. A timely notice to invoke the jurisdiction of this Court was filed on September 2, 2005.

SUMMARY OF THE ARGUMENT

The trial court erred in denying the Appellant's motion to suppress as the basis for the stop (broken tail light) of the Appellant's vehicle did not violate the statute and thus the officer did not have a legal basis to stop the vehicle. This Court has jurisdiction to review the decision of the Second District Court of Appeals because the case cited in the decision of the Second District is currently pending before this Court.

ARGUMENT

ISSUE

THE TRIAL COURT ERRED IN DENYING THE APPELLANT'S MOTION TO SUPPRESS, AS THE OFFICER'S BASIS FOR STOPPING THE VEHICLE WAS NOT REASONABLE, AS THE APPELLANT'S VEHICLE DID NOT VIOLATE SECTION 316.221(1), FLORIDA STATUTES (2002).

The Petitioner argued in his original appeal that police officers did not have a have a reason to stop the Petitioner's vehicle as the taillights on his vehicle did not violate the applicable statute.

Officer Davis testified that he stopped the Appellant's vehicle because the casing on the Appellant's left taillight was broken and it only emitted white light. The Appellant introduced a series of photographs, which indicated the vehicle had three taillights. (R71-75, T119)

Counsel for Appellant argued that the Appellant's vehicle was equipped with three stop lamps. (T121) Counsel noted that section 316.221 (1), Florida Statutes (2002) 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." The statute plainly says that the vehicle be equipped with at least two taillights. Under Doctor v. State, 596 So. 2d 442 (Fla. 1992), a vehicle equipped with two operating rear

lights does not violate the statute even with a cracked lens cover. If one of four taillights is inoperable, it was not in violation of the taillight statute requiring two operable taillights. Wilhelm v. State, 515 So. 2d 1343 (Fla. 2d DCA 1987). On appeal, a trial court's factual findings on a motion to suppress are reviewable under a de novo standard. Ornelas v. United States, 517 U.S. 690, 691, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996).

Appellant would argue that officers had no basis to stop the Appellant's vehicle under the statute concerning vehicle taillights and thus all evidence seized after the stop should be suppressed as fruit of the poisonous tree. Wong Sun v. United States, 371 U.S. 471 (1963); Frierson v. State, 851 So. 2d 293 (Fla. 4th DCA 2003).

The second district cites Hilton v. State, supra, held in an en banc decision, that law enforcement officers may stop vehicles for a safety inspection regardless of whether the officer reasonably believes the vehicle is unsafe to operate. Petitioner would note that in the case of State v. Burke, 902 So. 2d 955 (Fla. 4th DCA 2005), the Fourth District held that the standard was whether the officer had a reasonable belief that the driver of the vehicle committed a crime or traffic infraction. The Burke court certified conflict with Hilton.

CONCLUSION

Based on the foregoing argument and authorities, Mr. Paul respectfully submits that this Court reverse and remand the decision of the Second District Court of Appeals and remand it back to the district court should it reverse the decision in Hilton.

APPENDIX

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 December, 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,

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