IN THE SUPREME COURT OF THE STATE OF FLORIDA

SC CASE NO. SC05-1844

DCA CASE NO.4D04-2442

STATE OF FLORIDA,

Petitioner,

vs.

GREGG CAMPBELL,

Respondent.

PETITIONER'S INITIAL BRIEF ON THE MERITS

CHARLES J. CRIST, JR.
Attorney General
Tallahassee, Florida

CELIA TERENZIO
Assistant Attorney General
Bureau Chief, West Palm Beach
Florida Bar No. 0656879

MONIQUE E. L'ITALIEN
Assistant Attorney General
Florida Bar No. 0458198
1515 N. Flagler Drive
Suite 900
West Palm Beach, Florida 33401
Telephone: (561) 837-5000

Counsel for Petitioner

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PRELIMINARY STATEMENT

Petitioner, THE STATE OF FLORIDA, was the prosecution and Respondent, GREGG CAMPBELL, was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida. Petitioner was the Appellee and Respondent was the Appellant in the Fourth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court of Appeal except that Petitioner may also be referred to as the State.

STATEMENT OF THE CASE

Respondent was charged by Information with one count of carrying a concealed firearm. (R. 51-52) Respondent filed a pre-trial motion to suppress in which he argued (1) the stop was illegal as the detectives lacked the requisite founded suspicion; (2) the search was illegal as the detectives did not have probable cause to search the vehicle and the defendant did not voluntarily consent to his detention or search; and (3) the defendant's statements and consent violated his rights under the Fifth, Sixth, and Fourteenth Amendments. (R. 53-55) The trial court granted the motion to suppress. (R. 57) Petitioner appealed the trial court's ruling to the Fourth District Court of Appeal ("Fourth District"). In rendering its opinion, the Fourth District affirmed the trial court. The district court stated:

We conclude that the trial court could properly determine that,

> under the circumstances, a reasonable person could believe that he was not free to leave and was "detained" at the time consent was given. Here, the state does not offer justification, or articulable suspicion, explaining the deputies' failure to return Campbell's driver's license before seeking and obtaining his consent to search.
>
> On these facts, the trial court concluded that, although the initial encounter and surrender of license for a warrant check may have been lawful, Campbell's continuing detention, by failing to return the license before seeking consent, amounts to a tainting of consent such that it was not voluntary. *See Perko v. State*, 874 So. 2d 666 (Fla. 4th DCA 2004) (conviction reversed where consent to search vehicle obtained while officer in possession of driver's license while conducting warrant check); *see also Barna v. State*, 636 So.2d 571 (Fla. 4thDCA 1994). Recognizing the state's contention, with which we disagree, that this issue was resolved by the supreme court in *Baez*, and its importance to law enforcement, we certify the following question to the supreme court as one of great public importance:
>
> IS AN OTHERWISE UNTAINTED CONSENT TO SEARCH VOLUNTARY WHEN THE CONSENT IS GIVEN WHILE A LAW ENFORCEMENT OFFICER, WITHOUT JUSTIFICATION, RETAINS POSSESSION OF DEFENDANT'S DRIVER'S LICENSE?

Campbell v. State, 911 So.2d 192, 193 (Fla. 4th DCA 2005). Petitioner filed a notice to invoke discretionary jurisdiction. This Court accepted jurisdiction of this case and issued a briefing schedule.

STATEMENT OF THE FACTS

At the suppression hearing, Detective Patrick White testified he has been with the Broward Sheriff's Office (BSO) for five years. On January 7, 2004 he and his partners,

Detectives Michael Catalano and Carter[1], were on general patrol. All three were in one unmarked patrol car wearing plain clothes; regular t-shirts and jeans. They do wear a visible badge somewhere on their person. (T. 6, 12, 15, 19, 30) The detectives are all part of the Crime Suppression Team. (T. 15)

This particular day the detectives approached the Lakeside Apartments to check the parking lot. It is an area where they have had problems in the past. (T. 3-5) As they entered the area they observed Appellee's white Honda, parked. Appellee was leaning back in the driver's seat. (T. 5, 16, 30) They did not see any type of criminal activity; rather they were going to make a citizen contact.

It was Detective Catalano, a seven year veteran, who approached Appellee's vehicle first, from the driver's side. Detective White was temporarily distracted by a van driving slowly through the area. He stopped this van to make contact with the driver prior to reaching Appellee a minute or two later. (T. 6, 17, 21, 29, 35, 36) Detective White then approached Appellee from the passenger's side. Detective Carter remained at the rear of the vehicle standing in the grassy median. (T. 20, 21, 22)

Detective Catalano approached, touched the driver's side window and asked whether everything was okay. He also asked Appellee why he was just sitting there. (T. 31) Appellee responded he was waiting for his baby's mother to come downstairs. (T. 7, 31) Detective Catalano asked Appellee "do you mind if I see your license and

[1]The record on appeal does not appear to contain Detective Carter's first name.

registration." Detective Catalano did not raise his voice as this was a friendly conversation. (T. 31, 37) Appellee was very cooperative and handed it over. (T. 32) Detective Catalano took the identification and said he was going to check for any warrants, or something to that effect. Appellee said he had no problem. (T. 32)

When Detective White approached the Honda, Detective Catalano had already asked Appellee for his identification. Detective White only heard Detective Catalano ask Appellee what he was doing in the parking lot and heard Appellee's response. (T. 7, 31) White described the request for Appellee's identification as a consensual encounter. The detectives routinely ask people for identification and if a person wants to, he/she provides the identification. If he/she does not want to, he/she is free to go. Since it is a consensual encounter there is nothing else the officer can do, and White said such was the case here. (T. 7, 8, 9, 18, 28, 39)

While waiting on Appellee's warrants check, which took between three to seven minutes, Detective Catalano asked whether Appellee had any weapons or drugs in the car and the detective also asked Appellee if he would mind if he checked the car and his person. (T. 6-7, 8, 23, 33). None of the detectives told Appellee he was free to refuse their request to search his vehicle. (T. 25) Appellee was very cooperative. He replied he had no guns and no drugs in the car and gave his consent to search his vehicle. (T. 8, 25, 33) It was only a matter of minutes after searching the car that Detective Catalano found the handgun. (T. 12, 26, 37) The check of the identification was complete by the time

the handgun was found. (T. 13)

Detective White testified the detectives did nothing to intimate or threaten Appellee. Detective Catalano never raised his voice toward Appellee. (T. 9-10) In fact, based on Appellee's reaction, Detective White did not believe he was intimated in any way. (T. 22)

The State had no other witnesses and Appellee did not take the stand. (T. 40) After hearing argument from both sides, the trial court ruled as follows:

> All right. The Motion to Suppress is granted based on the Baez and Perko cases, where facts are exactly the same, as this encounter, then they did ask for his driver's license, which was produced. But they were running a check, and according to both of these cases, Fourth District in Baez on Page 1149, it said at that point consent, well, in Perko before returning his driver's license, while another deputy conducted a warrant check, under the circumstances the consent obtained was after he had been effectually seized, which is exactly circumstances in this case.
> I do understand the State's position on Golfing, but the Court basically throws the Fifth under the bus, if you read what they say about knowing only by someone who went to law school would understood what their rights are, so - -
>
> * * * *
>
> The Court finds original stop was consensual, it was a consensual encounter, but based upon once they take a driver's license, run a records check, the circumstances change. That's exactly the facts of those two cases.
> Although the Court does find the officers did nothing improper, there was no display of weapons, no show of authority, that he was free to leave, nothing intimidating about them. But once they took the license and ran the license, that changes things.

(T. 46-47)

SUMMARY OF THE ARGUMENT

The question certified by the Fourth District Court of Appeal must be answered in the affirmative and the district court's holding in this case must be reversed. The Fourth District erred in upholding the trial court's ruling on the motion to suppress and finding that Respondent's consent to search his vehicle was tainted because the deputy retained possession of his driver's license when the consent to search was given. However, the court failed to consider the totality of the circumstances surrounding the encounter. This Court has held that a detention does not arise from law enforcement asking for a driver's

license and running a check on it. Therefore the fact that the detective in this case briefly retained the license for a warrants check should not have been dispositive on the issue of whether Respondent's consent to search his vehicle was voluntary. Rather, had all of the circumstances been reviewed, the court would have had to find that the consensual nature of the encounter never changed. Respondent voluntarily provided his identification, he continued the encounter, he voluntarily consented to the search of his vehicle and he was free to leave at any time. The detective did not act in any way to make a reasonable person feel as if he could not end the encounter.

ARGUMENT

THE QUESTION CERTIFIED BY THE FOURTH DISTRICT COURT OF APPEAL MUST BE ANSWERED IN THE AFFIRMATIVE. THE DISTRICT COURT ERRED IN DETERMINING THAT RESPONDENT'S VOLUNTARY CONSENT TO SEARCH HIS VEHICLE WAS TAINTED BECAUSE THE CONSENT WAS OBTAINED WHILE THE POLICE RETAINED RESPONDENT'S DRIVER'S LICENSE IN ORDER TO RUN A WARRANTS CHECK.

Petitioner maintains that the Fourth District erred by holding that Respondent's otherwise voluntary consent was tainted because it was obtained while the police retained Respondent's driver's license in order to run a warrants check. Accordingly, the question certified by the district court must be answered in the affirmative.

It was not that long ago that this Court quashed the Fourth District's opinion in *Baez v. State*, 814 So. 2d 1149 (Fla. 4th DCA 2002) and held that a police officer's decision to run a routine warrants check on a defendant's license after the defendant produced the license did not result in an unlawful detention of the defendant based on the claim that he felt he was not free to leave while the officer had his driver's license. *State v. Baez*, 894 So. 2d 115 (Fla. 2004).

In *Baez*, an officer was dispatched to an industrial area to investigate a person who appeared to be asleep in the front seat of a van. When the officer arrived, he saw Baez asleep and tapped on the window. Baez sat up, and the officer asked for his identification. On his own, Baez got out of the van and gave the officer his driver's license. The officer

testified that he had no reason to believe that Baez had committed a crime and that this was at all times a "consensual conversation." The officer called to have a computer check run, which revealed an outstanding warrant for Baez's arrest. At some point after Baez was arrested, the police found cocaine in the van. Baez's motion to suppress the cocaine was denied. Baez was convicted and on appeal, the issue was whether, after the officer looked at Baez's license during the consensual encounter, the encounter became non-consensual when the officer retained the license and called in to check for outstanding arrest warrants. *Id*.

The Fourth District held "at the point in time after the officer had inspected Baez's driver's license, the consensual encounter had ended. When the officer retained it in order to investigate further by running a warrant check, no reasonable person would have felt free to leave. The search which produced the cocaine was the fruit of an unlawful seizure and violated the Fourth Amendment. The court erred in denying the motion to suppress." *Baez*, 814 So. 2d at 1152-1153.

In reversing the Fourth District's decision, this Court held that Baez was not unreasonably detained while the officer ran a warrants check on his driver's license. This Court determined that it should follow *Lightbourne v. State*, 438 So. 380 (Fla. 1983), wherein this Court held that the checking of the defendant's license in a consensual encounter did not render the encounter a seizure requiring Fourth Amendment protection. Specifically, in *Lightbourne*, the officer approached the defendant as he sat in his

vehicle, having responded to the scene pursuant to a call of suspicious activity. In finding the officer's computer check of the defendant's license did not constitute an illegal seizure, this Court explained:

> Officer McGowan simply approached the parked car, asked defendant a few simple questions as the reason for his presence there, his current address, and then ran a routine check on defendant's car and identification. Surely the average, reasonable person, under similar circumstances, would not find the officer's actions unduly harsh. There is nothing in the record that would indicate that prior to defendant **voluntarily relinquishing his driver's license** to Officer McGowan he was not free to express an alternative wish to go on his way.

438 So. 2d at 387-388. (Emphasis added.). It is Petitioner's contention that like this Court's decisions in *Baez* and *Lightbourne*, the retention of Respondent's driver's license to run a warrants check did not change the consensual nature of the encounter and hence it follows that Respondent's consent to search his vehicle while the detective waited on the warrants check remained voluntary. There is nothing in the record that would indicate that prior to Respondent voluntarily relinquishing his driver's license to Detective Catalano; he was not free to express an alternative wish to be on his way. Similarly, even though the warrant check was in progress and the detective was still in possession of Respondent's license, there is nothing in the record that would indicate that prior to Respondent voluntarily agreeing to the search of his vehicle, he was not free to simply ask for his license back and be on his way.

It is undisputed the instant case involved a consensual encounter. (T. 17, 30, 31) Detective Catalano in a friendly conversational tone asked Respondent if he minded if the detective saw his license and registration. (T. 31) Respondent was very cooperative and provided it with no problem. Detective Catalano told Respondent he was going to check it for any warrants and Respondent said "no problem". (T. 25, 32) Detective Catalano proceeded to check the identification with his dispatching authority to see if there were any active warrants. (T. 24, 25, 33) While the detective held Respondent's driver's license and they waited on the warrants check, which was only a couple of minutes, Detective Catalano asked Respondent whether he had any weapons or drugs in the car and did Respondent mind if Catalano checked the car for drugs or weapons. (T. 6-7, 8, 23, 24, 33, 37-38, 39) Appellee was very cooperative, he said no problem you can search my vehicle. (T. 8, 25, 33) Although the detectives did not specifically tell Respondent he was free to leave, if he had asked for his license back they would have returned it. (T. 25, 28, 39)

The trial court agreed the detectives did nothing improper: there was no display of weapons, no show of authority, and nothing intimidating about them. Respondent was free to leave. However, relying on the Fourth District's opinions in *Baez* and *Perko*[2], and

[2]*Perko v. State*, 874 So. 2d 666 (Fla. 4th DCA 2004), *review granted by State v. Perko*, 888 So.2d 18 (Fla. 2004), *review dismissed by State v. Perko*, 894 So.2d 972 (Fla. 2005)

noting conflict with the Fifth District in *Golphin*[3], the trial court concluded that once the detective took and ran a check on the license, the circumstances changed and Respondent was seized. (T. 46)

Notably Respondent did not testify and thus did not contradict either of the detectives' contentions that he was not intimidated and was free to leave at any time. (T. 40)

On appeal, the Fourth District held that the trial court did not err in granting the motion to suppress and affirmed. However, the Fourth District's decision was contrary to this Court's holding in *State v. Baez*, as well as to the Fifth District's holding in *Golphin v. State*, 838 So. 2d 705 (Fla. 5th DCA 2003), *review granted by Golphin v. State*, 888 So. 2d 17 (Fla. 2004).

In its opinion below, the Fourth District simply stated it considered Petitioner's numerous cases in support of its contention, and without discussion, deemed each distinguishable.[4] *Campbell*, 911 So. 2d at 192-193. Petitioner submits that the Fourth

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[3]*Golphin v. State*, 838 So. 2d 705 (Fla. 5th DCA 2003)

[4] *Florida v. Bostick*, 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991) (citizen encounter on bus not per se a seizure, no issue involving retained documents at time of consent as ticket and identification had been returned); *State v. Baez*, 894 So.2d 115 (Fla.2004) (officer finds driver slumped over wheel of van in warehouse area at night, asks if driver is all right, driver voluntarily exists van and relinquishes license, warrant check results in discovery of outstanding warrant which leads to discovery of drugs); *Lightbourne v. State*, 438 So.2d 380 (Fla.1983) (police investigating a complaint of suspicious vehicle; defendant's conduct and furtive

District's opinion is not only contrary to this court's opinions in *Lightbourne* and *Baez*, but also with other district court cases, as well as is inconsistent with case law from other jurisdictions. Moreover, the State suggests that the district court's reasoning that a reasonable person in Respondent's position would not have felt free to leave and not consent to the search of his vehicle is flawed; the district court failed to consider the totality of the circumstances.

It is axiomatic that not all personal intercourse between law enforcement and citizens is a seizure. *Terry v. Ohio,* 392 U.S. 1, 20 (1968). An officer does not violate the Fourth Amendment by approaching a person on the street and asking questions and for identification. *Id*. at 31-33. This is because the person approached does not have to listen or comply. *Id.* Hence, the court in *U.S. v. Mendenhall*, 446 U.S. 544 (1980) held that the defendant was not seized when the officers, based on a profile, encountered the defendant on a concourse, asked to look at her license and ticket, and upon returning these items, asked the defendant to accompany them to an office upstairs in the airport

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movements while officer still in possession of license causing concern for officer safety gave founded suspicion for pat down); *Golphin v. State*, 838 So.2d 705 (Fla. 5th DCA 2003) (defendant pedestrian in consensual encounter voluntarily relinquished identification to officer, told officer there was an open warrant which was confirmed); *State v. Chang*, 668 So.2d 207 (Fla. 1st DCA 1996) (consent obtained after return of identification to pedestrian); *McLane v. Rose*, 537 So.2d 652 (Fla. 2d DCA 1989) (outstanding warrant discovered after passenger's furtive movements led to discovery of passenger's contraband and ordering of defendant driver out of car while driver's license in officer's possession for warrant check).

where they asked for permission to search her person.

And although the officers in *Mendenhall* returned the defendant's license and ticket, the Court stated that a person is seized only when physical force or a show of authority restricts his freedom of movement. The court proceeded to list circumstances that might indicate a seizure: threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. 446 U.S. at 554. The court explained, "In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person." *Id*. Petitioner would emphasize that the record in this case is devoid of any evidence of circumstances that would even remotely indicate a seizure. *See Mendenhall*.

Later, the Court in *Florida v. Royer*, 460 U.S. 491, 501 (1983) decided that it was permissible for the officer to examine the defendant's airline ticket and driver's license upon approaching him in the airport. It further determined in *I.N.S. v. Delgado*, 466 U.S. 210, 217-218 (1984) that I.N.S. agents could individually approach workers in a factory and ask about, and for proof of, residency and citizenship without implicating the Fourth Amendment, even though agents stood next to the doors of the factory while the survey was being conducted. So, even where a person's movements are "confined" to an extent, an encounter is not necessarily rendered a seizure. *See Michigan v. Chesternut*, 486 U.S.

567 (1988)(police drove alongside pedestrian to find out where he was going). For instance, in *Florida v. Bostick*, 501 U.S. 429, 436 (1991), the defendant was a passenger on a bus about to depart when he was approached. The court held, therefore, that the inquiry was not whether a reasonable person would feel free to leave in this situation, but whether a reasonable person would feel free to decline the officer's requests or otherwise terminate the encounter. *Id*. After all, the refusal to cooperate does not furnish any objective justification for detention. *Id*. at 437.

Appropriately, then, this court in *Lightbourne v. State*, 438 So. 2d 380 (Fla. 1983) upheld the checking of the defendant's license as not in violation of the Fourth Amendment, even though it was not contended that the officer had reasonable suspicion to believe an offense had been committed. Acknowledging Petitioner's reliance on *Lightbourne*, the Fourth District merely stated it was nonetheless distinguishable from the instant case. However, in so doing, the Fourth District apparently overlooked testimony in the record and facts relied on by this court in *Lightbourne*.

Similarly, the Fourth District found *Golphin*, to be distinguishable. In *Golphin*, the defendant was standing with a group of five men on a public sidewalk in front of an apartment building when police officers approached. Although some of the individuals left, Golphin did not. One of the officers asked Golphin for his identification and then ran a computer check to determine whether Golphin had any outstanding warrants. While waiting for the results of the computer check, which took no more than a couple of

minutes, Golphin told the officer that he had a history of arrests and that he probably had an "open warrant." The computer check revealed that Golphin was the subject of an outstanding warrant, and he was arrested. A search incident to arrest resulted in the discovery of drugs and paraphernalia. The trial court found that the outstanding arrest warrant was discovered as a result of a "consensual encounter" and denied Golphin's motion to suppress. Golphin was convicted.

On appeal, Golphin cited to the Fourth District's decision in *Baez v. State*, 814 So. 2d 1149 (Fla. 4th DCA 2002), *rehearing denied* (May 14, 2002), alleging that the trial court erred in denying his motion to suppress. The Fifth District expressly disagreed with the Fourth District's holding in *Baez*, finding that the holding in *Baez* "appears to create a bright-line rule that pertains regardless of the circumstances." *Golphin*, 838 So. 2d at 706. The Fifth District also found that:

> We have considered whether the mere retention of property (in this case a license) by police might be tantamount to a "seizure," because the reasonable citizen might view the police conduct as a form of intimidation. If this were the case, however, then consent searches, such as that which was upheld in *Bostick*, could never pass Fourth Amendment scrutiny, because the mere retention of the property for sufficient time to perform a search by consent would constitute a per se seizure. Rather, we think that when a citizen voluntarily relinquishes possession of his property to police, reasonably implicit in such consent is that the police will retain the property for the period of time reasonably needed to accomplish the police purpose or until the consent is withdrawn, whichever first occurs. Moreover, a reasonable person, free from the guilt of criminal conduct, who

> voluntarily turns his property over to police, should feel free to request its return if he desires to go about his business. *See State v. Luckay*, 697 So.2d 221 (Fla. 5th DCA 1997) (observing that a "reasonable person" is one who is not guilty of criminal conduct).

Golphin, 838 So. 2d at 707-708. The Fifth District "believe[d] *Baez* to be wrongly decided first, because it creates a *per se* rule, which the Supreme Court in *[Florida v.] Bostick* [,501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991),] rejected in favor of the 'totality of the circumstances' test, and second, because it reaches what we believe to be the wrong conclusion when the proper test is applied." *Golphin,* 838 So. 2d at 708. The Fifth District declared conflict with the Fourth District's decision in *Baez*. *Golphin,* 838 So. 2d at 706.

The similarities between the instant case and *Golphin* are many, and the Fifth District's analysis embodies Petitioner's argument. The Fifth District found that the police behavior in *Golphin* in approaching the men obviously failed to communicate an intent to restrict them. Some of the men walked away from the police without incident. There was no indication that the police sought out Golphin or threatened him or intimidated him in any way. Golphin was fully cooperative and volunteered information about his arrest history. Also, Golphin did not manifest any desire to leave, nor did he request that his identification be returned. The police communicated nothing, by word or act, to lead Golphin to reasonably conclude that he was not free to leave. Golphin consented to the encounter with police. The Fifth District concurred with the trial court that Golphin's

consent, when all the circumstances were considered, was not the product of intimidation or harassment as viewed from the position of a reasonable person.

Similarly, Respondent was free to decline to agree to the search of his vehicle. Under the circumstances of this case, a reasonable person, would have felt free to request his license be returned him and to go about his business. Detective Catalano's mere retention of the license while he asked Respondent's consent to search does not change this. As the Fifth District explained, to hold otherwise would mean that consent searches, could never pass Fourth Amendment scrutiny, because the mere retention of the property for sufficient time to perform a search by consent would constitute a per se seizure. (Emphasis supplied)

As indicated above, in its opinion, the Fourth District indicated it found the cases cited by Petitioner to be distinguishable but did not elaborate on those distinctions. In addition to those discussed previously, Petitioner maintains these additional cases support its position.

For example, in *State v. Chang*, 668 So. 2d 207, 208 (Fla. 1st DCA 1996), the police officers saw a group of males standing in front of a vacant house known for drug trafficking. The officers asked the group what they were doing there and ran a check on the defendant's identification. The court held:

> We hold that the trial court erred in holding that Chang was illegally detained. There was no constitutional violation in Officer Schwab approaching Chang, asking for identification,

> receiving Chang's driver's license, and running a check for warrants. (citations omitted). The contact between Officer Schwab and Chang was nothing more than a consensual encounter between a police officer and citizen. (citations omitted).

668 So. 2d at 208. Because the encounter was deemed consensual, the court stated that it only had to determine whether the subsequent consent to search was voluntary. Although in *Chang* the officer returned the license then asked whether he could perform a search, Petitioner contends that is of no import to this case. In this case, the encounter remained consensual and the evidence is uncontroverted that Respondent voluntarily consented to the search of his vehicle.

Along the same lines, the appellate court in *McClane v. Rose*, 537 So. 23d 652 (Fla. 2d DCA 1989) determined that the trial court improperly denied forfeiture on the basis that the cocaine found on the defendant was unlawfully seized. It rejected the contention that the officers needed reasonable suspicion to approach the defendant and check his identification, deciding that the encounter was consensual.

In *McLane*, the officers approached the defendant and asked for his driver's license. Upon receiving the license, the officer requested computer information on the defendant. While waiting for this information, the officer observed the passenger in the defendant's car appear to try to hide something, so he ordered the passenger to exit, at which time the officer discovered a bag of cocaine between the console and the seat. The Second District in *McLane* found that the defendant was not detained until after the

officers found the cocaine. 537 So. 2d at 654. (Emphasis supplied)

Additionally, Petitioner submits that all circumstances need not be optimal to an individual's ability to walk away from an encounter with an officer before it is said that he is free to leave. "The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." *United States v. Mendenhall*, 446 U.S. 544, 553-554 (1980). For example, in *I.N.S. v. Delgado*, 466 U.S. 210 (1984), the factory workers would have to walk away from the inspecting officers and then past two more officers standing at the door of the factory in order to leave. Moreover, in *Michigan v. Chestnut*, 486 U.S. 567 (1988),the police followed alongside the defendant after he left the area where he was first observed. Thus, given these cases, a person whose license is in the process of being checked would not believe that he could not simply terminate the encounter as well as decline the request to search his vehicle, whether or not the officer still had his license.

In *Baez*, Justice Wells wrote a concurring opinion in which he stated inter alia:

> The recent decision of the United States Supreme Court in *Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County*, ___U.S. ___, 124 S.Ct. 2451, 159 L.Ed.2d 292 (2004) bolsters my view that under the circumstances of this case, the retaining of Baez's driver's license for the brief period of time it took to perform the computer check was not in violation of the Fourth Amendment. *Hiibe*l is different from this case in that it was a *Terry* stop case [footnote omitted], and the issue in the case was Nevada's stop and

> identify statute. [footnote omitted]. However, in *Hiibel* the Court does reiterate what I conclude is the point in this case:
>
> In the ordinary course a police officer is free to ask a person for identification without implicating the Fourth Amendment. "[i]nterrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure." *INS v. Delgado*, 466 U.S. 210, 216, 104 S.Ct. 1758, 80 L.Ed.2d 247 (1984).
> *Hiibel*, __U.S. at __, 124 S.Ct. at 2458.

Baez, 894 So. 2d at119-120 (Wells J. concurring), at 4-5. Justice Wells's point is well taken and is equally valid here. In this case, the detective was free to ask Respondent for his identification without implicating the Fourth Amendment. Accordingly, the detective was free to ask Respondent, while the warrants check was ongoing and the license was retained, whether the detective could search Respondent's vehicle. Under the facts of this case, that request did not, by itself, constitute a Fourth Amendment seizure. Therefore, the Fourth District erred by affirming the trial court's ruling as to the granting of the motion to suppress and the certified question must be answered in the affirmative.

CONCLUSION

WHEREFORE based on the foregoing arguments and authorities, the decision of the Fourth District Court of Appeal should be QUASHED and the certified question answered in the affirmative.

Respectfully submitted,
CHARLES J. CRIST, JR.
ATTORNEY GENERAL
Tallahassee, Florida

_____

CELIA A. TERENZIO
Assistant Attorney General
Bureau Chief
Florida Bar No. 0656879

_____

MONIQUE E. L'ITALIEN
Assistant Attorney General
Florida Bar No. 0458198
1515 N. Flagler Drive
9th Floor
West Palm Beach, FL 33401
(561) 837-5000
(561) 837-5099
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to: Samuel R. Halpern, Esquire, 2856 E. Oakland Park Blvd., Fort Lauderdale, Florida 33306-1814 this ____ day of _____, 2005.

_____
MONIQUE E. L'ITALIEN

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, and modeled after Rule 28-2(d), Rules of the United States Court of Appeals for the Eleventh Circuit, counsel for the State of Florida, hereby certifies that the instant brief has been prepared with 14 point Times New Roman type, a font that is not spaced proportionately.

_____
MONIQUE E. L'ITALIEN