IN THE SUPREME COURT OF FLORIDA

CHAVIS ZEIGLER,

Petitioner,

v. **SC06-589**
1ST DCA CASE NO. **1D05-314**

STATE OF FLORIDA,

Respondent.
_____/

TRISTAN ELLIS,

Petitioner,

v. **SC06-589**
1ST DCA CASE NO. **1D05-315**

STATE OF FLORIDA,

Respondent.
_____/

SECOND AMENDED JURISDICTIONAL BRIEF OF PETITIONERS

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STATE OF FLORIDA,

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_____/

JURISDICTIONAL BRIEF OF PETITIONER

STATEMENT OF THE CASE AND FACTS

In the district court of appeal, the instant two cases, Chavis Zeigler v. State, 1D05-314, and Tristan Ellis v. State, 1D05-314, were consolidated for direct appeal as they both involved the identical issue and evidence.

Both petitioners were charged by information with trafficking in cocaine and misdemeanor possession of marijuana.

Before trial, both men moved to suppress the contraband and asserted that it was seized during their illegal detention.

The evidence showed that Deputy Brownfield was conducting drug interdiction duties on Interstate 75 late at night. Brownfield observed the petitioners drive by and did not see the temporary tag posted in the rear window of their car. Consequently, he activated his overhead lights and stopped the

petitioners. As Brownfield approached the petitioners' car on foot, he noticed a properly displayed temporary tag in the back window.

Nevertheless, Brownfield went to the passenger side of the vehicle, knocked on the window with his flashlight and directed the occupants to provide identification. When the passenger side window was rolled down so the deputy could examine their identification papers, the deputy put his head inside the vehicle and detected an odor of burned marijuana. The petitioners were removed from the vehicle and it was searched. Cocaine and marijuana were found inside.

The trial court found no Fourth Amendment violation with the petitioners' detention or the subsequent seizure of the contraband from their vehicle.

Thereafter, both petitioners entered nolo contendere pleas and reserved their right to appeal the denial of their motion to suppress.

On direct appeal, both petitioners asserted that the contraband should have been suppressed on the authority of this Court's decision in State v. Diaz, 850 So. 2d 435 (Fla. 2003). In that case, a deputy stopped a car because he could not read the temporary tag posted on the rear window. As he approached the car he was able to read the tag and determined that it was

valid. Nevertheless, he approached the driver and asked for his driver's license. That led to the discovery that Diaz did not have a valid driver's license.

This Court ultimately ruled that once the reason for the stop had dissipated, "the sheriff's deputy could lawfully make personal contact with Mr. Diaz only to explain to him the reason for the initial stop. Because the sheriff's deputy had no justification for further detention, anything more than an explanation of the stop was a violation of Mr. Diaz's Fourth Amendment rights." Id. at 440 (emphasis addes).

The First District Court ruled that State v. Diaz, supra was distinguishable from this case. The District Court opined:

> According to the supreme court's ruling, Officer Brownfield had the legal authority to make personal contact with Appellants and to be in a position to smell the marijuana. An officer may use his sense of smell from a place where he may lawfully be to develop probable cause for a detention. See Lara v. State, 497 So. 2d 1311, 1312 (Fla. 1st DCA 1986). Once Officer Brownfield smelled the marijuana, he was entitled to detain Appellants. See, eg., State v. Betz, 815 So. 2d 627 (Fla. 2002).
>
> Although Officer Brownfield impermissibly asked for Appellant's identification, the trial court correctly determined that the contraband was not required to be suppressed. Under the inevitable discovery rule, when evidence is obtained through the result of unconstitutional police procedures, the evidence will still be admissible if it would have been discovered through legal means. See Jeffries v State, 797 So. 2d 573, 577-578 (Fla. 2001).

Zeigler and Chavis v. State, 2006 WL 538184 (Fla. 1st DCA, March 7, 2006).

SUMMARY OF ARGUMENT

This Court has discretionary jurisdiction to review the decision in Zeigler and Chavis v. State, supra because the holding in that case is in express and direct conflict with this Court's decision in State v. Diaz, supra.

In Diaz, supra, this Court held that once the reason for a traffic stop had dissipated, a police officer could make personal contact with the driver only to explain the reason for the stop, and that it was a violation of the Fourth Amendment to detain the driver to check his driver's license. In Diaz, supra, the improper driver's license check led to Mr. Diaz' arrest for driving with a suspended license.

Here, Deputy Brownfield realized that the petitioners had a valid temporary tag on their car before he made contact with them. Nevertheless, rather than explaining the reason for the stop, Brownfield knocked on the passenger's side window with his flashlight and requested identification. When the car window was lowered so that identification could be handed to the officer, he stuck his head inside the vehicle and smelled burned marijuana.

The opinion at issue is also in express and direct conflict with Moody v. State, 842 So. 2d 754 (Fla. 2003) and Fitzpatrick v. State, 900 So. 2d 495 (Fla. 2005) concerning the inevitable discovery doctrine.

The district court ruled that Deputy Brownfield would have inevitably smelled burned marijuana coming from the petitioners' vehicle because State v. Diaz, supra, authorized him to make personal contact with the petitioners to explain the reason for their being stopped.

In both Moody, supra, and Fitzgerald, supra, this Court held that in making a case for inevitable discovery, the state must show that at the time of the constitutional violation an investigation was already under way.

In the case at bar, there was no evidence whatsoever that either Chavis or Zeigler was already under investigation by any law enforcement organization when the constitutional violation occurred. Thus, the district court's application of the inevitable discovery doctrine is in express and direct conflict with this Court's holdings in both Fitzpatrick, and Moody.

Accordingly, this Court has jurisdiction to review the holding in Zeigler & Chavis v. State, supra. See, Art. V, S. 3(b)(3), Const. of Fla., and Fla. R. App. P. 9.030(a)(2)(A)(iv).

ARGUMENT

ISSUE PRESENTED

THE DISTRICT COURT'S DECISION IN ZEIGLER & CHAVIS V. STATE, SUPRA, IS IN EXPRESS AND DIRECT CONFLICT WITH THIS COURT'S DECISION IN STATE V. DIAZ, SUPRA, REGARDING THE CONTINUED DETENTION OF A MOTORIST AFTER THE REASON FOR A TRAFFIC STOP HAS DISSIPATED, AND IS ALSO IN EXPRESS AND DIRECT CONFLICT WITH THIS COURT'S DECISIONS IN FITZPATRICK V. STATE, SUPRA, AND MOODY V. STATE, SUPRA, CONCERNING THE APPLICATION OF THE INEVITABLE DISCOVERY DOCTRINE.

Illegal Detention

In State v. Diaz, supra, this Court held that when the reason for an auto stop had dissipated, a law enforcement officer could make contact with the occupants "only to explain to him the reason for the initial stop," and that "anything more than an explanation for the stop was a violation of Mr. Diaz' Fourth Amendment rights." The Court explained that "as soon as the officer determined the validity of Mr. Diaz' temporary tag, he no longer had reasonable grounds or any other basis, legal or otherwise, to further detain Mr. Diaz." The Court went on, "further detaining Mr. Diaz equated to nothing less than an indiscriminate, baseless detention, not unlike that held to be inappropriate and unconstitutional by the United States Supreme Court in *Prouse*."[1] The Court concluded that, "The investigative

[1] Deleware v. Prouse, 440 U.S. 648, 653, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979).

procedures and personal examination, requiring the production of further information, was beyond that which was necessary or reasonable to satisfy the stated purpose of the stop." Id.

In Zeigler and Chavis v. State, supra, the First District Court of Appeal unconstitutionally expanded this Court's holding in Diaz by allowing Deputy Brownfield to require that identification be shown before an explanation for the stop is given. Had Brownfield not required the petitioners to roll down their car window and provide identification, no marijuana smoke would have been detected, and the petitioners would have been on their way. That is, Brownfield testified at deposition, "And as I stuck my head through the window that's when I detected the odor of marijuana...." Deposition of Deputy Brownfield, page 36. Moreover, the videotape of the stop shows Brownfield tapping on the passenger side window and demanding identification. The window is rolled down and identification is passed to the deputy as he sticks his head inside the car.

On authority of State v. Diaz, supra, Brownfield was limited to explaining the reason for the stop. He was then required to allow the petitioners to go on their way.

The decision by the First District Court in this case is in express and direct conflict with this Court's decision in Diaz, supra, in that it permits an officer to detain a motorist and

check their identification without any suspicion of illegal activity. Diaz, supra, expressly forbid such an investigative procedure.

Inevitable Discovery Doctrine

The decision of the First District Court also expressly and directly conflicts with this Court's decisions in Fitzpatrick v. State, 900 So. 2d 495 (Fla. 2005), and Moody v. State, 842 So. 2d 754 (Fla. 2003), regarding application of the inevitable discovery doctrine.

In Zeigler and Chavis v. State, supra, the district court held that "Under the inevitable discovery rule, when evidence is obtained through the result of unconstitutional police procedures, the evidence will still be admissible if it would have been discovered through legal means. See Jeffries v. State, 797 So. 2d 573, 577-578 (Fla. 2001)." The district court went on: "Here, the trial court determined that Officer Brownfield smelled marijuana when he went to appellant's stopped vehicle.[2] Had Officer Brownfield immediately explained the reason for the stop when he made personal contact with Appellants, rather than first asking Appellants for their

[2] It should not be overlooked that earlier in the opinion, the district court wrote, "Appellant Zeigler rolled down his window [to produce the demanded identification], and almost immediately Officer Brownfield smelled burnt marajuana emanating from the vehicle." Zeigler and Ellis v. State, supra.

identification, he would have still smelled marijuana and thus developed probable cause to detain Appellants."[3]

Of course, that conclusion necessarily includes the assumption that the petitioners would have rolled down their window without being asked for identification, which, ironically, Jefferies v. State, supra, expressly forbids ("Mere assumptions are not enough to meet the reasonable probability standard set forth in Brookins.")

Moreover, in Moody v. State, supra, this Court held that "In making a case for inevitable discovery, the State must show that at the time of the constitutional violation an investigation was already under way" citing Nix v. Williams, 467 U.S. 431, 457, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984). See also, Fitzpatrick v. State, supra.

There is no evidence, or even a suggestion, in the instant record that "at the time of the constitutional violation an investigation was already under way" concerning either petitioner. Thus, to find that police would have inevitably smelled the marijuana smoke or found the drugs in petitioners' car without the constitutional violation is an assumption without an evidentiary basis. See, Jeffries v. State, supra.

[3] Petitioners concede that if Deputy Brownfield had detected the odor of marijuana before the window was rolled down that the subsequent seizure of drugs would have been lawful. That, however, is simply not what the evidence showed.

Moreover, such an assumption is in express and direct conflict with this Court's decisions in Fitzpatrick and Moody because in this case, there was no investigation of either petitioner already under way when the constitutional violation occurred.

CONCLUSION

The First District Court's decision in Zeigler and Chavis v. State, supra, is in direct and express conflict with this Courts decision in State v. Diaz supra, concerning continued detention of a motorist after the reason for a traffic stop has dissipated. The district court's decision is also in express and direct conflict with this Court's decisions in Moody v. State, supra, and Fitzpatrick v. State, supra concerning application of the inevitable discovery doctrine. Consequently, this Court should accept jurisdiction of this case and resolve the conflicts in the existing case law.

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Daniel A. David, Assistant Attorney General, counsel for the State of Florida, at The Capitol, PL-01, Tallahassee, FL 32399-1050; and to Chavis Zeigler, DOC# 124866, New River Correctional Institution - West Unit, 7819 NW 228th Street, Raiford, FL 32026, and Tristan Ellis,

DOC# 880137, Century Correctional Institution, 400 Tedder Road, Century, FL 32535, on this date, May 1, 2006.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that, pursuant to Florida Rule of Appellate Procedure 9.210, this brief was typed in Courier New 12 Point.

Respectfully submitted,

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