IN THE SUPREME COURT OF FLORIDA

ERIC CHRISTOPHER CALDWELL,

Petitioner,

v.

FSC No.: SC08-1519
L.T. No.: 2D07-565

STATE OF FLORIDA,

Respondent.
_____/

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA
(CONFLICT CERTIFIED)

PETITIONER'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Statutes and Rules

PRELIMINARY STATEMENT

The record on appeal is contained in three (3) volumes, and will be designated as (V. I) or (V. II). Volume I contains the court record and transcript of the Motion to Suppress hearing. Volume II contains a transcript of the Evidentiary Hearing on the Violation of Probation and other portions of the court record. Volume III is not relevant to the issues presented below.

The pages in the record have stamped numbers on the lower center or right of the page. All numbers are consecutive. Reference to the record will use these numbers, and will be designated (V._____, R._____).

STATEMENT OF THE CASE AND FACTS

This appeal is from the Second District Court of Appeal decision Caldwell v. State, 985 So. 2d 602 (Fla. 2d DCA 2008). There are two issues: (1) whether the reading of Miranda warnings converts a consensual encounter into an investigatory stop, and (2) whether a routine frisk transformed an encounter into a stop. Eric Caldwell ("Petitioner") submits that his contact with law enforcement was an investigatory stop requiring reasonable suspicion. The officer involved testified he had no reasonable suspicion of criminal activity nor did he have any indication that the Petitioner was armed.

The Petitioner pled Guilty to Arson and Burglary. On May 24, 2004, the court withheld adjudication, and ordered five (5) years of Probation. (V. I, R. 5-6, 10). The Petitioner was arrested on May 28, 2006 for three (3) Vehicle Burglaries. (V. I, R. 23). The State filed an Information charging the Petitioner with these Burglaries. (V. I, R. 63-64). As a direct result, an affidavit alleging a Violation of Probation on the Arson/Burglary charge was then filed on June 7, 2006. (V. I, R. 23). The new burglary charges were the sole basis of the violation. (V. I, R. 23).

A police officer ("Officer Crisco") was dispatched to the Vinoy Towers on May 27, 2006. (V. I, R. 76). He made contact with the security guard and viewed a surveillance video. (V. I,

R. 76-77). The video depicted a white male wearing dark clothing and a baseball cap on backwards. (V. I, R. 77). Officer Crisco testified that this video had "terrible" picture quality. (V. I-II, R. 77, 220-221).

The next day, over twenty-nine (29) to thirty (30) hours later, Officer Crisco drove by Williams Park in downtown St. Petersburg, Florida. (V. I, R. 77, 87). Williams Park is thirteen (13) blocks away from the Vinoy Towers. (V. I, R. 84). He noticed the Petitioner and had a "gut feeling" that the Petitioner was the person depicted in the video. (V. I, R. 83). He drove his fully-marked cruiser over a curb, over some grass, and parked next to a group of people. (V. I, R. 82). There is no roadway in Williams Park. (V. I, R. 82).

Officer Crisco exited his vehicle, and motioned for the Petitioner to come over. (V. I, R. 82). He directed the Petitioner to the back of his cruiser away from the group of people. (V. I, R. 84). Officer Crisco told the Petitioner he "needed to speak to him in reference to some burglaries." (V. I, R. 79). The Petitioner denied any involvement. (V. I, R. 79). Officer Crisco advised the Petitioner that he was the person who appeared in a video. (V. I, R. 79). The Petitioner stated he was not. (V. I, R. 79). The officer then advised the Petitioner that "I think you did it" three (3) more times and then advised the Petitioner of his *Miranda* rights. (V. I, R. 84-85). The

Petitioner asked why was he being arrested. (V. II, R. 228). Officer Crisco told the Petitioner he was not under arrest, but he needed to ask him some questions. (V. I, R. 228). Officer Crisco said that "too much pointed to him" and "things don't match up." (V. I, R. 85). He never told the Petitioner he was free to leave. (V. I-II, R. 84-85, 87, 225-227).

After being accused numerous times of committing the burglaries, the Petitioner agreed to accompany Officer Crisco to the Vinoy Towers to view the video. (V. I, R. 79-80). Officer Crisco frisked the Petitioner and placed him in the back seat of his vehicle. (V. I, R. 80). Officer Crisco testified he did not believe that the Petitioner was armed, and admitted that the pat-down was his "routine." (V. I-II, R. 85, 226). The car doors automatically locked. (V. I, R. 86). Officer Crisco again told the Petitioner that he was the individual depicted on the video tape, and continued to accuse the Petitioner. (V. I, R. 80).

Once they reached the Vinoy Towers, the Petitioner confessed to committing the burglaries. (V. I, R. 80). Officer Crisco had the Petitioner repeat his statements to Officer Friedland. (V. I, R. 81). There was no other evidence (other than his own statements) linking the Petitioner to the burglaries. (V. II, R. 228).

The Petitioner filed a Motion to Suppress Statements on October 25, 2006. (V. I, R. 66-69). The motion alleged that the Petitioner's statements were the product of an illegal detention. (V. I, R. 66-69). The Honorable Robert J. Morris, Jr., Circuit Judge, heard and denied the Motion to Suppress Statements on December 4, 2006. (V. I, R. 102-103). The Honorable Joseph A. Bulone was transferred to Judge Morris's division on January 1, 2007. (V. II, R. 203).

An evidentiary hearing on the Violation of Probation was held before the Honorable Joseph Bulone on January 19, 2007. (V. II, R. 203). The Petitioner filed a Motion to Reconsider Court's Order Denying Motion to Suppress Statements at the end of the hearing. (V. I-II, R. 121-122, 207). In the motion, he cited Raysor v. State 795 So. 2d 1071 (Fla. 4th DCA 2001). (V. I, R. 122). Raysor held that Miranda warnings alone convert a consensual encounter with law enforcement into an investigatory stop that requires reasonable suspicion. (V. I, R. 122). The Petitioner objected to the introduction of his statements at the hearing. (V. I, R. 218).

Judge Bulone denied the Petitioner's motion and found that the Petitioner violated the terms of his probation. (R. 239-240). However, the court ruled that the contact was an investigatory stop. (V. II, R. 239-240). The court sentenced the

Petitioner to sixty (60) months in the Department of Corrections. (V. II, R. 243).

The Petitioner appealed the denial of his Motion to Suppress to the Second District Court of Appeal. (V. II, R. 198-199). On June 6, 2008, the court affirmed the trial court's denial of the Motion to Suppress and held that Miranda warnings do not convert an encounter into a stop. Caldwell, 985 So. 2d at 604-605. The court based its holding on Davis v. Allsbrooks, 778 F. 2d 168, 173 (4th Cir. 1985), United States v. Lewis, 556 F. 2d 446, 449 (6th Cir. 1977), and Commonwealth v. Hoak, 700 A. 2d 1263, 1267 (Pa. Super. Ct. 1997). The court noted that Florida courts have held "that a consensual encounter is transformed into a detention if a pat down search is conducted." However, it held that an officer can frisk an person if that person voluntarily becomes a passenger in the officer's vehicle.

The Petitioner filed a Motion for Rehearing and Motion for Rehearing En Banc on June 14, 2008. The Second District denied both motions on July 17, 2008. The Petitioner filed a Notice to Invoke the Discretionary Jurisdiction of this Court on August 6, 2008. This court granted review on May 21, 2009. This appeal follows.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision which is certified to be in direct conflict with a decision of another district court of appeal. Fla. R. App. P. 9.030(a)(2)(A)(iv). It also has jurisdiction to review a decision that expressly and directly conflicts with a decision of another district court of appeal on the same point of law. Fla. R. App. P. 9.030(a)(2)(A)(iii).

SUMMARY OF THE ARGUMENT

The Petitioner alleges a certified conflict between the holding in the instant case and Raysor v. State, 795 So. 2d 1071 (Fla. 4th DCA 2001). The Petitioner also alleges an express and direct conflict between this case and Hidalgo v. State, 959 So. 2d 353 (Fla. 3d DCA 2007) and D.L.J. v. State, 932 So. 2d 1133 (Fla. 2d DCA 2007).

Law enforcement's contact with the Petitioner was an investigatory stop requiring reasonable suspicion. This is especially so when the Petitioner was read his Miranda warnings, informed he was the suspect in a burglary, and frisked. Further, the Petitioner was never told that he was free to leave, and that the officer needed to speak to him.

According to law enforcement, there was no reasonable suspicion of criminal activity or proof that the Petitioner was armed.

STANDARD OF REVIEW

Although an order denying a motion to suppress comes to the appellate court clothed in a presumption of correctness, an order that applies the law to a set of facts is reviewed by the de novo standard of review. Ornelas v. United States, 517 U.S. 690, 691 (1996). The determination of whether a particular contact is an encounter or an investigatory stop is reviewed as a mixed question of law and fact. Connor v. State, 803 So. 2d 598, 605 (Fla. 2001). Appellate courts should defer to a lower court's findings of fact but conduct a de novo review of the constitutional issue. Id.

ARGUMENT

I. THE DECISION OF THE SECOND DISTRICT IN THIS CASE IS CERTIFIED TO BE IN CONFLICT WITH THE DECISION OF THE FOURTH DISTRICT IN RAYSOR v. STATE 795 So. 2d 1071 (Fla. 4th DCA 2001).

There are two (2) entirely different tests that this court should be mindful of when considering this appeal: (1) when a "seizure" occurs that would convert a consensual encounter into an investigatory stop under the Fourth Amendment, and (2) "custody" for Miranda purposes under the Fifth Amendment (see Davis, Lewis, and Hoak, *supra.)*. A person is seized for Fourth Amendment purposes, if, based on the totality of the circumstances, a reasonable person would conclude he is free to end the encounter and depart. Popple v. State, 626 So. 2d 185, 186-187 (Fla. 1993). A person is in "custody" for Fifth Amendment purposes, requiring Miranda warnings if:

> ...a reasonable person placed in the same position would believe that his or her freedom of actions was curtailed *to a degree associated with actual arrest*. Traylor v. State, 596 So. 2d 957, 966 (Fla. 1992), (emphasis added).

The second standard requires this functional equivalent of an arrest before Miranda warnings are required. For example, a person is seized within the meaning of the Fourth Amendment if an officer asks him to exit his vehicle. However, Miranda rights are not required because the person in not in "custody"

for the Fifth Amendment protections to apply. See Popple, *supra.* and Berkemer v. McCarty, 468 U.S. 420, 440 (1984).

The Petitioner contends that, based on the totality of the circumstances, he was seized when law enforcement advised him of his Miranda rights, especially when the officer made it clear to the Petitioner that he committed a burglary multiple times, the officer needed to speak with the Petitioner, and he was frisked. This Court should also consider that, prior to being advised of his Miranda rights, law enforcement directed the Petitioner to a police vehicle. The Petitioner was also told he was the one who appeared in the surveillance video, a fact the officer knew to be false.

The Fourth Amendment to the United States Constitution provides "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..." Article I Section 12 of the Florida Constitution mandates that this right must be interpreted in conformity with the rulings of the United States Supreme Court. There are three (3) types of contacts between law enforcement and citizens: an encounter, an investigatory stop, and an arrest. Popple, 626 So. 2d at 186. The first type, a consensual encounter, involves a minor amount of police contact. Id. A person can comply with officers or simply disregard their requests. Id.

The second type, an investigatory stop, allows an officer to temporarily detain a person if the officer has a founded suspicion that a person has committed, is committing, or is about to commit a crime. Florida Statutes § 901.151. A hunch or gut feeling is not enough, and an officer must have well-founded suspicion based on articulable facts and circumstances. Carter v. State, 454 So. 2d 739, 741 (Fla. 2d DCA 1984).

The crucial difference between a consensual encounter and an investigatory stop is that an officer cannot:

> hinder or restrict the person's freedom to leave or freedom to refuse to answer inquiries...This Court has consistently held that a person is seized, if under the circumstances, a reasonable person would conclude that he or she is not free to end the encounter and depart. Popple, 626 So. 2d at 187-188.

A court must look to the totality of the circumstances in making this determination. United States v. Mendenhall, 446 U.S. 544, 551 (1980). Some factors a court should look to are: the threatening presence of several officers, the display of a weapon by an officer, "*some physical touching of the person of the citizen*, or *language indicating that compliance with the officer's request might be compelled*." Id. at 554-555, (emphasis added).

A consensual encounter is automatically converted to an investigatory stop when an officer reads a person his or her Miranda rights. Raysor, 795 So. 2d at 1071-1072. In Raysor, an

officer saw the appellant riding his bicycle in a high crime area. Id. He motioned for the defendant to come over in a friendly way, the appellant approached, and waived to the officer. Id. The officer noticed that the appellant had calluses on his hand consistent with crack-cocaine use. Id. He then read the appellant his Miranda rights, the defendant waived them, and told the officer he had a crack pipe on his person. Id.

The appellant filed a motion to suppress asserting that he was seized, and that a reasonable person would not feel free to leave. Id. At the suppression hearing, the officer stated that the appellant was free to leave at any time, and he always reads *Miranda* to a person "out of an abundance of caution." Id. The trial court denied the motion. Id. The appellant entered a guilty plea, specifically reserving his right to appeal the denial of the motion to suppress. Id. The Fourth District Court of Appeal *en banc* reversed. Id. The court reasoned:

> …in the present case the officer gave appellant warnings which are legally required *only* when a person is in custody and not free to leave. Because Miranda rights are not required to be read to suspects unless they are undergoing custodial interrogation, it follows that a person who has been read his Miranda rights would reasonably assume that he is not free to leave. Id. at 1072.

Raysor is similar to the Petitioner's case. As in Raysor, Officer Crisco read the Petitioner his Miranda warnings

indicating to a reasonable person that he was not free to leave. Like the officer in Raysor, Officer Crisco testified at the suppression hearing that the Petitioner was free to leave at any time and he read the Miranda warnings "in case he obtained an admission." However, unlike the officer in Raysor, Officer Crisco informed the Petitioner that he was the one who committed the burglary and he was the one who appeared on the video. Two accusations that the officer knew to be false at the time. Further, the officer drove over a curb, pulled up next to a group of people, directed the Petitioner to the rear of his cruiser, and then frisked him. The officer further stated that he needed to speak with the Petitioner, but he was not under arrest.

The court in Raysor cited authority, United States v. Poitier, 818 F. 2d 679 (8th Cir. 1987), nearly identical to the instant case. In Poitier, two (2) DEA agents approached two people in the Arkansas airport they suspected of carrying illegal drugs. Id. at 681. An agent approached the appellant and told her they wanted to ask her some questions. Id. She agreed and the agent "suggested" they move to a less crowded area (still public). Id. After receiving inconsistent responses from the appellant, the agent informed the appellant he "suspected her of carrying drugs from Florida," and advised her of her Miranda warnings. Id. The appellant agreed to speak

with the agent and admitted to trafficking cocaine. Id. A kilogram of cocaine was found on her person. Id.

The trial court granted a Motion to Suppress, and the government appealed. Id. The appellate court held that, although the initial contact was an encounter, it was transformed into a Terry stop requiring reasonable suspicion when the agent told the appellant he suspected her of carrying drugs and advised her of her Miranda rights. Id. at 683. The court reasoned that:

> The accusation coupled with the Miranda warnings, created a sufficient show of authority to effectively restrain Poitier's freedom of movement. Id.

The facts in Poitier are almost identical to the instant case. Like the accusation of carrying drugs in Poitier, Officer Crisco informed the Petitioner: "he needed to speak to him (the Petitioner) in reference to some burglaries," the Petitioner appeared on the surveillance video, and stated "he did it" three (3) times." Similarly, the Petitioner was then advised of his Miranda rights. As in Poitier, the accusation coupled with the Miranda warnings would suggest to a reasonable person in the Petitioner's position that he could not leave. However, unlike Poitier, the Petitioner was informed that he was not being arrested, but that the officer needed to speak to him. Contrary to the State's argument below, this language is a further

indication that a reasonable person would not have felt free to leave.

The Second District Court of Appeal relied upon Davis v. Allsbrooks, 778 F. 2d 168, 173 (4th Cir. 1985). In Davis, the appellant agreed to speak with law enforcement at the police station in reference to a brutal murder. Id. at 170. He was read his Miranda rights, waived them, and spoke with detectives for hours, denying any involvement. Id. The appellant refused to take a polygraph test. Id. Detectives picked the appellant up near his house and drove back to the station. Id. Questioning resumed, and the Appellant again waived his Miranda rights. Id. Shortly thereafter, the Appellant advised detectives he no longer wanted to talk about the case. Id. Law enforcement showed the Appellant photographs of the crime scene, and, after a short break, the Appellant confessed. Id. On appeal, he argued that law enforcement did not scrupulously honor his right to remain silent. Id. The Court found that the Appellant was not in custody for Miranda purposes therefore its protections did not apply. Id. It also held that the reading of Miranda warnings alone did not create custody for Miranda purposes. Id. at 172. It reasoned that the contact was not the functional equivalent of *an arrest* because the Appellant voluntarily agreed to meet and speak with detectives. Id.

Nowhere in the opinion is Terry v. Ohio, 392 U.S. 1, 27 (1968) or United States v. Mendenhall mentioned.

United States v. Lewis, 556 F. 2d 446, 449 (6th Cir. 1977) is another case the Second District Court of Appeal cited. In Lewis, postal inspectors questioned the appellant concerning a stolen check. Id. at 447. The appellant spoke with the inspectors voluntarily and waived his Miranda rights. Id. The appellant asserted that he did not voluntarily waive his rights and his statements could not be used against him. Id. at 448. Further, he suggested that the reading of his Miranda rights created a custodial interrogation. Id. The court rejected both of the Appellant's arguments. Id. It reasoned that the appellant agreed to speak with the inspectors and that the reading of Miranda did not create a custodial interrogation. Id. Like Davis, nowhere in the opinion is Terry v. Ohio or United States v. Mendenhall even cited.

Finally, the court cited Commonwealth v. Hoak 700 A. 2d 1263, 1267 (Pa. Super. Ct. 1997). There, an officer stopped the appellant for erratic driving and gave him a warning. Id. at 1265. The officer informed the appellant he was free to leave. Id. The appellant then agreed to answers some questions and consented to a search of his vehicle, which revealed marijuana. Id. The appellant asserted that his consent was involuntary because it was the product of an illegal detention. Id. The

court affirmed and noted in *dicta* that Miranda warnings do not convert a non-custodial setting into a custodial one. Id. at 1266-1267.

The State's reliance on these three (3) cases is distinguishable. First, and most crucial, Davis and Lewis involved "custody" for Miranda purposes under the Fifth Amendment. The test was whether a suspect's freedom was curtailed to the extent of an arrest or its functional equivalent. The instant case involves whether an encounter was converted into an investigatory stop. The question is whether a reasonable person in the Petitioner's position would not have felt free to end the contact and depart. The touchstone for this analysis is Terry v. Ohio and United States v. Mendenhall. Davis and Lewis do not mention, cite, or even reference Terry or Mendenhall. In Hoak, the appellant was not read his Miranda rights or confronted with evidence of his guilt.

II. THE DECISION OF THE SECOND DISTRICT IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE THIRD DISTRICT IN HIDALGO v. STATE, 959 So. 2d 353 (Fla. 3d DCA 2007) AND ANOTHER DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN D.L.J. v. STATE, 932 So. 2d 1133 (Fla. 2d DCA 2007).

Article I Section 12 of the Florida Constitution mandates that this Fourth Amendment must be interpreted in conformity with the rulings of the United States Supreme Court. Law enforcement is authorized to frisk a person if that officer has

reasonable suspicion that the suspect is armed. Terry, 392 U.S. at 27.

> (n)othing in Terry can be understood to allow a generalized 'cursory search for weapons' or, indeed, any search whatever for anything but weapons. The 'narrow scope' of the Terry exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked. Ybarra v. Illinois, 444 U.S. 85, 93-94 (1979)

Florida Statutes § 901.151 (5) provides that a frisk can be conducted during a valid detention if law enforcement has probable cause to believe that the detained person is "armed with a dangerous weapon."

Numerous decisions in Florida hold that a person is seized when an officer conducts a frisk. Hines v. State, 737 So. 2d 1182, 1186 (Fla. 1st DCA 1999) (a frisk turns a consensual encounter into a stop requiring reasonable suspicion); Sholtz v. State, 649 So. 2d 283, 284 (Fla. 2d DCA 1995) (consensual encounter turned into a stop when the appellant was frisked); Hidalgo v. State, 959 So. 2d 353, 354 (Fla. 3d DCA 2007) (a consensual encounter was converted to a stop when there was a pat-down). Furthermore, law enforcement can not conduct pat down searches for routine safety purposes absent a belief that the suspect is armed. Hunt v. State, 700 So. 2d 94, 95 (Fla. 2d DCA 1997).

An officer merely informing a suspect that he or she is going to conduct a pat-down converts an encounter into an

investigatory stop. Beasley v. State, 604 So. 2d 871 (Fla. 2d DCA 1992). There, a Tampa police officer saw the appellant enter an abandoned apartment owned by the Tampa Housing Authority. Id. at 872. The Tampa Housing Authority had an agreement that the Tampa Police can issue trespass warnings and eviction notices. Id. Officers approached the appellant, and asked if they could speak with him. Id. The officer testified the appellant was free to leave, and there was no suspicion that the appellant was armed. Id. The officer *told* the appellant he was going to pat him down, and the appellant consented. Id. The search revealed two baggies: one containing marijuana and one containing cocaine. Id. The appellant filed a motion to suppress alleging that the drugs were the product of an illegal search. Id. The trial court denied the motion, and the appellant pled nolo contendere, reserving the right to appeal the denial of his dispositive Motion to Suppress. Id.

This court reversed the trial court, and held that the encounter was converted into a stop when an officer "*advised* Beasley that he was going to pat him down." Id., (emphasis added). The court reasoned:

> A frisk or patdown incident to an investigatory stop may be conducted only where the officer has probable cause to believe the person is armed with a dangerous weapon. The officer here did not articulate any reason for believing that Beasley was armed with a dangerous weapon. Id.

A pat down is constitutionally impermissible if it is merely based on an officer's routine practice. Harris v. State, 574 So. 2d 243, 244 (Fla. 1st DCA 1991). In Harris, an officer stopped several juveniles late at night carrying a portable television on their bikes near several closed businesses. Id. One of the juvenile's jacket appeared to be "bulging." Id. The officers frisked the appellant and another juvenile. Id. Both juveniles were charged with multiple counts of Burglary and Grand Theft. Id. The appellant moved to suppress the evidence found on his person. Id. The trial court denied the motion, and the appellate court reversed. Id. The court noted:

> …in the present case the officer did not express any belief that either the appellant or the juvenile was armed, and admitted that he routinely performs a "safety frisk" in any "contact situation." *A protective frisk which is merely based upon such routine practice, in the absence of a proper factual predicate is constitutionally impermissible.* Id. at 244-245, (emphasis added).

The encounter between Officer Crisco and Mr. Caldwell became a stop once Officer Crisco frisked him. Like the officer in Beasley, Officer Crisco testified Mr. Caldwell was free to leave and he had no reason to believe Mr. Caldwell was armed. Similar to the officer in Harris, Officer Crisco also asserted that he patted down Mr. Caldwell as part of his "routine" before letting anyone get into his vehicle. A reasonable person in Mr. Caldwell's position would not have felt free to leave once

Officer Crisco patted him down. Moreover, as in Beasley and Harris, Officer Crisco's "routine" frisk was constitutionally impermissible because Officer Crisco had no suspicion or reason that Mr. Caldwell was armed. However, unlike both of these cases, Officer Crisco frisked Mr. Caldwell *after* he told Mr. Caldwell several times he suspected him of burglaries and read him his Miranda rights. There was no evidence or testimony presented that Mr. Caldwell consented to the frisk.

The Second District Court of Appeal relied on Williams v. State, 403 So. 2d 453 (Fla. 1st DCA 1981), holding that an officer may pat down a suspect who voluntarily becomes a passenger in that officer's vehicle. In Williams, the defendant abducted a woman at knifepoint and raped her. The court noted

> Concerning the pat-down search for weapons prior to appellant entering the police car, we note that appellant was being questioned in connection with a crime committed by an armed and dangerous felon (sexual battery and kidnapping). Id. at 456.

Contrary to Williams, there is absolutely nothing to indicate that the Appellant was being questioned in connection with crime committed by an armed and dangerous felon or that a weapon was involved. Moreover, Williams was decided in 1981. Since then, the First District Court of Appeal specifically held, in Harris v. State, *supra.* The holding in Harris seems to overrule Williams.

CONCLUSION

In light of the foregoing facts, arguments, and authorities, Petitioner respectfully requests that this Honorable Court reverse the lower court and find that the Petitioner was illegally seized.

Further, the Petitioner asks this Court approve the decisions in Rayor, Hidalgo, and disapprove the holding below.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to the Office of State Attorney, Pinellas County, P.O. Box 5028, Clearwater, FL 33758 and the Office of the Attorney General, Concourse Center, #4, 3507 Frontage Road, Ste. 200, Tampa, FL 33607 this the ____ day of July, 2009.

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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).

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