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)

AMENDED JURISDICTIONAL BRIEF OF PETITIONER

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STATEMENT OF THE CASE AND FACTS

Eric Christopher Caldwell ("Petitioner") pled Guilty to Arson and Burglary. On July 24, 2004, the court withheld adjudication, and ordered five (5) years of Probation. (V. I, R. 3-4). 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 and that he could not make out any identifying features of the person depicted. (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. Officer Crisco told the Petitioner he was not, but he <u>needed</u> 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 backseat 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. There was no other evidence (other than his own statements) linking the Petitioner to the burglaries. (V. I, R. 81).

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 Judge 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 based on the grounds raised in the previous Motion to Suppress Statements. (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).

Mr. Caldwell appealed the denial of his dispositive Motion to Suppress to the Second District Court of Appeal. (V. II, R. 198-199). On June 6, 2008, the Second District Court of Appeal affirmed the trial court's denial of the Motion to Suppress and held that Miranda warning alone do not covert an encounter into a stop. 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.

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

Petitioner, Eric Christopher Caldwell, alleges direct and express conflict between the holding in the instant case and the decision in *Raysor v. State,* 795 So.2d 1071 (Fla. 4th DCA 2001), in that, according to Raysor, the reading of Miranda rights to a citizen automatically converts a consensual encounter into an investigatory stop requiring reasonable suspicion. The Second District Court of Appeal certified conflict in its opinion. The Petitioner also alleges conflict between the holding in the instant case and the decisions in Hidalgo v. State, 959 So.2d 353, 354 (Fla. 3d DCA 2007) and D.L.J. v. State, 932 So.2d 1133, 1134 (Fla. 2d DCA 2006)in that a frisk transforms a encounter into an investigatory stop.

ARGUMENT

THE DECISION OF THE SECOND DISTRICT IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FOURTH DISTRICT IN RAYSOR v. STATE 795 So. 2d 1071 (Fla. 4th DCA 2001)

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

Discretionary jurisdiction may be invoked to review any decision of a district court of appeal that is in express and direct conflict with a decision of another district court of appeal on the same question of law. Fla. Const. Art. V, § 3(b)(4). 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). This Court has held the "concern in cases based on our conflict jurisdiction is the precedential effect of those decisions which are incorrect and in conflict with decisions reflecting the correct rule of law." Wainwright v. Taylor, 476 So. 2d 669, 670 (Fla. 1985). The Second District Court of Appeal opinion in the instant case is in express and direct conflict with the Fourth District Court of Appeal. The Second District Court of Appeal has certified this conflict.

On June 6, 2008, the Second District issued a written opinion affirming the trial court's denial of the Petitioner's

Motion to Suppress. The court found that the reading of Miranda rights to a citizen does not convert an encounter into a stop, and certified conflict with the Fourth District. Furthermore, the court, relying on Williams v. State, 403 So. 2d 453 (Fla. 1st DCA 1981) ruled that an officer need not have any reasonable suspicion to frisk an individual who voluntarily becomes a passenger in a police vehicle. The court failed to consider that the defendant in Williams, abducted a woman at knifepoint and sexually assaulted her. The facts in the instant case distinguishable. This holding is also is conflict with the holdings of the Third District, Hidalgo, and the Second District, D.L.J.

Petitioner asserts that the totality of the circumstances would lead a reasonable person in his position to conclude that he could not leave.

CONCLUSION

In light of the foregoing facts, arguments, and authorities, Petitioner respectfully requests that this Honorable Court exercise its discretionary jurisdiction under Art. V, Section 3(b)(3), Fla. Const., to resolve the conflicts outlined above.

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 September, 2008.

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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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