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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC12-2501

AMY HINMAN,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

INITIAL BRIEF OF PETITIONER ON THE MERITS

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

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INTRODUCTION

Petitioner, Amy Hinman, was the appellee in the district court of appeal and the defendant in the Circuit Court. Respondent, State of Florida, was the appellant in the district court of appeal, and the prosecution in the Circuit Court. In this brief, the symbol "R" designates the record on appeal.

STATEMENT OF THE CASE AND FACTS

Amy Hinman was arrested and charged with possession of hydrocodone (R. 7-9). She filed a motion to suppress statements she made to the arresting officer and evidence seized as a result of those statements on the ground that she had been subjected to custodial interrogation without being advised of her *Miranda* rights. At the hearing on that motion to suppress, the State's sole witness was Officer Orlando Lopez, who testified to the following.

On February 4, 2009, Officer Lopez was on duty working in conjunction with a narcotics detection operation (R. 32-33). Officer Lopez was driving a marked police vehicle and was accompanied by Officer Parker (R. 38). Both officers were in full police uniform (R. 39).

The lead detective on the narcotics detection team had instructed Officer Lopez to be on the lookout for a particular vehicle with a female occupant heading north on 147th Avenue (R. 33-34). Immediately after receiving this instruction, Officer Lopez observed Amy Hinman driving a car which matched the description given to him by the lead detective of the narcotics detection team (R. 33-34). Officer Lopez followed the car being driven by Ms. Hinman pursuant to the investigation being conducted by the narcotics detection team (R. 42). After Officer Lopez saw Ms. Hinman run a red light, he activated his police lights and

police siren and pulled over Ms. Hinman (R. 35). Ms. Hinman turned off on a side street and stopped her vehicle (R. 35).

Officer Lopez exited his police vehicle and approached the driver's side of Ms. Hinman's car (R. 35). Officer Parker exited the police car and approached the passenger side of Ms. Hinman's car (R. 36). Ms. Hinman remained seated in her car as the officers approached her (R. 35-36).

When Officer Lopez reached the driver's side of the car, he asked Ms. Hinman if she had any drugs or weapons in the vehicle (R. 35-36). Officer Lopez did not advise Ms. Hinman of her *Miranda* rights prior to conducting this questioning (R. 44). Officer Lopez testified at the hearing on the motion to suppress that he conducted this questioning of Ms. Hinman for "safety" and it was his "customary policy" to do so (R. 36). It was his personal routine whenever he spoke to people to ask them if they had any drugs or weapons in their vehicle (R. 36-37). Officer Lopez testified that Ms. Hinman was not free to leave when he was questioning her (R. 40-41).

In response to Officer Lopez's questioning, Ms. Hinman immediately said she did not have any weapons (R. 36). After a brief hesitation, she admitted that she had a bag of pills (R. 36). Officer Lopez told her to step out of the vehicle (R. 37). Ms. Hinman complied with this order, pulled a bag out of her pocket and placed the bag on the hood of her car (R. 37). The bag contained numerous pills

(R. 37). Officer Lopez left the pills on the hood of the car and contacted the lead detective of the narcotics detection team (R. 37).

The trial court granted the motion to suppress (R. 60-62). The court found that the stop and subsequent detention of Ms. Hinman “was part and parcel of an ongoing narcotics investigation.” (R. 61). The court further found that Officer Lopez questioned Ms. Hinman about her possession of drugs “in his capacity as ‘back-up’ for the narcotics team and with the knowledge that she was a target of the narcotics team.” (R. 61). The court ruled that the officer’s detention of Ms. Hinman under these circumstances was custodial interrogation requiring *Miranda* warnings prior to the questioning (R. 62). The court relied on the decision of the First District Court of Appeal in *State v. Hall*, 537 So.2d 171 (Fla. 1st DCA 1989), which held *Miranda* warnings were required prior to the questioning of the defendant about his possession of drugs following a traffic stop of the defendant who was the target of a narcotics investigation at the time of the stop (R. 61). The court distinguished the decision of the Fourth District Court of Appeal in *State v. Olave*, 948 So.2d 995 (Fla. 4th DCA 2007) where the defendant was only questioned incident to a traffic stop and there was no concurrent narcotics investigation (R. 61). The court also distinguished the decision of the Second District Court of Appeal in *State v. Martissa*, 18 So.3d 49 (Fla. 2d DCA 2009)

where the defendant was not the target of a narcotics investigation at the time he was stopped and questioned (R. 61-62).

The State of Florida appealed the order granting the motion to suppress to the Third District Court of Appeal (R. 63). The district court of appeal reversed the order granting the motion to suppress. *State v. Hinman*, 100 So.3d 220 (Fla. 3d DCA 2012). The court held that because the defendant had been lawfully stopped for a traffic violation, the questioning of the defendant about her possession of drugs was not custodial for purposes of *Miranda*:

In the case of a lawful traffic stop such as this, however, “persons temporarily detained pursuant to such stops are not ‘in custody’ for the purposes of *Miranda*.” *Berkemer v. McCarty*, 468 U.S. 420, 440, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984).

Hinman, 100 So.3d at 221.

A notice invoking this Court’s discretionary jurisdiction based on express and direct conflict of decisions was filed on November 14, 2012. On June 3, 2013, this Court accepted jurisdiction and directed that oral argument would be set by separate order.

SUMMARY OF ARGUMENT

The Third District Court of Appeal held in this case that *Miranda* warnings are never required when a person is detained pursuant to a traffic stop as long as that traffic stop is lawful. This holding misconstrues the principle established by the United States Supreme Court in *Berkemer v. McCarty*, 468 U.S. 420 (1984). The Court did not hold in *Berkemer* that persons temporarily detained pursuant to lawful traffic stops are never in custody for the purposes of *Miranda*. Rather, the Court held that persons temporarily detained pursuant to *ordinary* traffic stops are not “in custody” for the purposes of *Miranda*.

Berkemer requires examination of the circumstances surrounding the traffic stop to determine if it was an ordinary traffic stop which would not lead the motorist to believe she was being subjected to custodial interrogation, or whether the circumstances surrounding the stop went beyond the ordinary traffic stop and would have led the motorist to believe she was being subjected to custodial interrogation. *Berkemer* establishes that even if a driver is lawfully stopped after committing a traffic violation, that driver may be in custody for the purposes of *Miranda* if the actions taken by the police exceed the actions that would normally be taken incident to an ordinary traffic stop.

The actions taken by the police officers who stopped Amy Hinman exceeded the actions that would normally be taken incident to an ordinary traffic stop, and as

a result Ms. Hinman was in custody for purposes of *Miranda* when she was questioned. The car being driven by Ms. Hinman was stopped and surrounded by two police officers and she was immediately questioned by the officer standing over her about whether she had any drugs or weapons in the car. A reasonable motorist under these circumstances would not expect that she would only be obliged to spend a short period of time answering questions and wait while the officer checks her license and registration, and then most likely would be allowed to continue on her way after possibly receiving a traffic citation. The actions taken by the police officers in this case would have led a reasonable motorist to believe that her freedom of action had been curtailed to a degree associated with a formal arrest and that she was being subjected to custodial interrogation. Accordingly, *Miranda* warnings were required prior to that questioning.

A holding that *Miranda* warnings were required prior to the questioning of Ms. Hinman is consistent with the decisions of the district courts of appeal which have considered this issue. In cases where a motorist is temporarily detained pursuant to an ordinary traffic stop, the district courts hold that the motorist is not in custody for the purposes of *Miranda*. In cases where a motorist is detained by a police officer and the actions taken by the police officer exceed the actions that would normally be taken incident to an ordinary traffic stop, the district courts hold that the motorist is in custody for purposes of *Miranda*.

A holding that *Miranda* warnings were required prior to the questioning of Ms. Hinman strikes the proper balance between protecting citizens' Fifth Amendment rights and allowing the police to efficiently enforce the traffic laws of this state. In an ordinary traffic stop, where a patrol officer stops a car based on the observation of a traffic violation and approaches the driver of that car and asks for the driver's license and registration, police should not be required to administer *Miranda* warnings to the driver because no reasonable driver would believe they were being subjected to custodial interrogation and therefore the administration of *Miranda* warnings would be a needless imposition on the efficient enforcement of the traffic laws. On the other hand, where police officers acting as part of an ongoing narcotics investigation stop a car after observing a traffic violation, surround the car, and ask the driver if she has any weapons or drugs inside the car, police should be required to administer *Miranda* warnings to the driver because a reasonable driver would believe she was being subjected to custodial interrogation, and therefore allowing the police to question the driver without giving her *Miranda* warnings would enable the police to circumvent the constraints on custodial interrogations established by *Miranda*.

ARGUMENT

THE POLICE QUESTIONING OF MS. HINMAN TO DETERMINE IF SHE WAS IN POSSESSION OF NARCOTICS, AS PART OF AN ONGOING NARCOTICS INVESTIGATION AND AS MS. HINMAN SAT IN HER CAR WHICH HAD BEEN STOPPED BY THE POLICE AND SURROUNDED BY TWO OFFICERS, CONSTITUTED CUSTODIAL INTERROGATION WITHIN THE RULE OF *MIRANDA*, REQUIRING THAT MS. HINMAN BE INFORMED OF HER CONSTITUTIONAL RIGHTS PRIOR TO THAT INTERROGATION.

In an ordinary traffic stop, a police officer on routine patrol observes a traffic violation occur, pulls over the driver who committed the traffic violation, gets out of the police car, approaches the driver, and asks for the driver's license and registration. Under these circumstances, the driver has not been led to believe that her freedom of action has been curtailed to a degree associated with formal arrest, and therefore *Miranda* warnings are not required.

This case does not involve an ordinary traffic stop by a police officer on routine patrol. The officers who stopped Amy Hinman by activating their police lights and siren were working in conjunction with a narcotics detection team and had been directed by the lead detective on that narcotics detection team to be on the lookout for the car being driven by Amy Hinman. The officers stopped the car being driven by Ms. Hinman after she ran a red light. One officer approached the driver's side of Ms. Hinman's car while a second officer approached the passenger side. The officer at the driver's side did not ask Ms. Hinman for her license and

registration. Instead, the officer asked Ms. Hinman if she had any drugs or weapons in her possession. Under these circumstances, Ms. Hinman was led to believe that her freedom of action had been curtailed to a degree associated with formal arrest, and therefore *Miranda* warnings were required prior to asking her if she had any drugs in her possession.

Both the United States and Florida Constitutions protect all persons from being compelled to give testimony against themselves. U.S. Const. amend. V; Art. I, § 9, Fla. Const. In *Miranda*, the United States Supreme Court established a procedural safeguard to protect an individual's constitutional privilege against compelled self-incrimination from the coercive pressures that can be brought to bear upon a suspect in the context of custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436 (1966). "The procedural safeguard does not, however, apply 'outside the context of the inherently coercive custodial interrogations for which it was designed.'" *Caso v. State*, 524 So. 2d 422, 423 (Fla. 1988)(quoting *Roberts v. United States*, 445 U.S. 552, 560 (1980)). The police are required to give Miranda warnings only when the person is in custody. *Caso*, 524 So. 2d at 423 (citing *California v. Beheler*, 463 U.S. 1121, 1124 (1983)).

In determining whether a suspect is in custody, "the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. at 1125

(quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977)). “[T]he only relevant inquiry is how a reasonable man in the suspect’s position would have understood his situation.” *Roman v. State*, 475 So.2d 1228, 1231 (Fla. 1985)(quoting *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984)).

In this case, the trial court considered the totality of the circumstances surrounding the police questioning of Ms. Hinman and determined that she was in custody for purposes of requiring *Miranda* warnings at the time of that questioning. “A trial court’s findings regarding whether a suspect was in custody are clothed with a presumption of correctness and will not be overturned if there is competent, substantial evidence which would support the decision under the correct analysis.” *Caso*, 524 So. 2d at 424. As competent, substantial evidence supports the trial court’s finding that Ms. Hinman was in custody, and as the trial court used the correct legal analysis to make that finding, the district court of appeal improperly reversed the trial court’s finding.

The Third District Court of Appeal held that *Miranda* warnings are never required when a person is detained pursuant to a traffic stop as long as that traffic stop is lawful:

In the case of a lawful traffic stop such as this, however, “persons temporarily detained pursuant to such stops are not ‘in custody’ for the purposes of *Miranda*.” *Berkemer v. McCarty*, 468 U.S. 420, 440, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984).

State v. Hinman, 100 So.3d 220, 221 (Fla. 3d DCA 2012). This holding misconstrues the principle established by the United States Supreme Court in *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984). The Court did not hold in *Berkemer* that persons temporarily detained pursuant to lawful traffic stops are never in custody for the purposes of *Miranda*. Rather, the Court held that persons temporarily detained pursuant to *ordinary* traffic stops are not “in custody” for the purposes of *Miranda*. *Id.* at 440.

In reaching this holding, the Court noted that certain features of an ordinary traffic stop “mitigate the danger that a person questioned will be induced ‘to speak where he would not otherwise do so freely,’” *Id.* at 437 (quoting *Miranda*, 384 U.S. at 467). One of these features is the fact that “detention of a motorist pursuant to a traffic stop is presumptively temporary and brief.” *Id.* Thus, in the ordinary traffic stop, the typical motorist has not been led to believe that his freedom of action has been curtailed to a degree associated with formal arrest:

A motorist’s expectations, when he sees a policeman’s light flashing behind him, are that he will be obliged to spend a short period of time answering questions and waiting while the officer checks his license and registration, that he may then be given a citation, but that in the end he most likely will be allowed to continue on his way.

Id. (footnote omitted).

After concluding that persons temporarily detained pursuant to ordinary traffic stops are not in custody for the purposes of *Miranda*, the Court did not

simply hold that Berkemer was not in custody because the traffic stop was lawful. Rather, the Court examined the circumstances surrounding the traffic stop to determine if it was an ordinary traffic stop which would not lead the motorist to believe he was being subjected to custodial interrogation, or whether the circumstances surrounding the stop went beyond the ordinary traffic stop and would have led the motorist to believe he was being subjected to custodial interrogation. After examining the circumstances surrounding the traffic stop of Berkemer, the Court concluded that he was not in custody for purposes of *Miranda* during that traffic stop:

Although Trooper Williams apparently decided as soon as respondent stepped out of his car that respondent would be taken into custody and charged with a traffic offense, Williams never communicated his intention to respondent. A policeman's unarticulated plan has no bearing on the question whether a suspect was "in custody" at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation. Nor do other aspects of the interaction of Williams and respondent support the contention that respondent was exposed to "custodial interrogation" at the scene of the stop. From aught that appears in the stipulation of facts, a single police officer asked respondent a modest number of questions and requested him to perform a simple balancing test at a location visible to passing motorists. Treatment of this sort cannot fairly be characterized as the functional equivalent of formal arrest.

(footnotes omitted).

In its subsequent decision in *Pennsylvania v. Bruder*, 488 U.S. 9 (1988), the Court examined the circumstances surrounding another traffic stop to determine if

it was an ordinary traffic stop which would not lead the motorist to believe he was being subjected to custodial interrogation, or whether the circumstances surrounding the stop went beyond the ordinary traffic stop and would have led the motorist to believe he was being subjected to custodial interrogation. In *Bruder*, a patrol officer observed the defendant driving very erratically along a State Highway. The defendant committed a number of traffic violations, including ignoring a red light. The officer stopped the defendant's vehicle. The defendant left his vehicle and approached the officer. The officer asked the defendant for his registration, and the defendant returned to his car to obtain it. When the officer smelled alcohol and observed the defendant's stumbling movements, the officer administered field sobriety tests and inquired about alcohol. The defendant answered that he had been drinking and was returning home.

After examining the circumstancing surrounding the traffic stop of defendant, the Court concluded that he was not in custody for purposes of *Miranda* during that traffic stop:

The facts in this record, which *Bruder* does not contest, reveal the same noncoercive aspects as the *Berkemer* detention: "a single police officer ask[ing] respondent a modest number of questions and request[ing] him to perform a simple balancing test at a location visible to passing motorists." 468 U.S., at 442, 104 S.Ct., at 3151 (footnote omitted). Accordingly, *Berkemer's* rule, that ordinary traffic stops do not involve custody for purposes of *Miranda*, governs this case.

Bruder, 488 U.S. at 11 (footnotes omitted).

Thus, *Berkemer* establishes that even if a driver is lawfully stopped after committing a traffic violation, a driver detained after the traffic violation may be in custody for the purposes of *Miranda* if the actions taken by the police officer exceed the actions that would normally be taken incident to an ordinary traffic stop. As the actions taken by the police officers who stopped Amy Hinman did exceed the actions that would normally be taken incident to an ordinary traffic stop, Ms. Hinman was in custody for purposes of *Miranda* when she was questioned.

Two police officers working in conjunction with a narcotics detection team pulled up behind the car being driven by Ms. Hinman and activated their police lights and police siren. Ms. Hinman turned off on a side street and stopped her vehicle in response to the officers' display of authority. Both officers exited the police vehicle and approached Ms. Hinman's car. One officer walked up to the passenger side of Ms. Hinman's car and the other officer walked up to the driver's side of the car. Ms. Hinman remained seated in her car as the two officers surrounded her car. When the officer reached the driver's side of the car he did not ask Ms. Hinman for her license and registration. Instead, the officer questioned Ms. Hinman to determine if she had any weapons inside the vehicle and if she had any drugs inside the vehicle.

These actions taken by the officers who stopped Ms. Hinman would have led a reasonable motorist to believe that her freedom of action had been curtailed to a degree associated with a formal arrest and that she was being subjected to custodial interrogation. A reasonable motorist under these circumstances would not expect that she would only be obliged to spend a short period of time answering questions and wait while the officer checks her license and registration, and then most likely would be allowed to continue on her way after possibly receiving a traffic citation. A reasonable motorist under these circumstances, after her car is surrounded by two police officers and after the officer standing over her immediately starts questioning her about whether she has any weapons in the car and whether she has any drugs in the car, would believe that she was being subjected to custodial interrogation. Accordingly, *Miranda* warnings were required prior to that questioning.

A holding that *Miranda* warnings were required prior to the questioning of Ms. Hinman is consistent with the decisions of the district courts of appeal which have considered this issue. In the following cases, the court held that *Miranda* warnings were required where a motorist was detained by a police officer and the actions taken by the police officer exceeded the actions that would normally be taken incident to an ordinary traffic stop.

In *State v. Hall*, 537 So.2d 171 (Fla. 1st DCA 1989), two police officers conducting a narcotics investigation were hiding on surveillance in a remote section of a parking area known for drug transactions. The officers observed the defendant sitting in a parked vehicle and suspected that the defendant was involved in the use of illegal narcotics. As the officers approached the vehicle they saw the defendant reach under his seat. When they arrived at the vehicle, one officer stood by the passenger door, and the other officer stood by the driver's door and shined his flashlight at the defendant. The officer at the door asked the defendant if he had any drugs and the defendant replied affirmatively. The trial court suppressed the evidence, finding that the circumstances under which the officer questioned the defendant were such that a reasonable person in the defendant's position would believe that he was being subjected to custodial interrogation and therefore the failure to advise the defendant of his constitutional rights rendered inadmissible the evidence gained through the interrogation. The appellate court affirmed the trial court's ruling, finding that the record supported the trial court's determination that for practical purposes the defendant was in custody while being questioned by the officers and was thus entitled to the full range of *Miranda* protections.

In *Fowler v. State*, 782 So.2d 461 (Fla. 2d DCA 2001), an officer initiated a traffic stop of the defendant's vehicle, which had a broken tail lamp. The officer told the defendant why he was stopped and requested his license, registration, and

insurance card. While running the license information through the computer, the officer was advised by the dispatcher that the defendant was suspected of selling drugs in the parks. The officer directed the defendant to step out of the vehicle and two other officers arrived to provide back up. At the rear of the vehicle, the officer told the defendant that he heard he had been selling drugs in the parks and asked if he had anything on him. The defendant responded, "Yes." The court held that the defendant was in custody and was entitled to *Miranda* warnings when he was told by the police to get out of his car and questioned at the rear of his vehicle about whether he had any drugs in his possession.

In *Morales v. State*, 557 So.2d 893 (Fla. 4th DCA 1990), the police stopped the defendant to give him a warning for speeding. In doing so, they saw him place something under the car seat. Based on concerns for their safety, they ordered the defendant out of the vehicle and checked under the seat. They found only a manila envelope, which relieved their safety concerns. Nonetheless, they then opened the envelope and discovered several items of jewelry. They then asked the defendant about the source of the jewelry. The court held that the defendant was in custody for purposes of requiring a *Miranda* warning at the time he was questioned about the source of the jewelry.

In *State v. Hackett*, 944 So.2d 399 (Fla. 4th DCA 2006), a police officer stopped a vehicle and issued the driver a notice of civil traffic infraction. The

officer then sought permission to search the vehicle and the driver agreed to the search. When the officer found a crack cocaine pipe, he arrested the driver and detained the two passengers. The officer then continued his search and found a bag of cocaine. Without advising the driver or passengers of their *Miranda* rights, the officer asked them whose bag it was. The defendant stated it was his bag and he was arrested for possession of cocaine. The trial court suppressed this statement because the defendant was in custody for purposes of *Miranda* when he was asked about his possession of drugs, and the appellate court affirmed that ruling.

In the following cases, the court held that *Miranda* warnings were not required because at the time of the questioning the motorist was only temporarily detained pursuant to an ordinary traffic stop. In *Hewitt v. State*, 920 So.2d 802 (Fla. 5th DCA 2006), a police officer legally stopped the defendant's car for a traffic violation. The officer was not a part of any investigation of the defendant's illegal drug activity. The officer approached the defendant and asked to see her driver's license. When the defendant told the officer she did not have a driver's license, the officer asked her to step out of the car and for reasons of officer safety asked if she had a gun, knives or drugs on her person. The defendant started crying and said she had some "weed" on her. The officer retrieved two bags of marijuana and arrested the defendant. The court held that the defendant had not

been subjected to custodial interrogation requiring *Miranda* warnings when the officer asked her if she had any drugs.

In *State v. Dykes*, 816 So.2d 179 (Fla. 1st DCA 2002), the defendant was pulled over in a routine traffic stop. While one officer was writing a citation for a minor undisputed traffic violation, another officer briefly questioned the defendant. The trial court did not find that the defendant had been subjected to custodial interrogation, but nevertheless suppressed the statements made by the defendant in response to the questioning because the questioning officer had commenced a criminal investigation without informing the defendant of his *Miranda* rights. Because the trial court never found that the questioning of the defendant was custodial interrogation, the appellate court reversed the trial court's order suppressing the statements.

In *State v. Martissa*, 18 So.3d 49 (Fla. 2d DCA 2009), a police officer was working in a covert capacity observing people who came and went from a suspected drug house. That officer told another officer that the vehicle the defendant was driving was seen at the suspected drug house. The second officer observed the vehicle, and it did not have a functional tag light. The officer initiated a valid traffic stop for the violation. He approached the car and asked the defendant for his driver's license and registration. The defendant told the officer that that his license was suspended. The officer detained the defendant while he

confirmed that his license was suspended. He asked the defendant to exit the vehicle and as the defendant was getting out of the vehicle the officer advised him that he was observed leaving an area known for the sale of illegal narcotics, and asked him if he had any illegal narcotics on him. The defendant told the officer that he had crack cocaine in the vehicle. The court held that the defendant had not been subjected to custodial interrogation requiring *Miranda* warnings when the officer asked him if he had any illegal narcotics.

In *State v. Olave*, 948 So.2d 995 (Fla. 4th DCA 2007), a patrol officer working the evening shift observed a white van with the taillight out. The officer stopped the van which was being driven by the defendant. The officer asked the defendant for his driver's license and the defendant provided it. The officer ran a check of the license and found out that it was restricted to business purposes only. The officer had the defendant step out of the van and stand alongside the road with another officer while the officer went back to his squad car to further check the status of the defendant's driver's license. As the officer returned following this check of the license, he heard the other officer ask the defendant if he had any drugs or weapons in his pockets. The defendant responded that he had some pills in his pocket. The court held that the defendant was not subjected to custodial interrogation requiring *Miranda* warnings at the time the officer asked if he had

any drugs or weapons in his pockets because the defendant was merely being detained pursuant to a routine traffic investigation at the time of that questioning.

In *State v. Poster*, 892 So.2d 1071 (Fla. 2d DCA 2004), a deputy activated his overhead lights and conducted a stop of the truck being driven by the defendant. The defendant was not ordered to exit his truck, but jumped out to approach the deputy. The defendant initiated conversation with the deputy about previous encounters. The conversation was very casual because the deputy knew the defendant. As they were talking, the deputy interrupted and asked the defendant if he had any methamphetamine. The defendant leaned towards the officer and, in a confidential tone, answered that he had a little bit. The court held this question did not constitute custodial interrogation requiring *Miranda* warnings because the atmosphere was not coercive, and the defendant's response was entirely voluntary based upon his familiarity with the deputy.

In *State v. Thomas*, 109 So. 3d 814 (Fla. 5th DCA 2013) a police officer on routine patrol observed the defendant's vehicle in an empty parking lot behind a closed restaurant. As the officer approached in his vehicle, the defendant drove away. The officer followed the defendant's vehicle, observed that its windows were unusually dark, and initiated a traffic stop of the defendant for driving a vehicle with illegal window tint. The officer approached the car and asked the defendant for his license and registration. When the officer noticed that the

defendant's hands were shaking and he appeared very nervous, the officer asked if he had anything illegal in the car. The court held that *Miranda* warnings were not required prior to this questioning.

The common thread running through these decisions that *Miranda* warnings were not required prior to questioning during a traffic stop is that when the officer stopped the driver and approached the stopped car the officer asked for the driver's license and registration. Under these circumstances, a reasonable motorist would expect that she would only be obliged to spend a short period of time answering questions and wait while the officer checks her license and registration, and then most likely would be allowed to continue on her way after possibly receiving a traffic citation. As such, *Miranda* warnings are not required. However, in cases such as this case where the officer does not simply approach the driver and ask for her license and registration, but rather immediately asks her if she has any weapons or drugs in the car, *Miranda* warnings are required because a reasonable motorist under those circumstances would not expect that she was going to be allowed to continue on her way after a short delay and possibly receiving a traffic citation.

A holding that *Miranda* warnings were required prior to the questioning of Ms. Hinman strikes the proper balance between protecting citizens' Fifth Amendment rights and allowing the police to efficiently enforce the traffic laws of this state. In *Berkemer*, the Court recognized that a bright line rule requiring

Miranda warnings during all traffic stops “would substantially impede the enforcement of the Nation’s traffic laws—by compelling the police either to take the time to warn all detained motorists of their constitutional rights or to forgo use of self-incriminating statements made by those motorists—while doing little to protect citizens’ Fifth Amendment rights.” *Id.* at 441 (footnote omitted). However, the Court also recognized that a bright line rule that a suspect need not be advised of his rights until she is formally placed under arrest “would enable the police to circumvent the constraints on custodial interrogations established by *Miranda.*” *Id.*

In an ordinary traffic stop, where a patrol officer stops a car based on the observation of a traffic violation, approaches the driver of that car and asks for the driver’s license and registration, police should not be required to administer *Miranda* warnings to the driver because no reasonable driver would believe they were being subjected to custodial interrogation and therefore the administration of *Miranda* warnings would be a needless imposition on the efficient enforcement of the traffic laws. On the other hand, where police officers acting as part of an ongoing narcotics investigation stop a car after observing a traffic violation, surround the car, and ask the driver if she has any weapons or drugs inside the car, police should be required to administer *Miranda* warnings to the driver because a reasonable driver would believe she was being subjected to custodial interrogation, and therefore allowing the police to question the driver without giving her *Miranda*

warnings “would enable the police to circumvent the constraints on custodial interrogations established by *Miranda*.” *Berkemer*, 468 U.S. at 441.

In this case, police officers acting as part of an ongoing narcotics investigation stopped the car being driven by Ms. Hinman after observing her commit a traffic violation, surrounded her car, and asked her if she had any weapons or drugs inside her car. As a reasonable person under these circumstances would believe that she was being subjected to custodial interrogation, the police were required to advise Ms. Hinman of her *Miranda* rights prior to such questioning.

CONCLUSION

Based on the foregoing facts, authorities and arguments, petitioner respectfully requests this Court to quash the decision of the Third District Court of Appeal, and remand this case with instructions that the trial court's order granting the defendant's motion to suppress be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was emailed to the Office of the Attorney General, Criminal Division, at CrimAppMIA@MyFloridaLegal.com this 28th day of June, 2013. Undersigned counsel hereby designates, pursuant to Rule 2.516, the following e-mail addresses for the purpose of service of all documents required to be served pursuant to Rule 2.516 in this proceeding: AppellateDefender@pdmiami.com (primary E-Mail Address); HKB@pdmiami.com (Secondary E-Mail Address).

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Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times New Roman.

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