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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC12-2501

AMY HINMAN,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

REPLY 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

In this reply brief of petitioner on the merits, as in the initial brief of petitioner on the merits, the symbol "R" designates the record on appeal.

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.

The State argues that when a police officer conducts a routine traffic stop, the officer is permitted to question the stopped motorist about the presence of weapons or drugs in the car without *Miranda* warnings, as long as the questioning does not unduly prolong the stop or confront the motorist with accusations of wrongdoing. The State is correct that such questioning is allowed *if the encounter between the officer and the motorist begins as a routine traffic stop*. However, if the encounter between the officer and the motorist does not begin as a routine traffic stop with a request by the officer for the motorist's license and registration or other identifying information, but rather begins with the officer requiring the motorist to disclose if she is in possession of any weapons or drugs, the motorist must be advised of her *Miranda* warnings prior to any such questioning. As the officer's first question to Ms. Hinman after she was stopped required her to reveal if she was in possession of any weapons or drugs, a reasonable motorist in her position would have been led to believe she was being subjected to custodial

interrogation and therefore *Miranda* warnings were required prior to that questioning.

The State cites a number of Florida and federal decisions holding that *Miranda* warnings were not required prior to questioning a motorist about the presence of weapons or drugs in the car during a routine traffic stop. The cases cited by the State differ from this case in one critical respect. In each of the cited cases the encounter between the officer and the motorist began as a routine traffic stop with an officer asking the driver for her driver's license or some other identifying information. *See State v. Thomas*, 109 So.3d 814, 817-18 (Fla. 5th DCA 2013) (holding *Miranda* warnings not required prior to officer asking driver if he had anything illegal in the car where encounter began when officer initiated a traffic stop of the defendant for driving a vehicle with illegal window tint, approached the car and asked the defendant for his license and registration); *State v. Martissa*, 18 So.3d 49, 52-53 (Fla. 2d DCA 2009) (finding *Miranda* warnings not required prior to question asking driver if he had any illegal narcotics on him where encounter began when officer initiated a valid traffic stop for driving without a functional tag light, approached the car and asked the driver for his driver's license and registration); *State v. Olave*, 948 So.2d 995, 997 (Fla. 4th DCA 2007) (concluding *Miranda* warnings not required prior to asking driver if he had any drugs or weapons in his pockets where encounter began with officer

conducting a valid traffic stop for driving with the taillight out and officer asking the defendant for his driver's license); *Hewitt v. State*, 920 So.2d 802, 805 (Fla. 5th DCA 2006) (finding *Miranda* warnings not required prior to asking driver if she had a gun, knives or drugs on her person where encounter began with officer stopping car for a traffic violation, approaching the driver, and asking to see her driver's license); *State v. Dykes*, 816 So.2d 179, 180 (Fla. 1st DCA 2002) (concluding facts did not support a finding of custodial interrogation where driver was briefly questioned after he was pulled over in a routine traffic stop and an officer was writing him a citation for a minor traffic violation); *United States v. Coleman*, 700 F.3d 329, 333 (8th Cir. 2012) (concluding *Miranda* warnings were not required prior to questioning driver about his travel plans and criminal history where encounter began with traffic stop for driving on the shoulder of the highway and officer writing driver a warning citation and checking his license status and criminal history); *United States v. Johnson*, 680 F.3d 966, 974-75 (7th Cir. 2012) (ruling *Miranda* warnings not required prior to asking driver if he had anything on him where encounter began when officers pulled him over and one officer approached the vehicle and requested his driver's license); *United States v. Garcia*, 646 F.3d 1061, 1069-70 (8th Cir. 2011) (finding *Miranda* warnings not required prior to asking driver for his name and phone number during brief investigative stop of his vehicle); *United States v. Everett*, 601 F.3d 484, 496 (6th Cir.

2010)(finding *Miranda* warnings not required prior to officer's inquiry as to weapons and drugs where encounter began when officer pulled up next to driver with her police lights on, approached driver's vehicle, and asked driver for his license, registration, and proof of insurance); *United States v. Morse*, 569 F.3d 882, 883 (8th Cir. 2009) (finding *Miranda* warnings not required prior to asking Morse if he had anything on his person that the officer should know about where encounter began with a stop of a vehicle in which Morse was a passenger and it was determined that the driver was driving with a suspended license); *United States v. Valenzuela*, 494 F.3d 886, 890 (10th Cir. 2007) (finding *Miranda* warnings not required prior to questioning regarding the presence of weapons where encounter began with officer explaining to driver that he had stopped him for changing lanes without displaying a signal, and asking the driver for his driver's license, registration, and proof of insurance); *United States v. Schlatter*, 411 Fed. Appx. 896, 900 (7th Cir. 2011) (holding *Miranda* warnings not required prior to asking driver why he did not immediately stop and what he was hiding after officer stopped vehicle for speeding and told driver he was only checking the car for safety before pursuing the traffic violation) (unpublished); *United States v. Porras-Palma*, CR. 10-50044-JLV, 2010 WL 2484090 (D.S.D. 2010) report and recommendation adopted sub nom. *U.S. Porras-Palma*, CR. 10-50044-JLV, 2010 WL 2464864 (D.S.D. 2010) (ruling *Miranda* warnings not required prior to asking

driver about his legal status in the United States where encounter began with officer asking driver for his driver's license, vehicle registration, and proof of insurance).

In each of these cases, where the police encounter begins with the officer stopping a motorist pursuant to a routine traffic stop and asking the driver for her driver's license or some other identifying information, *Miranda* warnings are not required because a reasonable motorist would not be led to believe under such circumstances that she was being subjected to custodial interrogation. A reasonable motorist under these circumstances 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.

However, where the encounter begins as it did in this case, with one officer stationing himself at the passenger side of the car and another officer approaching the driver's side of the car and immediately requiring the driver to disclose if she is in possession of any weapons or drugs,¹ a reasonable motorist would not expect

¹ Simply asking the driver at the outset about the presence of weapons in the car might be permissible without *Miranda* warnings based on concerns for the safety of the officer. *See New York v. Quarles*, 467 U.S. 649, 655 (1984) (creating public safety exception to the requirement that *Miranda* warnings be given where there is an immediate necessity to obtain information in order to secure the officer's own safety or the safety of the public). Additionally, a reasonable motorist would understand that such a question was asked for the officer's safety and would not

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 would be led to believe under the circumstances of this case that she was being subjected to custodial interrogation, and therefore *Miranda* warnings were required prior to the questioning in this case.² *See State v. Hall*, 537 So.2d 171 (Fla. 1st DCA 1989) (holding *Miranda* warnings required prior to asking driver if he had any drugs where encounter began with two police officers approaching a vehicle, one of the officers standing by the passenger door, and the other officer standing by the driver's door and shining his flashlight at the driver).

lead the motorist to believe she was being subjected to custodial interrogation. However, requiring the driver at the outset of the encounter to disclose if she is in possession of any weapons *or drugs* cannot be justified based on concerns for officer safety and would lead a reasonable motorist to believe she was being subjected to custodial interrogation.

² The State correctly argues that the subjective intent of the officer who questioned Ms. Hinman is not relevant to the determination of whether Ms. Hinman was subjected to custodial interrogation. *See Ashcroft v. al-Kidd*, 131 S.Ct. 2074 (2011); *Whren v. United States*, 517 U.S. 806 (1996). However, the officer's objective behavior in this case, requiring Ms. Hinman at the outset of the encounter to reveal whether she was in possession of any weapons or drugs, is relevant as it would lead a reasonable motorist such as Ms. Hinman to believe she was being subjected to custodial interrogation. *See Florida v. Jardines*, 133 S.Ct. 1409 (2013) (noting relevance of officers' behavior which objectively revealed a purpose to conduct a search).

The State's final argument, that the pills were not subject to suppression under *United States v. Patane*, 542 U.S. 630 (2004), is not properly raised in this proceeding. The sole argument raised by the State in the trial court was that the motion to suppress should be denied because the questioning of Ms. Hinman did not constitute custodial interrogation requiring *Miranda* warnings (R. 46-48). The sole argument raised by the State in the Third District Court of Appeal was that the trial court improperly granted the motion to suppress because the questioning of Ms. Hinman did not constitute custodial interrogation requiring *Miranda* warnings (R. at TAB A). The sole basis for the Third District's reversal of the order granting the motion to suppress was the court's holding that the questioning of Ms. Hinman did not constitute custodial interrogation requiring *Miranda* warnings (R. 73-76). The sole basis for invoking the discretionary jurisdiction of this Court is the express and direct conflict between the decision of the Third District in this case and the decisions in *Berkemer v. McCarty*, 468 U.S. 420 (1984), *Caso v. State*, 524 So.2d 422 (Fla. 1988), and *Hall*, as to what constitutes custodial interrogation which requires *Miranda* warnings prior to questioning. The State has never before argued that even if the questioning of Ms. Hinman did constitute custodial interrogation requiring *Miranda* warnings, an alternative basis exists for denying the motion to suppress. Accordingly, the State's attempts to have this Court address this issue for the first time in these proceedings should be rejected.

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 30th day of August, 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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CERTIFICATE OF FONT

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

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