

IN THE SUPREME COURT OF THE STATE OF FLORIDA

JERMAINE ENGLISH

Petitioner,

v.

Case No. SC14- 2229  
5th DCA No. 5D13-3398

STATE OF FLORIDA,

Respondent.  
\_\_\_\_\_ /

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ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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## STATEMENT OF THE CASE AND FACTS

The only facts relevant to this Court in determining whether to accept jurisdiction are those contained within the opinion of the District Court.<sup>1</sup> Respondent, therefore, offers the following as a substitute for Petitioner's statement of the case and facts.

The Fifth District Court of Appeal's opinion in English v. State<sup>2</sup>, states:

The facts are not in dispute. English was stopped by two Orlando police officers after they noticed that the tag light on the vehicle that he was driving, along with its attached wires, was hanging down in front of the license plate, obstructing the officers' view of the plate and rendering at least one letter on it unreadable. The tag became readable, only momentarily, when the vehicle turned and caused the wires to shift. However, after the turn, when the wires shifted back, the view of the tag was obstructed again.

Based on the single fact that the tag became unobstructed temporarily during a turn, the trial court granted English's motion to suppress, concluding:

~~"Under the other—under obstruction, there's a case ...~~ saying that once you are able to read the actual numbers, that it's no longer a violation. So even if you get out of your car and walk to the car, as soon as you can see the numbers, then that satisfies your need for your probable cause. So with that, I am going to grant the suppression."

This was error.FN1

<sup>1</sup> Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986).

<sup>2</sup> A copy of the opinion is attached.

“All that is required for a valid vehicle stop is a founded suspicion by the officer that the driver of the car, or the vehicle itself, is in violation of a traffic ordinance or statute.” Davis v. State, 788 So. 2d 308, 309 (Fla. 5th DCA 2001). Section 316.605(1), Florida Statutes, provides in pertinent part:

Every vehicle, at all times while driven, stopped, or parked upon any highways, roads, or streets of this state ... shall, ... display the license plate ... in such manner as to prevent the plates from swinging, and all letters, numerals, printing, writing, and other identification marks upon the plates regarding the word “Florida,” the registration decal, and the alphanumeric designation shall be clear and distinct and free from defacement, mutilation, grease, and *other obscuring matter*, so that they will be *plainly visible and legible at all times 100 feet from the rear or front*. ... A violation of this subsection is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

§ 316.605(1), Fla. Stat. (emphasis added). Based on the plain reading of the statute, the alphanumeric designation on the license plate must be plainly visible at all times. Here, according to the testimony of the officers, which the trial court found reliable, English's tag was not in compliance with the statute. As such, the officers had the authority to conduct a traffic stop in this case. See Wright v. State, 471 So. 2d 155, 156–57 (Fla. 3d DCA 1985) (finding that officer charged with enforcing motor vehicle laws had the duty and authority to investigate why a vehicle that was parked in the roadway had its license tag partially obscured with a dirty rag, in violation of the law). But see Harris v. State, 11 So. 3d 462, 463–64 (Fla. 2d DCA 2009) (finding that police officers who were unable to read defendant's license plate because of a trailer hitch properly attached to the vehicle lacked authority to perform a traffic stop, because matters external to the tag, such as trailer hitches, bicycle racks,

handicap chairs, u-hauls, and the like were not “other obscuring matter”).

Because we conclude that English's vehicle was properly stopped pursuant to a violation of section 316.605(1), we reverse the order of the trial court and remand for further proceedings consistent with this opinion.

FN1. It appears that the trial court inadvertently relied on State v. Diaz, 850 So. 2d 435 (Fla. 2003) to support its ruling. However, Diaz involved a stop based on the officer's inability to read the expiration date on a temporary tag. Id.; see also § 320.131(4), Fla. Stat. There, the Florida Supreme Court determined that once the deputy was satisfied that the temporary tag was valid, the reason for the stop was satisfied, and the deputy had no justification for further detention, other than giving an explanation for the stop. Diaz, 850 So. 2d at 440. In so ruling, the court made the following distinction between the temporary and permanent tag statutes:

The Florida statute regulating temporary license tags provided: “Temporary tags shall be conspicuously displayed in the rear license plate bracket or attached to the inside of the rear window in an upright position *so as to be clearly visible from the rear of the vehicle.*” § 320.131(4), Fla. Stat. (2000) (emphasis added). While the Legislature has required that permanent license plates must be “plainly visible and legible at all times 100 feet from the rear or front,” § 316.605(1), Fla. Stat. (2000), the Legislature has failed to mandate a distance at which temporary tags must be fully legible. Notably, the temporary tag statute does not specifically require that the expiration date be legible, and it is the State itself which creates and issues the temporary license tag. See § 320.131(1), (4), Fla. Stat. (2000).

Id. at 437.

State v. English, 148 So. 3d 529 (Fla. 5th DCA 2014). Petitioner filed a timely notice to invoke the discretionary jurisdiction of this Court.

## SUMMARY OF THE ARGUMENT

This Court should decline to accept jurisdiction in the instant case. The Court is limited to the facts contained within the four corners of the decision in determining whether an express and direct conflict exists. On the face of the decision under review, there is no express and direct conflict with any decision of this Court or any district court.



## ARGUMENT

THIS COURT SHOULD DECLINE TO EXERCISE ITS DISCRETIONARY JURISDICTION IN THIS CASE, AS THE FIFTH DISTRICT'S OPINION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF THIS COURT OR ANOTHER DISTRICT COURT.

Petitioner seeks discretionary review with this Honorable Court under Article V, Section 3(b)(3) of the Florida Constitution. See also Fla. R. App. P. 9.030(a)(2)(A)(iv). Article V, Section 3(b)(3) provides that the Florida Supreme Court may review a district court of appeal decision only if it “expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.” In Reaves, 485 So. 2d at 830, this Court explained: “[c]onflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction.” Reaves, 485 So. 2d at 830, n.3. Additionally, this Court has held that inherent or so-called “implied” conflict may not serve as a basis for this Court’s jurisdiction. DHRS v. National Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986).

Petitioner asserts that the decision of the Fifth District Court of Appeal is in conflict with Harris v. State, 11 So. 3d 462 (Fla. 2d DCA 2009). In Harris, the Second District Court of Appeal concluded that section 316.605, Florida Statutes, did not apply to a trailer hitch that was properly installed on the bumper of a truck

and which obscured some of the letters of the license plate, because the statute does not apply to "matters external to the tag," such as hitches, bicycle racks, handicap chairs, and u-hauls. Id. at 463-64. The Second District did, however, agree with the holding in Wright v. State, 471 So. 2d 155 (Fla. 3d DCA 1985), that a rag that was affixed to a vehicle and in contact with the plate is the type of obstruction contemplated in section 316.605, drawing a distinction between obstructions that are "on" the tag and items "external to" the license plate. Harris, 11 So. 3d at 463-64 n.1.

The instant case is not in direct conflict with Harris because the decisions are not irreconcilable. See Aravena v. Miami-Dade County, 928 So. 2d 1163, 1166-67 (Fla. 2006) (One of the tests for conflict jurisdiction is whether the allegedly conflicting decisions are irreconcilable). Here, Petitioner's license plate was obstructed not by a properly affixed external attachment such as a trailer, but by an improperly affixed, dangling tag light, which was part of the vehicle itself, designed to illuminate the very thing it was obstructing. Particularly in view of the fact that Harris agreed with the Wright court's holding that a rag hanging over a license plate *is* a violation of section 316.605, it is not at all clear that the Second District would reach a different conclusion than that of the Fifth District given the set of facts presented in English. Therefore, the opinions are not in conflict.

Petitioner has failed to establish that the Fifth District's opinion in English

expressly and directly conflicts with any case of this Court or a district court. Jurisdiction should be denied.

### CONCLUSION

Based on the arguments and authorities presented herein, Respondent respectfully requests this Honorable Court decline to accept jurisdiction in this case.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Jurisdictional Brief of Respondent has been furnished via electronic mail to counsel for Appellant, Assistant Public Defender Rose M. Levering, 444 Seabreeze Blvd., Ste. 210, Daytona Beach, FL 32118, at [appellate.efile@pd7.org](mailto:appellate.efile@pd7.org); and [levering.rose@pd7.org](mailto:levering.rose@pd7.org), on December 1, 2014.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Times New Roman in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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148 So.3d 529

District Court of Appeal of Florida,  
Fifth District.

STATE of Florida, Appellant,

v.

Jermaine D. ENGLISH, Appellee.

No. 5D13-3398. | Oct. 10, 2014.

◆ License plates and registration stickers, in general

Officers had the authority to conduct a traffic stop because at least one letter on license plate of defendant's vehicle was unreadable, in violation of statute governing licensing of vehicles. West's F.S.A. § 316.605(1).

Cases that cite this headnote

**Synopsis**

**Background:** State appealed from decision of the Circuit Court, Orange County, Jenifer M. Davis, J., granting defendant's suppression motion.

**[Holding:]** The District Court of Appeal held that officers had the authority to conduct a traffic stop because at least one letter on license plate of defendant's vehicle was unreadable.

**Attorneys and Law Firms**

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James S. Purdy, Public Defender, and Rose M. Levering, Assistant Public Defender, Daytona Beach, for Appellee.

**Opinion**

Reversed and remanded.

BERGER, J.

The State of Florida appeals an order granting Jermaine D. English's motion to suppress. We reverse.

West Headnotes (3)

The facts are not in dispute. English was stopped by two Orlando police officers after they noticed that the tag light on the vehicle that he was driving, along with its attached wires, was hanging down in front of the license plate, obstructing the officers' view of the plate and rendering at least one letter on it unreadable. The tag became readable, only momentarily, when the vehicle turned and caused the wires to shift. However, after the turn, when the wires shifted back, the view of the tag was obstructed again.

[1] **Automobiles**

◆ Grounds

All that is required for a valid vehicle stop is a founded suspicion by the officer that the driver of the car, or the vehicle itself, is in violation of a traffic ordinance or statute.

Cases that cite this headnote

Based on the single fact that the tag became unobstructed temporarily during a turn, the trial court granted English's motion to suppress, concluding:

[2] **Automobiles**

◆ License and registration

Pursuant to statute governing licensing of vehicles, alphanumeric designation on car's license plate must be plainly visible at all times. West's F.S.A. § 316.605(1).

Cases that cite this headnote

Under the other—under obstruction, there's a case ... saying that once you are able to read the actual numbers, that it's no longer a violation. So even if you get out of your car and walk to the car, as soon as you can see the numbers, then that satisfies your need for your probable cause. So with that, I am going to grant the suppression.

[3] **Automobiles**

This was error.<sup>1</sup>

[1] [2] [3] “All that is required for a valid vehicle stop is a founded suspicion by the \*530 officer that the driver of the car, or the vehicle itself, is in violation of a traffic ordinance or statute.” *Davis v. State*, 788 So.2d 308, 309 (Fla. 5th DCA 2001). Section 316.605(1), Florida Statutes, provides in pertinent part:

Every vehicle, at all times while driven, stopped, or parked upon any highways, roads, or streets of this state ... shall, ... display the license plate ... in such manner as to prevent the plates from swinging, and all letters, numerals, printing, writing, and other identification marks upon the plates regarding the word “Florida,” the registration decal, and the alphanumeric designation shall be clear and distinct and free from defacement, mutilation, grease, and other obscuring matter, so that they will be *plainly visible and legible at all times 100 feet from the rear or front*. ... A violation of this subsection is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

§ 316.605(1), Fla. Stat. (emphasis added). Based on the plain reading of the statute, the alphanumeric designation on

the license plate must be plainly visible at all times. Here, according to the testimony of the officers, which the trial court found reliable, English's tag was not in compliance with the statute. As such, the officers had the authority to conduct a traffic stop in this case. *See Wright v. State*, 471 So.2d 155, 156–57 (Fla. 3d DCA 1985) (finding that officer charged with enforcing motor vehicle laws had the duty and authority to investigate why a vehicle that was parked in the roadway had its license tag partially obscured with a dirty rag, in violation of the law). *But see Harris v. State*, 11 So.3d 462, 463–64 (Fla. 2d DCA 2009) (finding that police officers who were unable to read defendant's license plate because of a trailer hitch properly attached to the vehicle lacked authority to perform a traffic stop, because matters external to the tag, such as trailer hitches, bicycle racks, handicap chairs, u-hauls, and the like were not “other obscuring matter”).

Because we conclude that English's vehicle was properly stopped pursuant to a violation of section 316.605(1), we reverse the order of the trial court and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED.

PALMER and LAWSON, JJ., concur.

#### Parallel Citations

39 Fla. L. Weekly D2130

#### Footnotes

<sup>1</sup> It appears that the trial court inadvertently relied on *State v. Diaz*, 850 So.2d 435 (Fla.2003) to support its ruling. However, *Diaz* involved a stop based on the officer's inability to read the expiration date on a temporary tag. *Id.*; see also § 320.131(4), Fla. Stat. There, the Florida Supreme Court determined that once the deputy was satisfied that the temporary tag was valid, the reason for the stop was satisfied, and the deputy had no justification for further detention, other than giving an explanation for the stop. *Diaz*, 850 So.2d at 440. In so ruling, the court made the following distinction between the temporary and permanent tag statutes:

The Florida statute regulating temporary license tags provided: “Temporary tags shall be conspicuously displayed in the rear license plate bracket or attached to the inside of the rear window in an upright position *so as to be clearly visible from the rear of the vehicle.*” § 320.131(4), Fla. Stat. (2000) (emphasis added). While the Legislature has required that permanent license plates must be “plainly visible and legible at all times 100 feet from the rear or front,” § 316.605(1), Fla. Stat. (2000), the Legislature has failed to mandate a distance at which temporary tags must be fully legible. Notably, the temporary tag statute does not specifically require that the expiration date be legible, and it is the State itself which creates and issues the temporary license tag. *See* § 320.131(1), (4), Fla. Stat. (2000).

*Id.* at 437.