

IN THE SUPREME COURT OF FLORIDA

JERMAINE ENGLISH,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

FSC Case No. _____

Fifth DCA Case No. 5D13-3398

_____ /

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON JURISDICTION

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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OTHER AUTHORITIES CITED:

Section 316.605(1), Florida Statutes

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STATEMENT OF CASE AND FACTS

On October 10, 2014, the Fifth District Court of Appeal issued an opinion granting a State appeal and reversing a trial court order granting Jermaine D. English's motion to suppress. *State v. English*, 39 Fla. L. Weekly D2130 (Fla. 5th DCA Oct. 10, 2014). Petitioner English filed his notice of intent to invoke this Court's jurisdiction on November 10, 2014.

English was charged with possession of cocaine, cannabis, and paraphernalia. (R 14-16) He filed a motion to suppress evidence, arguing that the police traffic stop that led to the discovery of the contraband was unauthorized. (R 18-21) Evidence adduced at the hearing on the motion was that the Petitioner was stopped because a bulb (with a white light) and wires were hanging down in front of the license plate on the vehicle he was driving; that obstructed the view of the plate. (R 47, 50, 52-53, 57) At least one letter, or half of one letter, was unreadable, although the plate became temporarily readable when the vehicle turned, and the wires shifted position. (R 53-54, 57) The officers who stopped the Petitioner issued a citation for the white light from the dangling bulb. (R 58) There was no reference in the citation, charging document or police report to an obstructed license plate. (R 49-52, 58) The trial court granted the motion. (R 62)

On September 24, 2013, the State filed a timely notice of appeal of the trial court's order.

The issue before the appellate court was the proper interpretation of section 316.605(1), Florida Statutes, which provides that the license plate must be free from “other obscuring matter,” so that the alphanumeric designation on the plate shall be visible at all times.

On October 10, 2014, the Fifth District Court of Appeal issued an opinion determining that the Petitioner’s plate was not in compliance, and the stop was justified. However, in a “But see” citation, the court cited the Second District’s *Harris v. State*, 11 So. 3d 462, 463-64 (Fla. 2d DCA 2009), which found 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.”

SUMMARY OF ARGUMENT

This Court should exercise its jurisdiction to review this case. The Fifth District Court's decision is in express and direct conflict with the Second District's decision in *Harris v. State*, 11 So. 3d 462, 463-64 (Fla. 2d DCA 2009). The issue is the correct interpretation of section 316.605(1), Florida Statutes, which provides that a vehicle's license plate must be free from "other obscuring matter," so that the alphanumeric designation on the plate shall be visible at all times. The Second DCA, in a case of first impression in Florida, held that matters *external* to the tag, that is, not affixed to the tag, were not "other obscuring matter" within the meaning of the statute. The Fifth District acknowledged *Harris*, but found that an external item (a bulb and wires hanging down in front of the license plate, which obstructed the view of at least one letter of the plate, except when the vehicle made a turn) rendered the vehicle not in compliance with the statute.

ARGUMENT

THIS COURT SHOULD EXERCISE ITS
DISCRETIONARY JURISDICTION IN THIS CASE
AS THE FIFTH DISTRICT COURT'S OPINION IS IN
EXPRESS AND DIRECT CONFLICT WITH THE
DECISION OF ANOTHER DISTRICT COURT.

This Court should exercise its jurisdiction to review this case. The Fifth District Court's decision is in express and direct conflict with the Second District's decision in *Harris v. State*, 11 So. 3d 462 (Fla. 2d DCA 2009). The issue before the courts in both cases was the proper interpretation of section 316.605(1), Florida Statutes (2013), which provides that license plate must be free from "other obscuring matter," so that the alphanumeric designation on the plate is visible at all times. Specifically, that statute provides that:

. . .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.

In Harris the court (finding no cases on point in Florida) applied the doctrine of *ejusdem generis*, and held that the term "other obscuring matter" referred only to obscuring matter on the license plate itself. Therefore, police officers who were unable to read defendant's license plate because of a trailer hitch

that was properly attached to defendant's vehicle lacked authority under the statute to perform a traffic stop; matters external to the tag, such as trailer hitches, bicycle racks, handicap chairs, u-hauls, and the like were not “other obscuring matter.” *Id.* at 463-464.

In the present case, *State v. English*, 39 Fla. L. Weekly D2130 (Fla. 5th DCA Oct. 10, 2014) the Fifth District acknowledged *Harris*, but found that a bulb and wires hanging down in front of the license plate on the vehicle Petitioner was driving, which obstructed the officers' view of at least one letter of the plate (yet did not do so when the vehicle made a turn) rendered the vehicle not in compliance with the statute. The court stated, “Based on the plain reading of the statute, the alphanumeric designation on the license plate must be plainly visible at all times.” *Id.*

Appellant acknowledges that *Harris* might be distinguished from the present case on the basis that, in *Harris*, the obscuring matter (a trailer hitch) was not only external, but was also properly attached. However, that distinction was not drawn in the *English* opinion.

CONCLUSION

This Court has discretionary jurisdiction to review the decision below and should exercise that jurisdiction to consider the merits of Petitioner's argument.

Respectfully submitted,

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

/s/ Rose M. Levering

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CERTIFICATE OF FONT

I HEREBY CERTIFY that the font used in this brief is 14 point proportionally spaced Times New Roman.

DESIGNATION OF E-MAIL ADDRESS

I HEREBY DESIGNATE the following e-mail addresses for purpose of service of all documents, pursuant to Rule 2.516, Florida Rules of Judicial Administration, in this proceeding: appellate.efile@pd7.org (primary) and levering.rose@pd7.org (secondary).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed electronically to the Florida Supreme Court, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1925, at www.myflcourtagency.com; delivered electronically to the Office of the Attorney General, 444 Seabreeze Boulevard, fifth floor, Daytona Beach, Florida 32118, at crimappdab@myfloridalegal.com and rebecca.mcguigan@myfloridalegal.com; and a true and correct copy thereof delivered by mail to Mr. Jermaine English, 3540 Bolden Lane, Dalzell, South Carolina 29040, on this 14th day of November, 2014.

/s/ Rose M. Levering
ROSE M. LEVERING

IN THE SUPREME COURT OF FLORIDA

JERMAINE ENGLISH,

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FSC Case No. _____

Fifth DCA Case No. 5D13-3398

Appendix to Petitioner's Brief on Jurisdiction

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

STATE OF FLORIDA,

Appellant,

v.

Case No. 5D13-3398

JERMAINE D. ENGLISH,

Appellee.

_____ /

Opinion filed October 10, 2014

Appeal from the Circuit Court
for Orange County,
Jenifer M. Davis, Judge.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Rebecca Rock
McGuigan, Assistant Attorney General,
Daytona Beach, for Appellant.

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

BERGER, J.

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

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.¹

“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.”

¹ 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.

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.