

IN THE SUPREME COURT OF FLORIDA

JERMAINE ENGLISH,

Petitioner,

vs.

FSC Case No. SC14-2229

STATE OF FLORIDA,

Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON THE MERITS

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SEVENTH JUDICIAL CIRCUIT

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TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF ARGUMENT	5
ARGUMENT	6
 THE TRIAL COURT DID NOT ERR BY GRANTING THE MOTION TO SUPPRESS; THE POLICE LACKED PROBABLE CAUSE TO STOP THE PETITIONER’S VEHICLE FOR VIOLATION OF THE FLORIDA STATUTE REQUIRING LICENSE PLATES TO BE FREE OF “OBSCURING MATTER.”	
CONCLUSION	11
CERTIFICATE OF FONT	11
DESIGNATION OF E-MAIL ADDRESS	12
CERTIFICATE OF SERVICE	12

TABLE OF CITATIONS

<u>CASES CITED:</u>	<u>PAGE NO.</u>
<i>Harris v. State</i> 11 So. 3d 462 (Fla. 2d DCA 2009)	1, 4, 7, 8
<i>Hilton v. State</i> 961 So. 2d 284 (Fla. 2007)	6
<i>Pagan v. State</i> 830 So. 2d 792 (Fla. 2002), <i>cert. denied</i> , 539 U.S. 919 (2003)	6
<i>Perkins v. State</i> 576 So. 2d 1310 (Fla. 1991)	8
<i>Saviory v. State</i> 717 So. 2d 200 (Fla. 5th DCA 1998)	9
<i>State v. English</i> 148 So. 3d 529 (Fla. 5th DCA 2014)	<i>passim</i>
<i>State v. St. Jean</i> 697 So. 2d 956 (Fla. 5th DCA 1997)	8, 9
<i>United States v. Boyd</i> 388 Fed. Appx. 943 (11th Cir. 2010)	8-9
<i>Whren v. United States</i> 517 U.S. 806 (1996)	7
<i>Wright v. State</i> 471 So. 2d 155 (Fla. 3d DCA)	9

TABLE OF CITATIONS

OTHER AUTHORITIES CITED:

PAGE NO.

Section 316.605(1), Florida Statutes (2013)

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PRELIMINARY STATEMENT

This case is before the Court on discretionary review of the decision of the Fifth District Court of Appeal in *State v. English*, 148 So. 3d 529 (Fla. 5th DCA 2014). That 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), on the proper interpretation of section 316.605(1), Florida Statutes (2013).

In the proceedings below, the Petitioner, Jermaine D. English, was the Appellant/Defendant and the Respondent, State of Florida, was the Appellee/prosecution.

The record on appeal consists of one sequentially numbered volume. In this brief, the symbol "T" denotes pages in transcripts; the symbol "R" denotes remaining pages in the record on appeal.

STATEMENT OF CASE AND FACTS

Case - Mr. English was charged with possession of cocaine, cannabis, and paraphernalia. (R 14-16) He filed a motion to suppress all evidence obtained in a stop of his vehicle, arguing that the police lacked probable cause for the stop. The trial court granted his motion at a suppression hearing. (T 62-63) The court also denied the State's motion for rehearing. (T 65-68)

The Fifth District granted the State's direct appeal in *State v. English*, 148 So. 3d 529 (Fla. 5th DCA 2014). Mr. English filed a notice to invoke this Court's discretionary jurisdiction on November 10, 2014, and a jurisdictional brief on November 14, 2014. This court accepted jurisdiction on April 10, 2015.

Facts - Mr. English's vehicle was stopped by Orlando police officers because one of the tag lights for the vehicle was hanging down. (T 46) Both the bulb and the wires were in front of the tag, "causing it to obstruct the view of the tag." (T 47) At the suppression hearing, the testimony was that the vehicle was stopped because the officers could not, at that point in time, clearly read the tag. (T 47, 50) The State argued that section 316.605(1), Florida Statutes, justified a stop for a non-criminal traffic infraction because the obstruction made it difficult to read one of the letters on the tag. (T 59-60)

The dangling bulb and wires obscured, or partly obscured one letter of the license plate. (T 53, 57) (“The wires and light made it difficult to read the tag. I believe it was half covering up one of the letters.”) (T 57)

The officers could see the letter or number that was obscured when Mr. English’s vehicle turned. (T 53) When the turn was complete, the obstruction was still there. (T 54) That was before they got out of their patrol car and approached the vehicle. (T 53-54) It appears that it was at that point (the turn) that they “called out with their communications.” (T 53-54) There was no testimony as to how closely the patrol car was following.

The officers issued a citation for a "white light emitting...from the rear of the vehicle." There was no mention of the tag being obstructed. (T 58) The charging affidavit stated that the reason for the stop was "...the light and bulb were in full view from the rear of the vehicle." (T 51)

The trial court granted the motion to suppress. The court referenced case law holding that once an officer, walking up to a vehicle, could read the numbers, there was no probable cause. (T 62) The court also denied the State’s subsequent motion for reconsideration, in which the State suggested the court may have been relying on cases on the temporary tag statute, which requires a temporary tag to be visible at all times, not the statute that requires the license plate to be visible and

legible at all times. (R 26-27; T 66) The court denied the reconsideration motion without comment. (T 68)

The appellate court found the stop was proper because the license plate was not in conformance with section 316.605(1), Florida Statutes, because the tag light and attached wires obstructed the officers' view of the plate, and rendered at least one letter unreadable. *State v. English*, 148 So. 3d 529 (Fla. 5th DCA 2014).

The court cited *Harris v. State*, 11 So. 3d 462, 463-64 (Fla. 2d DCA 2009), as contrary authority ("But see"). That case held that matters external to the tag, such as trailer hitches, bike racks, *etc.*, were not "other obscuring matter."

SUMMARY OF ARGUMENT

The trial court did not err by granting the motion to suppress. The reason for the stop (as stated at the hearing on the motion to suppress) was that the license plate was obscured. The police officers following Mr. English's vehicle saw that the tag light bulb and wires were hanging down over the plate, obscuring, or partly obscuring, one letter or number. The entire plate was visible when the car made a turn. As explained by the Second District, the doctrine of *ejusdem generis* requires that the statutory language regarding obscuring matter be interpreted to apply only to matter on the tag itself, and not to matter external to the tag.

A trial court's ruling on a motion to suppress comes to the appellate court clothed with a presumption of correctness, and the reviewing court must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling.

ARGUMENT

THE TRIAL COURT DID NOT ERR BY GRANTING THE MOTION TO SUPPRESS; THE POLICE LACKED PROBABLE CAUSE TO STOP THE PETITIONER'S VEHICLE FOR VIOLATION OF THE FLORIDA STATUTE REQUIRING LICENSE PLATES TO BE FREE OF "OBSCURING MATTER."

Standard of review

A trial court's ruling on a motion to suppress comes to the appellate court clothed with a presumption of correctness, and the reviewing court must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling. *Pagan v. State*, 830 So. 2d 792, 806 (Fla. 2002), *cert. denied*, 539 U.S. 919 (2003). Statutory interpretation is a question of law subject to de novo review. *Hilton v. State*, 961 So. 2d 284, 288 (Fla. 2007).

Argument

In *State v. English*, 148 So. 3d 529 (Fla. 5th DCA 2014), the Fifth District Court of Appeals decided that a license plate light bulb and wires hanging down in front of the license plate on the vehicle Petitioner was driving, which obstructed officers' view of at least one letter of the license plate, rendered the vehicle not in compliance with of section 316.605(1), Florida Statutes (2013). The court found

that "Based on the plain reading of the statute, the alphanumeric designation on the license plate must be plainly visible at all times." *Id.*

The facts below are not in dispute. The issue before this court is the proper interpretation of that portion of the license plate statute that provides that license plates must be free from "other obscuring matter," so that the alphanumeric designation on the plate is visible at all times. Specifically, the statute provides, in pertinent part:

. . . 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.

Section 316.605(1), Florida Statutes (2013). A violation of this subsection is a noncriminal traffic infraction, punishable as a nonmoving violation. Section 316.605(1), Fla. Stat. (2013) A decision to stop an automobile is reasonable where police have probable cause to believe that traffic violation has occurred. *Whren v. United States*, 517 U.S. 806 (1996).

The Fifth disagreed with the Second District's decision in *Harris v. State*, 11 So. 3d 462 (Fla. 2d DCA 2009), as to what constitutes "other obscuring matter." *English*, 148 So. 3d at 530. 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.

The phrase *ejusdem generis* refers to the doctrine that a general term preceded by a list of specific terms will be construed to be limited to the same class as that described in the list. *Perkins v. State*, 576 So. 2d 1310, 1314, n. 6 (Fla. 1991).

Thus, the Second District held that the statute did not allow law enforcement to stop a vehicle whose trailer hitch blocked the view of the license plate.

The present case, like *Harris*, concerns matter that is external to the plate, like a trailer hitch, and unlike defacement or grease. The evidence at the suppression hearing showed that the bulb and wires partially obscured only one letter. ("The wires and the white light made it difficult to read the tag. I believe it was half covering up one of the letters.") (T 57) And, at that, the letter became momentarily visible when the Petitioner's vehicle made a turn, and the officer's angle of vision changed. (T 53-54)

There is little case law on the issue of obscuring matter, or readability. In *State v. St. Jean*, 697 So. 2d 956 (Fla. 5th DCA 1997), the court found that the fact that the county name on a license plate was obscured by an "ornament" around the outside of the tag was insufficient to show that defendant had committed a traffic violation. However, in *United States v. Boyd*, 388 Fed. Appx. 943, 947, n. 3 (11th

Cir. 2010), the court distinguished *Jean*, finding that a stop was reasonable where it was a registration decal that was obscured by a vanity frame,.

In *Saviory v. State*, 717 So. 2d 200 (Fla. 5th DCA 1998), the court determined that a plastic blue cover placed over car's license plate was a reasonable basis for an initial stop of vehicle. The court found that violated the subsection in question, stating that section 316.605(1) provides “that nothing shall be placed on the face of a Florida license plate unless permitted by law.” *Id.* at 201. In *Wright v. State*, 471 So. 2d 155, 156 (Fla. 3d DCA), the court that the police properly approached and investigated an apparently unoccupied vehicle parked on roadway with its license tag obscured by a rag.

In the present case, the stop was unreasonable under the Fourth Amendment. A dangling wire and bulb that shifted as the vehicle went around a turn should not be deemed obscuring matter. It is external to the plate and does not seem to be the type of infraction contemplated by the legislation. It is unlikely that the Petitioner’s intent was to render the license plate unreadable, and therefore the occurrence should not have triggered any reasonable suspicion on the part of the officers. In fact, neither the citation they issued nor the charging document mentioned that the plate was obscured or unreadable. (T 51, 58)

The Petitioner respectfully urges this court to find that there was no statutory violation, and no reasonable suspicion for the stop. The trial court was correct to suppress the evidence. The appellate court should have upheld the trial court's ruling.

CONCLUSION

Based on the foregoing argument and authorities, the Petitioner respectfully submits that the decision of the Fifth District Court of Appeal should be reversed.

Respectfully submitted,

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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 5th day of May, 2015.

/s/ Rose M. Levering
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