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.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

Jermaine English's vehicle was subjected to a traffic stop. (R 18-19). Subsequent to the traffic stop, English was charged with possession of cocaine, possession of cannabis, and possession of drug paraphernalia. (R 11). English filed a motion to suppress alleging the officers lacked probable cause to stop the vehicle. (R 11-12).

During the suppression hearing, the officers testified that they stopped English's vehicle because the wires and bulb for one of the tag lights was hanging down in front of the tag, obstructing the view and making the tag partially unreadable. (R 46-47, 52, 56-57). At one point the vehicle turned, causing the wires to shift, and allowing the officers to see the obscured number or letter. (R 53). However, after the turn the obstruction continued. (R 54).

The trial court granted the motion to suppress, finding:

> In this case, in CF13-9098, I am going to grant the motion to suppress. I was trying to pull up the specific case there and I can't pull it up very easily.
>
> The safety -- the statute on safety I'm finding does not apply. Under the other -- under obstruction, there's a case. I thought it was a Fifth DCA, but like I said, I couldn't find it that quickly -- 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 you 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.

(R 62). The trial court found the officers' testimony "absolutely" credible. (R 63).

The State filed a motion for reconsideration, pointing out that the case law relied upon by the trial court was for the temporary tag statute, not the regular tag statute which requires a tag to be plainly visible and legible from 100 feet at all times. (R 26-27). The trial court denied the motion for reconsideration. (R 28).

On appeal, the Fifth District Court of Appeal found that the trial court erred in granting Petitioner's motion to suppress, holding,

> 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.

State v. English, 148 So. 3d 529, 530 (Fla. 5th DCA 2014). The court cited with approval to 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). However, it prefaced with "but see," its reference to 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").

Petitioner filed a notice to invoke this Court's discretionary jurisdiction on November 14, 2014. Respondent objected, arguing that Petitioner's case is not in conflict with Harris, because Harris is factually distinguishable. This Court accepted jurisdiction on April 10, 2015.

SUMMARY OF THE ARGUMENT

It remains the position of the State that there is no express and direct conflict between Harris v. State, 11 So. 3d 462 (Fla. 2d DCA 2009), and State v. English, 148 So. 3d 529 (Fla. 5th DCA 2014), because Harris and English are factually distinguishable. Harris was premised on the court's conclusion that section 316.605(1) does not apply to "matters external to the tag," such as hitches, bicycle racks, handicap chairs, and u-hauls, drawing a distinction between obstructions that are "on" the tag and items "external to" the license plate. However, the obstruction in English's case was not due to "matters external to the tag," but instead was caused by a part of the vehicle itself hanging in front of the plate in such a manner that it must have been touching or almost touching the plate. Thus, there is no conflict between the two.

However, Respondent further asserts that Harris was wrongly decided because the Second District Court of Appeal unnecessarily resorted to a rule of statutory construction, resulting in an outcome at odds with the plain language of the statute.

ARGUMENT

THE PLAIN LANGUAGE OF SECTION 316.605(1), FLORIDA STATUTES, PROHIBITS ALL OBSTRUCTIONS PREVENTING LICENSE PLATES FROM BEING PLAINLY VISIBLE WITHIN 100 FEET, WITHOUT REGARD TO WHETHER THE OBSTRUCTION IS "ON" OR "EXTERNAL TO" THE LICENSE PLATE.

While acknowledging this Court's decision to accept jurisdiction in this case, it remains the position of the State that there is no express and direct conflict on the face of the decision under review due to the factual distinctions between Harris v. State, 11 So. 3d 462, 463–64 (Fla. 2d DCA 2009), and State v. English, 148 So. 3d 529, 530 (Fla. 5th DCA 2014). Respondent maintains that it is not clear that the Harris court would have reached a different conclusion than that of the Fifth District given the set of facts presented in English. Harris was premised on the court's conclusion that section 316.605(1) does not apply to "matters external to the tag," such as hitches, bicycle racks, handicap chairs, and u-hauls, drawing a distinction between obstructions that are "on" the license plate and items "external to" the license plate. 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. The State's position is supported by the fact that the Harris court cited with approval to Wright v. State, 471 So. 2d 155 (Fla. 3d DCA 1985), where a rag that was affixed to a vehicle and

in contact with the plate was found to be the type of obstruction contemplated in section 316.605. Harris, 11 So. 3d at 463-64 n.1. Petitioner's dangling wires and tag light are much more akin to the rag contemplated in Wright, than the trailer hitch contemplated in Harris, and could not reasonably be viewed as matter "external to" the license plate.

Nevertheless, it is Respondent's position that the Harris court erred in drawing a distinction between obstructions "on" the tag, as opposed to "external to" the tag, because such a conclusion is contrary to the plain language of the statute.

In relevant part, the license plate statute, section 316.605(1), Florida Statutes, states:

> 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.**

§ 316.605(1), Fla. Stat. (2013), (emphasis added).

In interpreting the statute, the Harris court applied the rule of statutory construction known as *ejusdem generis* to hold that the phrase "and other

obscuring matter," relates only to obstructions such as defacement, mutilation, and grease. Harris, 11 So. 3d at 463. "The doctrine of *ejusdem generis* requires that general terms in a statute be construed in a manner consistent with more precise terms associated with them." Fla. Police Benev. Ass'n, Inc. v. Dep't of Agric. & Consumer Servs., 574 So. 2d 120, 122 (Fla. 1991). However, before resorting to rules of statutory interpretation, courts must first look to the actual language of the statute. Koile v. State, 934 So. 2d 1226, 1230-31 (Fla. 2006). When a statute is clear and unambiguous, the court should not look behind the plain language of it or resort to rules of statutory construction. Koile, 934 So. 2d at 1230-31. Further, it is inappropriate to use the maxim *ejusdem generis* if, as a result, the court fails to give meaning to all of the words used by the legislature. State v. Hobbs, 974 So. 2d 1119, 1121 (Fla. 5th DCA 2008) approved, 999 So. 2d 1025 (Fla. 2008).

The plain language of section 316.605(1) makes clear that the purpose of the statute is to ensure that license plates are "plainly visible at all times 100 feet from the rear or front." The legislature provided examples of various types of obstructions, ("defacement, mutilation, and grease"), but also indicated that the list was not meant to be exhaustive by stating, "and other obscuring matter." § 316.605(1), Fla. Stat. (2013). The Harris majority's application of the doctrine of *ejusdem generis* makes the language, "and other obscuring matter," almost meaningless, because, as noted by the dissent, any number of obstructions

preventing law enforcement from being able to read the plate from 100 feet away would be allowed, as long as the obstruction was not affixed to the tag itself. Harris, 11 So. 3d at 465 (Khouzam dissenting). A statute should not be read in a way that fails to give effect to each clause. Florida Dept. of Envtl. Prot. v. ContractPoint Florida Parks, LLC, 986 So. 2d 1260, 1265 (Fla. 2008). Nor should it be read to yield an absurd result. See State v. Atkinson, 831 So. 2d 172, 174 (Fla. 2002). However, Harris's interpretation of the statute does just that: failing to give effect to the expansive, "and other obscuring matter" language, and yielding a statute that allows certain obstructions to the readability of license plates, but not others.

Harris erred in unnecessarily applying a rule of statutory construction to an unambiguous statute, thwarting the goal of making license plates plainly visible and legible *at all times*, and creating the absurd result that while some obstructions making license plates not viewable from 100 feet away would be prohibited, many others would be lawful. By contrast, the Fifth District Court of Appeal's decision in English, recognizes that the plain language of section 316.605(1) requires license plates to be free of obstructions and plainly visible *at all times*, without regard to the manner of the obstruction. English should be affirmed.

CONCLUSION

WHEREFORE, based on the arguments and authorities presented herein, Respondent respectfully requests this Honorable Court affirm the decision of the Fifth District Court of Appeal in English, and disapprove Harris, to the extent that it holds that any obstruction to a license plate that is not internal to, or touching the plate, is not prohibited by section 316.605(1), Florida Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer 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; and levering.rose@pd7.org, on May 26, 2015.

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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