IN THE SUPREME COURT OF FLORIDA

Case No. SC15-2125
L.T. No(s).: 1D13-6199, 2012-CF-1976

CHRISTOPHER L. CARPENTER,
Petitioner,

v.

THE STATE OF FLORIDA,
Respondent.

On Petition for Discretionary Review from the First District Court of Appeal, Case No. 1D13-6199

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

On August 3, 2012, the Petitioner[1] was charged by Amended Information with one count each of traveling to meet a minor to commit an unlawful sex act, pursuant to Section 847.0135(4), Fla. Stat.; solicitation of a minor to commit an unlawful sex act, pursuant to Section 847.0135(3), Fla. Stat.; and three counts of transmission of material harmful to minor pursuant to Section 847.0138(2), Fla. Stat. The Petitioner filed a motion to suppress evidence asserting, in part, that at the time of his arrest his cell phone was seized from his person and improperly searched by law enforcement without a warrant. In moving for suppression of the warrantless cell phone evidence the Petitioner relied upon this Court's opinion in *Smallwood v. State*, 113 So.3d 724 (Fla.2013) (hereinafter "*Smallwood II*") – the legal standard in effect at the time he filed his motion to suppress – for the proposition that the warrantless search of his cell phone violated the Fourth Amendment of the U.S. Constitution and that any evidence obtained from the cell phone by warrantless search should be suppressed. In response, the State relied on *Smallwood v. State*, 61 So.3d 448, 459-60 (Fla. 1st DCA 2011) (hereinafter "*Smallwood I*"): the legal standard in effect at the time of the search of Petitioner Carpenter's cell phone. The trial court granted the Petitioner's

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[1] The Petitioner, Christopher L. Carpenter, will be referred to as "Petitioner." The State of Florida will be referred to as "Respondent" or the "State."

motion and suppressed all cell phone evidence. The State appealed and the First District reversed the trial court, holding that because *Smallwood I* was binding appellate precedent at the time Petitioner Carpenter's cell phone was searched it was objectively reasonable for law enforcement to rely on the authority of *Smallwood I*. *See State v. Carpenter*, 158 So.3d 693 (Fla. 1st DCA 2015) (hereinafter "*State v. Carpenter*", attached as Appendix A). The First District acknowledged in *State v. Carpenter* that Petitioner Carpenter had urged the Court to follow the Second District's opinion in *Willis v. State*, 148 So.3d at 480 (Fla. 2d DCA 2014), where the court held that the good-faith exception to the exclusionary rule did not allow for admission of warrantless evidence seized from the defendant's cell phone.

Petitioner Carpenter moved the First District for certification of conflict with the Second DCA's opinion in *Willis v. State.* The certification request was denied and the Mandate was issued by the First District on March 30, 2015. By Order of this Court dated November 19, 2015, the Petitioner's request for belated discretionary review was granted.

SUMMARY OF ARGUMENT

THE FIRST DISTRICT'S OPINION IN *STATE V. CARPENTER* EXPRESSLY AND DIRECTLY CONFLICTS WITH THE SECOND DISTRICT'S OPINION IN *WILLIS V. STATE* AND THEREFORE THIS COURT SHOULD ACCEPT JURISDICTION TO RESOLVE THE CONFLICT.

Pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) and Art. V, § 3(b)(4), Fla. Const., this Court has jurisdiction to review a decision of a Florida district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or of the Florida Supreme Court on the same question of law. There is express and direct conflict between the First District's opinion in *State v. Carpenter* and the Second District's opinion *Willis v. State*, which requires resolution by this Court. In reversing the trial court's order granting Petitioner Carpenter's motion to suppress evidence, the First District held that *Smallwood v. State*, 61 So.3d 448, 459-60 (Fla. 1st DCA 2011) (hereinafter "*Smallwood I*"), was binding appellate precedent that permitted the warrantless search of a cell phone incident to arrest.

In *Willis v. State*, 148 So.3d at 480, the Second District held that the good-faith exception to the exclusionary rule did *not* allow for the admission of warrantless evidence seized from the defendant's cell phone even though, as in the present case, the cell phone search was conducted while *Smallwood I* was binding appellate precedent. Recognizing that *Smallwood I* was later overruled by this Court's opinion

in *Smallwood v. State*, 113 So.3d 724 (Fla.2013) (hereinafter "*Smallwood II*"), and recognizing the U.S. Supreme Court's ruling in *Riley v. California*, — U.S. —, 134 S.Ct. 2473, 2493, 189 L.Ed.2d 430 (2014), the *Willis* court reasoned that the case law is still developing on the type of precedent that qualifies as "binding appellate precedent" that is sufficient to permit "objectively reasonable reliance. *Willis* further held that "there was no decision on this issue from either the Florida Supreme Court or the United States Supreme Court at the time of the *search*, and the issue of cell phone searches was clearly an open and unresolved legal issue in 2012." (emphasis added) *Willis* further held that:

> "when a Fourth Amendment issue is rapidly evolving, it is hard to justify an approach to the good-faith exception that allows the first defendant to reach the United States Supreme Court to receive the benefit of the exclusionary rule while other defendants in the legal pipeline do not. The equal application of the rule of law would seem to be a principle of our legal system calling for a cautious use of the good-faith exception in situations like the one we face today." *Id.* at 483.

Finally, and specifically on the issue of reliance on *Smallwood II* and *Riley*, the *Willis* court stated that under the circumstances *Smallwood II* and *Riley* should not be limited to prospective application.

Conflict therefore exists between the present case and the Second DCA's opinion in *Willis* on whether a defendant whose cell phone was searched while the prevailing law was *Smallwood I* should get the benefit of *Smallwood II* and the

national standard now recognized by *Riley*. This Court should accept jurisdiction to resolve this conflict.

ARGUMENT

THE FIRST DISTRICT'S OPINION IN *STATE V. CARPENTER* EXPRESSLY AND DIRECTLY CONFLICTS WITH THE SECOND DISTRICT'S OPINION IN *WILLIS V. STATE* AND THEREFORE THIS COURT SHOULD ACCEPT JURISDICTION TO RESOLVE THE CONFLICT.

Pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) and Art. V, § 3(b)(4), Fla. Const., this Court has jurisdiction to review a decision of a Florida district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or of the Florida Supreme Court on the same question of law. There is express and direct conflict between the First District's opinion in *State v. Carpenter* and the Second District's opinion *Willis v. State*, which requires resolution by this Court. In reversing the trial court's order granting Petitioner Carpenter's motion to suppress evidence, the First District held that *Smallwood I* was binding appellate precedent that permitted the warrantless search of a cell phone incident to arrest. The Court held that because the search of Carpenter's cell phone was conducted in objectively reasonable reliance on binding appellate precedent, it fell under the good-faith exception to the exclusionary rule.

After Petitioner Carpenter's appeal was filed with the First District, the United

States Supreme Court issued its decision in *Riley v. California*, — U.S. —, 134 S.Ct. 2473, 2493, 189 L.Ed.2d 430 (2014), where the Supreme Court held that a warrant is generally required before officers can conduct a warrantless search of a cell phone "even when a cell phone is seized incident to an arrest." *Id.* at 2493. *Riley v. California* clearly upholds the Florida Supreme Court's holding in *Smallwood II*, which remains the prevailing law in Florida regarding warrantless cell phone searches incident to arrest.[2]

In *Willis v. State*, 148 So.3d at 480, a post-*Riley v. California* opinion, the Second DCA held that the good-faith exception to the exclusionary rule did not allow for the admission of warrantless evidence seized from the defendant's cell phone. In *Willis*, the defendant appealed his judgments and sentences for 24 counts of possession of child pornography; the images were found on his cell phone in February, 2012 when, as in the present case with Petitioner Carpenter, a warrantless search for these photographs was still permissible under *Smallwood I*. Recognizing that *Smallwood I* was later overruled by *Smallwood II*, and recognizing the U.S.

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[2] In the present case the State relied on *Davis v. United States*, 131 S.Ct. 2419, 2434 (2011), for the proposition that binding appellate precedent in effect at the time of the search in Petitioner Carpenter's case should prevail. The State argued that *Smallwood II* therefore should not apply and that law enforcement's pre-*Smallwood II* search in the present case should be governed by the then-existing ruling in *Smallwood I*.

Supreme Court's ruling in *Riley*, 134 S.Ct. at 2473, the *Willis* court nevertheless found:

> In light of the holdings in *Smallwood II* and *Riley*, we conclude that the evidence obtained prior to the search warrant must be suppressed. In *Smallwood II*, the Florida Supreme Court held that law enforcement is required to obtain a search warrant before searching the data and content of a cell phone that has been seized incident to a lawful arrest.

Willis, 13 So. 3d at 727, 735.

The court in *Willis* specifically addressed *Davis v. United States*, — U.S. —, 131 S.Ct. 2419, 2434 (2011), in relation to the application of binding precedent. More important, and in relation to the State's argument in Petitioner Carpenter's case that *Smallwood II* and *Riley* should not apply because *Smallwood I* was the law at the time his cell phone was searched, the *Willis* court reasoned:

> We recognize that at the time it occurred, the warrantless search of the cell phone here was permitted by the First District's recent decision in *Smallwood I*, which was a decision then binding on all Florida trial courts. *See Pardo v. State*, 596 So.2d 665, 666 (Fla.1992). As discussed in *Smallwood II*, the Supreme Court held in *Davis v. United States*, ——U.S. ——, 131 S.Ct. 2419, 2434 (2011), that "when the police conduct a search in objectively reasonable reliance on binding appellate precedent, the exclusionary rule does not apply." ***The case law is still developing on the type of precedent that qualifies as "binding appellate precedent" that is sufficient to permit "objectively reasonable reliance."*** (emphasis added)

Id. at 483.

As noted by the *Willis* court, "there was no decision on this issue from either

the Florida Supreme Court or the United States Supreme Court at the time of the search, and the issue of cell phone searches was clearly an open and unresolved legal issue in 2012," and: "Thus, without faulting the officers involved, we conclude that the State cannot rely upon the good-faith exception to prevent the exclusion of this evidence." Id. at 483 (emphasis added)[3] *Willis* further held:

> It should be noted that *Smallwood I* was pending on review in the Florida Supreme Court when this cell phone was searched. *See Smallwood v. State*, 68 So.3d 235 (Fla.2011) (table decision). There is nothing in the record to establish that the officers in this case actually knew about the holding in the First District and that they were relying on that holding. The exclusionary rule does serve, at least in substantial part, as a deterrent. **However, when a Fourth Amendment issue is rapidly evolving, it is hard to justify an approach to the good-faith exception that allows the first defendant to reach the United States Supreme Court to receive the benefit of the exclusionary rule while other defendants in the legal pipeline do not. The equal application of the rule of law would seem to be a principle of our legal system calling for a cautious use of the good-faith exception in situations like the one we face today.** (emphasis added)

Id. at 483.

Finally, and specifically on the issue of reliance on *Smallwood II* and *Riley*, the *Willis* court stated:

> Distinct from the *Davis* argument, the State briefly suggests that *Smallwood II* and *Riley* should have prospective application only. It relies on the First District's decision in *State v. O'Steen*, 238 So.2d 434, 437 (Fla. 1st DCA 1970).

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[3] As set forth in Appellee's Answer Brief, the *only* evidence in Appellee Carpenter's case that law enforcement relied on the legal standard from *Smallwood I* was a leading question from the prosecutor.

> *Osteen* involved a search incident to arrest that occurred prior to the decision in *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034 (1969). *Chimel* was a case in which the United States Supreme Court confronted at least two of its own prior decisions and attempted to create a more predictable rule. **We conclude that the circumstances that warranted a prospective approach to the holding in Chimel simply do not exist in this case.**

Id. at 3 (emphasis added); *accord*, *Saint-Hilaire v. State*, 143 So.3d 1147, 1148 (Fla. 3d DCA 2014).

As set forth above, and pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) and Art. V, § 3(b)(4), Fla. Const., this Court has jurisdiction to review a decision of a Florida district court of appeal that expressly and directly conflicts with a decision of another district court of appeal on the same question of law. Conflict exists between the present case and the Second DCA's opinion in *Willis v. State* on whether a defendant whose cell phone was searched while the prevailing law was *Smallwood I* should get the benefit of *Smallwood II* and the national standard now recognized by *Riley*.

CONCLUSION

Based on the foregoing, the Petitioner respectfully moves this Court to invoke its jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), for purposes of resolving the conflict between the First and Second District Courts of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by email to Assistant Attorney General Justin D. Chapman, Justin.Chapman@myfloridalegal.com and crimapptlh@myfloridalegal.com, on November 30, 2015.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.210(a), undersigned counsel hereby certifies that this brief complies with the font requirements the Rule, and is formatted in Times New Roman 14-point font.

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IN THE SUPREME COURT OF FLORIDA

Case No. SC15-2125
L.T. No(s).: 1D13-6199, 2012-CF-1976

CHRISTOPHER L. CARPENTER,
Petitioner,

v.

THE STATE OF FLORIDA,
Respondent.

On Petition for Discretionary Review from the First District Court of Appeal, Case No. 1D13-6199

APPENDIX TO PETITIONER'S BRIEF ON JURISDICTION

APPENDIX A

EMA deferred to pain management physicians, and the authorized pain management physicians opined Claimant in fact needs palliative care. The JCC apparently concluded that the EMA opined the work accident was no longer the MCC of Claimant's complaints because the L4–5 disc was, as the JCC put it, "no longer involved in the claimant's current complaints of pain." Claimant moved for rehearing to inform the JCC that the record did not support his reading of the EMA's MCC opinion, and the JCC denied rehearing without comment.

The JCC applied the law correctly here, but erred as a matter of fact: the EMA did not opine that the L4–5 disc bulge had resolved and that the L5–S1 bulge was new and not related to work. To the contrary, the EMA expressly opined that the work injury, for which a permanent impairment rating was assigned, is the MCC of Claimant's need for ongoing care. An EMA's opinion is presumed correct, see section 440.13(9), Florida Statutes ("The opinion of the expert medical advisor is presumed to be correct unless there is clear and convincing evidence to the contrary as determined by the judge of compensation claims."), and the JCC did not find clear and convincing evidence to reject that opinion—but because the JCC misunderstood the content of that opinion, we remand for the JCC to review the record to determine whether clear and convincing evidence exists to reject the EMA's actual opinion.

AFFIRMED in part, REVERSED in part, and REMANDED.

PADOVANO, CLARK, and MARSTILLER, JJ., concur.

STATE of Florida, Appellant,

v.

Christopher L. CARPENTER, Appellee.

No. 1D13–6199.

District Court of Appeal of Florida, First District.

Feb. 5, 2015.

Rehearing Denied March 12, 2015.

Background: Defendant was charged with traveling to meet a minor, solicitation of a minor, and transmission of harmful material to a minor. Defendant moved to suppress images and data retrieved from a warrantless search of his cell phone. The Circuit Court, Bay County, James B. Fensom, J., granted defendant's motion. State appealed.

Holding: The District Court of Appeal, Rowe, J., held that police officer's search was conducted in objectively reasonable reliance on binding appellate precedent in effect at the time of the search, and thus fell within the good-faith exception to the exclusionary rule.

Reversed.

1. **Criminal Law ⇐392.38(1)**

Where a good-faith exception to the exclusionary rule applies, a defendant is not entitled to the remedy of exclusion of evidence simply because of retroactive applicability of a new law. U.S.C.A. Const. Amend. 4.

2. **Courts ⇐100(1)**

The United States Supreme Court decision in *Riley v. California* and the Florida Supreme Court decision in *Smallwood v. State*, which both held that police officers may not, without a warrant, search digital information on cell phones seized from arrestees, must be applied retroactively to all cases, state or federal, pending

on direct review or not yet final because those cases set forth new rules of constitutional criminal procedure. U.S.C.A. Const. Amend. 4.

3. Criminal Law ⇐392.38(4)

Police officer's warrantless search of defendant's cell phone during arrest to retrieve text messages and images containing sexual content that defendant allegedly sent to undercover officer posing as 14 year-old boy was conducted in objectively reasonable reliance on binding appellate precedent in effect at the time of the search, and thus the search fell within the good-faith exception to the exclusionary rule. U.S.C.A. Const.Amend. 4.

Pamela Jo Bondi, Attorney General, and Justin D. Chapman, Assistant Attorney General, Tallahassee, for Appellant.

Ross A. Keene of Ross Keene Law, P.A., Pensacola, for Appellee.

ROWE, J.

The State of Florida appeals the trial court's order granting Christopher Carpenter's motion to suppress evidence found during a warrantless search of his cell phone at the time of his arrest. The trial court concluded, relying on *Smallwood v. State*, 113 So.3d 724 (Fla.2013) (*Smallwood II*), that law enforcement was required to obtain a search warrant before searching the data and contents of Carpenter's cell phone. However, at the time of the search, *Smallwood v. State*, 61 So.3d 448 (Fla. 1st DCA 2011) (*Smallwood I*), was binding appellate precedent and expressly permitted the warrantless search of a cell phone incident to arrest. Because the search of Carpenter's cell phone was conducted in objectively reasonable reliance on binding appellate precedent, it falls under the good-faith exception to the exclusionary rule. Accordingly, we hold that the trial court erred in granting Carpenter's motion to suppress evidence obtained from the search.

FACTS

Carpenter was charged with traveling to meet a minor, solicitation of a minor, and transmission of harmful material to a minor. At the time of his arrest, law enforcement officers searched Carpenter and removed a cell phone from his person.

Without a warrant, law enforcement officers retrieved from the cell phone images and data, including text messages with sexual content and explicit photos sent by Carpenter to an undercover officer posing as a 14–year–old.

Carpenter filed a motion to suppress, arguing that pursuant to the Florida Supreme Court's opinion in *Smallwood II*, the warrantless search of Carpenter's cell phone violated the Fourth Amendment. The state argued in response that when Carpenter was arrested, the binding legal precedent in this jurisdiction was this Court's decision in *Smallwood I*, and the law enforcement officer acted in good faith and under binding appellate precedent when he searched Carpenter's cell phone.

At the suppression hearing, Investigator Williams testified that he was working undercover as an online "chatter" on Craigslist, and Carpenter responded by email to the ad. Investigator Williams' testified that he told Carpenter by e-mail that he was 14 years old, and Carpenter continued to communicate with him by email and text messaging. Investigator Sconiers, the officer who conducted the search of Carpenter's cell phone, testified that the search was based on a concern about the destruction of evidence, explaining that there is a risk that evidence can be lost from a cell phone even if the defendant cannot personally put his hands on the phone itself. Investigator Sconiers also testified that at

the time of the search of Carpenter's cell phone he was operating under the authority of this Court's *Smallwood I* decision. Following the hearing, the trial court granted Carpenter's motion to suppress the cell phone evidence, citing the opinion in *Smallwood II*.

ANALYSIS[1]

In *Smallwood I*, this court held, "[T]he search of appellant's cell phone incident to his arrest was not a violation of the Fourth Amendment." In June 2012, the time of the search in this case, *Smallwood I* was binding appellate precedent on the issue of cell phone searches. Following the search, however, the Florida Supreme Court quashed *Smallwood I*, and held in *Smallwood II* that law enforcement officers are required to obtain a search warrant before searching the contents of a cell phone that has been seized incident to a lawful arrest.

[1, 2] Although Carpenter correctly challenges the legality of the warrantless search of his cell phone based upon *Smallwood II*,[2] determining the legality of the search does not address the question of whether he is entitled to the remedy of exclusion of evidence obtained from the search. In *Davis v. United States*, —— U.S. ——, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011), the United States Supreme Court held that "searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule." *Id.* at 2423–24. Under *Davis*, where a good-faith exception to the exclusionary rule applies, a defendant is not entitled to the remedy of exclusion of evidence simply because of retroactive applicability of a new law. In *Davis*, the Court emphasized that the exclusionary rule is not a personal constitutional right, but is instead a "judicially created sanction" to "deter future Fourth Amendment violations." *Davis*, 131 S.Ct. at 2433–34 (quoting *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976)). The Court stated, "[W]hen binding appellate precedent specifically authorizes a particular police practice, well-trained officers will and should use that tool to fulfill their crime-detection and public-safety responsibilities." *Id.* Accordingly, the question presented in this case is not whether the evidence obtained from the warrantless search of Carpenter's cell phone should have been suppressed under the exclusionary rule, but whether the evidence was admissible based on the application of the good-faith exception to the exclusionary rule.

[3] At the time of Carpenter's arrest, *Smallwood I* was the only Florida district court decision addressing the legality of warrantless cell phone searches incident to arrest. In *Pardo v. State*, 596 So.2d 665 (Fla.1992), the Florida Supreme Court held that decisions of a district court of appeal constitute binding appellate precedent and "represent the law of Florida unless and until they are overruled by this Court." *Id.* at 666. Accordingly, under *Pardo*, this Court's decision in *Smallwood I* was binding on all Florida trial courts until it was later reversed in *Smallwood*

1. The issue presented in this case is reviewed de novo. *See Connor v. State*, 803 So.2d 598, 605 (Fla.2001).

2. After *Smallwood II*, the United States Supreme Court in *Riley v. California*, —— U.S. ——, 134 S.Ct. 2473, 189 L.Ed.2d 430 (2014), also held that police officers may not, without a warrant, search digital information on cell phones seized from defendants incident to an arrest. Both *Riley* and *Smallwood II* must be applied retroactively "to all cases, state or federal, pending on direct review or not yet final" because those cases set forth new rules of constitutional criminal procedure. *See Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987); *Smiley v. State*, 966 So.2d 330 (Fla.2007). However, *Riley* does not address the application of the exclusionary rule at issue here.

II. In conducting the search of Carpenter's phone, the officers acted pursuant to the authority set forth in this Court's decision in *Smallwood I.* Thus, under *Pardo* and *Davis,* it was objectively reasonable for the officers to rely on the binding appellate precedent of *Smallwood I* when conducting the warrantless search of Carpenter's cell phone.[3]

Notwithstanding the principles set forth in *Davis* and *Pardo,* Carpenter urges this Court to follow the Second District's decision in *Willis v. State,* 148 So.3d 480 (Fla. 2d DCA 2014), where the court held that the good-faith exception to the exclusionary rule did not allow for the admission of evidence seized from the warrantless search of the defendant's cell phone. In *Willis,* as in this case, the search occurred in 2012 after *Smallwood I,* but before *Smallwood II.*

Despite the Florida Supreme Court's holding in *Pardo* that "in the absence of interdistrict conflict, district court decisions bind all Florida trial courts" *id.* at 666, the majority in *Willis* questioned whether this Court's *Smallwood I* decision was binding on law enforcement acting in the Second District. The court added that it was "not convinced that our supreme court intends for one recent decision from another Florida district court of appeal on such a controversial issue to create 'binding precedent,' at least in other districts, for purposes of the good-faith exception as announced in *Davis.*" *Willis,* 148 So.3d at 483. Observing that *Smallwood I* was pending review in the Florida Supreme Court at the time of the search at issue in that case, the *Willis* majority opined that:

> when a Fourth Amendment issue is rapidly evolving, it is hard to justify an approach to the good-faith exception that allows the first defendant to reach the United States Supreme Court to receive the benefit of the exclusionary rule while other defendants in the legal pipeline do not. The equal application of the rule of law would seem to be a principle of our legal system calling for a cautious use of the good-faith exception in situations like the one we face today.

Id. at 483.

This assertion by the *Willis* majority is unsupported by any authority and is completely at odds with the rule established in *Pardo.* Indeed as the *Willis* majority acknowledges, "[t]he rule in Pardo was created to establish consistency within Florida law in light of our unique system in which the intermediate appellate courts are intended to be the normal final courts of review." *Id.* at 483. If there were any serious doubt as to statewide application of the rule in *Pardo,* the Florida Supreme Court's reaffirmation of the rule in *System Components Corp. v. Florida Department of Transportation,* 14 So.3d 967 (Fla.2009), settles the question entirely: "In the absence of inter-district conflict or contrary precedent from this Court, it is absolutely clear that the decision of a district court of appeal is binding *throughout Florida.*" *Id.* at 967 (emphasis in original).

Further, the *Willis* majority's assertion that the good-faith exception should not apply "when a Fourth Amendment issue is rapidly evolving" finds no foundation in Florida law. As discussed at length by Judge Morris in his dissenting opinion in *Willis,* the majority in essence "carves out an exception to *Pardo* for cases involving Fourth Amendment issues." *Id.* at 488. We agree with Judge Morris's analysis and

3. Contrary to Carpenter's argument that there was insufficient evidence that law enforcement officers here were actually relying on *Smallwood I,* the investigator who conducted the search of Carpenter's cell phone testified that he was relying on the law under *Smallwood I* at the time of the search. Regardless, law enforcement officers are expected to know the law in their jurisdiction and to act in accord with that law.

find nothing in *Pardo* or in any controlling authority to preclude its application in a Fourth Amendment case.[4] Accordingly, we decline to follow *Willis* or apply its reasoning to this case.

CONCLUSION

Because *Smallwood I* was binding appellate precedent at the time of the search of Carpenter's cell phone, it was objectively reasonable for law enforcement to rely on the authority of that decision. The search of Carpenter's cell phone falls within the good-faith exception to the exclusionary rule, and thus, the trial court erred in granting the motion to suppress.

REVERSED.

THOMAS and OSTERHAUS, JJ., concur.

Lenorris MINCEY, Appellant,

v.

STATE of Florida, Appellee.

No. 5D14–1528.

District Court of Appeal of Florida, Fifth District.

Feb. 6, 2015.

Rehearing Denied March 11, 2015.

3.850 Appeal from the Circuit Court for Orange County, Julie H. O'Kane, Judge.

Lenorris Mincey, Malone, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Rebecca Rock Mc Guigan, Assistant Attorney General, Daytona Beach, for Appellee.

PER CURIAM.

Lenorris Mincey, defendant, appeals the trial court's order denying all claims raised in his original and amended motions for post-conviction relief, filed pursuant to rule 3.850 of the Florida Rules of Criminal Procedure. We dismiss this appeal as untimely.

Pursuant to rule 3.850(j), a trial court's order disposing of a motion for rehearing shall be filed no later than 40 days from the date of the order of which rehearing is sought. If no order is issued within 40 days, the motion is deemed denied.

In this case, the trial court's order denying the defendant's post-conviction motion was rendered on October 22, 2013, and his motion for a rehearing was filed timely on November 6, 2013. Thus, the trial court was required to issue an order on the motion for rehearing on or before December 2, 2013, or else the motion for rehearing would be deemed denied on that date. Here, the trial court failed to timely render an order addressing the motion for rehearing on or before December 2nd. Therefore, the defendant's appellate window began on that date. Thus, the defendant had 30 days from December 2nd to file a timely notice of appeal. His notice

4. *Willis* is also readily distinguished on the facts. In *Willis*, the cell phone was discovered pursuant to an inventory search incident to a traffic stop. Here, Carpenter's phone was actually used in the commission of the crime for which he was arrested. Carpenter's arrest was based on an undercover investigation where Carpenter was caught communicating via email and text messaging with someone he believed was 14 years old, and then he arranged through the same electronic means to travel to meet that person. The sexual content of the text messages and the explicit photos sent by Carpenter's phone to the undercover officer formed the basis of the charges in this case. Further, unlike in *Willis*, here there was testimony that the officer searched the phone based on an imminent concern about the destruction of evidence, in addition to the officer's expressed belief that his search of the cell phone was legal.