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IN THE SUPREME COURT OF FLORIDA

CHRISTOPHER CARPENTER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No.: SC15-2125

Lower Case Nos.: 1D13-6199
2012-CF-1976

ON DISCRETIONARY REVIEW FROM
THE FIRST DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement of the case and facts as supported by the record, subject to the supplementation from the decision below that follows:

> 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.
>
> . . .
>
> 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.

Although Carpenter correctly challenges the legality of the warrantless search of his cell phone based upon Smallwood II, 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.

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 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.

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

State v. Carpenter, 158 So. 3d 693 (Fla. 1st DCA 2015) (internal footnotes omitted).

SUMMARY OF ARGUMENT

Respondent concedes the decision below creates an express and direct conflict with Willis v. State, 148 So. 3d 480 (Fla. 2d DCA 2014). However, Respondent disagrees with Petitioner's framing of the conflict. Petitioner asserts the conflict based upon the factual outcome of the two cases, but truly the conflict lies within the rule of law crafted by the decisions. Accordingly, Respondent writes to clarify the conflict between the question of law passed on by both cases.

The conflict arises in how each case defines "binding appellate authority," because searches conducted in objectively reasonable reliance on such authority are not subject to the exclusionary rule. The decision below found that pursuant to this Court's decision in Pardo, a decision from a district court of appeal is binding appellate precedent when it is the only district court decision in Florida on the issue. Conversely, Willis found that this Court in Pardo did not intend for one recent decision from another Florida district court of appeal on a controversial issue--e.g. violations of the Fourth Amendment--to create binding precedent for purposes of the good-faith exception to the exclusionary rule. Accordingly, the applicable question is: Whether an officer can rely in good-faith on another district court's decision as "binding appellate authority" where that district court's decision is the only one addressing the relevant issue?

ARGUMENT

ISSUE: WHETHER AN EXPRESS AND DIRECT CONFLICT EXISTS BETWEEN CARPENTER AND WILLIS. (RESTATED)

Respondent concedes the decision below expressly and directly conflicts with Willis v. State, 148 So. 3d 480 (Fla. 2d DCA 2014). However, Respondent disagrees with Petitioner's framing of the conflict. This Court "[m]ay review any decision of a district court of appeal . . . that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." Article V, § 3(b)(3), Fla. Const.; see also Fla. R. App. P. 9.030(a)(2)(A)(iv). In the instant case the conflict is not so narrowly tailored or factually driven as Petitioner alleges.

Petitioner avers: "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[1] should get the benefit of Smallwood II[2] and the national standard now recognized by Riley.[3]" (PJB[4]. 9). This framing of the conflict does not truly explain the question of law analyzed by each court. In order to reach differing applications of the Smallwood decisions, the question of law passed on by

[1] Smallwood v. State, 61 So. 3d 448 (Fla. 1st DCA 2011).

[2] Smallwood v. State, 113 So. 3d 724 (Fla. 2013).

[3] Riley v. California, 134 S.Ct. 2473 (2014).

[4] References to Petitioner's Jurisdictional Brief will be as "PJB." Followed by the appropriate page number(s).

both courts was what constitutes "binding appellate precedent" sufficient to qualify as a good-faith basis under the exclusionary rule. Accordingly, the conflict in the outcomes does not create this Court's jurisdiction, rather it was the question of law which creates jurisdiction.

The decision below, relied on Davis v. United States, 131 S.Ct. 2419 (2011), to find that "searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule." Carpenter, 158 So. 3d 693, 695 (Fla. 1st DCA 2015) (quoting Davis, 131 S.Ct. at 2423-24). Neither the decision below nor Willis conflict with this holding from Davis. The conflict arises in the way the two courts define "binding appellate precedent." The decision below relied on this Court's decision in Pardo v. State, 596 So. 2d 665 (Fla. 1992), to find 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.'" Carpenter, 158 So. 3d at 695 (quoting Pardo, 596 So. 2d at 666). Accordingly, the decision below relied on Pardo to find, "Smallwood I was binding on all Florida trial courts until it was later reversed in Smallwood II," because Smallwood I was the only Florida district court decision addressing the search at issue when the search was executed. Carpenter, 158 So. 3d at 695. "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." Id. at 696.

However, in Willis the Second District Court of Appeal crafted a different rule of law about what is "binding appellate authority." In Willis, the court declined to find Smallwood I was binding appellate precedent, because "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, 148 So. 3d at 482. Ultimately, the court held as follows: "We are not inclined to believe that the rule announced in Pardo should be used in the Fourth Amendment context to determine whether evidence from a warrantless search is admissible." Id. at 483. The court explained, "we are 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." Id. Accordingly, the true conflict between the two cases is: Whether an officer can rely in good-faith on another district's decision as "binding appellate authority" where that district's decision is the only one addressing the relevant issue?

CONCLUSION

Based on the foregoing discussion, Respondent concedes jurisdiction, but only as to the question of what constitutes binding appellate authority for purposes of good-faith reliance under to the exclusionary rule.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by electronic mail to the following: Ross A. Keene, Attorney for Petitioner, at rkeene@rosskeenelaw.com, this 2nd day of February, 2016.

CERTIFICATE OF COMPLIANCE

I certify that this document was computer generated using Courier New 12 point font.

Respectfully submitted,
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AGO#: L15-1-14571

IN THE SUPREME COURT OF FLORIDA

CHRISTOPHER CARPENTER,

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v.

STATE OF FLORIDA,

Respondent.

Case No.: SC15-2125

Lower Case Nos.: 1D13-6199
2012-CF-1976

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1. State v. Carpenter, 158 So. 3d 693 (Fla. 1st DCA 2015)............... 1

KeyCite Yellow Flag - Negative Treatment
Review Granted by Carpenter v. State, Fla., November 19, 2015

158 So.3d 693
District Court of Appeal of Florida,
First District.

STATE of Florida, Appellant,
v.
Christopher L. CARPENTER, Appellee.

No. 1D13–6199.
|
Feb. 5, 2015.
|
Rehearing Denied March 12, 2015.

Synopsis
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.

Attorneys and Law Firms

***694** 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.

Opinion

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 *695 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* *696 *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 ***697** 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.

All Citations

158 So.3d 693, 40 Fla. L. Weekly D348

Footnotes

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.

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.

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.

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