

IN THE SUPREME COURT OF THE STATE OF FLORIDA

MARTIN MATTHEW DOBRIN,

Appellant/Petitioner,

vs.

5th DCA Case No.: 5D02-987

STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR

Supreme Court Case No.

VEHICLES,

Appellee/Respondent.

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STATEMENT OF THE CASE AND FACTS

On October 28, 2002, the District Court entered its Order in this matter denying Appellant's Motion for Rehearing of the District Court's Opinion filed September 6, 2002, which Granted Certiorari and quashed the Circuit Court's Order quashing the administrative suspension of Appellant's driving privileges for refusal to submit to a breath test.¹

On Petition for Certiorari, the Department of Highway Safety and Motor Vehicles, hereinafter "Department," argued that the Circuit Court erred in granting certiorari, quashing the Department's Order of Suspension, because it conducted its own fact finding mission. The Circuit Court had found that the record was insufficient to show that Appellant was lawfully stopped.

The 5th DCA found that in stating: "This court finds that it cannot uphold the stop on a basis of what the officer could have done, rather it must only analyze what in fact the officer did and why he did it," the circuit court applied the wrong law. The court held: "The issue is not why this particular officer conducted the traffic stop; the question should be whether the established facts would have caused a reasonable officer under the same circumstances to make the stop. *See State v. Pollard*, 625 So.2d 968 (Fla.

¹ The Order and Opinion are included in the Appendix to this brief. References to the Appendix will be designated by the symbol 'A' followed by the page number.

2nd DCA 1993); *see also State v. McNeal*, 666 So.2d 229 (Fla. 2nd DCA 1995). In other words, would it be unreasonable for an officer who observed one driving a truck at a high rate of speed and unable to maintain a straight course to pull the driver over to check the safety of the vehicle, the health of the driver or the capacity of the driver?" (A-1, pg. 2)

Petitioner, in seeking rehearing of this order, argued that the court had applied the wrong law in substituting a reasonable officer standard for the objective standard adopted by this court in *State v. Holland*, 696 So.2d 757 (Fla. 1997), and that the court had itself conducted its own fact finding mission. (A-2, pg. 3) The district court denied this motion without opinion. (A-3)

Petitioner timely filed a Notice to Invoke the Jurisdiction of this Court and this Petition follows.

SUMMARY OF ARGUMENT

Petitioner invokes the discretionary jurisdiction of this Court to review the decision of the Fifth District Court of Appeal in this cause issued September 6, 2002, and its Order denying rehearing filed October 28, 2002.

Jurisdiction of the Florida Supreme Court is invoked pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), because the District Court's ruling expressly and directly conflicts with *State v. Holland*, 696

So.2d 757 (Fla. 1997). The District Court relied upon *State v. Pollard*, 625 So.2d 968 (Fla. 2nd DCA 1993) and *State v. McNeal*, 666 So.2d 229 (Fla. 2nd DCA 1995), both of which used a reasonable officer standard and both of which predated *Holland*. In *Holland*, this court adopted the objective standard set forth by the United States Supreme Court in *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1789, 135 L.Ed. 89 (1996). In adopting the objective standard, the Supreme Court overruled those cases using a reasonable officer standard relied upon by the Fifth District Court of Appeal.

The District Court has therefore applied the wrong standard in reviewing the actions of police underlying Petitioner's stop which is in express and direct conflict with *Holland*.

ARGUMENT

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IN THIS CASE, BECAUSE THE RULING EXPRESSLY AND
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(FLA. 1997).

In *Holland*, this court was presented with a certified question of great public importance whether *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996), overruled *State v. Daniel*, 665 So.2d 1040, 1046 (Fla. 1995).

In *Daniel*, this court, while thoroughly analyzing the three competing approaches to reviewing the lawfulness of a stop, adopted a reasonable officer test, over the objective and subjective tests. This court stated, “The reasonable officer test is better suited for an individualized inquiry because it also asks whether the usual police practice would be to effect a stop when confronted with a particular kind of minor infraction.” *Daniel* 665 So.2d @ 1043.

In *Whren*, the United States Supreme Court held that the individual motivations of police are not involved in assessing the constitutional reasonableness of a stop, adopting instead a purely objective test. *Whren*, 517 U.S. @ 813. It rejected the reasonable officer test in favor of a strictly objective one which asked only whether probable cause existed for the stop. *Whren*, 517 U.S. @ 819.

In *Holland*, this Court noted that *Whren* applied a different test in determining the reasonableness of a stop than adopted in *Daniel*. This Court concluded that the conformity clause of the Florida Constitution, article 1, section 12, required that “the reasonable officer test as set out in *Daniel* is overrule by the objective test of *Whren*. *Holland*, 696 So.2d @ 759. In so doing, the Court noted that the only consideration was whether probable cause existed for the stop. *Id.*

In the instant case, the Fifth District Court of Appeal went far beyond an analysis of whether the undisputed facts in the record showed that probable cause existed for the stop. Contrary to the trial court's finding that the record did not support a violation of the traffic laws and that the officer did not set forth any other basis for the stop, the District Court adopted the reasonable officer approach of *Daniel* and went on its own fact finding mission, asking whether a reasonable officer under the circumstances would stop a vehicle to ascertain its condition or the well-being of its occupants. (A-1, pg. 2) It supported this analysis on the basis of two cases from the Second District Court of Appeal, which adopted the reasonable officer standard. (A-1, pg. 2) These cases, as was *Daniel*, were clearly overruled by *Holland*. The Fifth District therefore completely ignored this Court's ruling in *Holland* and applied the wrong law in its analysis of the trial court's action.

CONCLUSION

Based upon the foregoing argument and authorities, Petitioner respectfully requests that this Court accept jurisdiction to review the ruling of the District Court in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been delivered by U.S. Mail to Heather Rose Cramer, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, 6801 Lake Worth Road, #230, Lake Worth, Florida, 33467, this ____ day of December, 2002.

WHITED, FULLER & MILLER

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CERTIFICATE OF FONT

I hereby certify that the size and style of type used in this brief is point proportionally spaced Times New Roman, 14 Pt.

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