

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE NO. 95,741  
 ) DCA Case No. 98-01424  
 WILL PERKINS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RESPONDENT'S BRIEF ON THE MERITS

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**UNITED STATES CONSTITUTION**

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**FLORIDA STATUTES**

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**PRELIMINARY STATEMENT**

Respondent, Will Perkins, was the defendant in the trial court and the appellant in the District Court of Appeal, Fourth District. He will be referred to as respondent in this brief.

A copy of the decision below is attached as appendix I

**CERTIFICATION OF TYPE FACE**

Respondent certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

**STATEMENT OF THE CASE AND FACTS**

Respondent accepts petitioner's statement of the case and facts.

## SUMMARY OF ARGUMENT

Citizens of Florida are protected by the state and federal constitutions from being seized without, at a minimum, founded suspicion of criminal activity. If a person is seized without cause, traditional Fourth Amendment analysis prohibits the state from benefitting from the unlawful seizure, thus evidence seized and information gained is excluded from being used in court. The purpose of this rule is, of course, to deter future unlawful conduct by the police.

In the instant case respondent was unlawfully stopped while driving his car. As the direct result of the unlawful stop the police officer learned respondent's name and that his drivers license had been suspended. Using the traditional analysis, respondent sought to exclude all information the state gained as the result of the unlawful stop, which in this case includes respondent's self-identification to the officer. The Fourth District found there was no reason not to apply the traditional rules governing information learned as the result of unlawful police activity because the information in this case was indeed the fruit of the poisonous tree. The court disagreed that the holding in Immigration and Naturalization Service v. Lopez-Mendoza requires a different result, explaining that the references to "body" or "identity" relied on by other courts actually refers to the jurisdiction of the court and its power to bring a person before it

rather than to evidence of identity. Further, Lopez-Mendoza was a civil deportation proceeding to which traditional criminal rules of exclusion of evidence do not apply.

Respondent's right to be free from unlawful search and seizure was violated in this case; he should therefore be entitled to a remedy for that violation. Exclusion of the evidence gained as a result of the unlawful act is the remedy which will best protect citizens by deterring unlawful police conduct. The district court's opinion should be affirmed.

## ARGUMENT

THE FOURTH DISTRICT DID NOT ERR IN HOLDING EVIDENCE REGARDING THE DISCOVERY OF RESPONDENT'S NAME AND DRIVING RECORD MUST BE EXCLUDED BECAUSE THEY WERE FRUITS OF AN UNLAWFUL STOP. EXCLUSION OF THE INFORMATION IS THE ONLY VIABLE DETERRENT TO PREVENT UNLAWFUL SEARCH AND SEIZURE IN FUTURE CASES.

In the instant case respondent was unlawfully stopped while driving a car, the officer involved having neither founded suspicion nor probable cause to believe respondent was committing any offense. Perkins v. State, 734 So. 2d 430 (Fla. 4<sup>th</sup> DCA 1999)(appendix I). Respondent gave the officer his name and license as he was required to do, see §322.15, Fla. Stat. (1997), and the officer then discovered respondent's drivers license was suspended. Id. Respondent sought to suppress as fruit of the unlawful stop everything the officer saw and learned as a result of the stop: respondent's response to the officer identifying himself, the officer's observations after the stop, and the drivers license suspension which the officer discovered. Although the trial judge agreed respondent's right to be free from unlawful search and seizure had been violated and he would have granted the motion if he were free to do so, the trial court recognized it was bound to follow case law from the Second and Third District Courts of Appeal. In an extensive written order the trial judge explained, however, why he believed those cases were wrongly decided and he therefore certified a question to the Fourth District (R 14-29,

attached as appendix II). The district court agreed with the trial judge's analysis and issued its opinion reversing the denial of the motion to suppress. Perkins v. State, *supra*. In so doing, the court certified its decision is in conflict with the opinions in Ware v. State, 679 So. 2d 3 (Fla. 2d DCA 1996) and O'Neal v. State, 649 So. 2d 311 (Fla. 3d DCA 1995).

Ware and O'Neal each involved defendants charged with driving with a suspended license. Like the instant case, those defendants were stopped in violation of state and federal search and seizure law. With virtually no analysis other than a single sentence from Immigration and Naturalization Service v. Lopez-Mendoza, 468 U.S. 1032 (1984), the Second and Third districts refused to suppress any of the evidence found as the result of the unlawful stop on the rationale that the "identity of a defendant ... is never itself suppressible as a fruit of an unlawful arrest...." Ware v. State, 679 So. 2d at 5; O'Neal v. State, 649 So. 2d at 312. But as the trial judge explained and the Fourth District found, the O'Neal and Ware courts' reliance on Lopez-Mendoza is faulty.

The starting place for a decision *sub judice* is the recognition that Floridians enjoy an expectation of privacy while operating their automobiles on the highways. A stop of a citizen's car by law enforcement officers without at least a reasonable suspicion of criminal activity constitutes a seizure of that citizen proscribed by the Fourth Amendment as well as by our state

constitution. Delaware v. Prouse, 440 U.S. 648 (1979). When a Fourth Amendment violation has occurred, traditional constitutional analysis requires a court to first consider what the evidence to be offered is and whether it has been obtained by exploiting the violation of the Fourth Amendment.

We need not hold that all evidence is "fruit of the poisonous tree" simply because it would not have come to light but for the illegal actions of police. Rather, the more apt question in such a case is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of the illegality or instead by means sufficiently distinguishable to be purged of the primary taint."

Wong Sun v. United States, 371 U.S. 471, 487-488 (1963). The court should also consider the purpose of the exclusionary rule, namely to deter unlawful police conduct, and determine whether suppression will further that purpose.

Proper analysis thus suggests that if the traffic stop was unlawful, that which flowed from it would be subject to the exclusionary rule. If in this case the police had discovered physical evidence, such as a trunk-load of cocaine in respondent's car, this case would never have gotten to an appellate court because everyone would have agreed that exclusion of the cocaine and the officer's observations was the appropriate remedy. See Mapp v. Ohio, 367 U.S. 643 (1961); compare Robinson v. State, 617 So. 2d 412 (Fla. 2d DCA 1993). Likewise, if an unlawful stop results in admissions by the person stopped, those statements and

any information learned as a result of the statements will be suppressed. Mapp. These are classic examples of the "fruit of the poisonous tree" doctrine. See Wong Sun v. United States, supra. This result is justified on the theory that deterring undesirable police conduct, and thus protecting the right of all citizens to be free from unreasonable search and seizure, serves a greater good than the prosecution of any individual. See Brown v. Illinois, 422 U. S. 590, 599-600 (1975) ("The rule is calculated to prevent, not to repair. Its purpose is to deter -- to compel respect for the constitutional guaranty in the only effectively available way -- by removing the incentive to disregard it.")

But in the instant case the information obtained was respondent's name and his driving record. The officer's knowledge of this information was the direct result of respondent being unlawfully stopped and is the link necessary to connect respondent to an offense. The question then is what use may the state make of that information, i.e., how may they exploit it? Respondent suggests, and the Fourth District found, that the analysis to answer that question is the one which has already been described.

Since the goal of the exclusionary rule is to stop unlawful seizures it makes no sense to say that if the police discover contraband it will be suppressed but if the direct evidence they obtain and intend to exploit is the citizen's name and driving record then the person has no remedy. In each instance the citizen's Fourth Amendment rights have been violated by unlawful

police action.<sup>1</sup> If police are allowed to make random motor vehicle stops to determine the identity of drivers, the protections accorded by Delaware v. Prouse are stripped away. There would be no judicial remedy for this governmental wrongdoing. By admitting the ill-gotten evidence the courts would be a participant in the Constitutional violation.

Interestingly enough, petitioner concedes that an illegally-stopped defendant has a constitutional right to a remedy; it suggests that if something "is to be suppressed it must be the dispositive fact -- the fact of Respondent's driving -- and not his identity." (Pet.B. at 10). Respondent would certainly have no objection to an order which prohibited the officer from testifying that he observed respondent driving as petitioner suggests, but such an order would be a variation on the traditional fruit of the poisonous tree doctrine. When the Fourth District applied traditional constitutional analysis to this case, it concluded there was "no basis for distinguishing the circumstances here from others in which evidence must be suppressed, as fruit of the poisonous tree, where discovery followed an unlawful stop." Perkins v. State, supra.

None of this analysis appears to have been done by the courts

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<sup>1</sup> If one were to conduct a weighing of harm to the public good from suppression, most would agree that a suppression of drugs which lets a drug trafficker go free is a more serious danger than one which frees a person charged with a misdemeanor driving offense.

in Ware and O'Neal. Those courts will apparently willingly exclude contraband and statements unlawfully obtained, unless those statements are the person's name.<sup>2</sup> Then, not only may the state use the incriminating admission, it may exploit that admission to gain additional incriminating evidence.<sup>3</sup> In support of this result, and with virtually no other analysis, those courts' claim it is the result required by the Supreme Court in Lopez-Mendoza. The conclusion appears to be based on a statement taken out of context.

Lopez-Mendoza sought to exclude her statements from a deportation hearing, arguing they had been obtained as the result of an unlawful seizure. But as the Supreme Court explained, deportation hearings are civil, not criminal, 468 U.S. at 1038; the exclusionary rule has not been applied in civil proceedings. See United States v. Janis, 428 U.S. 433 (1976). The Fourth District recognized the importance of these facts when it looked at the

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<sup>2</sup> The court in St. George v. State, 564 So. 2d 152 (Fla. 5th DCA 1990), however, has specifically held that the Fifth Amendment prevents the state from compelling a defendant to identify himself. Can it be that the Fifth Amendment prevents the government from compelling testimony about identity, but there is no remedy when the government discovers the defendant's identity by violating the Fourth Amendment?

<sup>3</sup> Under the current analysis, if the unlawfully stopped driver gave a *false* name which was later discovered resulting in an obstruction charge, no conviction could result because the officer's stop was unlawful. See Fournier v. State, 731 So. 2d 75 (Fla. 2d DCA 1999); Vollmer v. State, 337 So. 2d 1024 (Fla. 2d DCA 1976)(identification furnished was the product of the illegal stop.) It is this type of illogical result which makes no sense.

sentence from Lopez-Mendoza previously quoted by the other district courts and then put that sentence into context. As the court explained in reaching its decision here, the statement in Lopez-Mendoza refers primarily to the jurisdiction of the court over a person.

In Lopez-Mendoza, the respondent, an illegal alien, was unlawfully arrested at his place of employment. INS agents, without a warrant, entered the premises and questioned the proprietor and Lopez-Mendoza. They learned his name and that he was from Mexico and, without more, arrested him. At the INS office, he confessed that he had not passed through immigration when he entered this country. The court of appeals vacated a deportation order and the Supreme Court reversed, concluding that a deportation proceeding is purely civil and that various protections that apply in the contest of a criminal trial do not apply in a deportation hearing.

The Court's reversal was based on the maxim that "[t]he 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred." Lopez-Mendoza, 468 U.S. at 1039. The court relied on Gerstein v. Pugh, 420 U.S. 103 (1975), and Frisbie v. Collins, 342 U.S. 519 (1952). Both Pugh and Collins involve the question of whether an illegally arrested defendant can be brought to trial despite the illegality of his detention. As stated in Collins, "[t]his Court has never departed from the rule announced in Ker v. Illinois...., that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction.'" Id. at 511. The essential issue in Lopez-Mendoza was whether he could be "summoned to a deportation hearing following

an unlawful arrest." Id. at 1040. Thus, the question in Lopez-Mendoza was one of jurisdiction, not whether the INS could prove his identity, evidence of which was not objected to by the respondent.

In a companion proceeding to that of Lopez-Mendoza, the respondent, Sandoval-Sanchez, did object to the evidence as to his identity. The Court ruled that the evidence was admissible, finding that the exclusionary rule did not apply to a deportation hearing. The Supreme Court did not, however, rule on whether the identity of the defendant, learned as a result of the illegal stop, was inadmissible as fruit of the poisonous tree. Therefore, the Ware and O'Neal courts' reliance on that decision may have been misplaced.

In further explanation of the issue the court, in a footnote, quoted extensively from the trial judge's written order which quoted yet another county judge's analysis of the use of the word "identity" in Lopez-Mendoza. Perkins v. State, supra, n. 1.<sup>4</sup>

It is clear in this case that respondent's statement of identification to the police officer and the officer's corresponding retrieval and match of respondent's driving record were the direct result of the unlawful stop and the crucial link necessary to connect respondent to an offense. To allow that evidence to be introduced therefore directly exploits the violation of the Fourth Amendment. There are no interests involved here which are superior to those protected by the Fourth

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<sup>4</sup> Rather than repeating that analysis, the full text of the lower court's order is included as appendix II.

Amendment. The Fourth District's decision should be affirmed.

**CONCLUSION**

WHEREFORE, it is respectfully requested that the Court resolve the issues presented in this case in accordance with the Fourth District court's decision.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy hereof has been furnished by courier, Joseph A. Tringali, Assistant Attorney General, 1655 Palm Beach Lakes Boulevard, Third Floor, West Palm Beach, Florida 33401, this 26th day of August 1999.

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Counsel for Respondent