

IN THE SUPREME COURT OF THE STATE OF FLORIDA,

STATE OF FLORIDA,

Petitioner/Appellant

v.

WILL PERKINS,

Respondent/Appellee.

Case No. 95,741

ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL

**INITIAL BRIEF OF PETITIONER/APPELLANT
ON THE MERITS**

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CERTIFICATE OF INTERESTED PERSONS

Counsel for the Petitioner/Appellant certifies that the following persons or entities may have an interest in the outcome of this case:

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County Court Judge, Palm Beach County, Florida
(trial judge)
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CERTIFICATE OF TYPE FACE AND FONT

Counsel for the Petitioner/Appellant hereby certifies, pursuant to this Court's Administrative Order of July 13, 1998, that the type used in this brief is Times Roman 14 point proportionally spaced font.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS I

CERTIFICATE OF TYPE FACE AND FONT ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE AND FACTS 2

SUMMARY OF THE ARGUMENT 4

ARGUMENT 5

THE FOURTH DISTRICT COURT OF APPEAL ERRED
IN HOLDING WHERE THE IDENTITY OF A DRIVER
IS AN ESSENTIAL ISSUE THAT MUST BE PROVEN,
THAT IDENTITY IS SUBJECT TO SUPPRESSION IF IT
IS DISCOVERED AS A RESULT OF AN UNLAWFUL
SEARCH AND SEIZURE.

CONCLUSION 14

CERTIFICATE OF SERVICE 15

TABLE OF AUTHORITIES

Cases Cited **Page Number**

FEDERAL CASES

<u>INS v. Lopez-Mendoza</u> , 468 U.S. 1032, 104 S.Ct. 3479, 82 L.Ed.2d 778 (1984)	5, 6
<u>Mapp v. Ohio</u> , 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961)	10
<u>U.S. v. One (1)</u> , 1971 Harley-Davidson Motorcycle Serial No. 4A25791H1, 508 F.2d 351 (9th Cir. 1974)	11
<u>United States v. Janis</u> , 428 U.S. 433, 96 S. Ct. 3021, 49 L. Ed. 2d 1046 (1976)	6
<u>Weeks v. United States</u> , 232 U.S. 383, 34 S. Ct. 341, 58 L. Ed. 652 (1914)	10
<u>Wong Sun v. United States</u> , 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963)	6

STATE CASES

<u>Brown v. State</u> , 613 So. 2d 569 (Fla. 2d DCA 1993)	11
<u>Campbell v. State</u> , 679 So. 2d 1168 (Fla. 1996)	8
<u>City of Miami v. Aronovitz</u> , 114 So. 2d 784 (Fla. 1959)	7
<u>Coon v. State</u> , 585 So. 2d 1079 (Fla. 1st DCA 1991)	11
<u>Hartsfield v. State</u> , 629 So. 2d 1020 (Fla. 4th DCA 1993)	8

Jones v. Kirkman, 138 So. 2d 5123 (Fla. 1962) 7

O’Neal v. State, 649 So. 2d 311 (Fla. 3d DCA)
rev. denied, 659 So.2d 272 (Fla.1995) 3, 5

State v. Daniel, 665 So. 2d 1040 (Fla. 1995) 8

State v. Duesterhoeft, 311 N.W.2d 866 (Minn. 1981) 9

State v. Gibson, 655 P.2d 1302 (Utah),
cert. denied, 464 U.S. 894, 104 S. Ct. 241, 78 L. Ed. 2d 231 (1983) 9

State v. Jones, 483 So. 2d 433 (Fla. 1986) 7

State v. Leyva, 599 So. 2d 691 (Fla. 3d DCA 1992) 9

Ware v. State, 679 So. 2d 3 (Fla. 2d DCA 1996) 3, 5

PRELIMINARY STATEMENT

Petitioner/Appellant was the appellant in the Fourth District Court of Appeal and the prosecution in the Criminal Division of the County Court of Palm Beach County, Florida.

Respondent/Appellee was the appellee in the Fourth District Court of Appeal and the defendant in the Criminal Division of the County Court of Palm Beach County, Florida.

In this brief, the parties will be referred to as they appear before this Court, except that Petitioner/Appellant may also be referred to as the “prosecution’ or the “State.”

The following symbols will be used:

R = Record on Appeal

T = Transcript

STATEMENT OF THE CASE AND FACTS

Respondent's vehicle was stopped by Officer Wilpidio Pinto of the West Palm Beach Police Department. He was thereafter charged by uniform traffic citation with the offense of driving with a suspended or revoked license. Pursuant to that citation, Respondent appeared in Palm Beach County Court represented by the Office of the Public Defender, and moved to suppress all evidence arising from the traffic stop, alleging it was unlawful because it was made without a warrant, probable cause or founded suspicion. The trial court considered the motion on stipulated facts which it recited in its order:

For the purposes of the Defendant's motion, the facts are undisputed. Only July 13, 1997 at 10:45 a.m., the Defendant was driving within the municipal limits of the City of West Palm Beach and was stopped by West Palm Beach Police Officer Wilpidio Pinto. Prior to the traffic stop, Officer (sic) Pinto did not see the Defendant commit any traffic violations, commit any other violations of the law, or observe activity that would give Officer Pinto legal authority to effectuate a stop of the Defendant. Although Officer Pinto did not have probable cause to stop the Defendant, once he stopped him, Officer Pinto "ran" the Defendant's driver's license and discovered that the Defendant's driving license privileges had been suspended. Thereupon, Officer Pinto charged the Defendant with the crime of driving with a suspended license.

(R 14)

Following an analysis of the law, the trial judge entered an order declaring himself “duty bound” to deny Respondent’s motion to suppress based on the holdings of *Ware v. State*, 679 So.2d 3 (Fla. 2d DCA 1996) and *O’Neal v. State*, 649 So.2d 311 (Fla. 3d DCA 1995), but certified the following question as being one of great public importance:

Where the identity of a driver is an essential issue that must be proven, is that identity subject to suppression if it is discovered as a result of an unlawful search and seizure?

(R 29)

Petitioner plead no contest in the County Court, reserving his right to appeal the denial of his motion to suppress, and thereafter appealed to the Florida Fourth District Court of Appeal.

The District Court considered the question certified by the County Court and issued a written opinion on May 12, 1999 in which it certified conflict with *Ware* and *O’Neal*. Petitioner then filed a notice to invoke the jurisdiction of this Court, and the Court, by and order dated June 9, 1999 postponed its decision on jurisdiction and ordered Petitioner to serve a merits brief on or before July 6, 1999. This brief follows.

SUMMARY OF THE ARGUMENT

Driving is a privilege which can be taken away or encumbered as a means of meeting a legitimate legislative goal. An individual's interest in a driver's license is a privilege, not a right, and that the public interest in highway safety is great.

In those cases in which this Court and other courts have found a traffic stop to be illegal, they have suppressed the illegal act rather than the identity of the defendant. The Court must make a distinction between the suppression of a dispositive fact which may be evidence of a crime, and identity which is information and cannot be returned or suppressed.

ARGUMENT

THE FOURTH DISTRICT COURT OF APPEAL ERRED IN HOLDING WHERE THE IDENTITY OF A DRIVER IS AN ESSENTIAL ISSUE THAT MUST BE PROVEN, THAT IDENTITY IS SUBJECT TO SUPPRESSION IF IT IS DISCOVERED AS A RESULT OF AN UNLAWFUL SEARCH AND SEIZURE.

The County Court of Palm Beach County posed the following question of great public importance to this Court:

Where the identity of a driver is an essential issue that must be proven, is that identity subject to suppression if it is discovered as a result of an unlawful search and seizure?

The Fourth District Court of Appeal answered the question in the affirmative, certifying conflict with the Second District in *Ware v. State*, 679 So.2d 3 (Fla. 2d DCA 1996) and the Third District in *O’Neal v. State*, 649 So.2d 311 (Fla. 3d DCA) *rev. denied*, 659 So.2d 272 (Fla.1995). In doing so, the Fourth District distinguished the case of *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984) which was cited in both *Ware* and *O’Neal*, in which the United States Supreme Court explicitly held that “[t]he ‘body’ or identity of a defendant in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest.” The Fourth District said it distinguished *Lopez-Mendoza* because in that case the real question before the Supreme Court was whether “an illegally arrested defendant can be brought to trial despite the illegality of

his detention,” and, therefore, “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.”

Petitioner submits, first, that the question posed by the Palm Beach County Court and answered affirmatively by the Fourth District has already been implicitly answered by this Court when it declined to review the Third District Court of Appeal’s opinion in *O’Neal*.

Secondly, and perhaps more importantly, Petitioner respectfully submits both the trial court and the Fourth District gave insufficient consideration to language contained in the *Lopez-Mendoza* decision with regard to co-respondent Sandoval Sanchez. The Court pointed out:

Respondent Sandoval-Sanchez has a more substantial claim. He objected not to his compelled presence at a deportation proceeding, but to evidence offered at that proceeding. The general rule in a criminal proceeding is that statements and other evidence obtained as a result of an unlawful, warrantless arrest are suppressible if the link between the evidence and the unlawful conduct is not too attenuated. *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

I.N.S. v. Lopez-Mendoza, 468 U.S. at 1032.

In short, the United States Supreme Court squarely faced the suppression of identity issue, and, after applying the balancing of interests test which it applied in

United States v. Janis, 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976) whereby the likely social benefits of excluding unlawfully obtained evidence are weighed against the likely costs, held the balance came out against applying the exclusionary rule in civil deportation proceedings.

In *Janis*, the Court admitted “[t]he debate within the Court on the exclusionary rule has always been a warm one,” and said, “It has been unaided, unhappily, by any convincing empirical evidence on the effects of the rule.” The Court then explained the prime purpose of the rule, if not the sole purpose, is to deter future unlawful police conduct rather than protect the personal constitutional rights of the party aggrieved.

Turning to the facts of the case at bar, it is apparent that even if this Court were to announce that identity in and of itself is a suppressible ‘fruit’ of illegal police conduct, it could not rest such a sweeping new rule of law on so narrow a foundation.

This Court has long held that driving is a privilege, and the privilege can be taken away or encumbered as a means of meeting a legitimate legislative goal. *City of Miami v. Aronovitz*, 114 So.2d 784 (Fla. 1959). It is well settled that an individual’s interest in a driver’s license is a privilege, not a right, and that the public interest in highway safety is great. *Jones v. Kirkman*, 138 So.2d 5123 (Fla. 1962). Thus, for example, this Court has approved of roadblocks, even roadblocks which stop random vehicles, rather than all vehicles, for the purpose of checking drivers for intoxication, *State v. Jones*,

483 So.2d 433 (Fla. 1986), and has at least implicitly allowed properly-established roadblocks for the purpose of checking for valid driver's licenses. See: *Campbell v. State*, 679 So.2d 1168 (Fla. 1996).

However, when the Court has found a stop to be 'illegal' -- whether by roadblock or otherwise -- it has suppressed the illegal act rather than the identity of the defendant. In *Campbell*, for example, where the defendant was stopped at such a roadblock, found to have a suspended license and transported to the county jail where officers searched him and found powder cocaine and marijuana in his sock, the Court, holding that the roadblock did not meet the standards which it laid down in *Jones, supra*, suppressed the contraband seized from him and approved the decision of the Fourth District Court of Appeal in *Hartsfield v. State*, 629 So.2d 1020 (Fla. 4th DCA 1993) in which the Fourth District suppressed physical evidence, statements and admissions obtained by Broward County Sheriff's deputies in connection with a DUI roadblock operation. Significantly, in both cases this Court and the Fourth District Court suppressed the evidence of a crime: possession of contraband drugs and evidence of intoxication. In neither case did the court 'suppress' the identity of either defendant.

Petitioner submits this distinction between identity and criminal act is basic to the exclusionary rule. In *State v. Daniel*, 665 So.2d 1040 (Fla. 1995), for example, where a defendant claimed he had been stopped illegally, this Court noted "[t]he

dispositive fact here is that, when Daniel could not produce a driver's license, probable cause immediately arose to believe that he had violated a statute intended to protect the public from harm--the requirement of valid licensure.” Although the Court went on to find the stop non-pretextual and affirm the defendant’s conviction, the language of its decision makes it clear that it was the ‘dispositive fact’ rather than his identity which was subject to suppression.

The distinction is compelling. If identity -- that is the physical features of a person -- could be suppressed, that individual would be essentially immunized from further arrest and prosecution. In the case at bar, for example, if the decision of the Fourth District were to stand, what would be the concomitant remedy? Courts of this State as well as other states have held that an officer’s knowledge of a defendant’s previously suspended driver’s license provided that officer with a reasonable suspicion upon which to make a valid legal stop. *State v. Leyva*, 599 So.2d 691 (Fla. 3d DCA 1992); *State v. Gibson*, 655 P.2d 1302 (Utah), *cert. denied*, 464 U.S. 894, 104 S.Ct. 241, 78 L.Ed.2d 231 (1983); *State v. Duesterhoeft*, 311 N.W.2d 866 (Minn. 1981). In light of such reasoning, what would happen in the case at bar if the same officer saw the Respondent driving in another part of the city later in the day? Could he legally stop him, or would he have to wipe the defendant’s physical features from his mind? Suppose he was observed by a different officer? Would Respondent be immune from

arrest because of the “fellow officer” rule which imputes to one officer the knowledge of another? More importantly, what if the illegally-stopped defendant who could not produce a valid driver’s license, were also wanted for first-degree murder? Clearly, in such a case a court would have to distinguish between prosecution for driving while suspended and the defendant’s arrest on the outstanding warrant.

All of which is not to suggest that an illegally-stopped defendant has no constitutional rights merely because the remedy is harsh or difficult to craft; rather it is to point out that in the case at bar the trial court and the district court both focused on the wrong factor: if anything is to be suppressed it must be the dispositive fact -- the fact of Respondent’s driving -- and not his identity.

The exclusionary rule is a remedy created by the United States Supreme Court and enunciated in *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). Simply stated, it provides that illegally-seized evidence is excluded, that is, it may not be used by the State in a criminal case. However, the rule did not spring full-grown from the mind of Mr. Justice Clark who authored the opinion. In fact, it had been in place in the federal courts since 1914 when the Court said:

If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might

as well be stricken from the Constitution.

Weeks v. United States, 232 U.S. 383, at 391-92, 34 S.Ct. 341, at 344, 58 L.Ed. 652, (1914).

While it is a relatively simple matter for a court to exclude the use of evidence from a trial, the subsequent disposition of that evidence is another matter. Obviously, a court has inherent power to direct return of property seized from criminal defendant if that property is not contraband and is no longer needed as evidence against defendant. *Brown v. State*, 613 So.2d 569 (Fla. 2d DCA 1993); *Coon v. State*, 585 So. 2d 1079 (Fla. 1st DCA 1991). By the same token, in *U.S. v. One (1) 1971 Harley-Davidson Motorcycle Serial No. 4A25791H1*, 508 F.2d 351, (9th Cir. 1974), the Ninth Circuit Court of Appeals observed, “Clearly the Constitution does not require the government to return heroin to a convicted defendant merely because the contraband was unconstitutionally seized.” *Id.*, at 352.

As Petitioner pointed out in its brief to the Fourth District Court of Appeal, identity is neither property which can be returned to the defendant, nor is it contraband which can be seized by the State. Identity has never been subject to the exclusionary rule in either State or federal courts. It is not ‘evidence’ which can be received and handled in the ordinary course. The Fourth District erred in its holding, and its opinion should be quashed.

CONCLUSION

WHEREFORE based on the foregoing arguments and authorities cited herein, Petitioner/Appellant prays for an order of this Court to reversing the Fourth District Court of Appeal's decision, and for such other and further relief as to the Court may seem just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing “Initial Brief of Petitioner/Appellant on the Merits” has been furnished by courier to CHERRY GRANT, Esq., Assistant Public Defender, The Criminal Justice Building, 421 Third Street, 6th Floor, West Palm Beach, FL 33401 on December 22, 1999.

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Appendix

Written opinion of Florida Fourth District Court of Appeal.