No. 15-____

In the Supreme Court of the United States

STATE OF FLORIDA,

Petitioner,

v.

KERRICK VAN TEAMER,

Respondent.

On Petition for Writ of Certiorari to the Florida Supreme Court

---

PETITION FOR WRIT OF CERTIORARI AND APPENDIX BY PETITIONER STATE OF FLORIDA

PAMELA JO BONDI
Attorney General of Florida
Carolyn M. Snurkowski
Assistant Deputy Attorney General
Jay Kubica*
Assistant Attorney General
jay.kubica@myfloridalegal.com
PL-01, The Capitol
Tallahassee, FL 32399-1050
850-414-3300
Counsel for State of Florida
**Counsel of Record*

QUESTION PRESENTED

Does a discrepancy between a vehicle's color and the color indicated by the license tag attached to the vehicle, when viewed through an officer's experience that such discrepancy is indicative of a license plate being switched between vehicles in violation of Florida's criminal law, establish reasonable suspicion for an officer to perform a temporary detention under the Fourth Amendment?

TABLE OF CONTENTS

TABLE OF CONTENTS TO APPENDIX

TABLE OF AUTHORITIES

Cases

Constitutional and Statutory Provisions

PETITION FOR A WRIT OF CERTIORARI

OPINION BELOW

The opinion of the Florida Supreme Court, *State v. Teamer*, is reproduced in the Petitioner's Appendix ("Pet. App.") at Appx. G and is reported at 151 So. 3d 421, 39 Fla. L. Weekly S478 (Fla. July 3, 2014), *rehearing denied,* Nov. 19, 2014.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked based on 28 U.S.C. §1257(a). The Florida Supreme Court issued its decision on July 3, 2014, and denied rehearing on Nov. 19, 2014. The Florida Supreme Court is the "highest court of a State in which a decision could be had." *Id.*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment of the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

The Fourteenth Amendment of the United States Constitution, Section 1, provides, in relevant part: "No State shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amend XIV, § 1.

Article 1, Section 12 of the Florida Constitution provides, in relevant part: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court." Fla. Const., Art.1, §12.

STATEMENT OF THE CASE

This case involves the question of whether a discrepancy between a vehicle's color and the color indicated by the license tag attached to the vehicle is sufficient to establish reasonable suspicion for a temporary detention under the Fourth Amendment.

On June 22, 2010, Deputy Christopher Knotts, with the Escambia County Sheriff's Office, was traveling westbound on a public thoroughfare, with a bright green Chevy vehicle traveling in front of him. (J-11-12). The bright green Chevy pulled into a

parking lot of a business and Deputy Knotts proceeded on his way. (J-12). A brief time later, Deputy Knotts once again encountered the bright green Chevy and ran the tag of the vehicle through his computer database with the Department of Highway Safety and Motor Vehicles. (J-13). Deputy Knotts testified at the suppression hearing that the information he received on the tag was that it belonged to a blue Chevrolet. (J-13). Noting that the colors were inconsistent, Deputy Knotts acknowledged that in his training and experience he has encountered upwards of 50 to 100 individuals that will switch tags on vehicles, and that from his vantage point he could not determine whether or not the tag that was on the vehicle was actually registered to that vehicle. (J-13-14). At that point, Deputy Knotts effectuated a traffic stop of the vehicle. (J-14).

Deputy Knotts approached the vehicle on the driver's side and told the driver, later identified as Respondent, that the tag did not match the vehicle. (J-14-15). As he was speaking with Respondent, Deputy Knotts noticed an odor emanating from the vehicle that smelled like marijuana. (J-15). In speaking with Respondent, Deputy Knotts was provided an explanation by Respondent as to the reason for the color discrepancy, which was that he had just recently painted the vehicle. (J-16). Deputy Knotts acquired Appellant's registration, returned to his patrol vehicle and requested a second deputy to respond to the scene. (J-15). As for his reason in calling for a second officer to assist, Deputy Knotts testified that it was his intention to initiate a

probable cause search of the vehicle based upon the odor of marijuana emanating therefrom. (J-16).

Once the backup officer arrived, Deputy Knotts returned to Respondent, issued him a warning for the variance in color from what was listed on the registration, and also informed him about the odor he detected. (J-16-17). Respondent responded to Deputy Knotts by stating that he had smoked marijuana earlier. (J-28). Deputy Knotts then proceeded to search Respondent, who had no contraband on his person, but did possess a large amount of U.S. currency, approximately over $1,100. (J-17). At that point, a passenger in Respondent's vehicle was also asked to step out of the vehicle. (J-17). Deputy Knotts then proceeded to search the vehicle, which revealed the presence of narcotics inside the center console cup, specifically marijuana and crack cocaine. (J-18).

Respondent was subsequently arrested and charged via Amended Information with Trafficking in Cocaine (Count One), Possession of a Controlled Substance (Count Two) and Possession of Drug Paraphernalia (Count Three). Respondent filed a Motion to Suppress Evidence, and a hearing was held on December 9, 2010. (J-1-61). The trial court denied Respondent's Motion to Suppress through written order on March 13, 2012. (K-1). Following a jury trial, Respondent was convicted as charged and was sentenced to a term of six (6) years incarceration as to Count One and time served as to Counts Two and Three.

An appeal to the Florida First District Court of Appeal followed. The First District reversed the denial of Respondent's motion to suppress, holding that a discrepancy between a vehicle's actual color and the color associated with the tag attached to the vehicle at the time of a stop did not constitute reasonable suspicion of criminal activity. *Van Teamer v. State*, 108 So.3d 664 (Fla. 1st DCA 2013). The First District also certified conflict with the Fourth District's decision in *Aders v. State*, 67 So.3d 368 (Fla. 4th DCA 2011).

The Florida Supreme Court accepted jurisdiction of the case to resolve the conflict and approved the First District's reversal of the denial of the motion to suppress, reasoning that a color discrepancy was insufficient to constitute reasonable suspicion for a temporary detention. *State v. Teamer*, 151 So.3d 421 (Fla. 2014). The Florida Supreme court denied the State of Florida's motion for rehearing on November 19, 2014.

REASONS FOR GRANTING THE WRIT

A. Certiorari is Warranted Because the Florida Supreme Court's Decision Constitutes a Misapplication of this Court's Fourth Amendment Precedent by Holding That a Single Non-criminal Fact Does Not Warrant Reasonable Suspicion, and By Failing to Consider the Facts in the Light of the Detaining Officer's Experience.

This case presents an issue regarding the misapplication of this Court's Fourth Amendment precedent, namely, whether the Florida Supreme Court relied on a categorical rule for determining reasonable suspicion by holding that a single non-criminal fact cannot give rise to reasonable suspicion, and also ignored this Court's well-settled analysis for determining reasonable suspicion by failing to view the facts in the light of the detaining officer's experience.

In *Florida v. Harris*, 133 S. Ct. 1050, 1055-1056 (2013), this Court reiterated the well-settled rule that probable cause is determined not from "rigid rules, bright-line tests, and mechanistic inquiries", but from the totality of the circumstances. This Court recognized that the Florida Supreme Court had "flouted" this analysis by requiring the State to provide specific pieces of evidence regarding a drug-detection dog's reliability to establish probable cause based on that dog's alert for contraband. *Id.* at 1056. Thus, this Court concluded that the question of whether a drug detection dog's alert establishes probable cause to justify a search was answered with

the same analysis as any other probable cause determination: "[W]hether all the facts surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime."

This adherence to the totality of the circumstances is as ubiquitous in the reasonable suspicion analysis as it is in that of probable cause. *See U.S. v. Cortez*, 449 U.S. 411, 417-418 (1981); *see also Ornelas v. U.S.*, 517 U.S. 690, 695-96 (1996). In this analysis, the facts are viewed through the training and experience of the detaining officer to make inferences from the facts that would not occur to the average citizen. *See U.S. v. Arvizu*, 534 U.S. 266, 273 (2002). When a court has reached a decision that complicates this simple analysis with guidelines or frameworks, this Court has consistently reversed. *See U.S. v. Sokolow*, 490 U.S. 1, 8 (1989)(reversing where lower court required at least one fact indicative of ongoing criminal activity to make facts of possible innocent activity relevant to reasonable suspicion analysis); *see also Arvizu*, 534 U.S. 266 at 274 (reversing where lower court viewed facts which indicated possible innocent conduct in isolation and excised them from the reasonable suspicion analysis).

Despite this Court's repeated warnings against departing from the simple application of the totality of the circumstances analysis, the Florida Supreme Court did just that in the instant case. Specifically, the Florida Supreme Court held that reasonable

suspicion required more than a single fact, a color discrepancy between Respondent's vehicle and the color of the vehicle to which Respondent's license plate was registered, which could be indicative of innocent activity. *Teamer*, 151 So.3d 421 at 428. Whether conduct is "innocent" or not is not the relevant question in a reasonable suspicion analysis, the appropriate question being the degree of suspicion that attaches to any given fact. *See Sokolow*, 490 U.S. 1 at 10. In crafting a conclusion that focused on the number of facts available, rather than the inferences drawn from the available facts in light of the detaining officer's experience, and by parsing facts that are "criminal" and "non-criminal", rather than considering the facts together, the court reintroduced the same discredited logic that this Court has consistently rejected. *See Sokolow*, 490 U.S. 1; *see also Arvizu*, 534 U.S. 266.

Indeed, this flaw in the court's decision was a main focus of the dissent. Justice Canady wrote that it was the "crux of the majority's decision" and that court's "conclusion suggests a categorical rule that is not consistent with the framework established in the Supreme Court's Fourth Amendment jurisprudence." *Teamer*, 151 So.3d 421 at 433 (Polston, J., *dissenting*). While the court attempted to justify its analysis by relying on *U.S. v. Brignoni-Ponce*, 422 U.S. 873 (1975), for the proposition that a single, non-criminal fact does not support reasonable suspicion, Justice Polston aptly pointed out that this Court's actual holding in *Brignoni-Ponce* was that a detention based purely on the ethnicity of a person was unjustified. *Teamer*, 151 So.3d 421 at 433-434.

It does not logically follow that the insufficiency of a person's ethnicity to support reasonable suspicion means that a single, non-criminal fact is insufficient. However, that is precisely the meaning the Florida Supreme Court gleaned from *Brignoni-Ponce* in misapplying this Court's precedent. The court concluded by specifically prescribing that for instances of a color discrepancy between a vehicle and the registration information, reasonable suspicion only existed where that discrepancy was added to facts of potential criminal activity. Taken with the court's differentiation between "criminal" and "non-criminal" facts, this holding creates nothing other than the kind of numerical formula for establishing reasonable suspicion that this Court rejected in *Harris*.

The Florida Supreme Court also misapplied this Court's Fourth Amendment precedent by failing to view the available facts through the lens of the detaining officer's training, knowledge, and experience. Specifically, the court's analysis omits any mention of the significance of the color discrepancy to the detaining officer, and how the officer used that experience to draw an inference of criminal activity from the discrepancy. The officer's personal experience consisted of encountering individuals who switched license plates between vehicles upwards of 50 to 100 times, which allowed him to reasonably infer that the color discrepancy was the result of Respondent switching the license plate from the vehicle to which it was registered to the vehicle he drove, an act that is a second degree misdemeanor in violation of Section 320.261 of the

Florida Statutes. (J-13-14). When the court failed to view the totality of the circumstances through this prism and denied itself the benefit of the officer's unique experience with this kind of criminal activity, it is unsurprising that the inference drawn from the color discrepancy fully eluded the court.

In place of the officer's experience as a viewpoint through which the totality of the circumstances is considered, the Florida Supreme Court appears to have substituted a re-balancing of the public interest in criminal prevention and an individual's right to be free from arbitrary interference to yield a conclusion that the temporary detention was not warranted due to the State's interest being outweighed by Respondent's constitutional rights. *Teamer,* 151 So.3d 421 at 428-430. This Court has rejected attempts to re-balance the interests of the government and the individual on a case-by-case basis when probable cause supports a search or seizure, for that balance has already been determined by the "usual rule" that probable cause outweighs an individual's privacy interest. *Whren v. U.S.*, 517 U.S. 806, 818 (1996). Similarly, this Court has already struck the appropriate balance for temporary detentions by holding that they are permissible when supported by reasonable suspicion of criminal activity. *See Terry v. Ohio*, 392 U.S. 1, 20-21 (1968). It is axiomatic that the Florida Supreme Court's decision to disregard this Court's balancing of the interests of the government vs that of the citizen in favor of its own determination is a misapplication of this Court's precedent.

Certiorari is appropriate to establish that the Florida Supreme Court misapplied this Court's well-settled Fourth Amendment precedent in reaching its decision in the instant case. Not only did the Florida Supreme Court craft a numerical framework for determining reasonable suspicion, but the court also failed to view the facts through the lens of the detaining officer's experience, instead substituting a prohibited re-balancing of the government's interests against the individual's interest in a temporary detention. These errors are ripe for correction.

B. This Case Presents an Excellent Vehicle to Resolve Conflicting Decisions on the Question of Whether a Discrepancy Between a Vehicle's Color and the Color Indicated by the License Tag Attached to the Vehicle is Sufficient to Establish Reasonable Suspicion for a Temporary Detention Under the Fourth Amendment.

This case presents an outstanding vehicle to resolve conflicting opinions on whether a discrepancy between a vehicle's color and the color indicated by the license tag attached to the vehicle is sufficient to establish reasonable suspicion for a temporary detention under the Fourth Amendment. A number of courts throughout the nation have passed on this question, some finding that the discrepancy is sufficient, while others finding that it is not, and another falling somewhere between these positions. A decision addressing which result is correct is necessary to provide uniformity in the law.

Florida has a state constitutional provision that conforms to the Fourth Amendment protections of the federal constitution,[1] so there is no higher state protection than the Fourth Amendment or alternative ground for disposition under state law. Indeed, the Florida Supreme Court's decision expressly states that its decision is required to be in conformity to this Court's Fourth Amendment precedent. *State v. Teamer*, 151 So.3d 421, 425 (Fla. 2014).

This Court has previously indicated that cases involving this provision of the Florida Constitution, which "conform[s]" to similar provisions of the United States Constitution, present excellent vehicles for this Court to address federal constitutional claims. This is so because such decisions cannot be based on adequate and independent state grounds. *See Florida v. Casal*, 462

[1] *See* Art. I, § 12, Fla. Const. ("The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.").

U.S. 637, 638 (1983) (Mem.) (Berger, C.J., concurring) ("The people of Florida have since shown acute awareness of the means to prevent such inconsistent interpretations of the two constitutional provisions. In the general election of November 2, 1982, the people of Florida amended Art. 1, § 12 of the State Constitution . . . . As amended, that section ensures that the Florida courts will no longer be able to rely on the State Constitution to suppress evidence that would be admissible under the decisions of the Supreme Court of the United States."); *see also Florida v. J.L.*, 529 U.S. 266 (2000) (deciding case on writ of certiorari granted to Florida District Court of Appeal, Third District where decision was based on Florida's Fourth Amendment conformity clause); *Florida v. Royer*, 460 U.S. 491 (1983) (same); *Hayes v. Florida*, 470 U.S. 811 (1985) (same as to the Florida District Court of Appeal, Second District); *Florida v. Meyers*, 466 U.S. 380 (1984) (same as to the Florida District Court of Appeal, Fourth District).

The Georgia Court of Appeals, the Arkansas Court of Appeals, Division I, and the Indiana Court of Appeals have all held that a color discrepancy like that involved in the instant case furnish reasonable suspicion to justify a temporary detention. *See Andrews v. State*, 658 S.E.2d 126 (Ga. Ct. App. 2008); *see also Thammasack v. State*, 747 S.E.2d 877 (Ga. Ct. App. 2013); *Schneider v. State*, 2014 Ark. App. 711 (Ark. Ct. App. 2014); *Smith v. State*, 713

N.E.2d 338 (Ind. Ct. App. 1999).[2] Additionally, an unpublished opinion from the Court of Appeals of Idaho holds that the color discrepancy supports reasonable suspicion. *State v. Creel*, 2012 WL. 9494147 (Idaho Ct. App. 2012)(unpublished).

In opposition to these holdings is that of the Court of Appeals of Virginia, which in an unpublished opinion held that a color discrepancy was not sufficient to give rise to reasonable suspicion. *Com v. Mason*, 2010 WL.768721 (Va. Ct.

---

[2] The First District Court of Appeal of Florida pointed to a footnote in the *Smith* opinion which noted that the stopped vehicle was initially suspected of gang involvement to support the mistaken notion that Smith did not actually hold that a color discrepancy was sufficient to support reasonable suspicion. *Van Teamer v. State*, 108 So.3d 664, 667 (Fla. 1st DCA 2013). However, this fact was never included as part of the reasonable suspicion analysis in *Smith*, as illustrated by the following passage from the opinion:

> Here, the evidence was uncontroverted that the license plate on Smith's blue and white car was registered to a yellow car. Upon conducting a computer check, Sergeant Henson had reasonable suspicion to believe that Smith's vehicle had a mismatched plate, and as such, could be stolen or retagged. Sergeant Henson's traffic stop was valid and comported with the mandates of the Fourth Amendment.

Smith, 713 N.E.2d 338 at 342. Because the *Smith* court never considered any fact outside of the color discrepancy in its reasonable suspicion analysis, Smith truly holds that a color discrepancy alone, regardless of additional information of criminal activity, justifies a temporary detention.

App. 2010)(unpublished).[3] Additionally, the Ninth Circuit has remarked in dicta that a high-crime location and a color discrepancy provided only "a thin basis" for reasonable suspicion, and that the question was "exceedingly close". *U.S. v. Rodgers*, 656 F.3d 1023 (9th Cir. 2011). The Ninth Circuit did not resolve this question, however, instead assuming that reasonable suspicion existed for purposes of its analysis and reversing on another ground.[4]

The Seventh Circuit has addressed this issue in *U.S. v. Uribe*, 709 F.3d 646 (7th Cir. 2013), but with an important difference in the facts. While the Seventh Circuit held that a color discrepancy alone was insufficient to furnish reasonable suspicion that a vehicle had been stolen, the court's analysis mentioned that it could not view the facts through the officer's experience because the government had not provided such information, and thus could not benefit from any special knowledge that would allow for inferences not apparent to the court. *Id.* at 652. These comments indicate that if an officer's experience were part of the Seventh Circuit's analysis, the court may have held that a color discrepancy was sufficient to warrant reasonable suspicion. Additionally, while the court found the

---

[3] The Florida Supreme Court relied on *Mason* in the instant case.

[4] A trial court's unpublished order from a New Hampshire Superior Court is cited in *U.S. v. Uribe*, 709 F.3d 646 (7th Cir. 2013), as also holding that a color discrepancy is insufficiency. *See State v. O'Neill*, 2007 WL.2227131 (N.H. Super. Ct. Apr. 17, 2007).

discrepancy to not create a reasonable suspicion of a registration violation, it did so on the basis that the registration law at issue did not apply to the defendant, as opposed to any inherent insufficiency in the color discrepancy. *Id.* at 653. Thus, *Uribe* falls between courts that hold the discrepancy supports reasonable suspicion and those that hold it does not.

As discussed above, Florida's constitution conforms to the Fourth Amendment protections of the federal constitution, so there is no concern of a higher state protection than the Fourth Amendment or alternative ground for disposition under state law. Because this case involves a conformity clause it presents an excellent vehicle to resolve the conflict on whether a discrepancy between a vehicle's color and the color indicated by the license tag attached to the vehicle is sufficient to establish reasonable suspicion for a temporary detention under the Fourth Amendment.

C. The Issue Presented by This Case is Significant in That It's Resolution Will Affect Law Enforcement Practices in the Detection and Prevention of Crime.

Most of the courts to have addressed the issue of traffic stops based on a color discrepancy between a vehicle and the color associated with its license plate, even those that have ruled against the State's position, have recognized a number of crimes that could be indicated by such a discrepancy, such as auto theft and an illegal transfer of license plates between vehicles. *See Teamer*, 151 So.3d 421 at 427

(recognizing the discrepancy as presenting an ambiguous situation to an officer); *see also Van Teamer v. State*, 108 So.3d 664, 668 (Fla. 1st DCA 2013)(recognizing that the discrepancy raises a legitimate concern that a vehicle is stolen or the plates swapped); *Aders v. State*, 67 So.3d 368, 371 (Fla. 4th DCA 2011), *disapproved of by Teamer*, 151 So.3d 421 (holding that the discrepancy raised a reasonable suspicion of illegally swapped plates); *Smith*, 713 N.E. 2d 338 at 342 (holding that the discrepancy could indicate a vehicle was stolen or retagged); *Creel*, 2012 WL.949147 at 2 (same); *Schneider*, 2014 Ark. App. 711 at 4 (same); *Andrews*, 658 S.E.2d 126 at 128-129 (holding that the discrepancy established reasonable suspicion that plate was switched). It is entirely reasonable that in many cases only a discrepancy will be apparent to an officer. Thus, an erroneous ruling which prohibits traffic stops based on a discrepancy effectively thwarts law enforcement in these efforts. Moreover, the discredited Fourth Amendment reasoning reintroduced by *Teamer* is likely to propagate to other courts, both within and without Florida, thereby thwarting crime prevention regarding any and all criminal activity

The decision of the Florida Supreme Court in the instant case will have lasting repercussions if left uncorrected, and the State's interest in law enforcement will be unnecessarily hindered. Correcting the misapplication of this Court's precedent and resolving the various conflicting opinions regarding the color discrepancy is essential in maintaining the ability of law enforcement

throughout the nation to effectively combat crime within the confines of the Fourth Amendment.

CONCLUSION

For the foregoing reasons, the State of Florida respectfully requests this Court grant the Petition for Writ of Certiorari and reverse and remand the decision of the Florida Supreme Court.

Respectfully submitted,

PAMELA JO BONDI
Attorney General of Florida

Carolyn M. Snurkowski
Associate Deputy Attorney General
Jay Kubica*
Assistant Attorney General
jay.kubica@myfloridalegal.com
PL-01, The Capitol
Tallahassee, FL 32399-1050
850-414-3300
**Counsel of Record*

No. 15-____

In the Supreme Court of the United States

STATE OF FLORIDA,

Petitioner,

v.

KERRICK VAN TEAMER,

Respondent.

On Petition for Writ of Certiorari to the
Florida District Court of Appeal, First District

APPENDIX TO PETITION FOR WRIT OF CERTIORARI BY PETITIONER STATE OF FLORIDA

PAMELA JO BONDI
Attorney General of Florida
Carolyn M. Snurkowski
Assistant Deputy Attorney General
Jay Kubica*
Assistant Attorney General
jay.kubica@myfloridalegal.com
PL-01, The Capitol
Tallahassee, FL 32399-1050
850-414-3300
850-410-2672 fax
Counsel for State of Florida
**Counsel of Record*

TABLE OF CONTENTS TO APPENDIX

No. 15-____

In the Supreme Court of the United States

STATE OF FLORIDA,

Petitioner,

v.

KERRICK VAN TEAMER,

Respondent.

On Petition for Writ of Certiorari to the Florida Supreme Court

APPENDIX A TO PETITION FOR WRIT OF CERTIORARI BY PETITIONER STATE OF FLORIDA

PETITIONER'S ANSWER BRIEF IN THE FLORIDA DISTRICT COURT OF APPEAL, FIRST DISTRICT

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

KERICK VAN TEAMER, Appellant, v. STATE OF FLORIDA, Appellee.	Case No. 1D11-3491

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR ESCAMBIA COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

PAMELA JO BONDI
ATTORNEY GENERAL

SAMUEL A. PERRONE
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0017444

OFFICE OF THE ATTORNEY
GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300
(850) 992-6674 (FAX)
COUNSEL FOR APPELLEE

TABLE OF CONTENTS

PAGE(S)

TABLE OF CITATIONS

CASES PAGE(S)

FEDERAL CASES

STATE CASES

DOCKETED CASES

OTHER

PRELIMINARY STATEMENT

Appellant, KERICK VAN TEAMER, was the defendant in the trial court; this brief will refer to Appellant as such, Defendant, or by proper name. Appellee, the State of Florida, was the prosecution below; the brief will refer to Appellee as such, the prosecution, or the State.

The record on appeal consists of two (2) volumes, which will be referenced as "RI," and "RII," respectively, followed by any appropriate page number, as well as three (3) supplemental volumes, which will be referenced as "SRI," "SRII," and "SRIII," respectively, followed by any appropriate page number. "IB" will designate Appellant's Initial Brief, followed by any appropriate page number.

All bold-type emphasis is supplied, and all other emphasis is contained within original quotations unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Pursuant to Fla. R. App. P. 9.210(c), the State provides its own Statement of the Case and Facts.

On June 22, 2010, Deputy Christopher Knotts, with the Escambia County Sheriff's Office, was traveling westbound on a public thoroughfare, with a bright green Chevy vehicle traveling in front of him (RI 21). The bright green Chevy pulled into a parking lot of a business and Deputy Knotts proceeded on his way (RI 22). A brief time later, Deputy Knotts once again encountered the bright green Chevy and ran the tag of the vehicle through

his computer database with the Department of Highway Safety and Motor Vehicles (RI 22-23). Deputy Knotts testified at the suppression hearing that the information he received on the tag was that it belonged to a blue Chevrolet (RI 23). Noting that the colors were inconsistent, Deputy Knotts also acknowledged that in his training and experience he has encountered individuals that will switch tags on vehicles, and that from his vantage point he could not determine whether or not the tag that was on the vehicle was actually registered to that vehicle (RI 23). At that point, Deputy Knotts effectuated a traffic stop of the vehicle (RI 24).

Deputy Knotts approached the vehicle on the driver's side and told the driver, later identified as Appellant, that the tag did not match the vehicle (RI 24). As he was speaking with Appellant, Deputy Knotts noticed an odor emanating from the vehicle that smelled like marijuana (RI 24-25). In speaking with Appellant, Deputy Knotts was provided an explanation by Appellant as to the reason for the color discrepancy, which was that he had just recently painted the vehicle (RI 25). Deputy Knotts acquired Appellant's registration, returned to his patrol vehicle and requested a second deputy to respond to the scene (RI 25). As for his reason in calling for a second officer to assist, Deputy Knotts testified that it was his intention to initiate a probable cause search of the vehicle based upon the odor of marijuana emanating therefrom (RI 25).

Once the backup officer arrived, Deputy Knotts returned to Appellant, issued him a warning for the variance in color from what was listed on the registration, and also informed him about the odor

he detected (RI 26). Appellant responded to Deputy Knotts by stating that he had smoked marijuana earlier (RI 36). Deputy Knotts then proceeded to search Appellant, who had no contraband on his person, but did possess a large amount of U.S. currency, approximately over $1,100 (RI 26). At that point, a passenger in Appellant's vehicle was also asked to step out of the vehicle (RI 26). Deputy Knotts then proceeded to search the vehicle, which revealed the presence of narcotics inside the center console cup, specifically marijuana and crack cocaine (RI 27,52).

Appellant was subsequently arrested and charged via Amended Information with Trafficking in Cocaine (Count One), Possession of a Controlled Substance (Count Two) and Possession of Drug Paraphernalia (Count Three) (RI 3). On October 4, 2010, Appellant filed a Motion to Suppress Evidence, and a hearing was held on December 9, 2010 (RI 8-68). The trial court denied Appellant's Motion to Suppress through written order on March 13,2012 (SRII 180).[1] On June 16, 2011, following a jury trial, Appellant was convicted as charged and was sentenced to a term of six (6) years incarceration as

---

[1]The record indicates that on March 13, 2012, a "Stipulated Motion and Order" was filed in which the Assistant State Attorney and defense counsel stipulated that Appellant's Motion to Suppress was dispositive, that the trial court had orally denied the Motion, and requested the trial court issue a written order manifesting the trial court's prior denial. (SRII 176).

to Count One and time served as to Counts Two and Three (RI 116-122). This appeal follows.

SUMMARY OF ARGUMENT

ISSUE I.

The trial court did not err in denying Appellant's Motion to Suppress. Deputy Christopher Knotts, with the Escambia County Sheriff's Office, had reasonable suspicion that the discrepancy in color of Appellant's vehicle from what was being observed to what was listed in the computer database was possibly indicative of wrongdoing in the registration of the vehicle, justified the stopping of Appellant. Thus, the trial court did not err in denying Appellant's Motion to Suppress. Accordingly, Appellant has failed to establish an entitlement to relief, and the instant claim should be denied.

ISSUE II.

Appellant's claim that his conviction is unconstitutional as allegedly being a strict liability offense is without merit. This Court has upheld the constitutionality of convictions pursuant to Chapter 893, as has the Florida Supreme Court. Appellant has failed to establish an entitlement to relief, and the instant claim should be denied.

ISSUE III.

Appellant's claim that his sentence is unconstitutional, as in ISSUE II supra, is without merit. Convictions and sentences pursuant to Chapter 893 have been upheld as being constitutional despite Appellant's strict liability

argument to the contrary. Appellant has failed to establish an entitlement to relief, and the instant claim should be denied.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS (Restated)

Standard of Review

Because a trial court's ruling on a motion to suppress involves a mixed question of law and fact, appellate courts must follow a mixed standard of review. See Seibert v. State, 923 So. 2d 460, 468 (Fla. 2006), citing Fitzpatrick v. State, 900 So. 2d 495, 510 (Fla. 2005) ("Because a trial court's ruling on a motion to suppress is a mixed question of law and fact, we defer to the trial court on the factual issues but consider the constitutional issues de novo."). Analogous to a motion for judgment of acquittal, the reviewing court examines the evidence adduced at the suppression hearing "in the light most favorable to sustaining the trial court's ruling." State v. Moore, 791 So. 2d 1246, 1247 (Fla. 1st DCA 2001), citing San Martin v. State, 705 So. 2d 1337 (Fla. 1997), cert. denied, 525 U.S. 841 (1998).

Equally analogous, the appellate court must affirm the trial court's factual findings if competent and substantial evidence supports those findings. See Wheeler v. State, 956 So. 2d 517, 520 (Fla. 2d DCA 2007), citing Caso v. State, 524 So. 2d 422 (Fla. 1988) ("The trial court's factual findings must be affirmed if supported by competent, substantial evidence..."); see also Ornelas v. United States, 517

U.S. 690, 699 (1996):

> A trial judge views the facts of a particular case in light of the distinctive features and events of the community; likewise, a police officer views the facts through the lens of his police experience and expertise. The background facts provide a context for the historical facts, and when seen together yield inferences that deserve deference.

However, the appellate courts must apply the de novo standard when reviewing the trial court's application of the law to those facts. See Wheeler at 520, citing Ornelas ("... while the trial court's application of the law to those facts is reviewed de novo."); see also Moore at 1247 ("While the reviewing court is required to accept the trial court's determination of the historical facts surrounding the challenged seizure and/or search, it reviews de novo the application of the law to the historical facts.").

This bifurcated review allows the appellate court to accomplish three tasks: (1) defer to the trial court's ability "to evaluate and weigh the testimony and evidence based upon its observation of the bearing, demeanor, and credibility"; (2), ensure that trial courts apply the law uniformly "in decisions based on similar facts"; and (3), protect the Constitutional rights of the defendant. Conner v. State, 803 So. 2d 598, 607-608 (Fla. 2001), quoting Stephens v. State, 748 So. 2d 1028, 1032 (Fla. 1999).

Conformity Clause

Initially, the State notes that pursuant to Article I, section 12 of the Florida Constitution, this

Court shall interpret search and seizure issues in conformity with the Fourth Amendment to the United States Constitution, as interpreted by the Supreme Court of the United States. See Doorbal v. State, 837 So. 2d 940, 952 n.32 (Fla. 2003) ("We are required to follow the United States Supreme Court's interpretations of the Fourth Amendment."); see also Bernie v. State, 524 So. 2d 988, 991 (Fla. 1988) ("With this amendment, however, we are bound to follow the interpretations of the United States Supreme Court with relation to the fourth amendment, and provide no greater protection than those interpretations.").

Burden of Persuasion and Presumption of Correctness

Litigation cannot proceed in an adversarial system without someone bearing the burden of persuasion. One device for determining that burden is presumptions. Judgments are presumed correct, which shifts the burden to the losing side, here Appellant, to convince the appellate court to vacate the presumptively correct judgment, Savage v. State, 156 So.2d 566, 568 (Fla. 1st DCA 1963); Lynn v. City of Fort Lauderdale, 81 So.2d 511, 513 (Fla. 1955); § 924.051 (7), Fla. Stat.

It is the trial court's decision, not its reasoning that is presumed correct, and in support of that decision, "the appellee can present any argument supported by the record even if not expressly asserted in the lower court." Dade County School Board v. Radio Station WQBA, 731 So.2d 638 (Fla. 1999). The rationale for this rule is that the appellate courts do not waste scarce judicial resources by remanding a case for the trial court to

make the identical ruling, albeit for a different reason.

Merits

Appellant asserts that the trial court erred in denying his Motion to Suppress. Specifically, Appellant avers that the "mere fact that the color of a vehicle does not match the color indicated on motor vehicle registration records does not establish a reasonable, articulable suspicion of criminal activity, or even traffic violation, to support a stop of the vehicle." (IB 8). The State, however, respectfully disagrees. The mere fact of the change in color was not the basis for the stop, but, instead, it was what the discrepancy represented in terms of potential illegality that led to the stop. Thus, the trial court did not err in denying Appellant's Motion to Suppress.

Reasonable Suspicion Existed to Justify the Stop

Initially, the State notes that there are three levels of police-citizen encounters, the second level being an investigatory stop in which a police officer may detain a citizen temporarily if the officer has reasonable suspicion to believe the persons has committed, is committing, or is about to commit a crime. See Popple v. Florida, 626 So. 2d 185, 186 (Fla. 1993); see also § 901.151(2), Fla. Stat. When determining whether there is an articulable reasonable suspicion, the court must look at the totality of the circumstances. See United States v. Arvizu, 534 U.S. 266, 273 (2002); see also State v. Pye, 551 So. 2d 1237, 1238 (Fla. 1st DCA 1989).

In Ornelas v. United States, 517 U.S. 690, 695-96 (1996), the United States Supreme Court

observed:

> Articulating precisely what 'reasonable suspicion' and 'probable cause' mean is not possible. They are commonsense, nontechnical conceptions that deal with "'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" Illinois v. Gates, 462 U.S. 213, 231, 103 S.Ct. 2317, 2328, 76 L.Ed.2d 527 (1983) (quoting Brinegar v. United States, 338 U.S. 160, 175, 69 S.Ct. 1302, 1311, 93 L.Ed. 1879 (1949)); see United States v. Sokolow, 490 U.S. 1, 7-8, 109 S.Ct. 1581, 1585-1586, 104 L.Ed.2d 1 (1989). As such, the standards are 'not readily, or even usefully, reduced to a neat set of legal rules.' Gates, supra, at 232, 103 S.Ct., at 2329. We have described reasonable suspicion simply as 'a particularized and objective basis' for suspecting the person stopped of criminal activity, United States v. Cortez, 449 U.S. 411, 417-418, 101 S.Ct. 690, 694-695, 66 L.Ed.2d 621 (1981), and probable cause to search as existing where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found, see Brinegar, supra, at 175-176, 69 S.Ct., at 1310-1311; Gates, supra, at 238, 103 S.Ct., at 2332. We have cautioned that these two legal principles are not 'finely-tuned

> standards,' comparable to the standards of proof beyond a reasonable doubt or of proof by a preponderance of the evidence. Gates, supra, at 235, 103 S.Ct., at 2330-2331. They are instead fluid concepts that take their substantive content from the particular contexts in which the standards are being assessed. Gates, supra, at 232, 103 S.Ct., at 2329; Brinegar, supra, at 175, 69 S.Ct., at 1310 ('The standard of proof [for probable cause] is ... correlative to what must be proved'); Ker v. California, 374 U.S. 23, 33, 83 S.Ct. 1623, 1630, 10 L.Ed.2d 726 (1963) ("This Cour[t] [has a] long-established recognition that standards of reasonableness under the Fourth Amendment are not susceptible of Procrustean application'; '[e]ach case is to be decided on its own facts and circumstances' (internal quotation marks omitted)); Terry v. Ohio, 392 U.S. [1, 29 (1968)], 88 S.Ct., at 1884 (the limitations imposed by the Fourth Amendment 'will have to be developed in the concrete factual circumstances of individual cases').

Id. at 695-696. In particular, the Court further noted:

> The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the

> standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause.

Id. at 696. In United States v. Cortez, 449 U.S. 411(1981), the Court said of the requirements necessary for an officer to conduct a lawful stop:

> Courts have used a variety of terms to capture the elusive concept of what cause is sufficient to authorize police to stop a person. Terms like 'articulable reasons' and 'founded suspicion' are not self-defining; they fall short of providing clear guidance dispositive of the myriad factual situations that arise. But the essence of all that has been written is that the totality of the circumstances--the whole picture--must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.

Id. at 417-418. In particular, the Court further noted that the determination of whether an officer had an articulable reasonable suspicion is to be made from the totality of the circumstances. Specifically, the Court stated:

> The idea that an assessment of the whole picture must yield a particularized suspicion contains two elements, each of which must be present before a stop is

> permissible. First, the assessment must be based upon all of the circumstances. The analysis proceeds with various objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers. From these data, a trained officer draws inferences and makes deductions -- inferences and deductions that might well elude an untrained person.

Id.

Additionally, the Court concluded in Terry v. Ohio, 392 U.S. 1 (1968), that an officer could, without violating the protections of the Fourth Amendment, conduct a brief investigatory stop. The officer in order to conduct such a stop must have a reasonable suspicion that "criminal activity may be afoot." Id. In United States v. Arvizu, 534 U.S. 266, 274, the Court stated that "[a]lthough an officer's reliance on a mere 'hunch' is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required for probable cause." See also Illinois v. Wardlow, 528 U.S. 119, 123 (2000)(describing reasonable suspicion as a "less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence ....".).

In United States v. Sokolow, 490 U.S. 1, 10 (1989), the Court further stated:

> We noted in Gates, 462 U.S., at 243-244, n. 13, that "innocent behavior will frequently provide the basis for a showing of probable

> cause," and that "[i]n making a determination of probable cause the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of noncriminal acts." That principle applies equally well to the reasonable suspicion inquiry.

In State v. Stevens, 354 So. 2d 1244, 1247 (Fla. 4th DCA 1978), the court stated:

> Certain factors might then be evaluated to determine whether they reasonably suggested the suspect's possible commission, existing or imminent, of a crime: The time; the day of the week; the location; the physical appearance of the suspect; the behavior of the suspect; the appearance and manner of operation of any vehicle involved; anything incongruous or unusual in the situation as interpreted in the light of the officer's knowledge.

At an evidentiary hearing on a motion to suppress, it is the trial court that sits as the sole finder of fact and arbitrator of witness credibility. See State v. Moore, 791 So. 2d 1246, 1250 (Fla. 1st DCA 2001). "In reviewing an order on a motion to suppress, the court considers the evidence presented at the suppression hearing in the light most favorable to sustaining the trial court's ruling." Id. at 1247. Furthermore, a trial court's "finding of fact ... will be

sustained on review if supported by competent substantial evidence." Marquard v. State, 850 So. 2d 417, 424 (Fla. 2002).

In Stephens v. State, 748 So. 2d 1028 (Fla. 1999), the Florida Supreme Court observed:

> We recognize and honor the trial court's superior vantage point in assessing the credibility of witnesses and in making findings of fact. The deference that appellate courts afford findings of fact based on competent, substantial evidence is an important principle of appellate review. In many instances, the trial court is in a superior position "to evaluate and weigh the testimony and evidence based upon its observation of the bearing, demeanor, and credibility of the witnesses." Shaw v. Shaw, 334 So. 2d 13, 16 (Fla. 1976). When sitting as the trier of fact, the trial judge has the "superior vantage point to see and hear the witnesses and judge their credibility." Guzman v. State, 721 So. 2d 1155, 1159 (Fla. 1998), cert. denied, 526 U.S. 1102, 119 S.Ct. 1583, 143 L.Ed.2d 677 (1999). Appellate courts do not have this same opportunity.

Id. at 1034; see also Tibbs v. State, 397 So. 2d 1120, 1123 (Fla. 1981). Where a trial court's order "is supported by competent substantial evidence, ... this Court will not 'substitute its judgment for that of the trial court on questions of fact, likewise of the credibility of the witnesses as well as the weight to

be given to the evidence by the trial court.'" Demps v. State, 462 So. 2d 1074, 1075 (Fla. 1984), quoting, Goldfarb v. Robertson, 82 So. 2d 504, 506 (Fla. 1955)(citation omitted); Smith v. State, 697 So. 2d 991, 992 (Fla. 4th DCA 1997)("[I]t is within the province of the finder of fact 'to rely upon the testimony found by it to be worthy of belief and to reject such testimony found by it to be untrue.'")(citation omitted).

In the case *sub judice*, the trial court properly determined that Deputy Knotts was justified in stopping the vehicle driven by Appellant. In Whren v. United States, 517 U.S. 806 (1996), the United States Supreme Court held that a temporary stop and detention of a motorist is valid under the Fourth Amendment where probable cause exists to believe that there was a violation to traffic laws. Further, pursuant to the Court's subsequent decision in Maryland v. Wilson, 519 U.S. 408 (1997), once law enforcement has probable cause to make a temporary stop and detention of a vehicle, they are also lawfully permitted to order both a driver and passenger(s) to exit the vehicle without violating the Fourth Amendment prohibitions against unreasonable seizures. See also State v. Hernandez, 718 So.2d at 836.

Here, Deputy Knotts testified at the suppression hearing that when he ran the tag number of the vehicle being driven by Appellant into the Department of Highway Safety and Motor Vehicles database, which revealed the vehicle to which the registration belonged was different in color (RI 23). Deputy Knotts also testified that the database information provided only that, in addition

to the color, only the make of the vehicle was provided, not the model (RI 30). Deputy Knotts noted that he was aware that "it's illegal to make a false application regarding information on a vehicle for the registration of said vehicle." (RI 32). Based on this information provided, Deputy Knotts stopped Appellant's vehicle. Thus, it was not solely the fact that the color listed in the database for Appellant's vehicle was different, but, instead, it was what the discrepancy in the two colors represented in the mind of Deputy Knotts. Specifically, the fact that Appellant may have falsely provided inaccurate information in the registering of his vehicle.

In Aders v. State, 67 So.3d 368 (Fla. 4th DCA 2011), the Fourth District Court of Appeal dealt with the same scenario as at issue in the case sub judice. In Aders, the defendant's vehicle was stopped when a deputy learned, via a law enforcement database, that the color of the vehicle was listed differently on the vehicle's registration. Id. at 369. At that point the deputy stopped the vehicle, was given consent to search the vehicle, upon which he discovered drug paraphernalia inside. Id. at trial, the defendant moved to suppress the discovery of the paraphernalia on the basis that the deputy had insufficient justification to stop the vehicle based on the change in color. The trial court ruled the stop was proper, as did the Fourth District Court of Appeal in affirming the trial court's decision.

Specifically, the Fourth District held that "a color discrepancy between a car and its computer registration creates sufficient reasonable suspicion to justify a traffic stop for further investigation." Id. at 371. The Court acknowledged that there was no legal

requirement for a person to update his registration to indicate a vehicle has received a new color. However, the Court also noted that the mere fact that there was a discrepancy in the vehicle's color was not the sole concern. To the contrary, it was what the discrepancy represented, namely, the possibility that license plate may have been improperly transferred. Such an action would have been violative of Section 320.261, Florida Statutes. Id. "A color discrepancy is enough to create a reasonable suspicion in the mind of a law enforcement officer of the violation of this criminal law." Id. (citing Smith v. State, 713 N.E. 2d 338, 341 (Ind.Ct.App.1999)(traffic stop valid where computer check on vehicle's license plate revealed that the plate was registered to a yellow vehicle, rather than blue and white); Andrews v. State, 658 S.E.2d 126, 127-28 (2008)(reasonable suspicion existed to stop vehicle where computer check revealed license registered to a silver vehicle, not the green-gold vehicle observed)).

Although Appellant acknowledges the Aders decision he, nonetheless, argues that Aders is "not controlling authority and, moreover, urges this Court to adopt the well reasoned decisions in United States v. Uribe, 2011 WL 4538407 (S.D. Ind. Sept. 28, 2011), and Commonwealth v. Mason, 2010 WL 768721 (Va. Ct. App. Mar. 9, 2010)." (IB 9). The State respectfully disagrees. In Uribe, there was no argument made that any Indiana law was violated, unlike here, where Deputy Knotts testified as to the providing of false information when registering a vehicle, and the impropriety therein. With respect to Mason, as the Aders Court noted, the focus in that

decision was the application of Virginia state law and the "subjective" intentions of the officer in effectuating the stop, as opposed to the objective evaluation of the totality of the circumstances, as is performed in Florida. Mason, 67 So.3d at 372.

Here, as in Aders, Deputy Knotts did not stop Appellant's vehicle solely because there was a discrepancy in the color of the vehicle, but, instead, it was because of what that discrepancy represented. As was discussed during Deputy Knott's testimony, the fact that the computer database listed Appellant's vehicle as being a color different than that which Deputy Knotts was observing provided the reasonable suspicion that there could have been illegality with respect to the vehicle, related to that discrepancy. While the failure to update a vehicle registration to reflect a new color is not in specific violation of a Florida law, the improperly licensing and providing of false information in the registering of a vehicle is prohibitive of Chapter 320, Florida Statutes, in particular Sections 320.06 and 320.061, Florida Statutes. Thus, the State argues that the trial court did not err in determining that Deputy Knotts had the requisite reasonable suspicion to stop Appellant's vehicle. Accordingly, Appellant has failed to establish an entitlement to relief, and the instant claim should be denied.

ISSUE II

WHETHER THE OFFENSE OF TRAFFICKING IN COCAINE IS UNCONSTITUTIONAL ON ITS FACE, REQUIRING PUNISHMENT FOR AN ALLEGED STRICT LIABILITY OFFENSE (Restated)

Standard of Review

The constitutionality of a statute is a question of law subject to *de novo* review. Crist v. Ervin, 56 So.3d 745, 747 (Fla. 2010); Simmons v. State, 886 So.2d 399, 400 (Fla. 1st DCA 2004)(noting that the constitutionality of criminal statutes are reviewed de novo). Statutes, however, are presumed to be constitutional. Crist v. Florida Ass'n of Criminal Defense Lawyers, Inc., 978 So.2d 134, 139 (Fla. 2008)(noting that despite the *de novo* standard of review, statutes come to the court clothed with a presumption of constitutionality and should any doubt exist as to their propriety, the presumption is in favor of constitutionality). "To overcome the presumption of constitutionality, the invalidity must appear beyond a reasonable doubt, for it must be presumed the legislature intended to enact a valid law." Franklin v. State, 87 So.2d 1063, 1073 (Fla. 2004).

Merits

Appellant asserts that his conviction

and sentence for Trafficking in Cocaine was unconstitutional, citing to Chicone v. State, 684 So.2d 736 (Fla. 1996), and Shelton v. Secretary, Dept. of Corrections, 802 F.Supp.2d (M.D. Fla. 2011). In so citing, Appellant alleges that his offense of conviction is a strict liability offense, which would be unconstitutional. The State, however, respectfully disagrees. Appellant's instant claim has been raised and repeatedly rejected by this Court, most recently in Flagg v. State, 74 So.3d 138 (Fla. 1st DCA 2011), as well as the Florida Supreme Court in State v. Adkins, 2012 WL 2849485 (Fla. July 12, 2012). Appellant's conviction and sentence does not violate due process under either the United States or Florida Constitutions. Thus, this Court should affirm.

In Flagg, the defendant was convicted of Possession of a Controlled Substance in violation of Section 893.13(6)(a) and Possession of Drug Paraphernalia in violation of Section 893.147(1)(b). The defendant challenged, among other things, the constitutionality of Section 893.13, Florida Statutes, based on the elimination of the *mens rea* requirement. In noting that "this exact argument has been rejected many times by this court and the other district courts of appeal," this Court acknowledged the defendant's contention that those prior decisions should be receded from based on the reasoning expressed in Shelton, which

held Section 893.13 as being facially unconstitutional based on the same argument the defendant raised on appeal. This Court went on to hold:

> Shelton is not binding on this court or any other state court, and we see no reason to recede from our settled precedent simply because one federal judge has a different view of the law than this court. Moreover, we do not find the analysis in Shelton persuasive because, among other reasons, the decision misperceives the operation of the affirmative defense in section 893.101. The statute does not, as Shelton implied, require the defendant to establish his innocence by proving a lack of knowledge, see Wright, 920 So.2d at 25 (explaining that section 893.101 "does not require the defendant to prove or disprove knowledge"); rather, the statute provides that if the defense is raised, the state has the burden to overcome the defense by proving beyond a reasonable doubt that the defendant knew of the illicit nature of the drugs. Id.; see also Fla. Std. Jury Instr. (Crim.) 25.7 (explaining that the jury should find the defendant not guilty if they "have reasonable doubt on the question of whether (defendant) knew of the illicit nature of the controlled substance"). Furthermore, because lack of knowledge is not a defense to a true strict liability crime, the availability of the affirmative defense in section 893.101 undermines the

essential premise in Shelton that the offenses in section 893.13 are strict liability crimes that may not be constitutionally punished as felonies.

We recognize that the Second District recently certified the constitutional issue raised in this case to the Florida Supreme Court for immediate resolution pursuant to Florida Rule of Appellate Procedure 9.125. See State v. Adkins, 2011 WL 4467637 (Fla. 2d DCA Sept. 28, 2011). Although we agree that the uncertainty caused by Shelton is affecting the administration of justice around the state and that an expeditious decision from the supreme court addressing the constitutionality of section 893.13 is needed, we do not see any reason not to reaffirm our view that the statute is constitutional. Indeed, we believe that a definitive statement from this court reaffirming the constitutionality of section 893.13 notwithstanding Shelton will promote the consistent administration of justice by resolving the issue for the trial courts, thereby allowing drug prosecutions to proceed, at least until the supreme court or another district court weighs in on the issue. Of course, defendants remain free to raise the constitutional argument to preserve the issue for appellate or federal review, but this decision will at least preserve the status quo until the supreme court addresses the issue, and it

> should also address the Second District's legitimate concern in Adkins that, without a definitive ruling from a higher court, different circuits (or even different judges in the same circuit) may continue to take opposite positions on the issue.
>
> In sum, for the reasons stated above, we reject Flagg's claim that section 893.13 is facially unconstitutional and affirm his conviction and sentence.

In Adkins, the Florida Supreme Court held:

> Here, the Legislature's decision to make the absence of knowledge of the illicit nature of the controlled substance an affirmative defense is constitutional. Under section 893.13, as modified by section 893.101, the State is not required to prove that the defendant had knowledge of the illicit nature of the controlled substance in order to convict the defendant of one of the defined offenses. The conduct the Legislature seeks to curtail is the sale, manufacture, delivery, or possession of a controlled substance, regardless of the defendant's subjective intent. As a result, the defendant can concede all elements of the offense but still coherently raise the "separate issue," Patterson, 432 U.S. at 207, of whether the defendant lacked knowledge of the illicit nature of the controlled substance. The affirmative defense does not ask the defendant to disprove something that the

> State must prove in order to convict, but instead provides a defendant with an opportunity to explain why his or her admittedly illegal conduct should not be punished. "It is plain enough that if [the sale, manufacture, delivery, or possession of a controlled substance] is shown, the State intends to deal with the defendant as a [criminal] unless he demonstrates the mitigating circumstances." Patterson, 432 U.S. at 206. Thus, the affirmative defense does not improperly shift the burden of proof to the defendant.

Based on the Florida Supreme Court's decision in Adkins, as well as this Court's decision in Flagg, the State asserts that Appellant's claim is without merit, and has been definitively rejected. Section 893.101 is not unconstitutional, and other than attempting to distinguish the clear precedent holding as such, Appellant fails to provide any authority upon which this Court should rely in finding otherwise. Accordingly, Appellant has failed to establish an entitlement to relief, and the instant claim should be denied.

ISSUE III

WHETHER APPELLANT'S SENTENCE WAS UNCONSTITUTIONAL AND VIOLATES DUE PROCESS (Restated)

Appellee adopts and incorporates the argument found in ISSUE II, supra. This Honorable court should affirm Appellant's conviction and sentence for Trafficking in Cocaine based on *stare decisis* and the above argument.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court affirm Appellant's judgment and sentence entered in this case.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Richard M. Summa, Assistant Public Defender, Office of the Public Defender, by ELECTRONIC MAIL at richard.summa@flpd2.com on July 19, 2012.

Respectfully submitted and served,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/Samuel A. Perrone
By: SAMUEL A. PERRONE
Attorney for State of Florida

Assistant Attorney General
Office of the Attorney General
Pl-01, the Capitol
Tallahassee, Fl 32399-1050
(850) 414-3300
(850) 922-6674 (Fax)

Florida Bar No. 0017444

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

/s/Samuel A. Perrone
SAMUEL A. PERRONE
Attorney for State of Florida

No. 15-____

In the Supreme Court of the United States

STATE OF FLORIDA,

Petitioner,

v.

KERRICK VAN TEAMER,

Respondent.

On Petition for Writ of Certiorari to the Florida Supreme Court

APPENDIX B TO PETITION FOR WRIT OF CERTIORARI BY PETITIONER STATE OF FLORIDA

OPINION OF THE FLORIDA DISTRICT COURT OF APPEAL, FIRST DISTRICT

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

KERICK VAN TEAMER,
Appellant,
v. CASE NO. 1D11-3491

STATE OF FLORIDA,
Appellee.
_____/

Opinion filed December 21, 2012.

An appeal from the Circuit Court for Escambia County.
Michael G. Allen, Judge.

Nancy A. Daniels, Public Defender, and Richard M. Summa, Assistant Public Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Samuel A. Perrone, Assistant Attorney General, Tallahassee, for Appellee.

WOLF, J.

Appellant, Kerick Van Teamer, seeks review of the trial court's denial of his motion to suppress and his subsequent judgment and sentence for felony drug

trafficking. We reverse the trial court's denial of appellant's motion to suppress and certify conflict with the Fourth District's opinion Aders v. State, 67 So. 2d 368 (Fla. 4th DCA 2011). Because we reverse, it is unnecessary to reach appellant's other issues raised on appeal.

On June 22, 2010, at about 3:00 p.m., an Escambia County Deputy Sheriff observed appellant driving a bright green Chevy. The deputy "ran" the license plate tag number through the Department of Highway Safety and Motor Vehicles (DHSMV). Upon learning that the plate number was registered to a *blue* Chevy, the deputy pulled the vehicle over based only on the color inconsistency. Upon interviewing the occupants, the deputy learned that the vehicle had recently been painted, thus explaining the inconsistency. During the stop, however, the deputy smelled marijuana emanating from the car and conducted a search of appellant, his passenger, and the vehicle. Marijuana and crack cocaine were recovered from the vehicle, and about $1,100 in cash was recovered from appellant. Appellant was charged with trafficking in cocaine (between 28-200 grams), possession of marijuana (less than 20 grams), and possession of drug paraphernalia, scales.

Appellant filed a dispositive motion to suppress the results of the stop as an unconstitutional search, arguing that the color inconsistency alone was an insufficient basis to justify an investigatory stop. During the hearing on the motion, the deputy explained that the color inconsistency piqued his interest. He acknowledged

that, in his training and experience, he encountered individuals who would switch vehicle plates, and he could not confirm whether the vehicle identification number matched the plates without pulling over the vehicle.

On cross examination, the deputy agreed that the only thing that was out of the ordinary was the inconsistency of the vehicle color from the registration. He acknowledged he observed no other traffic violation, suspicious or furtive behavior, nor was he aware of any reports of stolen vehicles or swapped plates in the area.

The trial court denied the motion and in a later statement of proceedings explained that "because the registration was not consistent with the color of the vehicle," the officer made an investigatory stop. The court determined that the officer "had a legal right to conduct an investigatory stop when a registration search of the automobile license tag reflected a different color than the observed color of the vehicle."

Appellant was subsequently tried before a jury, convicted of the three counts, and sentenced to six years' imprisonment for the trafficking count and time served for the other misdemeanor counts.

On appeal, appellant argues the mere fact that the color of a vehicle does not match the color indicated on motor vehicle registration records does not establish a reasonable, articulable suspicion of criminal activity to support an investigatory stop of a

vehicle. He further argues this is particularly true in Florida where there is no legal requirement that a vehicle owner inform the DHSMV of a change in the color of the vehicle. The State argues the color inconsistency, despite being the result of innocent activity, represents the potential illegal activity of making a false application on vehicle registration, a violation of sections 320.06 and 320.061, Florida Statutes. Thus, the State argues this is a sufficient basis for an investigatory stop, as determined by the Fourth District in Aders v. State, 67 So. 3d 368 (Fla. 4th DCA 2011).

The appropriate standard of review is summarized in State v. Gandy, 766 So. 2d 1234, 1235-36 (Fla. 1st DCA 2000):

> A trial court's ruling on a motion to suppress comes to us clothed with a presumption of correctness, and we must interpret the evidence and reasonable inferences and deductions in a manner most favorable to sustaining that ruling. Johnson v. State, 608 So.2d 4, 9 (Fla.1992), cert. denied, 508 U.S. 919, 113 S.Ct. 2366, 124 L.Ed.2d 273 (1993). In this case, the facts are undisputed and supported by competent substantial evidence. See Caso v. State, 524 So.2d 422 (Fla.), cert. denied, 488 U.S. 870, 109 S.Ct. 178, 102 L.Ed.2d 147 (1988). Accordingly, our review of the trial court's application of the law to the facts is de novo. See United States v. Harris, 928 F.2d 1113, 1115–16 (11th

> Cir.1991). In addition, we are constitutionally required to interpret search and seizure issues in conformity with the Fourth Amendment of the United States as interpreted by the United States Supreme Court. See Fla. Const. art. I, § 12; Perez v. State, 620 So.2d 1256 (Fla.1993); Bernie v. State, 524 So.2d 988 (Fla.1988).

The Fourth DCA summarized the law on traffic stops as follows:

> The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of this provision." Whren v. United States, 517 U.S. 806, 809–10, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) (citations omitted). Accordingly, the stop must be reasonable for it to comport with the Fourth Amendment. Id. at 810.
>
> "[T]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." Id. (citing Delaware v. Prouse,

> 440 U.S. 648, 659, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979); Pennsylvania v. Mimms, 434 U.S. 106, 109, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977)). "Probable cause exists where the totality of the facts known to the officer at the time would cause a reasonable person to believe that an offense has been committed." State v. Hebert, 8 So.3d 393, 395 (Fla. 4th DCA 2009) (citing State v. Walker, 991 So.2d 928, 931 (Fla. 2d DCA 2008)). At the very least, an officer must have an articulable and reasonable suspicion that the driver violated, is violating, or is about to violate a traffic law. See United States v. Arvizu, 534 U.S. 266, 273, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002); Prouse, 440 U.S. at 654 & n. 11, 661, 663, 99 S.Ct. 1391.

Aders, 67 So. 3d at 370 (Fla. 4th DCA 2011). In making a reasonable suspicion inquiry, "'the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of noncriminal acts.'" U.S. v. Sokolow, 490 U.S. 1, 10 (1989) (quoting Illinois v. Gates, 462 U.S. 213, at 243–244, n.13 (1983)). However, an investigatory stop must be predicated on something more than an "inchoate and unparticularized suspicion or 'hunch.'" Terry v. Ohio, 392 U.S. 1, 27 (1968).

As a preliminary matter, we acknowledge that any discrepancy between a vehicle's plates and the registration may legitimately raise a concern that

the vehicle is stolen or the plates were swapped from another vehicle. We must, however, weigh that level of concern against a citizen's right under the Fourth Amendment to travel on the roads free from governmental intrusions. See State v. Diaz, 850 So. 2d 435, 439 (Fla. 2003) ("The real test is one of reasonableness, which involves balancing the interests of the State with those of the motorist."). The question before this court, therefore, is whether an inconsistency in color alone is a sufficient basis to support an officer's articulable and reasonable suspicion that a particular person is committing a crime *in the absence of any other suspicious behavior or circumstances* to allow a temporary seizure of a person for an investigatory stop.

Changing the color of a vehicle is not illegal, and the State does not require an owner to report the change in color to the DHSMV. See Aders, 67 So. 3d at 371. The question then is what degree of suspicion attaches to this particular noncriminal act? In Aders and the cases cited therein, a few courts have concluded that the color inconsistency alone created enough suspicion to justify an investigatory stop.

In Aders, the officer testified that after running the tags and discovering a color discrepancy, he decided to stop the vehicle. The circuit court concluded that the officer was justified in the stop because:

> [i]t is reasonable for a law enforcement officer to conclude that a registration plate affixed to a vehicle which differs in color

> from the vehicle described on the registration information from the Florida Department of Highway Safety, Motor Vehicles Division, even if the make and Model are the same or similar, warrants further investigation.

Id. at 371. The Fourth District affirmed the circuit court on the basis of Smith v. State, 713 N.E.2d 338, 341 (Ind. Ct. App. 1999) and Andrews v. State, 658 S.E.2d 126, 127-28 (Ga. Ct. App. 2008), both cases which found that a color discrepancy in the registration was enough to create an articulable reasonable suspicion that the license plate may have been switched from another vehicle. In Smith, however, the vehicle matched the description of another vehicle known to be involved in gang activity. Smith, 713 N.E.2d at 341 n.3. The Smith court also failed to acknowledge that Indiana law also does not require an owner to report a change in vehicle color. See U.S. v. Uribe, No. 2:10-cr-17-JMS-CMM, 2011 WL 5088646, at *3 n.4 (S.D. Ind. Oct. 25, 2011) (declining to follow Smith based on this point). It also appears that no other court besides Aders has relied on either Smith or Andrews for the cited proposition.

In one unpublished opinion from Iowa, a court found that a registration color discrepancy was sufficient to stop a motorcycle because Iowa vehicle registration law *does* require an accurate description of the vehicle. State v. Thiel, Nos. 01-0029, 1-486, 2001 WL 1448490 (Ct. App. Iowa Nov. 16, 2001).

Typically, where registration color discrepancy is at issue, it is one of several factors that support a reasonable suspicion. See U.S. v. Clarke, 881 F.Supp 115 (D. Del. 1995) (color discrepancy, out-of-state plates, presence in a high crime area, and inconsistency of driver gender combined with the officer's knowledge that the model was commonly stolen was enough to support an articulable and reasonable suspicion that the driver was in violation of the law); U.S. v. Cooper, 431 Fed.Appx. 399, 402 (6th Cir. 2011) (officers had a reasonable suspicion that a vehicle may have been stolen based on registration color discrepancy, the vehicle's location in an area known for car theft, and officer's testimony that thieves will purposely put a plate of the same make and model on a stolen vehicle); State v. Paggett, 684 So. 2d 1072 (La. Ct. App. 1996) (speeding and color discrepancy sufficient for reasonable suspicion of traffic regulation violation); State v. Gonzalez, No. A05-2151, 2007 WL 46029 (Minn. Ct. App. Jan. 9, 2007) (in light of officer's training and experience, color discrepancy, condition of truck's interior, deceptive responses, and absence of owner together gave officer reasonable suspicion of drug transportation). In U.S. v. Caro, the court disapproved of the extent of the officer's VIN search into the passenger compartment after stopping the vehicle for a window tint violation, but acknowledged that the registration color discrepancy in addition to the driver's inability to recall the owner's last name was sufficient for the officer to take appropriate steps to ascertain the legal status of the vehicle. 248 F.3d 1240, 1246 (10th Cir. 2001). In U.S. v. Rodgers, while reversing the district court's denial of a

suppression motion on other grounds, the court noted that a color discrepancy coupled with a highcrime location provided a "thin basis" for a reasonable suspicion that the car was stolen, in light of the fact that local laws did not require registration to be updated with color changes. 656 F.3d 1023, 1027 (9th Cir. 2011).

Other than Aders, Thiel, and Andrews, our review of state and federal caselaw reveals few other cases where the courts considered color discrepancy as the sole factor to support a reasonable suspicion. In Uribe, a federal district court granted a motion to suppress when the evidence on record revealed that the officer had stopped the vehicle solely for a color discrepancy. Given the "totality of the circumstances," i.e., just one circumstance, there was nothing that would reasonably lead an officer to suspect the particular vehicle may be stolen, and state law did not require an owner to update the registration with a color change. 2011 WL 4538407 at *4. The Uribe court noted a decision from New Hampshire that found it could "not sanction traffic stops for those citizens who simply decide to paint their cars without some particularized suspicion of criminal wrongdoing such as, for example, the theft and subsequent repainting of a vehicle." Id., quoting State v. O'Neill, 2007 WL 5271849 (N.H. Super. Ct. 2007).

In Commonwealth v. Mason, a Virginia circuit court determined that because color disparity alone was not unlawful, "'without some additional indicia of legal wrongdoing'" the facts did not provide a

reasonable articulable suspicion that the vehicle or plate may be stolen. 78 Va. Cir. 474, *2 (Cir. Ct. 2009) (quoting Moore v. Commonwealth, 640 S.E.2d 531, 537 (Va. Ct. App. 2007) (Reinstated by 668 S.E.2d 150 (Va. 2008))). That court concluded that "[u]pholding a stop on these facts would permit law enforcement to make a random, suspicionless stop of any car with a color disparity on its registration. The Fourth Amendment does not afford the police such unbridled discretion." Id. The Virginia Court of Appeals agreed with the circuit court that the officer's belief that color discrepancies sometimes indicate a stolen vehicle was no more than a hunch in the absence of other circumstances. Commonwealth v. Mason, No. 1956-09-2, 2010 WL 768721 (Va. Ct. App. Mar. 9, 2010).

The somewhat analogous cases involving investigations of "temporary tags" provide us some guidance as to the reasonableness of this particular stop. Several cases have reviewed instances where officers stopped vehicles solely because the vehicle had a temporary license plate tag. While an officer may be aware that people driving with an apparently legal temporary tag may be violating the law by driving on an expired permit or even driving a stolen vehicle, the officer is required to have a "particularized and objective basis for suspecting the particular person stopped of criminal activity." U.S. v. Cortez, 449 U.S. 411, 417-18 (1981). Otherwise the officer has only a mere inclination or hunch that a tag may be expired or a car stolen. See Bius v. State, 563 S.E.2d 527 (Ga. Ct. App. 2002) (stopping a car with a temporary tag solely to ascertain whether the

driver is complying with vehicle registration laws is not authorized); Berry v. State, 547 S.E.2d 664 (Ga. Ct. App. 2001) (officer had a mere inclination or hunch that any car with a temporary tag might be stolen); People v. Hernandez, 86 Cal.Rptr.3d 105 (Cal. 2008) (An officer who sees a vehicle displaying a temporary tag may not stop the vehicle simply because he believes that such permits are often forged or otherwise invalid; to support a stop the officer must have a reasonable suspicion that the particular permit is invalid) (citing U.S. v. Wilson, 205 F.3d 720 (4th Cir. 2000); State v. Childs, 495 N.W.2d 475 (Neb. 1993); State v. Aguilar, 155 P.3d 769 (N.M. Ct. App. 2007); State v. Chatton, 463 N.E.2d 1237 (Ohio 1984); State v. Butler, 539 S.E.2d 414 (S.C. Ct. App. 2000); and State v. Lord, 723 N.W.2d 425 (Wis. 2006)).

We acknowledge there is a lack of guidance for police officers in this state's caselaw concerning the stopping of a vehicle for innocent behavior on the part of the driver. In State v. Diaz, a case involving a vehicle stop based on an officer's inability to read the state-issued handwritten expiration date of a temporary tag although the tag appeared to be legally displayed, three justices would have ruled the initial stop illegal and the author of the majority opinion expressed doubt as to the legitimacy of the stop. 850 So. 2d 435, 437, 440 (Fla. 2003) ("[D]espite the fact that the driver had no control over the legibility of the expiration date, we assume for the purposes of this case that the initial stop by the deputy sheriff was legitimate, albeit based upon a barely justifiable purpose.")

In Florida, it is legal to repaint a vehicle without reporting the change, creating an inconsistency between the vehicle registration and the vehicle. See Aders, 67 So. 3d at 371. Further, it appears there is no way for an innocent owner to report a change in vehicle color to the DHSMV. Id. at n.3 (recognizing that the DHSMV provides a form to report a change to the body of a vehicle but not the color).[5] While an officer may suspect that people driving a vehicle of an inconsistent color may be violating the law by driving with a swapped tag or even driving a stolen vehicle, the officer is still required to have a "particularized and objective basis for suspecting the particular person stopped of criminal activity." Cortez, 449 U.S. at 417-18. If we accept the State's argument, every person who changes the color of their vehicle is continually and perpetually subject to an investigatory stop so long as the color inconsistency persists, regardless of any other circumstances.[6] The record does not contain any data regarding the prevalence of repainted vehicles registered in the State, but we are hesitant to license an investigatory stop of every person driving a vehicle with an inconsistent color. In the absence of other suspicious behaviors or

[5] It is for the Legislature to determine whether inconsistent vehicle colors are sufficiently problematic so as to require owners to report a change in vehicle color.

[6] We also reject the State's *post hoc* rationalization that color inconsistency may indicate the owner made a false application on the vehicle registration in violation of sections 320.06 and 320.061, Florida Statues. There is nothing in the record to explain why an owner would make such a false application, particularly given the more probable innocent explanation.

circumstances, the decision of which inconsistent vehicles to stop would be left wholly to the discretion of the officer. Persons driving on public roads have a right to not have "their travel and privacy interfered with at the unbridled discretion of police officers." Delaware v. Prouse, 440 U.S. 648, 663 (1979).

We cannot agree with the Aders court that a color discrepancy alone warrants an investigatory stop and, therefore, certify conflict with the Fourth District's opinion in Aders v. State, 67 So. 2d 368 (Fla. 4th DCA 2011). The final judgment and sentence are reversed, and we remand to the trial court for appellant to be discharged.

REVERSED and REMANDED.

THOMAS and CLARK, JJ., concur.

No. 15-____

In the Supreme Court of the United States

STATE OF FLORIDA,

Petitioner,

v.

KERRICK VAN TEAMER,

Respondent.

On Petition for Writ of Certiorari to the Florida Supreme Court

APPENDIX C TO PETITION FOR WRIT OF CERTIORARI BY PETITIONER STATE OF FLORIDA

PETITIONER'S MOTION FOR REHEARING IN THE FLORIDA DISTRICT COURT OF APPEAL, FIRST DISTRICT

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

KERICK VAN TEAMER,
Appellant,
v. CASE NO. 1D11-3491

STATE OF FLORIDA,
Appellee.
_____/

MOTION FOR REHEARING

Pursuant to Florida Rules of Appellate Procedure 9.330, Appellee, State of Florida, moves this Court for rehearing, and in support states as follows:

On December 21, 2012, this Court issued an opinion reversing the trial court's denial of a motion to suppress evidence. This Court held that a color discrepancy between a vehicle and the color listed on the vehicle's registration was insufficient to justify an investigatory stop of that vehicle. Teamer v. State, 1D11-3491, 2012 WL 6634135 (Fla. 1st DCA Dec. 21, 2012). As part of the rationale for this holding, this Court stated that since there was no way for a person who repaints their vehicle to update the new color with the Department of Highway Safety and Motor Vehicles, that would render any person who repaints their vehicle forever subject to being stopped by an officer. Id at 6. This Court has misapprehended the facts of the instant case;

specifically, this Court has misapprehended whether a person can update their vehicle color with the DHSMV. The State respectfully submits that this problem merits rehearing and reconsideration of this decision.

Initially, the States notes that the mistaken factual assertion, that it is impossible for a person to update their vehicle color with the DHSMV, was not included in the record of the instant case. This Court cited to Aders v. State, 67 So.3d 368, 371 (Fla. 4th DCA 2011) for support of this factual assertion. The State respectfully suggests that such citation was improper. While citation to case opinions is normally proper, it is not a vehicle by which non-record factual matters can be included in a case. The citation was not for a legal principle, or for comparing the facts of other cases to those of the instant case. Rather, this citation was used to establish a factual matter in the opinion; namely, that there is no avenue by which a person can update the color of their vehicle with the DHSMV. If such citation were proper, it would require that facts only be testified to in one case; all other cases could dispense with the requirement of evidence and simply rely on the evidence of the original case. Such a scenario runs afoul of the principle that matters must be first presented to a trial court for consideration. Altchiler v. Dep't Prof'l Regulation, 442 So. 2d 349, 350 (Fla. 1st DCA 1983).

Further, it appears that the Fourth District may have improperly relied on non-record material for their factual assertion in the first place, given their heavy reliance on the website of the DHSMV

instead of the case record. Aders, 67 So.3d 368 at n.3. While a review of that website does not immediately indicate which form would allow a person to update their color information, the undersigned has learned from calling a local DHSMV office that the appropriate form for updating a vehicle's color information is Form 82040, which is entitled, "Application for Certificate of Title With/Without Registration." See http://www.flhsmv.gov/dmv/forms/BTR/82040.pdf. That form includes a blank for indicating the color of a vehicle, which a person may use to correct their title and registration on file with the DHSMV. Id. Failing to update the color of a vehicle with this form would render the owner's title incorrect. While the State has been unable at this time to find a statute requiring such an update, it appears that failing to update one's title renders it of questionable value and is a situation any rational vehicle owner would seek to avoid.

The State recognizes that the above information was not included in the record. However, given that the matter was never developed in the trial court, and that the opinion in the instant case makes incorrect factual assertions, also outside the record, the State feels compelled to inform this Court of the factual misapprehension. The State submits that this factual misapprehension warrants reconsideration of the opinion in the instant case, since there is no danger of innocent people being forever subject to traffic stops due to their inability to update their vehicle's color with the DHSMV.

WHEREFORE, the State respectfully requests this Honorable Court to grant rehearing to correct this Court's factual misapprehension in the above-entitled matter.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Jay Kubica
JAY KUBICA
Assistant Attorney General
Florida Bar No. 0026341
OFFICE OF THE ATTORNEY GENERAL
PL-01 THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300

COUNSEL FOR THE STATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Rehearing has been furnished by electronic mail to Richard Summa, Esq., at richard.summa@flpd2.com; this 9th day of January, 2013.

/s/ Jay Kubica
Jay Kubica
Attorney for the State of Florida

No. 15-____

In the Supreme Court of the United States

STATE OF FLORIDA,

Petitioner,

v.

KERRICK VAN TEAMER,

Respondent.

On Petition for Writ of Certiorari to the Florida Supreme Court

APPENDIX D TO PETITION FOR WRIT OF CERTIORARI BY PETITIONER STATE OF FLORIDA

OPINION OF THE FLORIDA DISTRICT COURT OF APPEAL, FIRST DISTRICT, ON MOTION FOR REHEARING

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

KERICK VAN TEAMER,
Appellant,
v. CASE NO. 1D11-3491

STATE OF FLORIDA,
Appellee.
_____/

Opinion filed February 12, 2013.

An appeal from the Circuit Court for Escambia County.
Michael G. Allen, Judge.

Nancy A. Daniels, Public Defender, and Richard M. Summa, Assistant Public Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Samuel A. Perrone, Assistant Attorney General, Tallahassee, for Appellee.

ON MOTION FOR REHEARING

WOLF, J.

Appellee's motion for rehearing filed on January 9, 2013, is denied. The court's opinion filed December 21, 2012, is withdrawn, and the following opinion
is substituted for clarification.

Appellant, Kerick Van Teamer, seeks review of the trial court's denial of his motion to suppress and his subsequent judgment and sentence for felony drug trafficking. We reverse the trial court's denial of appellant's motion to suppress and certify conflict with the Fourth District's opinion Aders v. State, 67 So. 2d 368 (Fla. 4th DCA 2011). Because we reverse, it is unnecessary to reach appellant's other issues raised on appeal.

On June 22, 2010, at about 3:00 p.m., an Escambia County Deputy Sheriff observed appellant driving a bright green Chevy. The deputy "ran" the license plate tag number through the Department of Highway Safety and Motor Vehicles (DHSMV). Upon learning that the plate number was registered to a *blue* Chevy, the deputy pulled the vehicle over based only on the color inconsistency. Upon interviewing the occupants, the deputy learned that the vehicle had recently been painted, thus explaining the inconsistency. During the stop, however, the deputy smelled marijuana emanating from the car and conducted a search of appellant, his passenger, and the vehicle. Marijuana and crack cocaine were recovered from the vehicle, and about $1,100 in cash was recovered from appellant. Appellant was charged with trafficking in cocaine (between 28-200 grams), possession of marijuana (less than 20 grams), and possession of drug paraphernalia, scales.

Appellant filed a dispositive motion to suppress the results of the stop as an unconstitutional search, arguing that the color inconsistency alone was an insufficient basis to

justify an investigatory stop. During the hearing on the motion, the deputy explained that the color inconsistency piqued his interest. He acknowledged that, in his training and experience, he encountered individuals who would switch vehicle plates, and he could not confirm whether the vehicle identification number matched the plates without pulling over the vehicle.

On cross examination, the deputy agreed that the only thing that was out of the ordinary was the inconsistency of the vehicle color from the registration. He acknowledged he observed no other traffic violation, suspicious or furtive behavior, nor was he aware of any reports of stolen vehicles or swapped plates in the area.

The trial court denied the motion and in a later statement of proceedings explained that "because the registration was not consistent with the color of the vehicle," the officer made an investigatory stop. The court determined that the officer "had a legal right to conduct an investigatory stop when a registration search of the automobile license tag reflected a different color than the observed color of the vehicle."

Appellant was subsequently tried before a jury, convicted of the three counts, and sentenced to six years' imprisonment for the trafficking count and time served for the other misdemeanor counts.

On appeal, appellant argues the mere fact that the color of a vehicle does not match the color

indicated on motor vehicle registration records does not establish a reasonable, articulable suspicion of criminal activity to support an investigatory stop of a vehicle. He further argues this is particularly true in Florida where there is no legal requirement that a vehicle owner inform the DHSMV of a change in the color of the vehicle. The State argues the color inconsistency, despite being the result of innocent activity, represents the potential illegal activity of making a false application on vehicle registration, a violation of sections 320.06 and 320.061, Florida Statutes. Thus, the State argues this is a sufficient basis for an investigatory stop, as determined by the Fourth District in Aders v. State, 67 So. 3d 368 (Fla. 4th DCA 2011).

The appropriate standard of review is summarized in State v. Gandy, 766 So. 2d 1234, 1235-36 (Fla. 1st DCA 2000):

> A trial court's ruling on a motion to suppress comes to us clothed with a presumption of correctness, and we must interpret the evidence and reasonable inferences and deductions in a manner most favorable to sustaining that ruling. Johnson v. State, 608 So.2d 4, 9 (Fla.1992), cert. denied, 508 U.S. 919, 113 S.Ct. 2366, 124 L.Ed.2d 273 (1993). In this case, the facts are undisputed and supported by competent substantial evidence. See Caso v. State, 524 So.2d 422 (Fla.), cert. denied, 488 U.S. 870, 109 S.Ct. 178, 102 L.Ed.2d 147 (1988). Accordingly, our review of the

> trial court's application of the law to the facts is de novo. See United States v. Harris, 928 F.2d 1113, 1115–16 (11th Cir.1991). In addition, we are constitutionally required to interpret search and seizure issues in conformity with the Fourth Amendment of the United States as interpreted by the United States Supreme Court. See Fla. Const. art. I, § 12; Perez v. State, 620 So.2d 1256 (Fla.1993); Bernie v. State, 524 So.2d 988 (Fla.1988).

The Fourth DCA summarized the law on traffic stops as follows:

> The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of this provision." Whren v. United States, 517 U.S. 806, 809–10, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) (citations omitted). Accordingly, the stop must be reasonable for it to comport with the Fourth Amendment. Id. at 810.
>
> "[T]he decision to stop an automobile is

> reasonable where the police have probable cause to believe that a traffic violation has occurred." Id. (citing Delaware v. Prouse, 440 U.S. 648, 659, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979); Pennsylvania v. Mimms, 434 U.S. 106, 109, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977)). "Probable cause exists where the totality of the facts known to the officer at the time would cause a reasonable person to believe that an offense has been committed." State v. Hebert, 8 So.3d 393, 395 (Fla. 4th DCA 2009) (citing State v. Walker, 991 So.2d 928, 931 (Fla. 2d DCA 2008)). At the very least, an officer must have an articulable and reasonable suspicion that the driver violated, is violating, or is about to violate a traffic law. See United States v. Arvizu, 534 U.S. 266, 273, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002); Prouse, 440 U.S. at 654 & n. 11, 661, 663, 99 S.Ct. 1391.

Aders, 67 So. 3d at 370 (Fla. 4th DCA 2011). In making a reasonable suspicion inquiry, "'the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of noncriminal acts.'" U.S. v. Sokolow, 490 U.S. 1, 10 (1989) (quoting Illinois v. Gates, 462 U.S. 213, at 243–244, n.13 (1983)). However, an investigatory stop must be predicated on something more than an "inchoate and unparticularized suspicion or 'hunch.'" Terry v. Ohio, 392 U.S. 1, 27 (1968).

As a preliminary matter, we acknowledge that any discrepancy between a vehicle's plates and the registration may legitimately raise a concern that the vehicle is stolen or the plates were swapped from another vehicle. We must, however, weigh that level of concern against a citizen's right under the Fourth Amendment to travel on the roads free from governmental intrusions. See State v. Diaz, 850 So. 2d 435, 439 (Fla. 2003) ("The real test is one of reasonableness, which involves balancing the interests of the State with those of the motorist."). The question before this court, therefore, is whether an inconsistency in color alone is a sufficient basis to support an officer's articulable and reasonable suspicion that a particular person is committing a crime *in the absence of any other suspicious behavior or circumstances* to allow a temporary seizure of a person for an investigatory stop.

Changing the color of a vehicle is not illegal, and the State does not require an owner to report the change in color to the DHSMV. See Aders, 67 So. 3d at 371. The question then is what degree of suspicion attaches to this particular noncriminal act? In Aders and the cases cited therein, a few courts have concluded that the color inconsistency alone created enough suspicion to justify an investigatory stop.

In Aders, the officer testified that after running the tags and discovering a color discrepancy, he decided to stop the vehicle. The circuit court concluded that the officer was justified in the stop because:

> [i]t is reasonable for a law enforcement officer to conclude that a registration plate affixed to a vehicle which differs in color from the vehicle described on the registration information from the Florida Department of Highway Safety, Motor Vehicles Division, even if the make and Model are the same or similar, warrants further investigation.

Id. at 371. The Fourth District affirmed the circuit court on the basis of Smith v. State, 713 N.E.2d 338, 341 (Ind. Ct. App. 1999) and Andrews v. State, 658 S.E.2d 126, 127-28 (Ga. Ct. App. 2008), both cases which found that a color discrepancy in the registration was enough to create an articulable reasonable suspicion that the license plate may have been switched from another vehicle. In Smith, however, the vehicle matched the description of another vehicle known to be involved in gang activity. Smith, 713 N.E.2d at 341 n.3. The Smith court also failed to acknowledge that Indiana law also does not require an owner to report a change in vehicle color. See U.S. v. Uribe, No. 2:10-cr-17-JMS-CMM, 2011 WL 5088646, at *3 n.4 (S.D. Ind. Oct. 25, 2011) (declining to follow Smith based on this point). It also appears that no other court besides Aders has relied on either Smith or Andrews for the cited proposition.

In one unpublished opinion from Iowa, a court found that a registration color discrepancy was sufficient to stop a motorcycle because Iowa vehicle registration law *does* require an accurate description

of the vehicle. State v. Thiel, Nos. 01-0029, 1-486, 2001 WL 1448490 (Ct. App. Iowa Nov. 16, 2001).

Typically, where registration color discrepancy is at issue, it is one of several factors that support a reasonable suspicion. See U.S. v. Clarke, 881 F.Supp 115 (D. Del. 1995) (color discrepancy, out-of-state plates, presence in a high crime area, and inconsistency of driver gender combined with the officer's knowledge that the model was commonly stolen was enough to support an articulable and reasonable suspicion that the driver was in violation of the law); U.S. v. Cooper, 431 Fed.Appx. 399, 402 (6th Cir. 2011) (officers had a reasonable suspicion that a vehicle may have been stolen based on registration color discrepancy, the vehicle's location in an area known for car theft, and officer's testimony that thieves will purposely put a plate of the same make and model on a stolen vehicle); State v. Paggett, 684 So. 2d 1072 (La. Ct. App. 1996) (speeding and color discrepancy sufficient for reasonable suspicion of traffic regulation violation); State v. Gonzalez, No. A05-2151, 2007 WL 46029 (Minn. Ct. App. Jan. 9, 2007) (in light of officer's training and experience, color discrepancy, condition of truck's interior, deceptive responses, and absence of owner together gave officer reasonable suspicion of drug transportation). In U.S. v. Caro, the court disapproved of the extent of the officer's VIN search into the passenger compartment after stopping the vehicle for a window tint violation, but acknowledged that the registration color discrepancy in addition to the driver's inability to recall the owner's last name was sufficient for the officer to take appropriate

steps to ascertain the legal status of the vehicle. 248 F.3d 1240, 1246 (10th Cir. 2001). In U.S. v. Rodgers, while reversing the district court's denial of a suppression motion on other grounds, the court noted that a color discrepancy coupled with a highcrime location provided a "thin basis" for a reasonable suspicion that the car was stolen, in light of the fact that local laws did not require registration to be updated with color changes. 656 F.3d 1023, 1027 (9th Cir. 2011).

Other than Aders, Thiel, and Andrews, our review of state and federal caselaw reveals few other cases where the courts considered color discrepancy as the sole factor to support a reasonable suspicion. In Uribe, a federal district court granted a motion to suppress when the evidence on record revealed that the officer had stopped the vehicle solely for a color discrepancy. Given the "totality of the circumstances," i.e., just one circumstance, there was nothing that would reasonably lead an officer to suspect the particular vehicle may be stolen, and state law did not require an owner to update the registration with a color change. 2011 WL 4538407 at *4. The Uribe court noted a decision from New Hampshire that found it could "not sanction traffic stops for those citizens who simply decide to paint their cars without some particularized suspicion of criminal wrongdoing such as, for example, the theft and subsequent repainting of a vehicle." Id., quoting State v. O'Neill, 2007 WL 5271849 (N.H. Super. Ct. 2007).

In Commonwealth v. Mason, a Virginia circuit court determined that because color disparity alone was not unlawful, "'without some additional indicia of legal wrongdoing'" the facts did not provide a reasonable articulable suspicion that the vehicle or plate may be stolen. 78 Va. Cir. 474, *2 (Cir. Ct. 2009) (quoting Moore v. Commonwealth, 640 S.E.2d 531, 537 (Va. Ct. App. 2007) (Reinstated by 668 S.E.2d 150 (Va. 2008))). That court concluded that "[u]pholding a stop on these facts would permit law enforcement to make a random, suspicionless stop of any car with a color disparity on its registration. The Fourth Amendment does not afford the police such unbridled discretion." Id. The Virginia Court of Appeals agreed with the circuit court that the officer's belief that color discrepancies sometimes indicate a stolen vehicle was no more than a hunch in the absence of other circumstances. Commonwealth v. Mason, No. 1956-09-2, 2010 WL 768721 (Va. Ct. App. Mar. 9, 2010).

The somewhat analogous cases involving investigations of "temporary tags" provide us some guidance as to the reasonableness of this particular stop. Several cases have reviewed instances where officers stopped vehicles solely because the vehicle had a temporary license plate tag. While an officer may be aware that people driving with an apparently legal temporary tag may be violating the law by driving on an expired permit or even driving a stolen vehicle, the officer is required to have a "particularized and objective basis for suspecting the particular person stopped of criminal activity." U.S. v. Cortez, 449 U.S. 411, 417-18 (1981). Otherwise the

officer has only a mere inclination or hunch that a tag may be expired or a car stolen. See Bius v. State, 563 S.E.2d 527 (Ga. Ct. App. 2002) (stopping a car with a temporary tag solely to ascertain whether the driver is complying with vehicle registration laws is not authorized); Berry v. State, 547 S.E.2d 664 (Ga. Ct. App. 2001) (officer had a mere inclination or hunch that any car with a temporary tag might be stolen); People v. Hernandez, 86 Cal.Rptr.3d 105 (Cal. 2008) (An officer who sees a vehicle displaying a temporary tag may not stop the vehicle simply because he believes that such permits are often forged or otherwise invalid; to support a stop the officer must have a reasonable suspicion that the particular permit is invalid) (citing U.S. v. Wilson, 205 F.3d 720 (4th Cir. 2000); State v. Childs, 495 N.W.2d 475 (Neb. 1993); State v. Aguilar, 155 P.3d 769 (N.M. Ct. App. 2007); State v. Chatton, 463 N.E.2d 1237 (Ohio 1984); State v. Butler, 539 S.E.2d 414 (S.C. Ct. App. 2000); and State v. Lord, 723 N.W.2d 425 (Wis. 2006)).

We acknowledge there is a lack of guidance for police officers in this state's caselaw concerning the stopping of a vehicle for innocent behavior on the part of the driver. In State v. Diaz, a case involving a vehicle stop based on an officer's inability to read the state-issued handwritten expiration date of a temporary tag although the tag appeared to be legally displayed, three justices would have ruled the initial stop illegal and the author of the majority opinion expressed doubt as to the legitimacy of the stop. 850 So. 2d 435, 437, 440 (Fla. 2003) ("[D]espite the fact that the driver had no control over the

legibility of the expiration date, we assume for the purposes of this case that the initial stop by the deputy sheriff was legitimate, albeit based upon a barely justifiable purpose.")

In Florida, it is legal to repaint a vehicle without reporting the change, creating an inconsistency between the vehicle registration and the vehicle. See Aders, 67 So. 3d at 371. Further, it appears there is no way for an innocent owner to report a change in vehicle color to the DHSMV. Id. at n.3 (recognizing that the DHSMV provides a form to report a change to the body of a vehicle but not the color).[1] While an officer may suspect that people driving a vehicle of an inconsistent color may be violating the law by driving with a swapped tag or even driving a stolen vehicle, the officer is still required to have a "particularized and objective basis for suspecting the particular person stopped of criminal activity." Cortez, 449 U.S. at 417-18. If we accept the State's argument, every person who changes the color of their vehicle is continually and perpetually subject to an investigatory stop so long as the color inconsistency persists, regardless of any other circumstances.[2] The record does not contain any data regarding the prevalence of repainted

[1] It is for the Legislature to determine whether inconsistent vehicle colors are sufficiently problematic so as to require owners to report a change in vehicle color.

[2] We also reject the State's *post hoc* rationalization that color inconsistency may indicate the owner made a false application on the vehicle registration in violation of sections 320.06 and 320.061, Florida Statues. There is nothing in the record to explain why an owner would make such a false application, particularly given the more probable innocent explanation.

vehicles registered in the State, but we are hesitant to license an investigatory stop of every person driving a vehicle with an inconsistent color. In the absence of other suspicious behaviors or circumstances, the decision of which inconsistent vehicles to stop would be left wholly to the discretion of the officer. Persons driving on public roads have a right to not have "their travel and privacy interfered with at the unbridled discretion of police officers." Delaware v. Prouse, 440 U.S. 648, 663 (1979).

We cannot agree with the Aders court that a color discrepancy alone warrants an investigatory stop and, therefore, certify conflict with the Fourth District's opinion in Aders v. State, 67 So. 2d 368 (Fla. 4th DCA 2011). The final judgment and sentence are reversed, and we remand to the trial court for appellant to be discharged.

REVERSED and REMANDED.

THOMAS and CLARK, JJ., concur.

No. 15-____

In the Supreme Court of the United States

STATE OF FLORIDA,

Petitioner,

v.

KERRICK VAN TEAMER,

Respondent.

On Petition for Writ of Certiorari to the Florida Supreme Court

APPENDIX E TO PETITION FOR WRIT OF CERTIORARI BY PETITIONER STATE OF FLORIDA

PETITIONER'S INITIAL BRIEF IN THE FLORIDA SUPREME COURT

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, v. KERICK VAN TEAMER, Respondent.	Case No. SC13-318

PETITIONER'S INITIAL BRIEF

PAMELA JO BONDI
ATTORNEY GENERAL

TRISHA MEGGS PATE
TALLAHASSEE BUREAU CHIEF,
CRIMINAL APPEALS
FLORIDA BAR NO. 0045489

JAY KUBICA
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0026341

OFFICE OF THE ATTORNEY
GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300
(850) 992-6674 (FAX)
COUNSEL FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES PAGE#

STATUTES

CONSTITUTIONS

PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Kerrick Van Teamer, the Appellant in the First District Court of Appeal and the defendant in the trial court, will be referenced in this brief as Respondent or his proper name.

The record on appeal consists of two (2) volumes, which will be referenced as "RI," and "RII," respectively, followed by any appropriate page number, as well as three (3) supplemental volumes, which will be referenced as "SRI," "SRII," and "SRIII," respectively, followed by any appropriate page number.

All emphasis through bold lettering is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

On June 22, 2010, Deputy Christopher Knotts, with the Escambia County Sheriff's Office, was traveling westbound on a public thoroughfare, with a bright green Chevy vehicle traveling in front of him. (RI 21). The bright green Chevy pulled into a parking lot of a business and Deputy Knotts proceeded on his way. (RI 22). A brief time later, Deputy Knotts once again encountered the bright green Chevy and ran the tag of the vehicle through his computer database with the Department of Highway Safety and Motor Vehicles. (RI 22-23). Deputy Knotts testified at the suppression hearing

that the information he received on the tag was that it belonged to a blue Chevrolet. (RI 23). Noting that the colors were inconsistent, Deputy Knotts also acknowledged that in his training and experience he has encountered individuals that will switch tags on vehicles, and that from his vantage point he could not determine whether or not the tag that was on the vehicle was actually registered to that vehicle. (RI 23). At that point, Deputy Knotts effectuated a traffic stop of the vehicle. (RI 24).

Deputy Knotts approached the vehicle on the driver's side and told the driver, later identified as Respondent, that the tag did not match the vehicle. (RI 24). As he was speaking with Respondent, Deputy Knotts noticed an odor emanating from the vehicle that smelled like marijuana. (RI 24-25). In speaking with Respondent, Deputy Knotts was provided an explanation by Respondent as to the reason for the color discrepancy, which was that he had just recently painted the vehicle. (RI 25). Deputy Knotts acquired Appellant's registration, returned to his patrol vehicle and requested a second deputy to respond to the scene. (RI 25). As for his reason in calling for a second officer to assist, Deputy Knotts testified that it was his intention to initiate a probable cause search of the vehicle based upon the odor of marijuana emanating therefrom. (RI 25).

Once the backup officer arrived, Deputy Knotts returned to Respondent, issued him a warning for the variance in color from what was listed on the registration, and also informed him about the odor he detected. (RI 26). Respondent responded to Deputy Knotts by stating that he had smoked marijuana earlier. (RI 36). Deputy Knotts

then proceeded to search Respondent, who had no contraband on his person, but did possess a large amount of U.S. currency, approximately over $1,100. (RI 26). At that point, a passenger in Respondent's vehicle was also asked to step out of the vehicle. (RI 26). Deputy Knotts then proceeded to search the vehicle, which revealed the presence of narcotics inside the center console cup, specifically marijuana and crack cocaine. (RI 27, 52).

Respondent was subsequently arrested and charged via Amended Information with Trafficking in Cocaine (Count One), Possession of a Controlled Substance (Count Two) and Possession of Drug Paraphernalia (Count Three). (RI 3). On October 4, 2010, Respondent filed a Motion to Suppress Evidence, and a hearing was held on December 9, 2010. (RI 8-68). The trial court denied Respondent's Motion to Suppress through written order on March 13, 2012. (SRII 180). On June 16, 2011, following a jury trial, Respondent was convicted as charged and was sentenced to a term of six (6) years incarceration as to Count One and time served as to Counts Two and Three. (RI 116-122).

An appeal to the First District Court of Appeal followed. The First District reversed the denial of Respondent's motion to suppress, holding that a discrepancy between a vehicle's actual color and the color associated with the tag attached to the vehicle at the time of a stop did not constitute reasonable suspicion of criminal activity. Van Teamer v. State, 108 So.3d 664 (Fla. 1st DCA 2013). The First District also certified conflict with the Fourth District's decision in Aders v. State, 67 So.3d 368 (Fla. 4th DCA 2011).

The State now petitions this Court for review of the First District's decision in the instant case.

SUMMARY OF ARGUMENT

The trial court did not err in denying Respondent's motion to suppress. Deputy Christopher Knotts had reasonable suspicion of possible criminal activity based on the difference between the color of Respondent's vehicle and the color of the vehicle to which Respondent's tag was registered. When the officer expected the color of the vehicle to match the color associated with its tag, such a discrepancy was an articulable fact which gave rise to a suspicion that crime may be afoot. Thus, the trial court did not err in denying Respondent's motion to suppress, nor did the Aders court err in affirming the denial of a motion to suppress under similar facts.

By departing from the prescribed reasonable suspicion analysis followed by the trial court and the Aders court, the First District erred in the instant case. Despite impliedly recognizing that any discrepancy between a vehicle and its registration gives rise to reasonable suspicion, the First District held that no reasonable suspicion existed based on a concern that innocent activity would form the basis for a temporary investigative detention. This concern has been rejected by the United States Supreme Court and the risk that those who commit no crimes may be temporarily detained is a risk that the Fourth Amendment accepts. Accordingly, the First District's opinion in the instant case should be quashed and the opinion in Aders approved.

ARGUMENT

ISSUE: WHETHER REASONABLE SUSPICION TO JUSTIFY A TEMPORARY INVESTIGATIVE DETENTION AROSE BASED ON A COLOR DISCREPANCY BETWEEN A VEHICLE AND THE COLOR ASSOCIATED WITH TAG ATTACHED TO THE VEHICLE, WHEN SUCH COLOR DISCREPANCY WAS INDICATIVE OF VIOLATIONS OF FLORIDA'S CRIMINAL TRAFFIC LAWS? (RESTATED)

Standard of Review

Because a trial court's ruling on a motion to suppress involves a mixed question of law and fact, appellate courts must follow a mixed standard of review. See Seibert v. State, 923 So. 2d 460, 468 (Fla. 2006), citing Fitzpatrick v. State, 900 So. 2d 495, 510 (Fla. 2005)("Because a trial court's ruling on a motion to suppress is a mixed question of law and fact, we defer to the trial court on the factual issues but consider the constitutional issues de novo."). Analogous to a motion for judgment of acquittal, the reviewing court examines the evidence adduced at the suppression hearing "in the light most favorable to sustaining the trial court's ruling." State v. Moore, 791 So. 2d 1246, 1247 (Fla. 1st DCA 2001), citing San Martin v. State, 705 So. 2d 1337 (Fla. 1997), cert. denied, 525 U.S. 841 (1998).

Equally analogous, the appellate court must

affirm the trial court's factual findings if competent and substantial evidence supports those findings. See Wheeler v. State, 956 So. 2d 517, 520 (Fla. 2d DCA 2007), citing Caso v. State, 524 So. 2d 422 (Fla. 1988)("The trial court's factual findings must be affirmed if supported by competent, substantial evidence..."); see also Ornelas v. United States, 517 U.S. 690, 699 (1996):

> A trial judge views the facts of a particular case in light of the distinctive features and events of the community; likewise, a police officer views the facts through the lens of his police experience and expertise. The background facts provide a context for the historical facts, and when seen together yield inferences that deserve deference.

However, the appellate courts must apply the de novo standard when reviewing the trial court's application of the law to those facts. See Wheeler at 520, citing Ornelas ("... while the trial court's application of the law to those facts is reviewed de novo."); see also Moore at 1247 ("While the reviewing court is required to accept the trial court's determination of the historical facts surrounding the challenged seizure and/or search, it reviews de novo the application of the law to the historical facts.").

This bifurcated review allows the appellate court to accomplish three tasks: (1) defer to the trial court's ability "to evaluate and weigh the testimony and evidence based upon its observation of the bearing, demeanor, and credibility"; (2) ensure that

trial courts apply the law uniformly "in decisions based on similar facts"; and (3) protect the Constitutional rights of the defendant. Conner v. State, 803 So. 2d 598, 607-608 (Fla. 2001), quoting Stephens v. State, 748 So. 2d 1028, 1032 (Fla. 1999).

Preservation

Pursuant to well-settled authority, Respondent preserved this issue in the trial court.

Merits

1. The color discrepancy between Respondent's vehicle and the vehicle to which his tag was registered created a reasonable suspicion of criminal activity.

Respondent's position in both the trial court and the district court was that an officer who discovers that a vehicle's color does not match the color of the vehicle to which the plate is assigned does not have reasonable suspicion to perform a temporary investigative stop to ascertain whether criminal activity is afoot. The State, however, respectfully disagrees. The discrepancy in color between the observed vehicle and the vehicle to which the plate was registered represented potential illegal activity that the officer was warranted in temporarily stopping the vehicle to investigate. Thus, the trial court did not err in denying Respondent's motion to suppress.

Initially, the State notes that pursuant to Article I, section 12 of the Florida Constitution, this Court shall interpret search and seizure issues in conformity with the Fourth Amendment to the

United States Constitution, as interpreted by the Supreme Court of the United States. See Doorbal v. State, 837 So. 2d 940, 952 n.32 (Fla. 2003) ("We are required to follow the United States Supreme Court's interpretations of the Fourth Amendment."); see also Bernie v. State, 524 So. 2d 988, 991 (Fla. 1988) ("With this amendment, however, we are bound to follow the interpretations of the United States Supreme Court with relation to the fourth amendment, and provide no greater protection than those interpretations.").

The State also notes that there are three levels of police-citizen encounters, the second level being an investigatory stop in which a police officer may detain a citizen temporarily if the officer has reasonable suspicion to believe the person has committed, is committing, or is about to commit a crime. See Popple v. Florida, 626 So. 2d 185, 186 (Fla. 1993); see also § 901.151(2), Fla. Stat. When determining whether there is an articulable reasonable suspicion, the court must look at the totality of the circumstances. See United States v. Arvizu, 534 U.S. 266, 273 (2002); see also State v. Pye, 551 So. 2d 1237, 1238 (Fla. 1st DCA 1989).

In Ornelas v. United States, 517 U.S. 690, 695-96 (1996), the United States Supreme Court observed:

> Articulating precisely what 'reasonable suspicion' and 'probable cause' mean is not possible. They are commonsense, nontechnical conceptions that deal with "'the factual and practical considerations of everyday life on which reasonable and

prudent men, not legal technicians, act.'" Illinois v. Gates, 462 U.S. 213, 231, 103 S.Ct. 2317, 2328, 76 L.Ed.2d 527 (1983) (quoting Brinegar v. United States, 338 U.S. 160, 175, 69 S.Ct. 1302, 1311, 93 L.Ed. 1879 (1949)); see United States v. Sokolow, 490 U.S. 1, 7-8, 109 S.Ct. 1581, 1585-1586, 104 L.Ed.2d 1 (1989). As such, the standards are 'not readily, or even usefully, reduced to a neat set of legal rules.' Gates, supra, at 232, 103 S.Ct., at 2329. We have described reasonable suspicion simply as 'a particularized and objective basis' for suspecting the person stopped of criminal activity, United States v. Cortez, 449 U.S. 411, 417-418, 101 S.Ct. 690, 694-695, 66 L.Ed.2d 621 (1981), and probable cause to search as existing where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found, see Brinegar, supra, at 175-176, 69 S.Ct., at 1310-1311; Gates, supra, at 238, 103 S.Ct., at 2332. We have cautioned that these two legal principles are not 'finely-tuned standards,' comparable to the standards of proof beyond a reasonable doubt or of proof by a preponderance of the evidence. Gates, supra, at 235, 103 S.Ct., at 2330-2331. They are instead fluid concepts that take their substantive content from the particular contexts in which the standards are being assessed. Gates, supra, at 232,

> 103 S.Ct., at 2329; Brinegar, supra, at 175, 69 S.Ct., at 1310 ('The standard of proof [for probable cause] is ... correlative to what must be proved'); Ker v. California, 374 U.S. 23, 33, 83 S.Ct. 1623, 1630, 10 L.Ed.2d 726 (1963) ("This Cour[t] [has a] long-established recognition that standards of reasonableness under the Fourth Amendment are not susceptible of Procrustean application'; '[e]ach case is to be decided on its own facts and circumstances' (internal quotation marks omitted)); Terry v. Ohio, 392 U.S. [1, 29 (1968)], 88 S.Ct., at 1884 (the limitations imposed by the Fourth Amendment 'will have to be developed in the concrete factual circumstances of individual cases').

Id. at 695-696. In particular, the Court further noted:

> The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause.

Id. at 696. In United States v. Cortez, 449 U.S. 411(1981), the Court said of the requirements necessary for an officer to conduct a lawful stop:

> Courts have used a variety of terms to capture the elusive concept of what cause is sufficient to authorize police to stop a person. Terms like 'articulable reasons' and 'founded suspicion' are not self-defining; they fall short of providing clear guidance dispositive of the myriad factual situations that arise. But the essence of all that has been written is that the totality of the circumstances--the whole picture--must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.

Id. at 417-418. In particular, the Court further noted that the determination of whether an officer had an articulable reasonable suspicion is to be made from the totality of the circumstances. Specifically, the Court stated:

> The idea that an assessment of the whole picture must yield a particularized suspicion contains two elements, each of which must be present before a stop is permissible. First, the assessment must be based upon all of the circumstances. The analysis proceeds with various objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers. From these data, a trained officer draws

> inferences and makes deductions -- inferences and deductions that might well elude an untrained person.

Id.

Additionally, the Court concluded in Terry v. Ohio, 392 U.S. 1 (1968), that an officer could, without violating the protections of the Fourth Amendment, conduct a brief investigatory stop. The officer, in order to conduct such a stop, must have a reasonable suspicion that "criminal activity may be afoot." Id. In United States v. Arvizu, 534 U.S. 266, 274, the Court stated that "[a]lthough an officer's reliance on a mere 'hunch' is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required for probable cause." See also Illinois v. Wardlow, 528 U.S. 119, 123 (2000)(describing reasonable suspicion as a "less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence ....".).

In United States v. Sokolow, 490 U.S. 1, 10 (1989), the Court further stated:

> We noted in Gates, 462 U.S., at 243-244, n. 13, that "innocent behavior will frequently provide the basis for a showing of probable cause," and that "[i]n making a determination of probable cause the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of noncriminal acts." That principle applies equally well to the

reasonable suspicion inquiry.

Further elucidating its acceptance of the risk of innocent behavior forming the basis for reasonable suspicion, the United States Supreme Court explained,

> Respondent and amici also argue that there are innocent reasons for flight from police and that, therefore, flight is not necessarily indicative of ongoing criminal activity. This fact is undoubtedly true, but does not establish a violation of the Fourth Amendment. Even in Terry, the conduct justifying the stop was ambiguous and susceptible of an innocent explanation. The officer observed two individuals pacing back and forth in front of a store, peering into the window and periodically conferring. 392 U.S., at 5–6, 88 S.Ct. 1868. All of this conduct was by itself lawful, but it also suggested that the individuals were casing the store for a planned robbery. Terry recognized that the officers could detain the individuals to resolve the ambiguity. Id., at 30, 88 S.Ct. 1868.
>
> In allowing such detentions, Terry accepts the risk that officers may stop innocent people. Indeed, the Fourth Amendment accepts that risk in connection with more drastic police action; persons arrested and detained on probable cause to believe they have committed a crime may turn out to

> be innocent. The Terry stop is a far more minimal intrusion, simply allowing the officer to briefly investigate further. If the officer does not learn facts rising to the level of probable cause, the individual must be allowed to go on his way. But in this case the officers found respondent in possession of a handgun, and arrested him for violation of an Illinois firearms statute. No question of the propriety of the arrest itself is before us.

Wardlow, 528 U.S. 119 at 125-26. Thus, facts that may be ambiguous and susceptible of innocent explanations are properly accepted as the basis for a reasonable suspicion. In State v. Stevens, 354 So. 2d 1244, 1247 (Fla. 4th DCA 1978), the court gave examples of possible factors which may be useful in a reasonable suspicion analysis:

> Certain factors might then be evaluated to determine whether they reasonably suggested the suspect's possible commission, existing or imminent, of a crime: The time; the day of the week; the location; the physical appearance of the suspect; the behavior of the suspect; the appearance and manner of operation of any vehicle involved; anything incongruous or unusual in the situation as interpreted in the light of the officer's knowledge.

(emphasis added).

In Whren v. United States, 517 U.S. 806 (1996), the United States Supreme Court held that a temporary stop and detention of a motorist is valid under the Fourth Amendment where probable cause exists to believe that there was a violation to traffic laws. Additionally, the subjective intentions of the officer making the stop are irrelevant in determining its validity; rather, the test is objective, whether probable cause exists under the facts that could justify a traffic stop. See Holland v. State, 696 So. 2d 757, 758 (Fla. 1997). When a suspected violation at issue is to a criminal traffic law, then the standard applied to a traffic stop is the same as to any other temporary investigative detention, that of reasonable suspicion of criminal activity. See State, Dep't of Highway Safety & Motor Vehicles v. DeShong, 603 So. 2d 1349, 1352 (Fla. 2d DCA 1992).

In Aders v. State, 67 So.3d 368 (Fla. 4th DCA 2011), the Fourth District Court of Appeal dealt with the same scenario as at issue in the case sub judice. In Aders, the defendant's vehicle was stopped when a deputy learned, via a law enforcement database, that the color of the vehicle was listed differently on the vehicle's registration. Id. at 369. At that point the deputy stopped the vehicle, was given consent to search the vehicle, upon which he discovered drug paraphernalia inside. Id. At trial, the defendant moved to suppress the discovery of the paraphernalia on the basis that the deputy had insufficient justification to stop the vehicle based on the change in color. The trial court ruled the stop was proper, as did the Fourth District Court of Appeal in affirming the trial court's decision.

Specifically, the Fourth District held that "a

color discrepancy between a car and its computer registration creates sufficient reasonable suspicion to justify a traffic stop for further investigation." Id. at 371. The Court acknowledged that there was no legal requirement for a person to update his registration to indicate a vehicle has received a new color. However, the Court also noted that the mere fact that there was a discrepancy in the vehicle's color was not the sole concern. To the contrary, it was what the discrepancy represented, namely, the possibility that the license plate may have been improperly transferred. Such an action would have been violative of Section 320.261, Florida Statutes. Id. "A color discrepancy is enough to create a reasonable suspicion in the mind of a law enforcement officer of the violation of this criminal law." Id. (citing Smith v. State, 713 N.E. 2d 338, 341 (Ind.Ct.App.1999)(traffic stop valid where computer check on vehicle's license plate revealed that the plate was registered to a yellow vehicle, rather than blue and white); Andrews v. State, 658 S.E.2d 126, 127-28 (2008)(reasonable suspicion existed to stop vehicle where computer check revealed license registered to a silver vehicle, not the green-gold vehicle observed)).

In the instant case, Deputy Knotts testified at the suppression hearing that when he ran the tag number of the vehicle being driven by Respondent through the Department of Highway Safety and Motor Vehicles database, which revealed the vehicle to which the registration belonged was different in color from the vehicle driven by Respondent. (RI 23). Deputy Knotts also testified that while the database provided the make of the vehicle, it did not provide

the model. (RI 30). Deputy Knotts noted that he was aware that "it's illegal to make a false application regarding information on a vehicle for the registration of said vehicle." (RI 32). Thus, this discrepancy constituted a fact which was incongruous or unusual in the officer's experience. Based on this information provided, Deputy Knotts stopped Appellant's vehicle. Thus, it was not solely the fact that the color listed in the database for Appellant's vehicle was different, but, instead, it was what the discrepancy in the two colors represented in the mind of Deputy Knotts. Specifically, the fact that Appellant may have falsely provided inaccurate information in the registering of his vehicle represented possible criminal activity. Moreover, under the objective test of Whren, the possible violation of §320.261, Fla. Stat., for switching the license plate to a vehicle of the same make but a different color provided reasonable suspicion for the stop. Consequently, the trial court did not err in denying the motion to suppress.

Here, as in Aders, Deputy Knotts did not stop Respondent's vehicle solely because there was a discrepancy in the color of the vehicle, but, instead, it was because of what that discrepancy represented. As was discussed during Deputy Knott's testimony, the fact that the computer database listed Respondent's vehicle as being a color different than that which Deputy Knotts was observing constituted an incongruous or unusual fact, and went against the expectation that the registration information for a tag will match the vehicle to which it is attached. Thus, this fact provided the reasonable suspicion that there could have been illegality with respect to

the vehicle related to that discrepancy. While the failure to update a vehicle registration to reflect a new color is not in specific violation of a Florida law, the improperly licensing and providing of false information in the registering of a vehicle is prohibitive of Chapter 320, Florida Statutes, in particular Sections 320.06 and 320.061, Florida Statutes, and switching tags between vehicles is a violation of §320.261, Fla. Stat. Thus, the trial court did not err in determining that Deputy Knotts had the requisite reasonable suspicion to stop Respondent's vehicle given that the facts available to him would lead an objective officer to suspect the possibility of a violation of the criminal traffic laws.

2. The First District Court of Appeals decision vs. Aders.

The First District Court of Appeals reversed the trial court's denial of Respondent's motion to suppress. The First District's decision is flawed because it failed to adhere to the mandated analysis for determining whether reasonable suspicion existed to justify the temporary detention of Respondent.

Specifically, the First District explicitly acknowledged that "any discrepancy between a vehicle's plates and the registration may legitimately raise a concern that the vehicle is stolen or the plates were swapped from another vehicle." Van Teamer v. State, 108 So. 3d 664, 667 (Fla. 1st DCA 2013). In the context of the reasonable suspicion analysis, a fact which legitimately raises a concern of criminal activity, such as vehicle theft or plate switching, is

precisely the kind of fact that supports a reasonable suspicion to justify a temporary detention. Despite recognizing that not just color, but any discrepancy between the registration plates of a vehicle and the vehicle itself was sufficient to create a legitimate concern of criminal activity, the First District declined to hold that reasonable suspicion existed in the instant case. Id. The court thus based its decision not on a determination of whether facts existed to raise a reasonable suspicion of criminal activity, but a concern that innocent motorists may be temporarily detained. Id. The United States Supreme Court has accepted the risk that innocent individuals will be temporarily detained based on facts that are equally, or more, consistent with innocent behavior than criminality. See Sokolow, 490 U.S. 1 at 10; see also Wardlow, 528 U.S. 119 at 123. Consequently, individuals innocent of any wrongdoing will be temporarily detained under the reasonable suspicion standard, such a result is to be expected, and so any concern for that risk is alien the correct analysis. Rather, what matters is whether articulable facts exist which support a reasonable suspicion of criminal activity from the viewpoint of an objectively reasonable officer. See Ornelas, 517 U.S. 690 at 696.

The First District cited to State v. Diaz, 850 So. 2d 435 (Fla. 2003), for the proposition that facts which would give rise to reasonable suspicion might still not be sufficient to justify a temporary investigatory detention when innocent behavior could be subject to such a detention. Specifically, the First District took a quote from Diaz regarding the general rule that Fourth Amendment analysis was

based on reasonableness and used it to justify altering the reasonable suspicion analysis to make the outcome more "reasonable". Van Teamer, 108 So. 3d 664 at 667. Diaz stands for no such proposition. The full quote from Diaz is as follows:

> The Fourth Amendment mandates that citizens remain free from unlawful searches and seizures by law enforcement officers. The real test is one of reasonableness, which involves balancing the interests of the State with those of the motorist. Here, the basis for the stop—regulation of motor vehicle operation—satisfied a legitimate state interest.

Diaz, 850 So. 2d 435 at 439. Consequently, Diaz's specific holding is at odds with the First District's in Van Teamer, for in Diaz, this Court held that the general test of reasonableness was satisfied by the State's legitimate purpose in enforcing the traffic laws, a purpose also present in the instant case. Id. It was only the continuation of the detention after the officer was satisfied no criminal activity was present that this Court held to be unreasonable. Id. Notably, the continuation was unreasonable for the precise reason that the reasonable suspicion which allowed the temporary detention had been dispelled by the officer's investigation, not because of a balancing between existing reasonable suspicion and the possibility of innocent activity.

The First District criticized the opinions relied upon by the Aders court as either not truly holding that a color discrepancy alone gave rise to a

reasonable suspicion of criminal activity, or that they were flawed. Specifically, the First District claimed that Smith, 713 N.E. 2d 338, actually held that a color discrepancy combined with a suspicion of gang affiliation, not a color discrepancy alone, amounted to a reasonable suspicion of criminal activity. To justify this conclusion, the First District pointed to a footnote in the opinion which noted that the stopped vehicle was initially suspected of gang involvement. Van Teamer, 108 So. 3d 664 at 667. However, this fact was never included as part of the reasonable suspicion analysis in Smith, as illustrated by the following passage from the opinion:

> Here, the evidence was uncontroverted that the license plate on Smith's blue and white car was registered to a yellow car. Upon conducting a computer check, Sergeant Henson had reasonable suspicion to believe that Smith's vehicle had a mismatched plate, and as such, could be stolen or retagged. Sergeant Henson's traffic stop was valid and comported with the mandates of the Fourth Amendment.

Smith, 713 N.E.2d 338 at 342. Because the Smith court never considered any fact outside of the color discrepancy in its reasonable suspicion analysis, Smith truly holds that a color discrepancy alone, regardless of additional information of criminal activity, justifies a temporary detention.

The First District pointed to a number of cases, including U.S. v. Cooper, 431 Fed. Appx. 399 (6th Cir. 2011) and U.S. v. Clarke, 881 F. Supp. 115

(D. Del. 1995), to support their position that color alone cannot allow for a traffic stop. However, while Cooper and Clarke both deemed a color discrepancy plus some other factor to sufficiently establish reasonable suspicion, it does not logically follow that color discrepancy alone would be insufficient, nor do these cases so hold. Additionally, while U.S. v. Rodgers, 656 F.3d 1023, 1027 (9th Cir. 2011), contains a statement that a color discrepancy plus a high-crime location may provide only a thin basis for reasonable suspicion, the court reversed on other grounds and so never reached that issue, rendering the statement mere dicta.

As for the First District's reliance on Commonwealth v. Mason, No. 1956-09-2, 2010 WL 768721 (Va.Ct.App. Mar 9, 2010), an unpublished opinion, it is misplaced because Mason's rationale is flawed. First, it is worth noting that the court took the facts and their inferences in the light most favorable to the defendant, and so the facts in Mason were viewed from the opposite perspective of the facts in the instant case. Id. at 2. Moreover, the court in Mason ignored the meaning which a color discrepancy carries in terms of possible criminal activity. Id. at 3. Instead, the court concerned itself with the potential for innocent activity forming the basis for reasonable suspicion, not fully recognizing that reasonable suspicion is a very low standard. Id. This concern over innocent activity is precisely that which the United States Supreme Court has determined should not play a part in the reasonable suspicion analysis. See Sokolow, 490 U.S. 1 at 10; see also Wardlow, 528 U.S. 119 at 123. Consequently, Mason is at odds with controlling

precedent, and the First District's reliance on it was misplaced.

The First District also analogized cases holding that simply because a person has a temporary tag on their vehicle, and a temporary tag might make it easier to drive on an expired permit or drive a stolen vehicle, it does not follow that reasonable suspicion exists to justify a temporary stop. Van Teamer, 108 So. 3d 664 at 669. This analogy is flawed because simply having a temporary tag on a vehicle does not mean anything other than that a temporary tag is present, with no indication that anything might be amiss. Conversely, a tag that is registered to a vehicle of a color other than that of the vehicle to which it is attached indicates that something may be amiss by virtue of the colors not matching when an objectively reasonable officer would expect them to match. The First District recognized as much when it explicitly held that any discrepancy between the registration and the vehicle to which it is attached gives rise to a legitimate concern of criminal activity. Id. at 667.

It is also worth noting that the exclusionary rule must serve a deterrent value, in accordance with Herring v. U.S., 555 U.S. 135 (2009) and Hudson v. Michigan, 547 U.S. 586 (2006). Application of the exclusionary rule would serve little purpose in the instant case. At the time of the traffic stop, Aders was the only opinion in Florida which dealt with the issue, and Aders was controlling authority on every trial court. Thus, the law available to the officer indicated that he acted legally in stopping Respondent. Indeed, not only did the officer have a good faith belief, but he was supported by a Florida

appellate court. The exclusionary rule would not provide deterrence in the instant case because the officer in the instant case relied on the legal authority of the Fourth District and could not anticipate the law would change.

In contrast to the First District's opinion in the instant case, the opinion of the Fourth District in Aders adheres to the consistently prescribed analysis for determining whether reasonable suspicion existed to support an investigative detention; namely, whether, from an objective standpoint, an officer would suspect the possibility of criminal activity based on the known facts. Aders, 67 So. 3d 368 at 371. Because a color discrepancy represented the possibility that a tag was switched between vehicles in violation of the criminal traffic laws, the color discrepancy provided the officer with reasonable suspicion to conduct a temporary investigative detention. Id.

By injecting a concern about possibly innocent behavior forming the basis for a temporary investigative detention, which concern has been rejected by the United States Supreme Court in Sokolow and Wardlow, the First District failed to adhere to the correct analysis for determining reasonable suspicion. It is the First District's failure to adhere to this analysis which mandates that the opinion in the instant case be quashed, and the opinion in Aders be approved.

CONCLUSION

Based on the foregoing, the State respectfully submits the decision of the First District Court of

Appeal reported at 108 So. 3d 664 should be quashed, the decision of the Fourth District Court of Appeal reported at 67 So.3d 368 should be approved, and the judgment entered in the trial court should be affirmed.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by electronic mail on July 8, 2013: Richard Summa, Esq., at richard.summa@flpd2.com.

CERTIFICATE OF COMPLIANCE

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

Respectfully submitted and certified,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Trisha Meggs Pate
TRISHA MEGGS PATE
Tallahassee Bureau Chief,
Criminal Appeals
Florida Bar No. 0045489

/s/ Jay Kubica
By: JAY KUBICA
Florida Bar No. 0026341
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Fl 32399-1050
(850) 414-3300 (VOICE)
(850) 922-6674 (FAX)
L13-1-6254

Attorney for the State of Florida

No. 15-____

In the Supreme Court of the United States

STATE OF FLORIDA,

Petitioner,

v.

KERRICK VAN TEAMER,

Respondent.

On Petition for Writ of Certiorari to the Florida Supreme Court

APPENDIX F TO PETITION FOR WRIT OF CERTIORARI BY PETITIONER STATE OF FLORIDA

PETITIONER'S REPLY BRIEF IN THE FLORIDA SUPREME COURT

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, v. KERRICK VAN TEAMER, Respondent.	Case No. SC13-318

PETITIONER'S REPLY BRIEF

PAMELA JO BONDI
ATTORNEY GENERAL

TRISHA MEGGS PATE
TALLAHASSEE BUREAU CHIEF,
CRIMINAL APPEALS
FLORIDA BAR NO. 0045489

JAY KUBICA
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0026341

OFFICE OF THE ATTORNEY
GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300
(850) 992-6674 (FAX)
COUNSEL FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES PAGE#

PRELIMINARY STATEMENT

Parties (such as the State and Respondent, Kerrick Van Teamer), and the record on appeal will be designated as in the Initial Brief, and "IB" will designate Petitioner's Initial Brief, "AB," will designate Respondent's Answer Brief, each followed by any appropriate page number in parentheses.

STATEMENT OF THE CASE AND FACTS

The State relies upon the Statement of the Case and Facts as set out in the State's Initial Brief.

ARGUMENT

ISSUE: WHETHER REASONABLE SUSPICION TO JUSTIFY A TEMPORARY INVESTIGATIVE DETENTION AROSE BASED ON A COLOR DISCREPANCY BETWEEN A VEHICLE AND THE COLOR ASSOCIATED WITH TAG ATTACHED TO THE VEHICLE, WHEN SUCH COLOR DISCREPANCY WAS INDICATIVE OF VIOLATIONS OF FLORIDA'S CRIMINAL TRAFFIC LAWS? (RESTATED)

Merits

Respondent raises a number of assertions in answer to the State's initial brief, all of which are flawed due to a misapprehension of the standard for conducting a temporary detention. The correct standard for determining the validity of a temporary detention, as discussed in the initial brief, is whether an officer has, "a particularized and objective basis for suspecting the particular person stopped of criminal activity." United States v. Cortez, 449 U.S. 411, 417-418 (1981). This standard does not take into account the likelihood of whether conduct is innocent or guilty, "but the degree of suspicion that attaches to particular types of noncriminal acts." United States v. Sokolow, 490 U.S. 1, 10 (1989), quoting Illinois v. Gates, 462 U.S. 213, 243-244 n.13 (1983). Wholly innocent activity may justify a stop based on the reasonable suspicion that arises from

that activity, and despite any wholly reasonable innocent inferences and explanations for the activity. Illinois v. Wardlow, 528 U.S. 119, 125-126 (2000). The following explanation on this point from the United States Supreme Court bears repeating:

> Respondent and amici also argue that there are innocent reasons for flight from police and that, therefore, flight is not necessarily indicative of ongoing criminal activity. This fact is undoubtedly true, but does not establish a violation of the Fourth Amendment. Even in Terry, the conduct justifying the stop was ambiguous and susceptible of an innocent explanation. The officer observed two individuals pacing back and forth in front of a store, peering into the window and periodically conferring. 392 U.S., at 5–6, 88 S.Ct. 1868. All of this conduct was by itself lawful, but it also suggested that the individuals were casing the store for a planned robbery. Terry recognized that the officers could detain the individuals to resolve the ambiguity. Id., at 30, 88 S.Ct. 1868.
>
> In allowing such detentions, Terry accepts the risk that officers may stop innocent people. Indeed, the Fourth Amendment accepts that risk in connection with more drastic police action; persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent. The Terry stop is a far more

> minimal intrusion, simply allowing the officer to briefly investigate further. If the officer does not learn facts rising to the level of probable cause, the individual must be allowed to go on his way. But in this case the officers found respondent in possession of a handgun, and arrested him for violation of an Illinois firearms statute. No question of the propriety of the arrest itself is before us.

Id. Had the likelihood of innocence entered into the analysis for reasonable suspicion, then Terry v. Ohio, 392 U.S. 1 (1968), would have been decided rather differently. The inference of innocent activity, which in that case would have been window shopping based on walking back and forth in front of a shop window, is rather high, and the innocent inference is particularly reasonable. Yet the likelihood of innocent activity was not taken into account when determining whether reasonable suspicion existed; as explained above, it is irrelevant to the analysis. Rather, what matters is whether an officer can point to a particularized and objective fact which reasonably supports their suspicion. See Cortez, 449 U.S. 411 at 417-418.

In light of the correct standard, Respondent's discussion of various statutes in determining the reasonableness of suspicion is particularly flawed. Just as the theft statute in Terry did not need to specify that walking back and forth in front of a store window constitutes reasonable suspicion of criminal activity, no Florida statute needs to address what is reasonable and what is not. As the United States

Supreme Court has explained, the concept of reasonable suspicion is a "commonsense, nontechnical" concept. Ornelas v. United States, 517 U.S. 690, 695-696 (1996). Given that each case must be decided on its own facts and circumstances, resort to the legislature as to what constitutes reasonable suspicion of a criminal violation is wholly unhelpful. Moreover, many of Respondent's assertions regarding the purpose of motor vehicle registration and notably lacking in citation to authority and should be disregarded for that reason.

Respondent has also advanced what he acknowledges to be a "slippery slope" argument. Aside from "slippery slope" arguments being a long-recognized logical fallacy, Respondent's "slippery slope" assertions are without merit. Respondent makes a false analogy in each hypothetical in his series of dangerous future cases. Respondent's hypothetical cases do not concern attributes of a vehicle, but rather, circumstances surrounding a vehicle, whereas the instant case is concerned only with reasonable suspicion arising from an irregularity in an attribute of the vehicle itself.

This is particularly important when each of Respondent's hypotheticals demonstrate situations where there is no discrepancy between the observed facts and the registration information. A registration designates who owns a vehicle, not who drives a vehicle; thus, that a male drives a vehicle owned by a female is not contrary to the information in the registration. Further, a registration designates the address of one who owns a vehicle, not where that vehicle is currently located; thus, that a vehicle is located away from the address of its

owner is not contrary to the information in the registration. It is because of the lack of discrepancy that there is no basis to suspect criminal activity in any of Respondent's hypotheticals, not because each contains an innocent inference. In contrast, the instant case involved the vehicle's actual color contradicting the color contained in the registration. Such a contradiction between what was expected and occurred is precisely the kind of particular, objective facts which support a finding of reasonable suspicion. When Deputy Knotts observed the contradiction, it was reasonable for the deputy to suspect that criminal activity was afoot and investigate further to "resolve the ambiguity." See Wardlow, 528 U.S. 119 at 125-126.

Respondent also asserts that the State has engaged in mischaracterization of the First District's opinion in the instant case. However, it is not disputed that the First District stated the following:

> As a preliminary matter, we acknowledge that any discrepancy between a vehicle's plates and the registration may legitimately raise a concern that the vehicle is stolen or the plates were swapped from another vehicle.

Van Teamer v. State, 108 So. 3d 664, 667 (Fla. 1st DCA 2013). The word "legitimate" is defined in part as, "reasonable; logically correct *[a legitimate inference]*." Webster's New World College Dictionary 819 (4th ed. 2010). Thus, if a discrepancy legitimately raises a concern of certain criminal activity, such a phrase is synonymous with a

reasonable concern (or suspicion) of criminal activity. Contrary to Respondent's assertion, no mischaracterization is present in the State's position. Rather, the State has correctly represented the inherent contradictions in the First District's opinion.

While it appears that Respondent is correct that Aders v. State, 67 So.3d 368 (Fla. 4th DCA 2011), was not issued at the time of the traffic stop, it is worth noting that even the First District in Van Teamer acknowleged the lack of guidance in this State's caselaw for officers in Deputy Knotts' position. Id. at 667. Given that the Fourth District in Aders later found an officer's determination under similar facts to be reasonable, and that other cases, such as Smith v. State, 713 N.E. 2d 338, 341 (Ind.Ct.App.1999), were consistent with the Aders court and were issued prior to the traffic stop in the instant case, there appears to be a lack of police culpability in the instant case. Since Deputy Knotts arrived at a conclusion shared by non-binding courts in other jurisdictions, and later shared by the Fourth District, the good faith exception should still apply in the instant case. As for Respondent's argument of waiver in regard to the good faith exception, Respondent has failed to apprehend that an appellate court must affirm the judgment of a trial court if the judgment is legally correct for any reason. See Dade County School Bd. v. Radio Station WQBA, 731 So. 2d 638, 645 (Fla. 1999).

Respondent's position is that Deputy Knotts had nothing but a hunch in the instant case, and so was not justified in temporarily detaining Respondent. Respondent's position ignores that the deputy did not

rely on a hunch, but on specific facts; namely, the color indicated on the vehicle's registration and the actual color of the vehicle. The significance of these facts is that they contradict each other, revealing that everything was not as it should be and that criminal activity involving improperly licensing and providing of false information in the registering of a vehicle, switching tags between vehicles, and vehicle theft may have occurred.

CONCLUSION

Based on the foregoing, the State respectfully submits the decision of the First District Court of Appeal reported at 108 So. 3d 664 should be quashed, the decision of the Fourth District Court of Appeal reported at 67 So.3d 368 should be approved, and the judgment entered in the trial court should be affirmed.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by electronic mail on August 28, 2013: Richard Summa, Esq., at richard.summa@flpd2.com.

CERTIFICATE OF COMPLIANCE

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

Respectfully submitted and certified,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Trisha Meggs Pate
TRISHA MEGGS PATE
Tallahassee Bureau Chief,
Criminal Appeals
Florida Bar No. 0045489

/s/ Jay Kubica
By: JAY KUBICA
Florida Bar No. 0026341
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Fl 32399-1050
(850) 414-3300 (VOICE)
(850) 922-6674 (FAX)
L13-1-6254

Attorney for the State of Florida

No. 15-____

In the Supreme Court of the United States

STATE OF FLORIDA,

Petitioner,

v.

KERRICK VAN TEAMER,

Respondent.

On Petition for Writ of Certiorari to the Florida Supreme Court

APPENDIX G TO PETITION FOR WRIT OF CERTIORARI BY PETITIONER STATE OF FLORIDA

JULY 3, 2014 OPINION OF THE FLORIDA SUPREME COURT

SUPREME COURT OF FLORIDA

No. SC13-318

STATE OF FLORIDA
Petitioner,

vs.

KERRICK VAN TEAMER,
Respondent

[July 3, 2014]

QUINCE, J.

This case is before the Court for review of the decision of the First District Court of Appeal in Teamer v. State, 108 So.3d 664 (Fla. 1st DCA 2013).[1] The district court certified that its decision is in direct conflict with the decision of the Fourth District Court of Appeal in Aders v. State, 67 So.3d 368 (Fla. 4th DCA 2011). We have jurisdiction. See art. V, § 3(b)(4), Fla. Const. As we explain, we approve the

[1] The record presents some confusion regarding the Respondent's surname. Although his full name is "Kerrick Van Teamer," his surname is "Teamer," not "Van Teamer." This opinion refers to him and his case below accordingly. State v. Teamer, 151 So. 3d 421, 424 (Fla. 2014), reh'g denied (Nov. 19, 2014)

First District's decision and disapprove that of the Fourth District.

FACTS AND PROCEDURAL HISTORY

On June 22, 2010, an Escambia County Deputy Sheriff observed Kerrick Teamer driving a bright green Chevrolet. Teamer, 108 So.3d at 665. After noticing the car, the deputy continued on his patrol, driving into one of the neighborhoods in that area. Upon traveling back to where he had first seen Teamer, the deputy again observed Teamer driving the same car. The deputy then "ran" the number from Teamer's license plate through the Florida Department of Highway Safety and Motor Vehicles (DHSMV) database, as is customary for him while on patrol, and learned that the vehicle was registered as a blue Chevrolet. Id. The database did not return any information regarding the model of the vehicle. Based only on the color inconsistency, the deputy pulled the car over to conduct a traffic stop.

"Upon interviewing the occupants, the deputy learned that the vehicle had recently been painted, thus explaining the inconsistency." Id. However, during the stop, the deputy noticed a strong odor of marijuana emanating from the car and decided to conduct a search of the vehicle, Teamer, and the other passenger. Id. "Marijuana and crack cocaine were recovered from the vehicle, and about $1,100 in cash was recovered from [Teamer]. [He] was charged with trafficking in cocaine (between 28–200 grams), possession of marijuana (less than 20 grams), and possession of drug paraphernalia" (scales). Id.

On October 4, 2010, Teamer filed a motion to suppress the results of the stop as products of an unlawful, warrantless search. At the hearing on the motion to suppress, the deputy acknowledged that, in his training and experience, he had encountered individuals who would switch license plates and he could not verify a vehicle's identification number without pulling over the vehicle. Id. On cross-examination, the deputy acknowledged that the car was not reported stolen, he had not observed any other traffic violations or suspicious or furtive behavior, he was not "aware of any reports of stolen vehicles or swapped plates in the area," and "the only thing that was out of the ordinary was the inconsistency of the vehicle color from the registration." Id.

The trial court denied the motion to suppress, explaining that the rationale for the denial was that the deputy "had a legal right to conduct an investigatory stop when a registration search of the automobile license tag reflected a different color than the observed color of the vehicle." The trial court found that the deputy made the investigatory stop "because the registration was not consistent with the color of the vehicle" and that since "the vehicle was legally stopped for investigative purposes," the odor of marijuana that the officer smelled during the stop gave him probable cause to conduct a search. After a jury trial, Teamer was convicted on all three counts as charged in the information. The trial judge sentenced him to six years on count one and time served on the other two counts.

Teamer appealed, and the First District reversed the trial court's denial of Teamer's motion to

suppress, certifying conflict with the Fourth District in Aders. Id. at 670. The First District acknowledged "that any discrepancy between a vehicle's plates and the registration may legitimately raise a concern that the vehicle is stolen or the plates were swapped from another vehicle," but found that such concern must be weighed "against a citizen's right under the Fourth Amendment to travel on the roads free from governmental intrusions." Id. at 667. The district court cited several cases demonstrating that color discrepancy is typically one of several factors constituting reasonable suspicion. Id. at 668. The First District then cited two nonbinding cases[2] for the principle that a color discrepancy alone does not provide reasonable suspicion for a stop. Id. at 668–69. Relying on those cases and other "somewhat analogous cases involving investigations of 'temporary tags,' " the district court ruled that a color discrepancy alone did not warrant an investigatory stop. Id. at 669–70. The court found that under the converse ruling, "every person who changes the color of [his or her] vehicle is continually subject to an investigatory stop so long as the color inconsistency persists." Id. at 670. The First District stated that it was "hesitant to license an investigatory stop" under such circumstances. Id.

ANALYSIS

---

[2] United States v. Uribe, No. 2:10–cr–17–JMS–CMM, 2011 WL 4538407 (S.D.Ind. Sept. 28, 2011); Commonwealth v. Mason, 78 Va. Cir. 474 (Cir.Ct.2009), aff'd, No. 1956–09–2, 2010 WL 768721 (Va.Ct.App. Mar. 9, 2010).

In reviewing a trial court's ruling on a motion to suppress, the trial court's determinations of historical facts are reversed only if not supported by competent, substantial evidence. Connor v. State, 803 So.2d 598, 608 (Fla.2001). However, the application of the law to those facts is subject to de novo review. Id. Further, this Court is required to construe Florida's constitutional right against unreasonable searches and seizures "in conformity with the [Fourth] Amendment to the United States Constitution, as interpreted by the United States Supreme Court." Art. I, § 12, Fla. Const.; Bernie v. State, 524 So.2d 988, 990–91 (Fla.1988) ("[W]e are bound to follow the interpretations of the United States Supreme Court with relation to the [F]ourth [A]mendment....").

The United States Supreme Court has "held that the police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." United States v. Sokolow, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989) (quoting Terry v. Ohio, 392 U.S. 1, 30, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)); Popple v. State, 626 So.2d 185, 186 (Fla.1993) ("[A] police officer may reasonably detain a citizen temporarily if the officer has a reasonable suspicion that a person has committed, is committing, or is about to commit a crime." (citing § 901.151, Fla. Stat. (1991))). However, a "police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" an investigatory stop. Terry, 392 U.S. at 21,

88 S.Ct. 1868. The Supreme Court has described reasonable suspicion as "a particularized and objective basis for suspecting the particular person stopped of criminal activity." United States v. Cortez, 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981). This standard requires "something more than an 'inchoate and unparticularized suspicion or hunch.' " Sokolow, 490 U.S. at 7, 109 S.Ct. 1581 (quoting Terry, 392 U.S. at 27, 88 S.Ct. 1868) (internal quotation marks omitted).

"Reasonableness, of course, depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.' " Pennsylvania v. Mimms, 434 U.S. 106, 109, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977) (quoting United States v. Brignoni–Ponce, 422 U.S. 873, 878, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975)); State v. Diaz, 850 So.2d 435, 439 (Fla.2003) ("The real test is one of reasonableness, which involves balancing the interests of the State with those of the motorist."). "When a search or seizure is conducted without a warrant, the government bears the burden of demonstrating that the search or seizure was reasonable." Hilton v. State, 961 So.2d 284, 296 (Fla.2007) (citing United States v. Johnson, 63 F.3d 242, 245 (3d Cir.1995) ("As a general rule, the burden of proof is on the defendant who seeks to suppress evidence. However, once the defendant has established a basis for his motion, i.e., the search or seizure was conducted without a warrant, the burden shifts to the government to show that the search or seizure was reasonable." (citation omitted))).

Reasonable suspicion must also be assessed based on "the totality of the circumstances—the whole picture," Cortez, 449 U.S. at 417, 101 S.Ct. 690; United States v. Arvizu, 534 U.S. 266, 277, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002), and "from the standpoint of an objectively reasonable police officer," Ornelas v. United States, 517 U.S. 690, 696, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996); Arvizu, 534 U.S. at 277, 122 S.Ct. 744. Thus, a police officer may draw inferences based on his own experience. Ornelas, 517 U.S. at 700, 116 S.Ct. 1657; Cortez, 449 U.S. at 418, 101 S.Ct. 690 ("[A] trained officer draws inferences and makes deductions—inferences and deductions that might well elude an untrained person."). However, "the officer's subjective intentions are not involved in the determination of reasonableness." Hilton, 961 So.2d at 294; Whren v. United States, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) (recognizing the rejection of "any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved").

"[I]nnocent behavior will frequently provide the basis" for reasonable suspicion. Sokolow, 490 U.S. at 10, 109 S.Ct. 1581; see also Illinois v. Wardlow, 528 U.S. 119, 125, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000) (acknowledging this fact and recognizing that an officer can detain an individual to resolve an ambiguity regarding suspicious yet lawful or innocent conduct). "[T]he relevant inquiry is not whether particular conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of noncriminal acts." Sokolow, 490 U.S. at 10, 109 S.Ct. 1581 (internal quotation marks omitted).

In the instant case, the State concedes that "the failure to update a vehicle registration to reflect a new color is not in specific violation of a Florida law." Thus, what degree of suspicion attaches to this noncriminal act?

To warrant an investigatory stop, the law requires not just a mere suspicion of criminal activity, but a reasonable, well-founded one. Popple, 626 So.2d at 186 ("[A]n investigatory stop requires a well-founded, articulable suspicion of criminal *427 activity."). In Terry, the stop was found appropriate because the officer "had observed [three men] go [t]hrough a series of acts, each of them perhaps innocent in itself, but which taken together warranted further investigation." Terry, 392 U.S. at 22, 88 S.Ct. 1868. The U.S. Supreme Court described the scenario as follows:

> There is nothing unusual in two men standing together on a street corner, perhaps waiting for someone. Nor is there anything suspicious about people in such circumstances strolling up and down the street, singly or in pairs. Store windows, moreover, are made to be looked in. But the story is quite different where, as here, two men hover about a street corner for an extended period of time, at the end of which it becomes apparent that they are not waiting for anyone or anything; where these men pace alternately along an identical route, pausing to stare in the same store window roughly 24 times; where each completion of this route is

> followed immediately by a conference between the two men on the corner; where they are joined in one of these conferences by a third man who leaves swiftly; and where the two men finally follow the third and rejoin him a couple of blocks away.

Id. at 22–23, 88 S.Ct. 1868. The Supreme Court found that "[i]t would have been poor police work indeed for an officer of 30 years' experience in the detection of thievery from stores in this same neighborhood to have failed to investigate this behavior further." Id. at 23, 88 S.Ct. 1868. Thus each seemingly innocent activity in Terry had a cumulative effect of providing an officer with a reasonable suspicion.

Conversely, in State v. Johnson, 561 So.2d 1139, 1142 (Fla.1990), this Court rejected an officer's use of a self-created drug courier profile because "Florida law does not permit a profile based on factors that are little more than mundane or unremarkable descriptions of everyday law-abiding activities." We noted that a drug courier profile in a Supreme Court case[3] was upheld "precisely because it described unusual conduct that set the defendant apart from other travelers and that strongly suggested concealed criminal conduct." Id. We invalidated the profile used in Johnson because "there was nothing at all unusual or out of the ordinary about the conduct that" fit within the profile. Id. at 1142–43. In so holding, we stated that individuals fitting within

[3] Sokolow, 490 U.S. 1, 109 S.Ct. 1581, 104 L.Ed.2d 1.

the officer's profile "simply cannot be described as an inherently 'suspicious' bunch." Id. at 1143. The innocent factors within the profile failed to create a reasonable suspicion.

Turning to the instant case, the sole basis here for the investigatory stop is an observation of one completely noncriminal factor, not several incidents of innocent activity combining under a totality of the circumstances to arouse a reasonable suspicion—as was the case in Terry. The discrepancy between the vehicle registration and the color the deputy observed does present an ambiguous situation, and the Supreme Court has recognized that an officer can detain an individual to resolve an ambiguity regarding suspicious yet lawful or innocent conduct. Wardlow, 528 U.S. at 125, 120 S.Ct. 673. However, the suspicion still must be a reasonable one. Popple, 626 So.2d at 186 ("Mere suspicion is not enough to support a stop."). In this case, there simply are not enough facts to demonstrate reasonableness. Like the factors in Johnson, the color discrepancy here is not "inherently suspicious" or "unusual" enough or so "out of the ordinary" as to provide an officer with a reasonable suspicion of criminal activity, especially given the fact that it is not against the law in Florida to change the color of your vehicle without notifying the DHSMV.

The law allows officers to draw rational inferences, but to find reasonable suspicion based on this single noncriminal factor would be to license investigatory stops on nothing more than an officer's hunch. Doing so would be akin to finding reasonable suspicion for an officer to stop an individual for walking in a sparsely occupied area after midnight

simply because that officer testified that, in his experience, people who walk in such areas after midnight tend to commit robberies. Without more, this one fact may provide a "mere suspicion," but it does not rise to the level of a reasonable suspicion.[4] Neither does the sole innocent factor here—a color discrepancy—rise to such level. The deputy may have had a suspicion, but it was not a reasonable or well-founded one, especially given the fact that the driver of the vehicle was not engaged in any suspicious activity. Moreover, "the government provided no evidence to tip the scales from a mere hunch to something even approaching reasonable and articulable suspicion, despite attempting to justify a detention based on one observed incident of completely innocent behavior in a non-suspicious context." United States v. Uribe, 709 F.3d 646, 652 (7th Cir.2013).

Reasonableness also "depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.' " Mimms, 434 U.S. at 109, 98 S.Ct. 330 (quoting Brignoni–Ponce, 422 U.S. at 878, 95 S.Ct. 2574); Diaz, 850 So.2d at 439 ("The real test is one of reasonableness, which involves balancing the interests of the State with those of the motorist."). In order to determine reasonableness, courts "must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against

[4] The State conceded as much during oral argument in this case. When asked whether that scenario provided enough reasonable suspicion for a stop, the prosecutor responded, "It would depend on what else they were doing...."

the importance of the governmental interests alleged to justify the intrusion." United States v. Place, 462 U.S. 696, 703, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983); Delaware v. Prouse, 440 U.S. 648, 654, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979) ("[T]he permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests."). Thus we must balance the nature and quality of the intrusion required to stop an individual and investigate a color discrepancy against the government's interest in finding stolen vehicles or enforcing vehicle registration laws.[5]

In Brignoni–Ponce, the Supreme Court invalidated a roving patrol stop by Border Patrol agents near a closed checkpoint operation at the Mexican border. 422 U.S. at 886, 95 S.Ct. 2574. In stopping the vehicle, the agents had relied on a single factor—"the apparent Mexican ancestry of the occupants." Id. at 885–86, 95 S.Ct. 2574. As part of balancing the public interest with the motorist's rights, the Supreme Court outlined as the governmental interest preventing illegal aliens from entering this country. Id. at 878–80, 95 S.Ct. 2574. However, despite the importance of that interest, the

[5] See § 320.02(6), Fla. Stat. (2010) ("Any person who registers his or her motor vehicle by means of false or fraudulent representations made in any application for registration is guilty of a misdemeanor of the second degree...."); § 320.261 (making it illegal to "knowingly attach [ ] to any motor vehicle" a license plate that was not "lawfully transferred to such vehicle"); § 320.0609(2)(a) (making it unlawful to transfer license plates to a different vehicle without notifying DHSMV).

"modest" intrusion of a brief stop, and the absence of practical alternatives for policing the border, the Court found that the apparent Mexican heritage of the occupants did not provide reasonable suspicion for a stop. Id. at 881, 886, 95 S.Ct. 2574. The Court stated, "The likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor, but standing alone it does not justify stopping all Mexican–Americans to ask if they are aliens." Id. at 886–87, 95 S.Ct. 2574; cf. United States v. Martinez–Fuerte, 428 U.S. 543, 545, 557–59, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976) (upholding stops for brief questioning at fixed checkpoints even with no reasonable suspicion of illegal aliens because although the need for such stops is as great as that in Brignoni–Ponce, a checkpoint stop is much less intrusive since "the generating of concern or even fright on the part of lawful travelers is appreciably less").

Similarly, in Prouse, the Supreme Court invalidated a random vehicle stop by roving patrol officers solely to confirm a driver's compliance with licensure and registration requirements. 440 U.S. at 659, 99 S.Ct. 1391. The Court described the intrusion on the motorist's interests as follows:

> We cannot assume that the physical and psychological intrusion visited upon the occupants of a vehicle by a random stop to check documents is of any less moment than that occasioned by a stop by border agents on roving patrol. Both of these stops generally entail law enforcement officers signaling a moving automobile to

> pull over to the side of the roadway, by means of a possibly unsettling show of authority. Both interfere with freedom of movement, are inconvenient, and consume time. Both may create substantial anxiety. For Fourth Amendment purposes, we also see insufficient resemblance between sporadic and random stops of individual vehicles making their way through city traffic and those stops occasioned by roadblocks where all vehicles are brought to a halt or to a near halt, and all are subjected to a show of the police power of the community. At traffic checkpoints the motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion.

Id. at 657, 99 S.Ct. 1391 (internal quotation marks omitted). The Court balanced that intrusion with the state's interests in apprehending stolen vehicles—which the Court characterized as indistinguishable from a "general interest in crime control"—and promoting roadway safety. Id. at 658–59 & n. 18, 99 S.Ct. 1391. The Supreme Court held that given the alternative mechanisms available for enforcing traffic and vehicle safety regulations—the foremost of which being to act only upon observed violations—the incremental contribution to highway safety of the random stops in that case did not justify their intrusion on Fourth Amendment rights. Id. at 659, 99 S.Ct. 1391.

The intrusion involved in the instant case is similar to that described in Prouse, especially considering that anyone who chooses to paint his or her vehicle a different color could be pulled over by law enforcement every time he or she drives it. Prouse, 440 U.S. at 662–63, 99 S.Ct. 1391 ("Were the individual subject to unfettered governmental intrusion every time he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed."). Furthermore, the governmental interest here is not nearly as strong as that in Brignoni–Ponce of developing "effective measures to prevent the illegal entry of aliens at the Mexican border," 422 U.S. at 878–79, 95 S.Ct. 2574, but is more like that in Prouse—"ensuring that ... licensing, registration, and vehicle inspection requirements are being observed," 440 U.S. at 658, 99 S.Ct. 1391. In fact, the Supreme Court described part of the interest at stake here—the apprehension of stolen vehicles—as indistinguishable "from the general interest in crime control." Id. at 659 n. 18, 99 S.Ct. 1391.

Even more relevant is the Supreme Court's finding in Brignoni–Ponce that a single factor—the apparent Mexican ancestry of the vehicle's occupants—was not enough to furnish a reasonable suspicion that the occupants were illegal aliens. 422 U.S. at 885–86, 95 S.Ct. 2574. Likewise, the likelihood that a color discrepancy such as that at issue here indicates a stolen vehicle may be high enough to make it a relevant factor, but standing alone, it does not justify initiating a stop to determine if the law has been violated. The deputy here needed more indicia of a violation to distinguish

between an illegal transfer of license plates, for example, and a legal decision to paint one's vehicle. Conducting an investigatory stop based on a color discrepancy only when that discrepancy exists in conjunction with additional factors indicating potential criminal activity still protects the government's interests, while also preserving a motorist's right of freedom from arbitrary interference by law enforcement. We find that the governmental interest in this case is outweighed by Teamer's constitutional rights, and the investigatory stop was not warranted.

"Under the exclusionary rule announced by the United States Supreme Court, 'the Fourth Amendment bar[s] the use of evidence secured through an illegal search and seizure.' " Hilton, 961 So.2d at 293 (alteration in original) (quoting Mapp v. Ohio, 367 U.S. 643, 648, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961) (holding that the federal exclusionary rule applies to the states as well)). "Whether the exclusionary sanction is appropriately imposed in a particular case ... is 'an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct.' " United States v. Leon, 468 U.S. 897, 906, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) (quoting Illinois v. Gates, 462 U.S. 213, 223, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)).

The primary rationale behind the exclusionary rule is to deter law enforcement from violating constitutional rights. Terry, 392 U.S. at 12, 88 S.Ct. 1868; see also United States v. Calandra, 414 U.S. 338, 348, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974) ("[T]he rule is a judicially created remedy designed to

safeguard Fourth Amendment rights generally through its deterrent effect."). The instant case is not one in which the exclusionary rule "is powerless to deter invasions of constitutionally guaranteed rights [because] the police either have no interest in prosecuting or are willing to forgo successful prosecution in the interest of serving some other goal." Terry, 392 U.S. at 14, 88 S.Ct. 1868. Applying the exclusionary rule here would have the required deterrent effect. See, e.g., Prouse, 440 U.S. at 651, 663, 99 S.Ct. 1391 (affirming the trial court's judgment granting the defendant's motion to suppress).

Further, the State has not demonstrated that any exceptions apply. Brown v. Illinois, 422 U.S. 590, 604, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975) (discussing whether to apply an exception to the exclusionary rule and stating that "the burden of showing admissibility rests, of course, on the prosecution"). The State argues a variation of the good faith exception to the exclusionary rule. This exception was first found to apply whenever a law enforcement officer conducts a search while relying, in good faith, upon a defective search warrant. Leon, 468 U.S. at 922, 104 S.Ct. 3405; Massachusetts v. Sheppard, 468 U.S. 981, 987–89, 104 S.Ct. 3424, 82 L.Ed.2d 737 (1984). Over time, however, the Supreme Court extended this exception to other factual scenarios, including searches where police acted in objectively reasonable reliance on binding judicial precedent. Davis v. United States, —— U.S. ——, 131 S.Ct. 2419, 2428, 180 L.Ed.2d 285 (2011). However, the rule of Davis has no application to the present case because the Aders decision was issued on July 27,

2011—more than one year after the stop of Teamer's vehicle. Thus Aders was not binding precedent on which the deputy could have relied.

Despite this fact, the State argues that the good faith exception should still apply because the deputy here "arrived at a conclusion shared by non-binding courts in other jurisdictions,[6] and later shared by the Fourth District" in Aders. However, there are also nonbinding courts in other jurisdictions that have arrived at the exact opposite conclusion. United States v. Uribe, No. 2:10–cr–17–JMS–CMM, 2011 WL 4538407 (S.D.Ind. Sept. 28, 2011); Commonwealth v. Mason, 78 Va. Cir. 474 (Cir.Ct.2009), aff'd, No. 1956–09–2, 2010 WL 768721 (Va.Ct.App. Mar. 9, 2010). We are satisfied that the exclusionary rule will have an appropriate deterrent effect in this case and that none of the exceptions to the rule apply.

CONCLUSION

Based on the foregoing, we disapprove the decision of the Fourth District in Aders v. State, 67 So.3d 368 (Fla. 4th DCA 2011), and approve the First District's decision in Teamer v. State, 108 So.3d 664 (Fla. 1st DCA 2013), reversing the trial court's judgment and sentence and ordering that Teamer be discharged.

It is so ordered.

---

[6] Smith v. State, 713 N.E.2d 338, 341 (Ind.Ct.App.1999); Andrews v. State, 289 Ga.App. 679, 658 S.E.2d 126, 127–28 (2008).

LABARGA, C.J., and PARIENTE, LEWIS, and PERRY, JJ., concur.
CANADY, J., dissents with an opinion in which POLSTON, J., concurs.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

CANADY, J., dissenting.

Because I conclude that the traffic stop of Kerrick Van Teamer's vehicle was based on a reasonable suspicion of criminal activity and that the trial court therefore correctly denied the motion to suppress, I dissent from the majority's approval of the First District Court of Appeal's decision reversing Teamer's judgment and sentence and ordering that he be discharged. I would quash the decision of the First District on review and approve the decision of the Fourth District in Aders v. State, 67 So.3d 368 (Fla. 4th DCA 2011).

I.

"The Fourth Amendment permits brief investigative stops—such as the traffic stop in this case—when a law enforcement officer has 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.' " Navarette v. California, —— U.S. ——, 134 S.Ct. 1683, 1687, 188 L.Ed.2d 680 (2014) (quoting United States v. Cortez, 449 U.S. 411, 417–18, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)). This rule is rooted in Terry v.

Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), where "the [Supreme] Court implicitly acknowledged the authority of the police to make a forcible stop of a person when the officer has reasonable, articulable suspicion that the person has been, is, or is about to be engaged in criminal activity." United States v. Place, 462 U.S. 696, 702, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983).

The Terry rule recognizes that "[t]he Fourth Amendment requires 'some minimal level of objective justification' for making the stop." United States v. Sokolow, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989) (quoting Immigration & Naturalization Serv. v. Delgado, 466 U.S. 210, 217, 104 S.Ct. 1758, 80 L.Ed.2d 247 (1984)). Reasonable suspicion thus requires "something more than an 'inchoate and unparticularized suspicion or "hunch." ' " Sokolow, 490 U.S. at 7, 109 S.Ct. 1581 (quoting Terry, 392 U.S. at 27, 88 S.Ct. 1868). "A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct." United States v. Arvizu, 534 U.S. 266, 277, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002). In permitting detentions based on reasonable suspicion, "Terry accepts the risk that officers may stop innocent people." Illinois v. Wardlow, 528 U.S. 119, 126, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). But when a stop lacks an objective basis, "the risk of arbitrary and abusive police practices exceeds tolerable limits." Brown v. Texas, 443 U.S. 47, 52, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979). Courts making "reasonable-suspicion determinations ... must look at the 'totality of the circumstances' of each case." Arvizu, 534 U.S. at 273, 122 S.Ct. 744.

The rule authorizing stops based on reasonable suspicion—which embodies an "exception to the probable-cause requirement"—rests on the Supreme Court's "balancing of the competing interests to determine the reasonableness of the type of seizure involved within the meaning of 'the Fourth Amendment's general proscription against unreasonable searches and seizures.' " Place, 462 U.S. at 703, 103 S.Ct. 2637 (quoting Terry, 392 U.S. at 20, 88 S.Ct. 1868). This balancing process involves weighing "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." Id. "A central concern in balancing these competing considerations in a variety of settings has been to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field." Brown, 443 U.S. at 51, 99 S.Ct. 2637. The Supreme Court's categorical authorization of brief investigative detentions based on a reasonable suspicion of criminal activity flows from the conclusion that "[w]hen the nature and extent of the detention are minimally intrusive of the individual's Fourth Amendment interests, the opposing law enforcement interests can support a seizure based on less than probable cause." Place, 462 U.S. at 703, 103 S.Ct. 2637.

II.

Here, the officer's suspicion was aroused by the discrepancy between the color of the vehicle driven by Teamer and the color that was indicated in the

registration information for the vehicle associated with the license tag on Teamer's vehicle. Because of this discrepancy, a reasonable officer could suspect that the license tag may have been illegally transferred from the vehicle to which it was assigned. Although the color discrepancy was not necessarily indicative of illegality, it constituted "a particularized and objective basis for suspecting the particular person stopped of criminal activity." Navarette, 134 S.Ct. at 1687 (quoting Cortez, 449 U.S. at 417–18, 101 S.Ct. 690). The color discrepancy was "something more than an 'inchoate and unparticularized suspicion or "hunch." ' " Sokolow, 490 U.S. at 7, 109 S.Ct. 1581 (quoting Terry, 392 U.S. at 27, 88 S.Ct. 1868). I would therefore conclude that the officer had the "minimal level of objective justification" necessary to conduct a stop for the purpose of further investigating the discrepancy. Sokolow, 490 U.S. at 7, 109 S.Ct. 1581 (quoting Delgado, 466 U.S. at 217, 104 S.Ct. 1758).

"It is not uncommon for members of the same court to disagree as to whether the proper threshold for reasonable suspicion has been reached." William E. Ringel, Searches & Seizures Arrests & Confessions § 11:12 (Westlaw database updated March 2014). On the issue presented by this case, different courts have disagreed regarding whether the color discrepancy was sufficient to establish reasonable suspicion. Compare Aders, 67 So.3d at 371 (holding that "[a] color discrepancy is enough to create a reasonable suspicion in the mind of a law enforcement officer of the violation of ... criminal law"); United States v. Uribe, 709 F.3d 646 (7th Cir.2013) (same); Andrews v. State, 289 Ga.App. 679,

658 S.E.2d 126 (2008) (same); Smith v. State, 713 N.E.2d 338 (Ind.Ct.App.1999) (same); with Van Teamer, 108 So.3d 664 (Fla. 1st DCA 2013) (holding that color discrepancy alone does not warrant an investigatory stop); United States v. Uribe, 2:10–cr–17–JMS–CMM, 2011 WL 4538407 (S.D.Ind. Sept. 28, 2011) (same); Commonwealth v. Mason, No. 1956–09–2, 2010 WL 768721 (Va.Ct.App. Mar. 9, 2010) (same). Different views on this question are no doubt influenced by divergent judgments regarding the likelihood that the color discrepancy had an innocent explanation—namely, the repainting of the vehicle after it was registered—and was not indicative of illegality. The courts in fact have no empirical basis for reaching a conclusion about that likelihood. But a stop predicated on such a color discrepancy unquestionably falls outside the category of "arbitrary invasions solely at the unfettered discretion of officers in the field." Brown, 443 U.S. at 51, 99 S.Ct. 2637. A stop in such circumstances cannot fairly be called an "arbitrary and abusive" police practice. Id. at 52, 99 S.Ct. 2637.

The crux of the majority's decision in this case is its conclusion that finding "reasonable suspicion based on this single noncriminal factor would be to license investigatory stops on nothing more than an officer's hunch." Majority op. at 428. This conclusion suggests a categorical rule that is not consistent with the framework established in the Supreme Court's Fourth Amendment jurisprudence. Although the totality of the circumstances must be taken into account in every case, that does not mean that an officer's reliance on a "single noncriminal factor"—such as the vehicle color discrepancy here—is the

equivalent of a "hunch." The majority is wholly unjustified in categorizing an undeniably objective factor as a hunch. The majority's "effort to refine and elaborate the requirements of 'reasonable suspicion' in this case creates unnecessary difficulty in dealing with one of the relatively simple concepts embodied in the Fourth Amendment." Sokolow, 490 U.S. at 7–8, 109 S.Ct. 1581.

The two cases on which the majority places primary reliance do not support the majority's line of analysis. In United States v. Brignoni–Ponce, 422 U.S. 873, 876, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975), the Supreme Court considered "whether a roving patrol may stop a vehicle in an area near the border and question its occupants when the only ground for suspicion is that the occupants appear to be of Mexican ancestry." The Supreme Court concluded that "Mexican appearance" "standing alone ... does not justify stopping all Mexican–Americans to ask if they are aliens." Id. at 887, 95 S.Ct. 2574. The Supreme Court's rejection of stops based purely on ethnic classification does not support the conclusion that all stops where the officer relies on "a single noncriminal factor" are unconstitutional. Nor does Delaware v. Prouse, 440 U.S. 648, 655, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979), where the Supreme Court rejected Delaware's argument "that patrol officers be subject to no constraints in deciding which automobiles shall be stopped for a license and registration check because the State's interest in discretionary spot checks as a means of ensuring the safety of its roadways outweighs the resulting intrusion on the privacy and security of the persons detained." Prouse thus does not address the issue of

reasonable suspicion, and it sheds no light on whether reasonable suspicion existed in the case on review here.

III.

The officer's stop of Teamer did not transgress the requirements of the Fourth Amendment. The decision of the First District should be quashed, and Teamer's conviction and sentence should remain undisturbed.

POLSTON, J., concurs.

Application for Review of the Decision of the District Court of Appeal - Direct Conflict of Decisions

First District - Case No. 1D11-3491

(Escambia County)

Pamela Jo Bondi, Attorney General, Trisha Meggs Pate, Tallahassee Bureau Chief, Criminal Appeals, and Jay Kubica, Assistant Attorney General, Tallahassee, FL,

for Petitioner.

Nancy A. Daniels, Public Defender, and Richard M. Summa, Assistant Public Defender, Tallahassee, FL,

for Respondent.

No. 15-____

In the Supreme Court of the United States

STATE OF FLORIDA,

Petitioner,

v.

KERRICK VAN TEAMER,

Respondent.

On Petition for Writ of Certiorari to the Florida Supreme Court

APPENDIX H TO PETITION FOR WRIT OF CERTIORARI BY PETITIONER STATE OF FLORIDA

PETITIONER'S JULY 18, 2014, MOTION FOR REHEARING IN THE FLORIDA SUPREME COURT

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,
v. Case No. SC13-318

KERRICK VAN TEAMER,
Respondent.
_____/

STATE'S MOTION FOR REHEARING

Pursuant to Florida Rule of Appellate Procedure 9.300, the Petitioner, the State of Florida (hereinafter State), moves this Honorable Court to rehear this matter, quash the decision of the First District in the instant case, and approve the decision of the Fourth District in Aders v. State, 67 So.3d 368 (Fla. 4th DCA 2011). In support thereof, Petitioner states:

This Court's opinion in this case has misapprehended the State's position, the facts of the case, and the applicable law. Specifically, this Court has characterized the State as conceding that a single non-criminal fact amounts to nothing more than a hunch that cannot give rise to reasonable suspicion. Slip Op., at 10-11, n. 4. To the contrary, the State has made no such concession. Rather, the State's position is that reasonable suspicion is analyzed not based on the number of facts available, but the nature and meaning of the facts. Indeed, just prior to the quote from the State during oral argument that was included in this Court's opinion, the State made clear that the position attributed to

the State was not correct by stating, "That is not at all the State's position." (Oral Argument Recording, Time Index 13:54-14:52). Subsequent to the quote from the State, the State made clear that its position was when particular facts give rise to an inference in criminal activity, reasonable suspicion exists and we expect an officer to investigate. (Oral Argument Recording, Time Index 14:52-15:42). Consequently, it appears that this Court has misapprehended the nature and import of the State's position in the instant case.

To analyze reasonable suspicion based on the number of available facts, as opposed to their quality, ignores the mandate that the analysis must consider the totality of the circumstances. The United States Supreme Court made this principle clear in Florida v. Harris, 133 S.Ct. 1050, 1055 (2013), when it stated the following regarding the similar analysis for determining probable cause:

> In evaluating whether the State has met this practical and common-sensical standard, we have consistently looked to the totality of the circumstances. See, e.g., Pringle, 540 U.S., at 371, 124 S.Ct. 795; Gates, 462 U.S., at 232, 103 S.Ct. 2317; Brinegar v. United States, 338 U.S. 160, 176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949). We have rejected rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach. In Gates, for example, we abandoned our old test for assessing the reliability of informants' tips because it had devolved into a "complex

> superstructure of evidentiary and analytical rules," any one of which, if not complied with, would derail a finding of probable cause. 462 U.S., at 235, 103 S.Ct. 2317. We lamented the development of a list of "inflexible, independent requirements applicable in every case." Id., at 230, n. 6, 103 S.Ct. 2317. Probable cause, we emphasized, is "a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." Id., at 232, 103 S.Ct. 2317.

There is little that is more rigid and mechanistic than an analysis driven by numbers, rather than by the facts and the context in which they arise. Thus, the State's position that the analysis is driven by what inferences can be derived, rather than the number of factors present, is in accord with United States Supreme Court precedent regarding the Fourth Amendment. This Court's analysis is at odds with this precedent and misapprehends the law by reaching a conclusion that when there is only one fact available to an officer, reasonable suspicion cannot arise. Slip Op., at 10, 15.

The Court reaches this conclusion based on a misreading of United States v. Brignoni-Ponce, 422 U.S. 873 (1975). Brignoni-Ponce presented the issue of whether a temporary traffic stop could be justified by nothing more than the Mexican ancestry of the stopped vehicle's occupants, where the occupants were suspected of being in the United States illegally. Id. at 885-886. While the Supreme Court held that this fact was insufficient to provide

reasonable suspicion, at no point did the Supreme Court announce that a single factor, standing alone, could never give rise to reasonable suspicion. Id. Thus, this Court's interpretation of Brignoni-Ponce, that a single factor is insufficient to provide reasonable suspicion, is a misapprehension of the law and a conclusion that does not follow logically from United States Supreme Court precedent. Slip Op., at 15.

This Court has also misapprehended the case of Delaware v. Prouse, 440 U.S. 648 (1979), for while this Court concluded that the instant case and Prouse are factually similar, Prouse does not support this conclusion. Prouse presented the issue of whether random stops, unsupported by any suspicion at all, for the purpose of checking driver and vehicle documentation were permissible under the Fourth Amendment. Id. at 663. The Supreme Court ruled that such random stops were impermissible. Id. The instant case, however, does not involve a random, utterly suspicionless stop at all, but instead involves a stop based on an officer's observation of a color discrepancy between the vehicle and its tag, combined with the officer's personal experience encountering individuals who switched tags "upwards of fifty to a hundred times". (RI 22-23). These factors led the officer to a conclusion that criminal activity may be afoot. (RI 22-23). Prouse does not address the issue of whether reasonable suspicion exists under certain factual scenarios, and so is inapplicable to the issue presented by the instant case. Thus, this Court's conclusion that Prouse and the instant case are similar evidences a

misapprehension of Prouse that renders this Court's reliance on Prouse incorrect.

Furthermore, this Court has misapprehended the facts of the instant case. This Court's opinion states that only one factor, a color discrepancy, formed the basis for the traffic stop. Slip Op., at 10. Rather, two factors existed in the instant case; the color discrepancy between the vehicle and the tag, and the officer's personal experience in encountering people who switched tags between vehicles. (RI 22-23). The officer's personal experience was specific to the scenario he encountered, and gave a special significance to that scenario. It was the comparison and consideration of these two factors that gave rise to a reasonable suspicion of criminal activity. The Court's statements to the contrary indicate a misapprehension of the facts which, along with this Court's misapprehension of the State's position and the law, warrant rehearing.

WHEREFORE, the State of Florida respectfully requests that this Court grant the instant motion, rehear this matter, quash the decision of the First District in the instant case, and approve the decision of the Fourth District in Aders v. State, 67 So.3d 368 (Fla. 4th DCA 2011).

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by electronic mail on July 18, 2014: Richard Summa, Esq., at richard.summa@flpd2.com.

CERTIFICATE OF COMPLIANCE

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

Respectfully submitted and certified,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Jay Kubica
By: JAY KUBICA
Assistant Attorney General
Florida Bar No. 0026341
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300 (VOICE)
(850) 922-6674 (FAX)
AG# L13-1-6254

Attorney for the State of Florida

No. 15-____

In the Supreme Court of the United States

STATE OF FLORIDA,

Petitioner,

v.

KERRICK VAN TEAMER,

Respondent.

On Petition for Writ of Certiorari to the Florida Supreme Court

APPENDIX I TO PETITION FOR WRIT OF CERTIORARI BY PETITIONER STATE OF FLORIDA

NOVEMBER 19, 2014 FLORIDA SUPREME COURT ORDER DENYING PETITIONER'S MOTION FOR REHEARING

SUPREME COURT OF FLORIDA

WEDNESDAY, NOVEMBER 19, 2014

CASE NO.: SC13-318
Lower Tribunal No(s): 1D11-3491
2010 CF3718

STATE OF FLORIDA vs. KERRICK VAN TEAMER
Petitioner(s) Respondent(s)

Petitioner's Motion for Rehearing is hereby denied.

LABARGA, C.J., AND PARIENTE, LEWIS, QUINCE, and PERRY, JJ., concur.
CANADY AND POLSTON, J.J., dissent.

A True Copy
Test:

_____
John A. Tomasino
Clerk, Supreme Court

sh
Served:

TRISHA MEGGS PATE
JAY PAUL KUBICA
RICHARD MICHAEL SUMMA
HON. PAM CHILDERS, CLERK
HON. JON S. WHEELER, CLERK
HON. MICHAEL GORDON ALLEN, JUDGE

No. 15-____

In the Supreme Court of the United States

STATE OF FLORIDA,

Petitioner,

v.

KERRICK VAN TEAMER,

Respondent.

On Petition for Writ of Certiorari to the Florida Supreme Court

APPENDIX J TO PETITION FOR WRIT OF CERTIORARI BY PETITIONER STATE OF FLORIDA

TRANSCRIPT OF CIRCUIT COURT HEARING ON RESPONDENT'S MOTION TO SUPPRESS

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

vs. CASE NO: 2010-2819A

KERRICK VAN TEAMER,
Defendant.
_____/

Digitally-recorded proceedings held in the above-styled cause before the Honorable Michael Allen, Circuit Judge, on the 9th day of December, 2010, at the M.C. Blanchard Judicial Building, 190 Governmental Center, Pensacola, Florida 32502.

APPEARANCES:

FOR THE STATE: JEFF GADDY, ESQUIRE
Assistant State Attorney
190 Governmental Center
Pensacola, Florida 32501

FOR THE DEFENDANT: PATRECE C. CASHWELL, ESQUIRE
201 E. Government Street
Pensacola, Florida 32501

DANA J. MURDOCK
CIRCUIT COURT REPORTER

P R O C E E D I N G S

MR. GADDY: Judge, if I could call Kerrick Teamer.

THE COURT: All right. That's Mr. Gaddy?

MR. GADDY: Yes. Calling Kerrick Teamer.

MS. CASHWELL: Is Jason Fails in the courtroom? Your Honor, I asked court security for the witness -- is he coming? Okay. Patrece Cashwell on behalf of Kerrick Teamer. Your Honor, we're here on a motion to suppress, and I need to just place a few things on the record.

THE COURT: All right.

MS. CASHWELL: If I may. Oh, excuse me, Your Honor.

THE COURT: One moment. May I have the file, please?

MR. GADDY: Judge, the suppression motion in this case addressed three issues: A stop of a vehicle, a search of a defendant in a vehicle, and a -- statements given by the defendant post-Miranda. The State is conceding as to the post-Miranda statements. So nothing that occurs immediately prior to Miranda will be introduced as evidence at trial.

MS. CASHWELL: Okay.

MR. GADDY: So no Miranda warnings --

THE COURT: Wait. You said you were conceding as to post-Miranda. You meant conceding as to pre-Miranda?

MR. GADDY: No, any post-Miranda statements.

THE COURT: Any post-Miranda statements. You agree --

MR. GADDY: I -- I --

THE COURT: -- that the State should not be permitted to offer into evidence any statements that he made pursuant to any --

MR. GADDY: Right. Based -- I'm not going to --

THE COURT: -- any questioning?

MR. GADDY: Correct. I'm not going to introduce any of those at trial. I don't know --

THE COURT: Okay.

MR. GADDY: If we had a hearing, I don't know if I'd be allowed to or not. But I'm not going to be attempting to introduce any of those.

THE COURT: All right. Are there any spontaneous statements, or are there any statements that you're going to assert that he made spontaneously, that you intend to offer as evidence at trial?

MR. GADDY: Possibly. Possibly.

MS. CASHWELL: And we're seeking to suppress all statements. And we, apparently --

THE COURT: Okay.

MS. CASHWELL: -- are going to have a full contested hearing.

THE COURT: But at least with regard, then, to any statements in response to any questions?

MR. GADDY: Any post-Miranda questions, the State's conceding those.

THE COURT: Okay. All right. But you may want to offer into evidence statements of or, excuse me-- evidence of statements that you assert he made spontaneously?

MR. GADDY: Correct, Judge. The issues would be the stop - -

THE COURT: Okay. Do you understand the context, then?

MS. CASHWELL: I understand what he's saying, Your Honor.

THE COURT: Okay.

MS. CASHWELL: And if I may --

THE COURT: All right.

MS. CASHWELL: - - make a brief opening statement.

THE COURT: All right.

MS. CASHWELL: Or do you want to have the hearing now?

THE COURT: Pardon me?

MS. CASHWELL: Do you want to have the hearing now, Your Honor?

THE COURT: When you say have the -- you mean hear the -- did we set it for this morning?

MS. CASHWELL: At 9:00, Your Honor.

THE COURT: Yeah.

MS. CASHWELL: Okay.

THE COURT: Let's just -- we're going to go ahead and do it.

MS. CASHWELL: Okay.

THE COURT: I mean, we'd set it, and I know it's 10:30 now. And, you know, my docket is crazy today, but we're going to go ahead and conduct the hearing.

MS. CASHWELL: Okay. Your Honor, I'm just going to briefly - -

THE COURT: Let me stop you for a second assume you have witnesses here.

MR. GADDY: I do.

THE COURT: Yeah. All right.

MS. CASHWELL: I'd like to invoke the rule, then.

THE COURT: You want to make a brief opening statement regarding it? Okay. Who are here as witnesses?

MR. GADDY: There's three officers. There's one officer - - I know the State subpoenaed two under defense subpoena.

THE COURT: Okay. If you think you're here as a witness in State of Florida versus Teamer, if you'll just wait right outside the Oourtroom, please.

MR. GADDY: And, Patrece, is Fails in the courtroom?

MS. CASHWELL: He hasn't been brought out yet.

MR. GADDY: Is that him?

MS. CASHWELL: Yes.

THE COURT: So you're planning to call, a witness, also?

MS. CASHWELL: Yes, Your Honor.

THE COURT: All right. One moment. Just a moment, This is a witness that Ms. Cashwell intends to call, and she's invoked the rule. So I need y'all just to hang tight with him, and then we' 11 tell you when to bring him in. All right. I'll allow a brief opening statement.

MS. CASHWELL: Okay. Your Honor, on June 22nd, about three o'clock, Officer Knotts was following a two-door Crossfire. He looked at the tag. He read -- he called the tag into -- I'm sorry?

MR. GADDY: Monte Carlo.

MS. CASHWELL: Monte Carlo. I'm sorry. He called the tag in, and he found out that the tag matched the year, make, model of the car, but it did not match the color. The color of the car, according to the registration that went with the tag, was supposed to be blue not green. So he initiated a stop of the vehicle.

He -- you'll then you'll see the in-car camera showed that he approached the vehicle,, and he was shown the registration information. And there was no violation of any statute by the defendant. There's no statute that says that he had to change the - update his registration information within a certain amount of time.

The officer then went back to his car, arid you can see him in his car. And what you'll see is that he -- he just -- he's sitting there and he's basically waiting for, I think, backup. Backup arrives. As soon as backup arrives, he orders Mr. Teamer out of the car. He then takes Mr. Teamer to the back of the vehicle, and you'll see him writing a ticket.

He then does a in-the-pocket search of Mr. Teamer, not a pat down, but in his pockets. He finds nothing. He then orders - - the other officer orders the passenger out of the vehicle, Again, does a pat down or does a search of the passenger. They then commence to search the vehicle.

What the defense is arguing, is that the stop - there was a problem with the stop because there was a mistaken belief of law that the registration information regarding color had to be changed. Number two, that ordering the defendant out of the car, which you'll see on the videotape, constituted a seizure. And, number three, that the search of the vehicle was illegal. It was not pursuant to consent.

And you'll hear the officer say that he smelled the odor of marijuana, but you will also hear, from two officers and the passenger and the driver, that there was no odor of marijuana. And we would ask the Court to suppress the stop. The two cases that we're relying on is

THE COURT: Let' s don' t argue the case right now.

MS. CASHWELL: Yes, Your Honor.

THE COURT: You just want to make an opening statement.

MS. CASHWELL: Okay.

THE COURT: Do you want to make a brief opening statement, Mr. Gaddy?

MR. GADDY: I don't need to.

THE COURT: Okay. This was a warrantless stop? A warrantless arrest?

MR. GADDY: A warrantless stop. A warrantless search.

THE COURT: All right. So the State will present evidence first?

MR. GADDY: Correct.

THE COURT: Okay.

MR GADDY: Christopher Knotts.

THE COURT: Christopher Knotts. I'm going to have them come up here to the witness stand.
(Witness sworn)

THE COURT: All right, just a minute. Okay. I need just a little -- little quieter while I have some testimony going on, please.
All right. Mr. Gaddy, you may proceed.

WHEREUPON, CHRISTOPHER KNOTTS,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GADDY:

Q. State your name, please.

A. Christopher Knotts.

Q. Where do you work?

A. The Escambia County Sheriff's Office.

Q. What do you do there?

A. I'm a deputy sheriff currently assigned to the uniform patrol division.

Q. Okay. How long have you been on patrol?

A. With the Escambia County Sheriff's Office for approximately four years.

Q. Okay. Do you have any prior law enforcement experience?

A. Yes, sir.

Q. Tell me about that.

A. I was a law enforcement officer in the State of Ohio for, I believe, about six years.

Q. What were your duties up there?

A. Essentially, patrol, as well, sir.

Q. Do you have any experience with narcotics?

A. Yes, sir, I do.

Q. Tell me about that.

A. I've been trained both through the Ohio Police Officer Training Academy as well as the Comparative Compliance Review Schooling through the Florida Department of Law Enforcement. I have made hundreds of narcotics arrest and have been around narcotics in a professional environment.

Q. Have you ever, throughout your work experience, had the occasion to smell the odor of marijuana?

A. Yes, sir.

Q. Approximately how many times?

A. I couldn't even venture a guess, sir. Upwards of a -- upwards of a couple of hundred, easily.

Q. And based on your training and experience, are you able to detect the odor of marijuana when you're in its presence?.

A. Yes, sir.

Q. Are you able to distinguish between the difference between raw marijuana and burnt marijuana?

A. Yes, sir.

Q. I want to take you back to June 22nd of this year around 3:30p.m. Do you remember that date and time?

A. Yes, sir.

Q. And do you remember coming into contact with a green Monte Carlo and eventually pulling it over?

A. Yes, sir.

Q. If you could, kind of start us at the beginning of your contact with that vehicle and walk us through what happened.

A. I was westbound on Jackson, approximately, from New Warrington and was just headed westbound, and there was a very bright green Chevy vehicle in front of me that turned into the Beachside Bingo, I believe, on Jackson, at one of dross streets there, 48, I think. I actually was -- I continued on my way. I just took notice of the fact that it was a very bright green vehicle. I went up and went into one of the neighborhoods there north - - or on the north side of the roadway of Jackson. I then decided -- my intention was to go back and get some coffee at a Circle K. I actually went back towards Jackson. 1nd as soon as I as soon as I come to the "t" intersection at the whatever street I was on on Jackson, I see the same bright green car and I thought, well, you know, unusual. You know, people often times will turn away from us in an attempt to - in an attempt to, you know, just --

MS. CASHWELL: Your Honor, I'm going to object at this point. There's a narrative going on at this point.

THE COURT: It's too much of a narrative. So I'm going to ask you to ask specific questions.

Q. (By Mr. Gaddy) Okay. So you see his vehicle for a second time?

A. Okay. See the vehicle for a second time. Pull out from behind the vehicle a second time. At that point in time, I ran the tag on the vehicle, sir.

Q. Okay. Why did you do that?

A. That's part of our job, sir, just to investigate things. I run hundreds of tags on a weekly basis, and sometimes you find things. Sometimes you don't. And--

Q. Okay. When you ran the tag, on this green Monte Carlo, what did it come back as?

A. It came back as a blue Chevy.

Q. And did that, peak your interest?

A. Yes, sir, it did.

Q. Why?

A. Because it was not consistent with what the - - with what the registration information given by the Department of Highway Safety and Motor Vehicles was, sir.

Q. In your training and experience, have you ever encountered individuals that will switch tags on vehicles?

A. Absolutely, sir.

Q. Okay. Approximately how many tithes have you seen that yourself?

A. Upwards of probably fifty to a hundred, sir..

Q. From where you are in your patrol car behind his vehicle, is there any way to determine whether or not the tag that's on that vehicle is actually registered to that tag other than that information you get?

A. No, sir.

Q. For example, i's there a VIN number visible on the vehicle in front of you that you can see to verify?

A. Not from my position behind the vehicle in my patrol vehicle.

Q. So once you run this information and see it comes back to a blue Chevy, what do you do at that point?

A. At that point in time, I conducted a traffic stop, sir.

Q. What happens when you pull the car over?

A. I made contact at Fairfield and Heartstone in the parking lot of Jamaica Cafe with the driver of that vehicle being Mr. Teamer.

Q. And tell me about that conversation.

A. I approached the I approached the driver's side window and my standard verbiage is, hi, sir, Deputy Knotts, Escambia County Sheriff's Officer. The

reason I pulled you over, is the tag doesn't match the vehicle. I believe, you know, I said something to that effect. That was the statement at that point in time, sir.

Q. Okay. While you're there having the conversation with Mr. Teamer, is his window down Or door open?

A. The window was down, sir.

Q. Okay. While you're standing there talking to Mr. Teamer, did you notice any odor?

A. Yes, sir, I did.

Q. Tell me about that.

A. I noticed an odor of what smelled to me like raw marijuana, sir.

Q. What did you do at that point?

A. At that point in time, I didn't act like there was anything amiss, and I simply -- I gained identification and I think I actually got the registration, also, and returned to my patrol vehicle, At which time, I requested a second deputy to come to the scene.

Q. Now, while you were talking to Mr. .Teamer, did you get an explanation for the discrepancy in the co1or of the vehicle?

A. Yes, sir.

Q. And what was that?

A. He stated that he'd had it painted, I think, the week previously. I think it was the week previous or sometime very recently.

Q. So then you go back to your vehicle and you said you asked for a backup officer?

A. Correct, sir.

Q. Why did you do that?

A. It was my intention to initiate a probable -- to initiate a probable cause search of the vehicle based upon what I smelled, the marijuana coming from the vehicle.

Q. And did that backup officer arrive?

A. Yes, he did.

Q. And, at that point in. time, did you approach Mr. Teamer and get him out of vehicle?

A. Yes, sir.

Q. Okay. What type of conversations did you have with him and where did you have it?

A. I actually had it at the rear of - - of his vehicle. I actually called him back. Explained to him the reason why I pulled him over and actually issued him a warning for the variance between the registration and the color, the improper, you know,

color on the vehicle, and I informed him of what I had smelled. Informed him that, you know, it was my intention to conduct a probable cause search of the vehicle.

Q. Okay. And did you then search Mr. Teamer?

A. Yes, sir, I did.

Q. And what, if anything, did you find on Mr. Teamer?

A. Nothing -- no contraband. However, I did find a large amount of U.S. currency.

Q. Okay. Approximately over $1,100?

A. I believe so.

Q. And, at that point in time, did you have the passenger, Mr. Fails, also removed from the vehicle?

A. Yes, sir.

Q. And was that so that you could search the vehicle?

A. Correct, sir.

Q. And, at that time, did you search the vehicle?

A. Yes, sir, I did.

Q. What is your backup officer doing at that I point?

A. At that point in time, he was actually, I believe, attempting to speak to Mr. Fails and Mr. Teamer, and just, basically, ensure my safety at the scene while I was conducting the search.

Q. At this point, are they put in handcuffs or patrol cars or anything like that?

A. No, sir.

Q. And so the backup officer, I believe, that's Deputy Southern?

A. Correct, sir.

Q. He stands by with Mr. Fails and. Mr. Teamer?

A. Correct, sir.

Q. And you search the vehicle?

A. Correct.

Q. Tell me about your search of the vehicle.

A. I searched the vehicle. And upon searching the vehicle, I located narcotics inside. .

Q. Where did you locate that narcotics?

A. There was actually a center console cup holder, and the cup holder was actually - there was a cup inside of it. I believe there was a cup inside of it, and underneath the cup holder was where the narcotics were found, sir.

MR. GADDY: May I approach, Judge?

THE COURT: You may.

MS. CASHWELL: No objection to the photographs, Your Honor.

Q. (By Mr. Gaddy) I'm showing you State's 1 through 4. Do those photographs show the vehicle and the location where the narcotics were found?

A. Yes, sir.

MR. GADDY: Judge, I 'a move State' s 1 through 4 into evidence.

THE COURT: You said no objection?

MS. CASHWELL: No objection.

THE COURT: All right. The photos will be received in evidence. Here you go. If you could hand those to me, sir.

MR. GADDY: May I approach, Judge?

THE COURT: You may.

MS. CASHWELL: Okay, no objection.

Q. (By Mr. Gaddy) I'm showing you what's been marked as State's Exhibit No. 5. Do you recognize this to be a video that you viewed outside a minute ago?

A. Yes, sir, I do.

Q. And does that video fairly and accurately show the traffic stop that you had with Mr. Teamer?

A. Yes, sir, it does.

MR. GADDY: Judge, I'd move State's Exhibit No. 5 into evidence.

MS. CASHWELL: I'm going to --.1 have no objection to this videotape being put into evidence, but I need to state on. the record that this is not the entirety of the video. This is a redacted portion of the video. Where it's been represented to me by the state attorney that the only thing that's been redacted is post-Miranda. So anything that occurred post-Miranda has been redacted.

THE COURT: Okay. And just, for the record, when you refer to it as a videotape, it's actually a DVD or a CD; is it not?

MR. GADDY: Correct.

THE COURT: Okay.

MS. CASHWELL: Did I say a videotape?

THE COURT: You said videotape. All right. All right, then I'll receive it in evidence.

MR. GADDY: Thank you, Judge. No more questions, Judge.

CROSS-EXAMINATION

BY MS. CASHWELL:

Q. Okay. Deputy Knotts, when you ran the tag, did it come back as stolen?

A. No, ma'am, it did not.

Q. Did it come back as nonexisting? Not being registered to any vehicle?

A. No, ma'am.

Q. Okay. Was there any kind of suspicious driving pattern? Did the car fail to stop when you tried to stop it?

A. No, ma'am.

Q. Okay. Did you have any knowledge or see: anything like furtive movements within the car?

A. No, ma'am.

Q. So the sole reason for your stop was that, when you ran the tag, it said it was registered to a 2006 Chevy Monte Carlo, correct?

A. No, ma'am.

Q. What did the tag say it was supposed to be attached to?

A. There is no indication of a model, only make.

Q. So a 2006 Chevy?

A. Correct, ma'am.

Q. And you had in front of you a 2006 Chevy; is that correct?

A. I wasn't sure what year vehicle I had. I knew that I had a Chevy, ma'am.

Q. Okay. And you also knew that it was two-door Chevy, correct? Did the tag come back to a two-door Chevy?

A. I do not recall, ma'am. I do not recall.

Q. Let me put it this way and make it crystal clear. The only thing that you found that was out of the ordinary with the tag andthe vehicle was the color? Would that be fair?

A. Yes, ma'am.

Q. Okay. And then you took that tag information and tried to find the registration information, correct? Or did you get it at the same time?

A. It's contemporaneously returned, ma'am.

Q. Okay. And on the registration information it said it was a blue Chevy, right?

A. Correct, ma'am.

Q. Okay. Now, the registration information would contain the make and model of the car, correct?

A. No, ma'am.

Q. So your registration information doesn't have a make and model of the car?

A. It returns as the make.

Q. Not the model?

A. Correct.

Q. So based on -- there was, no driving pattern. The tag wasn't stolen. There was no tag lights out. There was nothing else wrong other than the color that was allegedly on your registration information and the color of the vehicle did not match, right?

A. Correct, ma'am.

Q. Okay. Now, is there is there any statute that requires us to inform DMV when we paint our cars?

A. I am aware of a statute which -- which requires the updating of the registration information upon changes to address and things like that. I also am aware of the fact that it's illegal to make a false application regarding information on a vehicle for the registration of said vehicle.

Q. Let me I'm sorry for interrupting.

A. I'm sorry.

Q. I'm sorry for interrupting. Go on.

A. Those two things there.

Q. Okay. But you would agree that there's absolutely no statute that says that we have to update DMV any time we paint our car, correct?

A. I was unable to locate it on that day, yes, I ma'am.

Q. Okay. And you also -- so when you stopped the vehicle, you were stopping the vehicle for a color problem?

A. No, ma'am.

Q. But it was not a violation of any statute?

A. No, ma'am.

Q. You said that the statute -- well, do you know the statute that requires registration updating?

A. No, ma'am.

MS. CASHWELL: Your Honor, I would -- and I know this is somewhat out of turn -- but I would ask that the Court take judicial notice -- and I know it's supposed to be in writing -- but for purposes of the hearing, I would ask that the Court take judicial notice of Chapter 320 entitled Motor Vehicle Licenses, and, specifically and that all deals with registration -- but 320.02. 320.261.

THE COURT: Just those two?

MS. CASHWELL: Well, I would ask the Court to take a look at the entire statute to give the officer the benefit of the doubt.

Q. (By Ms. Cashwell) Okay. Did you offer -- did I you give - -

THE COURT: Hold on.

MS. CASHWELL: Oh, I'm sorry.

THE COURT: Mr. Gaddy, do you have any objection to me taking judicial notice of the statutes?

MR. GADDY: No, Judge.

THE COURT: I'll take judicial notice of the statutes.

MS. CASHWELL: Okay.

THE COURT: Go ahead.

MS. CASHWELL: Thank you.

Q. (By Ms. Cashwell) Once you stopped him, there were two people inside the vehicle, correct?

A. Correct, ma'am.

Q. Okay. And when you made contact with him, he immediately showed you his registration form; is that correct?

A. Correct, ma'am.

Q. And that registration form came back to a 2006 Monte Carlo, Chevy, two door; is that correct?

A. Yes, ma'am. Yes, ma'am.

Q. Okay. And he explain to you, immediately, that, hey, I painted the dogon car green?

A. Correct, ma'am.

Q. Okay. When you spoke to Mr. Fail when you asked Mr. Teamer to come out of the vehicle, did you smell the odor of marijuana on Mr. Teamer?

A. Not to such not to such an extent which would have explained my original heavy smell of marijuana emanating from the vehicle.

Q. The answer to the question would be yes?

A. Yes, ma'am.

Q. Okay. Did you smell the odor of marijuana on Jason Fails?

A. Yes, ma'am.

Q. Do you have any idea how long marijuana -- the odor of marijuana can linger on a person?

A. I have never done subjective testing to the effect, but --

Q. Have you done -- and I'm not trying to pick on I you.

A. Yes, ma'am.

Q. But it would be fair to say that your nose and your ability to smell is individual? I mean, everybody has got a different ability to smell?

A. Correct, ma'am.

Q. Would you agree?

A. Absolutely.

Q. Okay. And your nose has never been subjected to any sort of scientific test?

A. Correct.

Q. Would that be fair? Okay And so there's no -- so your nose may smell marijuana where somebody else's nose may not?

A. Very true.

MS. CASHWELL: Okay. Your Honor, I have no further questions.

THE COURT: Mr. Gaddy, any additional questions?

MR. GADDY: Briefly.

REDIRECT EXAMINATION

BY MR. GADDY:

Q. Did you inform Mr. Teamer that you'd smelled marijuana in the vehicle?

A. Upon my having him step out of the vehicle, yes, sir, I did.

Q. Did he have any response or explanation for that?

A. Yes, sir.

Q. And what was that?

A. He stated that he had smoked marijuana earlier.

Q. Inside the vehicle, or did he clarify?

A. I don't recall if he clarified, sir.

Q. Did you ever have a conversation with Jason Fails?

A. Yes, sir.

Q. Did you ever have a conversation with him about the odor of marijuana?

A. Yes, sir.

Q. Do you remember whether or not he made any statements about it?

MS. CASHWELL: Your Honor, I'm going to object. One, it's not a statement by a party to the case. And, number two, there's no. foundation for this since there's no prior inconsistent --

THE COURT: Well - -

MS. CASHWELL: So it's just pure hearsay.

MR. GADDY: And, Judge, I would agree with her objection. I guess I'm asking it, now, anticipating that he's going to come in and say the opposite. The Court can -- I don't know what his answer is going to be, but if--

THE COURT: All right. Well, if the issue is whether or not a statement made by someone else was part of what was considered by him, in determining whether or not there was probable cause, then it would not be hearsay because it would not be offered to prove the truth of the matter asserted. It would be offered to prove his subjective belief that he had probable cause to conduct a search. But it sounds to me like his encounter with Mr. Fails occurred after he had made the determination, anyway. Am I not mistaken about that?

MR. GADDY: That's correct.

MS. CASHWELL: That's correct, Your Honor.

THE COURT: So it doesn't appear to have any relevance.

MR. GADDY: I'll save it for rebuttal, Judge.

THE COURT: Okay.

MR. GADDY: No more questions.

THE COURT: All right. It was his witness. You may be excused right now. You need to wait outside. You're not to discuss your testimony with any other witnesses. Do you have another witness you want to call?

MR. GADDY: No, Judge.

THE COURT: Okay. Ms. Cashwell, do you want to call a witness?

MS. CASHWELL: Yes, Your Honor. I would call Deputy -- hold on --

MR. GADDY: Southern?

MS. CASHWELL: Actually, I want to get the crime scene person out of here. Solange Garcia.

THE COURT: Deputy Garcia, please. Is she a deputy or is she a technician?

MR. GADDY: A technician.

MS. CASHWELL: I think she's a crime scene technician, Your Honor.

THE COURT: Ms. Garcia.

(Witness sworn)

THE COURT: All right, You may be seated.

WHEREUPON, SOLANGE GARCIA,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. CASHWELL:

Q. Would you state your name, please?

A. Solange Marie Garcia.
Q. You were called out to this you were called out to Fairfield in front of the Jamaican, whatever, restaurant to take pictures of a 2006 Chevy Monte Carlo; is that correct?

A. Yes, that's correct.

Q. And to take pictures of the Monte Carlo, you took pictures of both inside and outside?

A. Yes, that's correct.

Q. And while you were around that vehicle, do you recollect smelling the odor of marijuana?

A. No, I can't recall at this time.

MS. CASHWELL: No further questions.

THE COURT: Mr. Gaddy.

CROSS-EXAMINATION

BY MR. GADDY:

Q. You mean you did not smell the odor, or you don't know one way or the other?

A. I can't recall. I can't remember if I did or I not.

Q. How many crime scenes do you think you've been to since that day?

A. Approximately, maybe, three or four, but I can't really give you an exact number.

Q. Okay. But you have no recollection, yes or no, as far as marijuana?

A. Right. No.

MR. GADDY: No more questions.

THE COURT: All right. Do you want this witness to remain available or -- I'm sorry -- do you have any redirect?

MS. CASHWELL: Oh, just one last question..

REDIRECT EXAMINATION

BY MS. CASHWELL:

Q. Is it notated anywhere in your report that you smelled the odor of marijuana?

A. No.

MS. CASHWELL: Okay. No further questions.

THE COURT: Do you want this witness to remain available?

MS. CASHWELL: No, Your Honor.

THE COURT: You may be excused. You're free to leave and go about your business.

Do you have another witness you want to call, Ms. Cashwell?

MS. CASHWELL: Deputy Southern.

MR. GADDY: May I approach, Judge?

THE COURT: You may.

WHEREUPON, JEREMY SOUTHERN

having been first duly sworn, was examined and testified as follows:

DIRECT EXPNINATION

BY MS. CASHWELL:

Q. Could you state your name, please?

A. Jeremy Southern.

Q. And how long have you been a deputy with the Escambia County Sheriff's Department?

A. I've been a deputy sheriff for a year. A detention deputy for three.

Q. Okay. Have you smelled the odor of marijuana before?

A. Yes, ma'am.

Q. How many times?

A. As a deputy sheriff, once.

Q. Okay. How many times in your total career?

A. As in law enforcement, just one time in my career.

Q. So you've only smelled marijuana once? How about your entire life?

A. It's probably a few times just throughout the years, you know, being as a younger guy --

Q. Okay.

A. -- kid, or whatever, around the wrong people back in the day.

Q. Would you recognize the smell? Do you feel comfortable recognizing the odor of marijuana?

A. Yes, ma'am.

Q. Okay. And on this day in question, would it be fair to say that you did not smell the odor of marijuana on Mr. Teamer?

A. I don't recall smelling it on Mr. Teamer on that day.

Q. Would it be fair to say that you do not recall smelling the odor of marijuana, there, around the vehicle?

A. I don't recall smelling the odor of marijuana.

MS. CASHWELL: No further questions.

THE COURT: Mr. Gaddy.

CROSS -EXAMINATION

BY MR. GADDY:

Q. Does that mean you did not smell it or that you don't remember one way or the other?

A. I don't recall - - remember one way or the other.

MR. GADDY: No more questions.

THE WITNESS: If I did, I would --

THE COURT: Do you want this witness to remain?

MS. CASHWELL: I'm sorry.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MS. CASHWELL:

Q. If you -- you were going to say if you had smelled the odor of marijuana -- I'm sorry, Your Honor if you

had smelled the odor of marijuana, that's something that you would have notated?

A. Yes, ma'am, I would have notated, but I wasn't required to write a supplement.

Q. Uh-huh.

A. But I believed if I did smell it, that I would have probably remembered. I just don't recall at all.

MS. CASHWELL: Okay.

THE COURT: All right. Do you want this witness to remain available?

MS. CASHWELL: No, Your Honor.

THE COURT: Mr. Gaddy, do you mind if he's excused?

MR. GADDY: No.

THE COURT: You may be excused. You're free to leave and go about your business.

MS. CASHWELL: Okay. We'd call Jason Fails.

THE COURT: All right. Can you get Mr. Fails out of lockup, please?

COURT SECURITY: Mr. Fails, step up here, raise your right hand and face the clerk.

(Witness sworn.)

WHEREUPON, JASON FAILS,

having, been first duly sworn, was examined and testified as follows:

DIRECT EXANINATION

BY MS. CASHWELL:

Q. Could you state your name, please?.

A. Jason Fails.

Q. And, sir, I'm just going to cut straight to it. Do you remember a day that you were riding with Mr. Teamer and got stopped by the police?

A. Yes, ma'am.

Q. Okay. And on that day, the two of you got were taken out 'of the car?

A. Yes, ma'am.

Q. Okay. Did you -- was there the odor -- did you smell the odor of marijuana inside the car?

A. No, ma'am.

Q. Had you smoked marijuana prior that day?

A. Yes, ma'am.

Q. Okay. Was there the odor of marijuana on or about you?

A. No, because it had been like a couple of hours, like, two or three hours earlier.

Q. Okay. So the answer is, no, that you didn't smell the odor of marijuana on you --

A. No, ma'am.

Q. -- or in the car?

A. No, ma'am.

Q. Did you smell the odor of marijuana on Mr. Teamer?

A. No, ma'am, not when I got in his car.

MS. CASHWELL: Okay, I have no further questions. Thank you.

THE COURT: Mr -- wait. Wait. Wait.

Mr. Gaddy, do you have any questions?

MR. GADDY: Just a couple, Judge.

CROSS EXPMINATION

BY MR. GADDY:

Q. So you did smoke marijuana earlier that day?

A. Yes, sir.

Q. Okay. How -- how long prior to that?

A. Probably like about two hours before he came and picked me up.

Q. Okay. Did Mr. Teamer smoke any marijuana while you were with him?

A. No, ma'am -- oh, no, sir.

Q. Did you know that there was marijuana found in the vehicle?

A. No, sir.

Q. Okay. You didn't have anything to do with the marijuana or crack cocaine that was found in the vehicle?

MS. CASHWELL: Your Honor, objection.

THE WITNESS: No, sir.

MS. CASHWELL: Outside the scope.

THE COURT: I'll sustain the objection.

MR. GADDY: No more questions, Judge.

THE COURT: All right.

MS. CASHWELL: I'd call Mr. Teamer, Your Honor.

THE COURT: All right. Just a moment.

MS. CASHWELL: Oh, I'm sorry.

THE COURT: No more questions for Mr. Fai1s?

MS. CASHWELL: No, Your Honor.

THE COURT: Is that correct? All right. He may be excused. You may take him back into custody.

MS. CASHWELL: I'd call Mr. Teamer.

THE COURT: I'm inclined -- unless you've got a problem, Mr. Gaddy --

MR. GADDY: No.

THE COURT: I'm inclined to just let him stand there at the podium - -

MS. CASHWELL: Oh, okay.

THE COURT: -- with Ms. Cashwell.

MR. GADDY: That' s fine.

THE COURT: Sir, she'll swear you in.

(Defendant sworn)

THE COURT: All right.

WHEREUPON, KERRICK VAN TEAMER,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. CASHWELL:

Q. Could you state your name, please?

A. Kerrick Teamer.

Q. Okay. And, sir, you were -- you remember the day that you were driving your. - - or driving a Chevy Monte Carlo?

A. Yes, ma'am.

Q. Okay. And when the police officer stopped you, was there a odor of marijuana inside your Car?

A. No, ma'am.

Q. Did you or Jason Fails smoke marijuana inside your car?

A. No, ma'am.

Q. And when you were -- when you were stopped, you told the police officer that you had painted your car from blue to green; is that correct?

A. Yes, ma'am.

Q. Okay. And had your car been previously stopped in reference to the color change?

A. Yeah, prior to that.

Q. Well, tell us about that.

A. Well, prior to that, I think that stop happened June 22nd. July the 2nd, 2010, a city officer, by the officer's name (unintelligible) Thompson, stopped me, and he didn't bring up he didn't give me no citation, for the change in the color of my car or nothing. He just gave me a warning for speeding, but he never issued me any citations or any warnings for the initiation of the color of my car, prior to being stopped June 22nd of 2010. And this was July 2nd, 2010.

Q. Okay. Mr. Teamer, are you aware of any statutes that require immediate notification, or any notification, to DMV that the color of your car has changed?

A. No, ma'am.

MS. CASHWELL: Thank you. No further questions.

THE COURT: Mr. Gaddy.

CROSS EXAMINATION

BY MR. GADDY:

Q. Mr. Teamer, did you tell Deputy Knott you'd smoked marijuana in that vehicle?

A. No, sir.

Q. Are you aware that he pulled marijuana out of that center console?

A. No, sir.

Q. Did you see the drugs that he pulled out?

A. After the fact.

Q. I'm not trying to get you to say they're yours. I'm just saying, did you see the drugs?

A. No, after the fact. No, I didn't see it until after the fact.

Q. Okay. What did you see, after the fact, that he pulled out of there?

MS. CASHWELL: Your Honor, objection. Outside the scope.

THE COURT: I'm not sure if it's relevant to the suppression proceeding, anyway. What's the relevance of what he saw pulled out?

MR. GADDY: I just want to know whether or not he saw the marijuana that came out of his car.

THE COURT: How is it relevant to this proceeding?

MR. GADDY: Because one of the big issues is the odor of marijuana, and him admitting that he saw it come out of his car would be pretty relevant.

THE COURT: I'll permit you to ask him the question, if he saw marijuana removed from the car.

Q. (By Mr. Gaddy) Did you see that they had retrieved marijuana out of your car?

A. After the fact, but not him basically getting it, no.

Q. After the fact, you saw the pile of stuff that came out of your car, including that pile of marijuana?

A. I seen what he had, but I didn't know where it came from. But I seen what he had. He told me that it was marijuana. I asked him what he found, and that's what he told me what he found. Not to my recollection, though. That what he told me he found when he came to me

MR. GADDY: No more questions, Judge.

THE COURT: All right.

REDIRECT EXAMINATION

BY MS. CASHWELL:

Q. And that -- oh, I'm sorry. Real quick. That marijuana, was it loose, lying around, or was it in a plastic baggie?

A. Yes, he had it in a plastic baggie.

Q. And that plastic baggie, was it loose and open to the world, or was it tied up?

A. I guess, when he showed it to me, it was tied up.

Q. Were there any -- did you see him find any blunts or anything else? Any evidence of recently smoked marijuana in the car?

A. No, ma'am.

MS. CASHWELL: No further questions.

THE COURT: All right. Any other witnesses?

MS. CASHWELL: No, Your Honor.

THE COURT: Any other witnesses, Mr. Gaddy?

MR. GADDY: Chris Knotts.

MS. CASHWELL: What do you want to do with the video?

THE COURT: How long is it?

MR. GADDY: Twenty-three minutes.

THE COURT: That's pretty long.

MS. CASHWELL: Yeah.

THE COURT: Do you want me to view it as part of this hearing?

MR. GADDY: I do, Judge.

THE COURT: Okay. Here's what we're going to have to do. We'll hear any testimony from Watts. I'll hear your argument, and then, sometime later today or tonight, I'll have to view the video. I'm not going to take twenty-three minutes right now.

MS. CASHWELL: Understood.

THE COURT: I'll have to view it and then notify y'all of the decision.

MS. CASHWELL: Understood.

THE COURT: All right. You remain under oath.

THE WITNESS: Yes, sir,

THE COURT: All right. Mr. Gaddy.

WHEREUPON, CHRISTOPHER KOTTS,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GADDY:

Q. State your name, please.

A. Christopher Knotts.

Q. And what narcotics did you recover from the vehicle?

A. Marijuana and crack cocaine.

Q. And was that burnt marijuana or raw marijuana?

A. I believe there was raw marijuana there,

Q. And did you confront Mr. Fails about the odor of marijuana?

A. Yes, sir.

Q. And what was his response?

A. I believe he'd stated that -- the quote was "we had smoked." So --

Q. Did he say anything about how long he'd been in the car?

A. My recollection is that he had picked him up and -- I'm sorry -- Mr. Teamer had picked him up and was taking him somewhere close by the location which I pulled him over.

MS. CASHWELL: Your Honor, we object and ask that that be struck - stricken because it was his understanding, as opposed to a prior inconsistent statement, an actual statement.

THE COURT: All right. What was the question you asked him, Mr. Bayhi (sic)? Did you ask him what Mr. Teamer said or what Mr. Fails said to you?

MR. GADDY; What Mr. Fails said.

THE COURT: What Mr. Fails said to him. Okay. Sir, do you remember what Mr. Fails said? And I'm confused when he said my understanding was. What did Mr. Fails say to you?

THE WITNESS: Exact verbiage, I do not remember, sir. I remember what he stated, though, or what he conveyed to me.

THE COURT: Okay. All right. So, Mr. Gaddy, I'm trying to gather for what purpose you're offering this testimony.

MR. GADDY: It's rebutting the testimony.

THE COURT: You're offering it to impeach --

MR. GADDY: Yes, it's impeaching, the testimony of Jason Fails.

THE COURT: Well, Mr. Fails testified that he told somebody that he had smoked marijuana' earlier. So it doesn't sound like it's rebutting Mr. Fails' testimony or that it's inconsistent.

MR. GADDY: Well, it is, Judge. Because, what. he testified was that, he said that he smoked marijuana hours earlier and that Mr. Teamer did not.

THE COURT: I agree with you. He did say that he had smoked marijuana before Mr. Teamer picked him

MR. GADDY: The testimony by this officer is, that the two of them smoked it together in a recent -- in time to the stop. So there's a big difference.

THE COURT: Okay.

MS. CASHWELL: But, Your Honor --

THE COURT: But I'll. overrule the objection that was made.

Any other questions, Mr.Gaddy?

MR. GADDY: No, Judge.

THE COURT: Any other questions, Ms. Cashwell?

REDIRECT EXAMINATION

BY MS. CASHWELL:

Q. That -- as far as the recency of the alleged smoking of marijuana, that's based on your understanding at the time. But you don't have a memory regarding what statements he actually made? Would that be fair?

A. As far as the exact phrase or exact words I used?

Q. Right.

A. That is correct, ma'am.

Q. Okay. And since everything was allegedly captured on an in-car camera, would you agree that the conversation you had with Mr. Fails should also be caught on an in-car camera? .

A. Yes, ma'am.

Q. Okay. And so you would agree that the best evidence of any conversation that you had with Mr. Fails would be the in-car camera?

A. Yes, ma'am.

MS. CASHWELL: No further questions.

THE COURT: All right. Any other questions?

MR. GADDY: No, Judge.

THE COURT: May he be excused?

MR. GADDY: Yes.

THE COURT: All right. You may be excused. You're free to go.

THE WITNESS: Thank you, sir.

THE COURT: All right. Counsel, what I'm going to do, is I'll let y'all present an argument to me. And then, sometime, if I'm able to during the day, today, or it may be tonight, I'll review the -- is it in a DVD format or a CD format; do you know?

MS. CASHWELL: DVD.

MR. GADDY: DVD.

THE COURT: It's a DVD format. Okay, that tells me where I may need --

MS. CASHWELL: And, Your Honor, I think we --

THE COURT: Okay. That tells me where I may need to play it.

MS. CASHWELL: I'm sorry. And, Your Honor, I think we can kind of because Mr. Gaddy and I have already spoken, kind of narrowly define the issue.

THE COURT: Okay.

MS. CASHWELL: And if you. have a problem with what I'm .saying, let -- you know, just jump in.

THE COURT: I have an idea of the narrow issue that I think is important, but I'll let you make your argument. And then I may steer y'all to what I believe is the most significant narrow issue. Go ahead.

MS. CASHWELL: As far as the stop goes, the issue is whether or not the officer could stop the vehicle with whether that stop was supported by probable cause and believed that a traffic violation had occurred, which it did not. Or a violation of statute, which it did not. There has been no evidence that there's a statute that requires changing the color of your car on your registration form within a certain time frame or that it is being delinquent in, you know, taking care of your affairs. So that's the paramount issue and whether or not just having a different color car constitutes reasonable suspicion. And the deputy already said that there was nothing else out of the ordinary, no furtive movements, no crazy driving pattern. It was three o'clock. In the midd1e of the day. There was absolutely nothing other than the color of the car and whether or not that constitutes reasonable suspicion.

As far as the stop and the odor of marijuana is concerned, that's obviously an issue of fact for the Court to determine. But I think that it is of consequence that you have two deputies out there that have no recollection of recalling the odor of marijuana either on either person or in the car.

THE COURT: Two deputies. There was, I think, one deputy and one technician.

MS. CASHWELL: You're correct, Your Honor, one deputy and one technician. And then you have the passenger and driver that also testified. We haven't gotten to the issue regarding the statements, and I'm not sure - - I think that when the Court looks at the videotape, the two things that will come to light is, one, he was obviously seized. And when he was told to get out of the car -- and you'll see it on the video he was told to get out of the car. To get to the back of the car for a traffic ticket. He was not mirandized. He was clearly being questioned about criminal activity. And so we'd just ask that everything be suppressed. There was no spontaneous statement and the video speaks to that.

THE COURT: All right. Mr. Gaddy.

MS. CASHWELL: Oh, and the case law. I'm sorry.

THE COURT: I'm sorry. Any cases you want to provide, Ms. Cashwell?

MS. CASHWELL: I almost forgot the most important thing. Langello v. State and that's at 970 So.2d 491. And that stands for the proposition mistake of law, which I'm sure the Court's familiar with. And then United States v. Chanthasouxat and that's 342 F.3d 1271. And that's an eleventh circuit court case. If I may approach?

THE COURT: You may. All right. Any others that you want me to consider, Ms. Cashwell? No other cases, you said?

MS. CASHWELL: I'm sorry, Your Honor?

THE COURT: No other cases that you want me to review besides these two?

MS. CASHWELL: At this time, if the Court has other issues - I think that the -- the reason I don't --

THE COURT: Let me stop you. Are these both on the issue of the stop?

MS. CASHWELL: Those are both on the issue of the stop.

THE COURT: Okay.

MS. CASHWELL: The reason I don't have any other cases is because I think that--

THE COURT: Right.

MS. CASHWELL: -- we've all read enough case law regarding the various other issues that it's --

THE COURT: All right.

MS. CASHWELL: I'll give it to you, if you want it, though, Your Honor.

THE COURT: What's the other case on the issue of?

MS. CASHWELL: I've got --

THE COURT: The odor issue?

MS. CASHWELL: Whether there's -- whether there's odor. Whether there's a seizure.

THE COURT: Yeah.

MS. CASHWELL: But I think --

THE COURT: Let me tell y'all, frankly, the most significant issue to me that I'm that, obviously, the first issue is the legality of the stop itself. And, frankly, it mostly rises or fails on the issue of the legality of the stop, in my opinion.

MS. CASHWELL: Right.

THE COURT: Mr. Gaddy.

MR. GADDY:. Yes, Judge.

THE COURT: Argument you want to make? And you handed me some cases earlier.

MR. GADDY: I did, Judge. I gave you two cases on the issue of the stop. State vs. S.P. 580 So.2d 216 and Ellis vs. State 935 So.2d 29. I gave two other cases, State vs. Williams 967 So.2d 941 and State vs. T.P. 835 So.2d 1277. The second two cases, basically, one's a First DCA case and basically says, if you have an odor of marijuana, you're allowed to search the occupant of the vehicle and the vehicle.

THE COURT: Assuming there's a lawful stop.

MR. GADDY: Correct. Obviously.

THE COURT: Right.

MR. GADDY: Obviously.

THE COURT: Right.

MR. GADDY: The first two cases go to the issue of the stop. The first case just kind of gets right out there in the open real quick. It's always okay for an officer to the run a tag. It's not an invasion of privacy, whatsoever, for a deputy to get behind a vehicle and run the tag and determine --

THE COURT; That's S.P?

MR. GADDY: Correct.

THE COURT: Okay.

MR. GADDY: There is no invasion of privacy, whatsoever, with running the tag on a vehicle. The second, I believe, it's very clear that the registration comes back, from the officer's testimony, and says blue Chevy. That's all the information that he has. What he sees in front of him is a green Chevy. There was no testimony saying distinguishing whether it was a car or a truck. Nothing clearly, there was nothing about the make of the vehicle. So, clearly, that's enough to arouse his suspicion.

The judge has taken judicial notice of these statutes, and I'm sure the Court's very aware that

attaching an improper tag is a violation. Clearly, running a tag and getting only a model of a car and a color that are inaccurate with the car that he sees in front of him, without a doubt, gives him reasonable suspicion that there might be crime afoot. He does not have to articulate a statute that's being violated at that time.

The defense mentions furtive movements and weaving or driving pattern or anything like that, and, clearly, that he was not trying to make a DUI stop. He's not chasing a fleeing suspect that he thinks is stashing a gun or anything like that. So those really don't come into play, but it's interesting that those are brought up for this reason. Those are things that lead to reasonable suspicion. It is not violation of the statute to weave within your lane. It is not a violation of any statute to make furtive movement in your vehicle. But those are things that could lead to a reasonable suspicion to make a traffic stop.

In this situation, we have an officer who runs a tag and it comes back to a vehicle other than the vehicle that he's behind, as far as he can tell. What these cases stand for, the proposition that when there's an issue like this, that there's a discrepancy, the cop doesn't just have to turn his back and walk away and let this car drive off that might be, for some reason, attaching an improper tag.

Or there's another statute here that -- 320.02(6). It talks about a person who registers the motor vehicle and gives false information on the registration. Again, that's a second-degree misdemeanor. The officer is not required to turn his back and walk away, but he is obligated to investigate this and determine whether or not the

driver of that vehicle is violating the law by attaching an improper tag or whether he did violate the law by giving false information to the Department of Highway Safety and Motor Vehicles.

Nobody's saying he violated a statute. Nobody's saying that an arrest should have been made, based on what he had. But without a doubt, he has reasonable suspicion to make a traffic stop and go investigate. Once he approaches that vehicle and smells marijuana, I think it's a given that he has the right to do everything he does from that point on.

MS. CASHWEL,L: May I have brief rebuttal, Your Honor?

THE COURT: You may.

MS. CASHWELL: Brief rebuttal is, that there is absolutely no evidence that he ran the tag and had any information or reason to believe that it did not match that car if that tag was in order. The registration was in order. It was not reported stolen. That car came back to a 2006 Chevy and that's exactly what he had in front of him, a 2006 Chevy. I would ask the Court to remember it's own registration.. And if you look at the registration, it has two doors on it. It has color. It has make and model information. So, I'm not sure -- and I'm not trying to disparage the officer -- but I just have a hard time believing that the registration information that's conveyed over dispatch records would not contain that information, because that is part of your registration information.

THE COURT: Well, I don't think I'm not prepared to make that assumption --

MS. CASHWELL; Yes, Your Honor.

THE COURT: -- that there is more information that's provided to him than he said is provided to him.

MS. CASHWELL: In any event, Your Honor, that -- reasonable suspicion is a totality of the circumstances analysis. And we have nothing else other than the color does not match, but the year and the model do match and everything's in order. And what is left out of this and is glaringly obvious is, reasonable suspicion of what? Reasonable suspicion of picking the wrong paint color? Reasonable suspicion of what? There is no reasonable -- there's no -- it has to be an articulable suspicion of a specific crime, and there's no articulable suspicion in this case. And the proof is in the pudding. And the proof is, that there's no -- there's no statute that requires that we inform DMV, when we register our car, that he have changed the color of our car until we go to reregister it.

THE COURT: All right. All right. Well, frankly, I think the significant issue is whether or not an officer is justified in making an investigatory stop under the circumstances that he was faced with. And if he was not justified in making an investigatory stop, then everything else after that, obviously, should fail.

And so, if I determine he was not justified in making an investigatory stop, then the rest of it doesn't matter, the issue of the odor and statements,

et cetera. If I determine that he was justified in making an investigatory stop, then there's a factual issue with regard to whether I believe that he subjectively believed that he smelled the odor of a controlled substance or not. And then, of course, I don't know the issues as they would relate to the statements yet, because I haven't watched the DVD.

I'm going to watch the DVD sometime later, either today, or it may end up being tonight, before I'm able to watch it. And I'll just get word to you -- my judicial assistant will just call your offices tomorrow to let you know my decision.

MS. CASHWELL: We're set, actually, for jury selection on Monday. So if you just want to let us know on jury selection day, that's fine, Your Honor.

THE COURT: Okay. Although, I mean, if I grant the motion --

MS. CASHWELL: Then we're ready for trial.

THE COURT: -- then the State doesn't need to have the witnesses lined up. Although, I guess you've just got them on call, anyway. You've already issued subpoenas and you have them on call, I assume?

MR. GADDY: I'm sure, Judge.

THE COURT: Then, the only question would come as to whether or not it's going to be -- whether or not there would be an issue as to whether or not this is dispositive, whether there would be a plea with the reservation of a right to appeal, or whether there would be a trial, anyway, if I deny it.

So I'm going to have my judicial assistant contact y'all tomorrow to let you know my decision, and then, maybe, if you can give an indication -- if I don't grant it, Ms. Cashwell, if you can give an indication as to whether or not there would be a likely plea with a reservation to appeal or a likely trial, okay?

MS. CASHWELL: Yes, Your Honor.

THE COURT: All right.

MR. GADDY: And, Judge, I would just note there is sound on that video,

THE COURT: Yeah. I'm going to watch it on an instrument that will permit me to play it as a DVD.

MS. CASHWELL: Thank you, Your Honor.

THE COURT: Okay.

MS. CASHWELL: Your Honor, do you have any objection to me, just really quickly, plugging -- popping it in Mr. Gaddy' s computer so I can just make sure?

THE COURT: I don't have any objection to that.

(Whereupon, concluded.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF ESCAMBIA

I, DANA J. MURDOCK, Official Court Reporter, do hereby certify that the foregoing, being pages numbered l through 57, inclusive, is a true and correct transcript to the best of my ability of the digitally-recorded proceedings held in the case of STATE OF FLORIDA vs. KERRICK VAN TEAMER, Case No. 10-28l9A, on the 9th day of December, 2010, before the Honorable Michael G. Allen, Circuit Judge, at 190 Governmental Center, Pensacola, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand, this the 3rd day of August, 2011.

_____

DANA J.MURDOCK
Official Circuit Court Reporter

No. 15-____

In the Supreme Court of the United States

STATE OF FLORIDA,

Petitioner,

v.

KERRICK VAN TEAMER,

Respondent.

On Petition for Writ of Certiorari to the Florida Supreme Court

APPENDIX K TO PETITION FOR WRIT OF CERTIORARI BY PETITIONER STATE OF FLORIDA

CIRCUIT COURT ORDER DENYING RESPONDENT'S MOTION TO SUPPRESS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA — CASE NO: 2010 CF 002819 A

v.

KERICK VAN TEAMER — DIVISION: D

ORDER

On December 9, 2010, the Court considered the Defendant's Motion to Suppress, and is of the opinion that said motion be:

GRANTED — (DENIED)

Signed this 13th day of MAR, 2012.

_____

CIRCUIT JUDGE
MICHAEL ALLEN

Cc: Patrece Cashwell,
Jeff Gaddy, State Attorney
No copies provided