No. 14-1039

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

REPLY BRIEF BY PETITIONER STATE OF FLORIDA

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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?

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REPLY BRIEF OF THE STATE OF FLORIDA

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.

Respondent's Brief in Opposition reveals the precise misapplication of this Court's precedent which must now be corrected. The brief represents that a single fact which is indicative of both criminal behavior and innocent behavior cannot give rise to reasonable suspicion. An officer would therefore be prohibited from temporarily detaining an individual to resolve an ambiguous circumstance which could indicate criminal activity if the circumstance could also have an innocent explanation. This position, which is the basis for the Florida Supreme Court's decision in the instant case, is directly contrary to this Court's precedent regarding reasonable suspicion.

This Court has expressly stated that innocent activity may form the basis for reasonable suspicion. *United States v. Sokolow*, 490 U.S. 1, 10 (1989). The correct analysis focuses instead on the degree of suspicion which arises from an innocent fact, as opposed to whether an innocent explanation exists for an ambiguous situation. *Id.* While Respondent presents the Florida Supreme Court's decision as resting on a determination of the degree of suspicion,

his recitation of that court's holding reveals precisely the opposite. The brief states the Florida Supreme Court found the degree of suspicion to be low "particularly in light of" the possible innocent explanation that a color discrepancy was the result of a person repainting their vehicle and failing to update the new color with the government. (BIO, pg. 6-7, 10). To find that too little suspicion arises when an innocent explanation exists is functionally identical to finding that reasonable suspicion cannot arise when an innocent explanation exists. This analysis, by any other name, is just as faulty and contrary to this Court's Fourth Amendment precedent.

This flaw of Respondent's position is also apparent in the hypothetical presented in the Brief in Opposition. Respondent suggests that the instant case, in which an officer had specialized knowledge that a color discrepancy between a vehicle and the registration information indicates criminal activity, is similar to an officer possessing hypothetical knowledge that when a person wears a ball cap, they may be involved in a bank robbery. (BIO, pg. 7). Respondent then submits that for his hypothetical scenario involving a ball cap, a single non-criminal fact with an innocent explanation, reasonable suspicion cannot exist, thereby illustrating his point that a single non-criminal fact with an innocent explanation cannot give rise to reasonable suspicion.

This argument fails to apprehend that the level of suspicion attached to a scenario varies not based on the number of facts available and whether a

possible innocent explanation exists, but based on the level of suspicion which attaches to a particular fact or facts in light of an officer's specialized knowledge. Thus, where a single fact may not give rise to reasonable suspicion in some cases, such as the scenario involving the ball cap, it will give rise to reasonable suspicion in others, such as the instant case. Hypothetical scenarios which deviate so far outside the salient facts are singularly without use in this light.

While Respondent submits that Petitioner is advancing a categorical rule regarding reasonable suspicion, the basis for this position is unclear. (BIO, pg. 8). Petitioner's argument is that the color discrepancy between Respondent's vehicle and the registration tag attached to that vehicle gave rise to a reasonable suspicion of criminal activity. This argument speaks not to categories, but to the facts of the instant case. To the extent that similar facts should result in similar outcomes, this is not a categorical rule, but instead an expression of *stare decisis*.

The only categorical rule in the instant case is that advanced by both Respondent and the Florida Supreme Court. That categorical rule holds that the possibility of innocent activity defeats any reasonable suspicion based upon a single noncriminal fact. This is precisely the kind of mechanistic and rigid bright-line rule which hampers officers who have a true reasonable suspicion of criminal activity, and which this Court has corrected in the past. *See Florida v. Harris*, 133

S. Ct. 1050 (2013). This Court should grant certiorari and correct the mechanistic analysis of the Florida Supreme Court.

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.

Respondent claims that the instant case is not on point with the facts of those cases cited in the Petition as being in conflict with the instant case. Specifically, Respondent makes this claim regarding *Andrews v. State*, 658 S.E.2d 126 (Ga. Ct. App. 2008), *Thammasack v. State*, 747 S.E.2d 877 (Ga. Ct. App. 2013), *State v. Creel*, 2012 WL. 9494147 (Idaho Ct. App. 2012)(unpublished), *Smith v. State*, 713 N.E.2d 338 (Ind. Ct. App. 1999), *Schneider v. State*, 2014 Ark. App. 711 (Ark. Ct. App. 2014), and *U.S. v. Uribe*, 709 F.3d 646 (7th Cir. 2013). This position is belied by many of these cases themselves citing each other as being factually on point.

For example, the court in *Schneider* concluded that "[d]ifferent courts have reached different conclusions **on the issue presented here**." 2014 Ark. App. 711 at 4 (emphasis added). The Florida Supreme Court's decision in the instant case was among those cited as reaching a different conclusion from the *Schneider* court on that issue, along with *Uribe*, while *Smith*, *Andrews*, and *Thammasack*

were cited as reaching the same conclusion on that issue. Respondent's brief has failed to apprehend what each of the courts who have ruled on this issue recognized, that cases pass on the same issue when the facts are substantially similar, not identical. As this Court has previously stated, "[E]ven where one case may not squarely control another one, the two decisions when viewed together may usefully add to the body of law on the subject." *Ornelas v. U.S.*, 517 U.S. 690, 698 (1996).[1]

While Respondent casts the State's position as one seeking a "national standard", this is far from the truth. (BIO, pg. 15). Rather, the State's position is that similar facts should result in similar outcomes under the Fourth Amendment, and this Court's action is necessary to ensure that result. Perhaps more importantly, this Court's action is necessary to ensure that the faulty reasoning in the instant case is corrected. The categorical rule that a single noncriminal fact with both an innocent and a criminal explanation cannot give rise to reasonable suspicion is one which is likely to be applied in many contexts, as such bright-line rules tend to be. Certiorari is warranted to prevent this, the true

[1] It is worth noting that Respondent represents a number of factual matters regarding the paint of his vehicle, such as whether it was obvious to the naked eye that it was repainted recently, as distinguishing this case from others. (BIO, pg. 15-16). None of these facts find support in the record, all of them appear to require specialized knowledge to discern their accuracy, and were never presented as evidence to the trial court. As such, this Court should disregard Respondent's new assertions of adjudicative facts.

categorical rule, from thwarting the common sense application of the reasonable suspicion standard.

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,

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