

No. 14-1039

**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 2014

STATE OF FLORIDA,
Petitioner,

v.

KERRICK VAN TEAMER,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

RICHARD M. SUMMA

STEVEN L. SELIGER

Assistant Public Defender
301 S. Monroe St., Suite 401
Tallahassee, FL 32301

Assistant Public Defender
301 S. Monroe St., Suite 401
Tallahassee, FL 32301

of counsel

steven.seliger@flpd2.com

850-606-8537

ATTORNEY FOR RESPONDENT AND
COUNSEL OF RECORD

(COUNSEL OF RECORD IS A MEMBER
OF THE BAR OF THIS COURT)

QUESTION PRESENTED
(restated)

Whether a discrepancy between the observed color and the registered color of a vehicle provides, absent any other suspicious circumstances, reasonable suspicion to stop the vehicle for the Florida misdemeanor offense of “unlawful transfer of license plate” where Florida law does not require notification of a change in the color of the vehicle.

TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
STATUTE INVOLVED	1
STATEMENT OF THE CASE	2
SUMMARY OF THE ARGUMENT	3
REASONS FOR DENYING THE WRIT	5
A. The Florida Supreme Court did not depart from the appropriate totality of the circumstances test.	5
B. The goal of uniformity in the law is neither advisable nor attainable on the question of reasonable suspicion based upon color discrepancy.	11
CONCLUSION	17

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE(S)</u>
<i>Andrews v. State</i> , 658 S.E. 2d 126 (Ga. Ct. App. 2008).....	13
<i>Commonwealth v. Mason</i> , 2010 WL 768721 (Va. Ct. App. 2010).....	14
<i>Florida v. Harris</i> , 133 S.Ct. 1050 (2013).....	7
<i>Harris v. State</i> , 71 So. 3d 756 (Fla. 2011).	7
<i>Illinois v. Gates</i> , 462 U.S. 213, 238, n.11 (1983).....	12
<i>Ornelas v. United States</i> , 517 U.S. 690 (1996).....	12
<i>Schneider v. State</i> , 2014 Ark. App. 711 (Ark. Ct. App. 2014).....	14
<i>State v. Teamer</i> , 151 So. 3d 421 (Fla. 2014).....	2, 5-8, 10, 12, 13
<i>Thammasack v. State</i> , 747 S.E. 2d 877 (Ga. Ct. App. 2013).	13, 14
<i>U. S. v. Uribe</i> , 2011 WL 4538407 (S.D. Ind. 2011), <i>affirmed</i> , 709 F. 3d 646 (7 th Cir. 2013).....	14
<i>United States v. Brignoni-Ponce</i> , 422 U.S. 873 (1975).	3, 8-10
<i>United States v. Sokolow</i> , 490 U.S. 1 (1989).	6, 7
 <u>STATUTES</u>	
Section 320.261, Florida Statutes (2009).	1
Section 320.262, Florida Statutes (2009).	12

STATUTE INVOLVED

Section 320.261, Florida Statutes (2009), provides in pertinent part:

Attaching registration plate not assigned unlawful; penalty. – Any person who knowingly attaches to any motor vehicle . . . any registration license plate, . . . which plate . . . was not issued and assigned or lawfully transferred to such vehicle, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

STATEMENT OF THE CASE

Respondent accepts the Petitioner's Statement of the Case with the following additions. The Florida motor vehicle registration database provides information on the make of the vehicle, but not the model. *State v. Teamer*, 151 So. 3d 421, 424 (Fla. 2014). The deputy acknowledged that there was no report that a car matching the description had been stolen. *Id.* The deputy did not observe Mr. Teamer commit any traffic violations. *Id.* Mr. Teamer did not engage in any suspicious or furtive behavior. *Id.* “[T]he only thing that was out of the ordinary was the inconsistency of the vehicle color from the registration.” *Id.* The deputy pulled the car over based only on the color inconsistency. *Id.* As the State conceded, “the failure to update a vehicle registration to reflect a new color is not in specific violation of a Florida law.” *Id.* at 426.

In his arrest report, the deputy described Mr. Teamer's vehicle as a “very bright fluorescent green vehicle.” Color photographs of the vehicle were entered into evidence at the suppression hearing as State's Exhibit #1 and State's Exhibit #2. (Appendix, 1-3). When the deputy “ran the tag,” it came back registered to a 2006 Chevrolet. The deputy testified that he runs “hundreds of tags on a weekly basis.” He has been a patrol officer in Escambia County for about four years.

SUMMARY OF THE ARGUMENT

This Court should deny the petition because the Florida Supreme Court did not deviate from the totality of the circumstances test. The present case is similar to this Court's decision in *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975). In *Brignoni-Ponce*, this Court rejected the claim that the only fact cited in support of the vehicle stop, i.e., the apparent Mexican ancestry of the occupants, was sufficient to constitute reasonable suspicion of illegal immigration. Even though the officers knew through experience that illegal immigration frequently occurs in the area just north of the border, the single fact of Mexican ancestry also carried the plausible innocent explanation of legal travel. In the present case, the single fact offered in support of the stop, i.e., color discrepancy, also carried the plausible innocent explanation of a change in color, i.e., a paint job. The Florida Supreme Court cannot be said to have ignored the totality of the circumstances test merely because the State of Florida relied only on a single observed fact to support the stop.

Moreover, this case is a poor vehicle for the establishment of a national legal standard. There is no real conflict of authorities; each case is fact driven. The determination of reasonable suspicion based upon color discrepancy is dependent upon a number of factors, including the applicable registration laws of each state and the specific appearance of each vehicle. In this case, Mr. Teamer's vehicle was

obviously repainted as indicated by the color photograph exhibits. (Appendix, 1-3). Any reasonable officer should have known that Mr. Teamer's vehicle was repainted a different color simply because of the outward appearance of the vehicle. (Appendix, 1-3). The obvious fact of repainting provided an innocent explanation for the discrepancy between the observed color and the registered color, and dispelled any suspicion of an unlawful transfer of a license plate.

REASONS FOR DENYING THE WRIT

A. The Florida Supreme Court did not depart from the appropriate totality of the circumstances test.

The Petitioner argues that the Florida Supreme Court established a categorical rule by “holding” that a single non-criminal factor cannot give rise to a reasonable suspicion, and also failed to evaluate the facts in light of the detaining officer’s experience. The Petitioner’s argument reflects a simple misinterpretation of the Florida Supreme Court’s decision.

The Florida Supreme Court did not depart from the totality of the circumstances test. In its decision, the supreme court noted the applicability of the totality of the circumstances test.

Reasonable suspicion must also be 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 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.”).

State v. Teamer, 151 So. 3d 421, 426 (Fla. 2014). In this context, the Florida

Supreme Court noted the totality of the specific circumstances relevant to the determination of reasonable suspicion. The Florida motor vehicle registration database provides information on the make of the vehicle, but not the model. *Id.* at 424. The deputy “had encountered individuals who would switch license plates.” *Id.* The deputy acknowledged that there was no report that a car matching the description had been stolen. *Id.* The deputy did not observe Mr. Teamer commit any traffic violations. *Id.* Mr. Teamer did not engage in any suspicious or furtive behavior. *Id.* “[T]he only thing that was out of the ordinary was the inconsistency of the vehicle color from the registration.” *Id.* The deputy pulled the car over based only on the color inconsistency. *Id.* As the State conceded, “the failure to update a vehicle registration to reflect a new color is not in specific violation of a Florida law.” *Id.* at 426.

In its analysis, the Florida Supreme Court weighed all of these factors and determined properly that only one factor, color discrepancy, bore any indicia of suspicion. The state court evaluated the “degree of suspicion” as required by this Court. *Id.* at 426, citing *United States v. Sokolow*, 490 U.S. 1, 10 (1989). Cognizant that the “law allows officers to draw rational inferences” from the facts, and recognizing that the officer may have had a suspicion of unlawful transfer of a license plate, the state court concluded that the officer’s suspicion of the unlawful transfer

was not reasonable, “especially given the fact that it is not against the law in Florida to change the color of your vehicle without notifying the [Department of Highway Safety and Motor Vehicles].” *Id.* at 427-428. In other words, a reasonable law enforcement officer should understand that the absence of a requirement to notify the state of a change in color of a vehicle means, undoubtedly, that a certain number of vehicles will not match the color stated in the state’s registration records. The fact that the officer knows that the unlawful transfer of plates sometimes occurs does not contribute substantially to the likelihood that an unlawful transfer of plates occurred in the instant case.

For example, an officer may know that bank robberies sometimes occur. An officer may further know that bank robbers sometimes wear a ball cap during the course of the crime. Does that mean that an officer has a reasonable suspicion that a bank robbery has occurred if the officer observes, only, a person exiting a bank wearing a ball cap? The obvious answer is no.

The petitioner’s attempt to equate *Teamer* with *Harris v. State*, 71 So. 3d 756 (Fla. 2011), is misguided. In *Florida v. Harris*, 133 S.Ct. 1050 (2013), this Court reversed the decision of the Florida Supreme Court because the state court imposed a “strict evidentiary checklist” which must be satisfied in all cases to establish probable cause to search a vehicle based upon a dog sniff. *Id.* at 1056. The present

case does not suffer the same defect. Here, the Florida Supreme Court did not place any evidentiary requirements on the State of Florida. Rather, the state court simply evaluated the facts and circumstances presented to determine whether they met the legal threshold for reasonable suspicion.

The Florida Supreme Court did not create a categorical rule, it merely rejected the categorical approach advanced by the State. The State sought a ruling that the color discrepancy, standing alone, constituted reasonable suspicion of the offense of unlawful transfer of a license plate. Under the guise of a totality of the circumstances approach, the State sought to establish reasonable suspicion on the basis of only one observed fact, i.e., the discrepancy between the observed color and the registered color of the vehicle. The officer's knowledge that unlawful transfers of license plates has occurred in the past was not an observed fact that reasonably bolstered his suspicion under these particular circumstances. The Florida Supreme Court correctly rejected the State's bright-line approach.

Viewed in this light, the *Teamer* decision is indistinguishable from this Court's decision in *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975), upon which the Florida Supreme Court heavily relied. In *Brignoni-Ponce*, border patrol agents stopped a vehicle traveling north near the Mexican border. The "only reason for [stopping the vehicle] was that its three occupants appeared to be of Mexican decent."

Id. at 875. In evaluating the totality of the circumstances, this Court opined that the state court could have relied on any number of factors in determining the issue of reasonable suspicion. Such factors, included (1) characteristics of the area; (2) proximity to the border; (3) usual traffic patterns on the particular road; (4) previous experience with alien traffic; (5) driver behavior, and; (6) characteristics of the vehicle itself. *Id.* at 884-885. This Court noted, however, that the government relied only “on a single factor to justify stopping respondent’s car; the apparent Mexican ancestry of its occupants.” *Id.* at 885-886. Weighing the degree of suspicion attaching to the ancestry of the occupants, this Court also noted that the officers knew that illegal immigration from Mexico is a widespread problem. Cars traveling north from the Mexican border frequently carry illegal aliens. This Court nonetheless observed that the government’s case relied on only one fact deemed “suspicious.” Moreover,

Roads near the border carry not only aliens seeking to enter the country illegally, but a large volume of legitimate traffic as well.

Id. at 882. Thus this Court opined that the single factor upon which the government relied, even in light of the officers’ knowledge and experience, also carried a reasonable inference of innocence. Thus, this Court held:

Even if they saw enough to think that the occupants were of Mexican descent, this factor alone would justify neither

a reasonable belief that they were aliens, nor a reasonable belief that the car concealed other aliens who were illegally in the country.

Id. at 886.

The reasonable suspicion analysis in *Brignoni-Ponce* is similar to that in *Teamer*. In *Teamer*, the Florida Supreme Court noted that the state presented only one factor deemed arguably suspicious, i.e., the color discrepancy. Yet, this factor also carried a reasonable inference of innocence, i.e., the color discrepancy may be explained by a change in the color of the vehicle, especially where the State of Florida does not require motorists to inform the state of a change in the color of the vehicle. There were no other incriminating factors. As in *Brignoni-Ponce*, this single factor was simply not enough to rise to the level of reasonable suspicion. The Florida Supreme Court properly exercised its duty to determine the degree of suspicion attaching to the color disparity. Even though the deputy knew that the offense of unlawful transfer of plates does occur, the degree of suspicion was simply not enough. The state court emphasized that the degree of suspicion was not great enough particularly in light of the fact that state law does not require notification of a change in the color of the vehicle, and there were no other factors present to bolster or corroborate the deputy's suspicion. The Florida Supreme Court properly examined the applicable law set forth by this Court and examined the totality of the

circumstances in that light. The Florida Supreme Court properly applied the totality of the circumstances test in concluding that the deputy did not have a reasonable suspicion of an unlawful transfer of a license plate. Petitioner's claim that the Florida Supreme Court departed from the totality of the circumstances test should be rejected.

B. The goal of uniformity in the law is neither advisable nor attainable on the question of reasonable suspicion based upon color discrepancy.

The State of Florida urges that review by this Court is necessary to provide uniformity in the law. On the specific question presented, uniformity is neither advisable nor attainable because the totality of circumstances will vary widely in individual cases. Variances in the laws of individual states occupy a prominent role in the determination of reasonable suspicion based upon color discrepancy. In addition, the unique appearance of each vehicle is a factor which makes each case *sui generis*. A ruling that a discrepancy between the observed color and the registered color of a vehicle creates reasonable suspicion obliterates these distinctions.

This Court observes the general rule that decisions determining questions of reasonable suspicion are of dubious precedential value because the circumstances of individual cases vary widely.

It is true that because the mosaic which is analyzed for a reasonable-suspicion or probable-cause inquiry is multi-

faceted, “one determination will seldom be a useful ‘precedent’ for another, . . .”

Ornelas v. United States, 517 U.S. 690, 698 (1996)(citing *Illinois v. Gates*, 462 U.S. 213, 238, n.11 (1983)). While there are exceptions to the rule, this case is not among them.

In the present case, the determination of reasonable suspicion was strongly influenced by specific features of Florida law. Under Florida law, it is a misdemeanor to transfer a license plate from one vehicle to another without proper authorization. § 320.262, Fla. Stat. (2009). Florida law, however, imposes no requirement to notify the state of a change in the color of a vehicle. *Teamer*, 151 So. 3d at 426, 428. Florida’s motor vehicle registration database reflects the make of the vehicle, i.e., Chevrolet, but not the model, i.e., Monte Carlo. This regulatory landscape figured prominently in the analysis of the question of reasonable suspicion.

Deputy Knotts was aware that violations of the “unlawful transfer” law do occur. A reasonable officer, however, should also be aware that the observed color of a vehicle may not always match the color indicated in registration records because a citizen may paint her vehicle a different color without notifying the state of the change in color. A color discrepancy will appear whenever a citizen changes the color of his or her vehicle. A reasonable officer, therefore, should be aware that a color discrepancy may have an innocent explanation, i.e., change of color.

A reasonable officer likewise should be aware that Florida registration records are not well designed for the purpose of vehicle identification. Florida registration records bear the make of the vehicle but not the model. For example, a person may remove a license plate from a red Toyota Camry and install it on a red Toyota Corolla and the registration record will be absolutely useless in the detection of the unlawful transfer of the license plate. A reasonable officer should be aware that Florida registration records are not reliable when used to identify a specific vehicle.

The state claims that *Teamer* is in conflict with cases from other jurisdictions. A closer examination reveals distinctions in the facts, laws and the arguments presented in the cases. In *Andrews v. State*, 658 S.E. 2d 126 (Ga. Ct. App. 2008), the court found reasonable suspicion to support the stop based upon an apparent color discrepancy. The defendant, however, did not raise the argument raised by *Teamer* - that state law does not require notification of a change in the color of the vehicle. *Andrews*, therefore, is not in conflict with the reasonable suspicion analysis under Florida law. *Andrews* does not state whether Georgia law requires notification of a change in the color of a vehicle.¹ The Georgia case of *Thammasack v. State*, 747 S.E. 2d 877 (Ga. Ct. App. 2013), does not conflict with *Teamer*. In *Thammasack*, the officer had two reasons to support the stop. The first reason was that the vehicle had

¹ *State v. Creel*, 2012 WL 9494147 (Idaho Ct. App. 2012)(unpublished), and *Smith v. State*, 713 N.E. 2d 338 (Ind. Ct. App. 1999), are to the same effect.

red headlights which constituted a safety hazard. The stop was thereby authorized. In addition, *Thammasack* reveals that Georgia vehicle registration records include the make and the model of the vehicle, i.e., Honda Civic. The Georgia records are, therefore, somewhat more useful than Florida records in identifying specific vehicles.

In an Arkansas case, *Schneider v. State*, 2014 Ark. App. 711 (Ark. Ct. App. 2014), the court found reasonable suspicion to support the stop of a vehicle based upon a color discrepancy. The opinion also reveals, however, that Arkansas motor vehicle records include the year, make, model and color of the vehicle, and so may be regarded as somewhat more useful than Florida records in identifying specific vehicles.

Another example of the variety of relevant state laws is found in *U. S. v. Uribe*, 2011 WL 4538407 (S.D. Ind. 2011), *affirmed*, 709 F. 3d 646 (7th Cir. 2013). In *Uribe*, the district court noted that Indiana law does not require an applicant for vehicle registration to list the color of the vehicle she intends to register. *Id.*, citing Ind. Code § 9-18-2-16. Nor does Indiana require notification upon a change in the color of a vehicle. *Id.* In contrast, the State of Virginia apparently requires vehicle owners to update their registrations upon a change in the color of their vehicle.

[The] defendant's obligation to update DMV on a change of color on his van . . . is not the issue here.

Commonwealth v. Mason, 2010 WL 768721 (Va. Ct. App. 2010)(unpublished). As

noted above, the wide range of state laws applicable to the determination of reasonable suspicion based solely, or primarily, upon color discrepancy supports the view that a uniform rule of decision is neither practicable nor possible.

Perhaps the most compelling reason why the present case is a poor vehicle for the establishment of a national standard is the appearance of Mr. Teamer's vehicle. Photographs of Mr. Teamer's vehicle were entered into evidence at the suppression hearing. (Appendix, 1-3). Simply stated, Mr. Teamer's vehicle appears to be, quite obviously, recently painted. The obvious fact of repainting explains the discrepancy between the observed color and the registered color and therefore dispels any suspicion, however slight, of ongoing criminal activity.

Police officers are expected to be familiar with motor vehicles in terms of makes, models, colors, and other descriptive terms. Consistent with this view, Deputy Knotts testified that he runs "hundreds of tags on a weekly basis." He has been a patrol officer for about four years. By his account, therefore, the deputy must have acquired a great deal of knowledge about motor vehicles.

Turn to the photos of Mr. Teamer's vehicle. Deputy Knotts described Teamer's Chevy Monte Carlo as a "very bright fluorescent green vehicle." This description is consistent with the photos entered into evidence. In 2006, Chevrolet did not offer the Monte Carlo in any shade of green. *See*

www.cars.com/chevrolet/monte-carlo/2006/colors (last visited March 4, 2015). Any reasonable officer with the knowledge and experience of Deputy Knotts should come to the simple and obvious conclusion that Mr. Teamer's vehicle exhibits an after-market, custom color paint job. State's Exhibit #2 shows that the front brake calipers are painted the same bright fluorescent green color as the body of the vehicle. (Appendix, 1). The painted brake calipers are a dead giveaway of a custom paint treatment. Any reasonable officer with the knowledge and experience of Deputy Knotts should know that Chevrolet does not paint the Monte Carlo brake calipers to match the exterior color of the vehicle. Any reasonable officer should know, therefore, that the vehicle had been painted this unusual shade of green.

At the time of the stop, Mr. Teamer's vehicle was also exceptionally bright, shiny and clean, projecting the obvious fact that it was recently painted. (Appendix, 1-3). The obvious fact that Mr. Teamer's vehicle was recently painted, to any reasonable officer, provides an innocent explanation of the discrepancy between the observed color and the registered color, and dispels any suspicion of ongoing criminal activity.

The appearance of each vehicle is a strong factor which enters into the determination of reasonable suspicion. Along with the wide variety of state laws applicable to the determination of reasonable suspicion, the specific physical

characteristics of each vehicle is yet another reason why each case must be judged on its own merits. Petitioner's attempt to establish a uniform rule of law is not only impractical, but impossible.

CONCLUSION

For the foregoing reasons, the Court should deny the petition.

No. 14-1039

**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 2014

STATE OF FLORIDA,
Petitioner

v.

KERRICK VAN TEAMER,
Respondent.

APPENDIX TO BRIEF IN OPPOSITION

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

RICHARD M. SUMMA

STEVEN L. SELIGER

Assistant Public Defender
301 S. Monroe St., Suite 401
Tallahassee, FL 32301

Assistant Public Defender
301 S. Monroe St., Suite 401
Tallahassee, FL 32301

of counsel

steven.seliger@flpd2.com

850-606-8537
ATTORNEY FOR RESPONDENT AND
COUNSEL OF RECORD

(COUNSEL OF RECORD IS A MEMBER
OF THE BAR OF THIS COURT)

TABLE OF CONTENTS TO APPENDIX

A.	State's Exhibit #2 - (Color photo of vehicle)	A-1
B.	State's Exhibit #1 - (Color photos of vehicle)	A-2, 3