IN THE APPELLATE DIVISION OF THE CIRCUIT COURT
ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY

Warren Redlich,
Appellant

Circuit Court Case No.
2016-000045-AC-01

vs.

State of Florida,
Appellee
_____/

APPELLANT'S BRIEF

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STATEMENT OF THE CASE AND OF THE FACTS

This appeal is filed pursuant to the rules of this Circuit, Local Rule R-3-1, and Appellate Rules 9.110(a)(1) and 9.030(c)(1)(A). Appellant was confronted by Coral Gables police in a checkpoint. On request of the officers he showed his license through his window, but did not hand it over to the police. He was charged with a violation of § 322.15 for "failure to exhibit license" in a checkpoint in Coral Gables.

The case was initially dismissed by Hearing Officer Larin as a part of routine procedure in Miami-Dade Traffic Court. Record at 36.

Private attorneys hired by the City of Coral Gables appeared purporting to be prosecutors, and moved for a new hearing. Record at 37. That motion was granted (Record at 70) and a trial was held in front of Judge Leifman (Record Volume II, Transcript (hereinafter Transcript), who found and adjudicated appellant guilty. Transcript at 125. There are three main issues raised on this appeal.

SUMMARY OF ARGUMENT

First, the appearance of municipal attorneys to prosecute a violation of a state law is prohibited by Article V, Section 17 of the Florida Constitution. That provision allows only the State Attorney to prosecute matters of state law in trial courts in the circuit. There is an exception allowing municipal attorneys to prosecute municipal ordinances, but does not allow them to prosecute state law matters.

Second, Appellant did comply with the requirements of § 322.15 because he did exhibit and display his license. The statute is at best unclear as to whether drivers are required to hand over the license. Legislative history shows that the word "display" in § 322.15(1) was changed to "present or submit" to accommodate the future possibility of digital licenses on smart phones and other such devices. There was no intent to change the way physical licenses were to be handled. Further it is unnecessary for police to hold the license in their hand. The claim that licenses cannot be fully examined through a closed window is refuted by common sense and video evidence.

Third, any statute requiring drivers to surrender their license to police violates the Fourth Amendment. A driver can show his license through a closed window, allowing the police officer to obtain all necessary information, while preserv-

ing the driver's Fourth Amendment right to be secure in his papers and effects (the license) as well as to be secure from having to roll the window down.

Fourth, the checkpoint was overbroad and conducted without strict compliance to the guidelines. What was purportedly a sobriety checkpoint was converted into generalized crime control including license inspections, plate readers, and drug sniffing dogs. Guidelines were grossly disregarded.

Fifth, for purposes of preserving the issue for appeal, Appellant argues that 90 years of federal and state case law are wrong. Checkpoints and traffic stops infringe the Fourth Amendment. Cars should not be stopped or searched without a warrant issued on probable cause based on an oath or affirmation.

ARTICLE V, SECTION 17 ALLOWS ONLY THE STATE ATTORNEY TO PROSECUTE

Article V, Section 17 of the Florida Constitution provides:

> Except as otherwise provided in this constitution, the state attorney shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law; provided, however, when authorized by general law, the violations of all municipal ordinances may be prosecuted by municipal prosecutors.

The plain language of the Constitution indicates that only the state attorney can be the prosecutor. That provision makes a specific exception allowing municipal

prosecutors to prosecute municipal ordinances. Article V, Section 20(c)(12) also makes this exception: "Municipal prosecutors may prosecute violations of municipal ordinances."

Appellant was not charged with violating a municipal ordinance. The charge was under § 322.15, a state law.

There are Florida statutes and court rules that appear to authorize municipal prosecutors to prosecute violations of state law. § 316.008(2) provides:

> The municipality, through its duly authorized officers, shall have nonexclusive jurisdiction over the prosecution, trial, adjudication, and punishment of violations of this chapter when a violation occurs within the municipality and the person so charged is charged by a municipal police officer. The disposition of such matters in the municipality shall be in accordance with the charter of that municipality. This subsection does not limit those counties which have the charter power to provide and regulate arterial, toll, and other roads, bridges, tunnels, and related facilities from the proper exercise of those powers pertaining to the consolidation and unification of a traffic court system within such counties.

This provision appears to be intended for municipal courts rather than state courts, as it refers not merely to adjudication but also to all the functions of a proceeding including trial, adjudication and punishment. See e.g. Miller v. City of Indian Harbour Beach, 453 So. 2d 107 (Fla. 5th DCA 1984):

> In 1972, Florida courts were reorganized. The voters approved a new Article V of the Florida Constitution … which provided for the abolition of all municipal

> courts by January 3, 1977. Prior to this time Article V had provided for separate municipal courts and county courts, and Chapter 186 of the Florida Statutes (1969) provided for a model traffic ordinance which could be adopted by municipalities and expressly contemplated separate municipal courts. While the municipal courts were in existence, they handled all traffic tickets written by municipal police departments, and the county courts handled those traffic citations written by the county sheriff's department.

Id. at 111.

Section 316.002, adopted in 1971 while municipal courts still existed, and unchanged since, describes the purpose of Chapter 316, including specifically 316.008:

> It is the legislative intent in the adoption of this chapter to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities. The Legislature recognizes that there are conditions which require municipalities to pass certain other traffic ordinances in regulation of municipal traffic that are not required to regulate the movement of traffic outside of such municipalities. **Section 316.008 enumerates the area within which municipalities may control certain traffic movement or parking in their respective jurisdictions.** This section shall be supplemental to the other laws or ordinances of this chapter and not in conflict therewith. It is unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter.

§ 316.002, Fla. Stat. (2015) (emphasis added).

The instant proceeding did not take place in a municipal court. It took place in County Court, a trial court within this Circuit, where Article V, Section 17 requires the State Attorney to be the prosecutor. The Florida Constitution simply does not allow

municipal prosecutors to prosecute alleged violations of state law. Both Section 17 and Section 20 make exception only for municipal prosecutors to prosecute alleged violations of municipal ordinances, and not of state statutes. E.g. Waite v. City of Fort Lauderdale, 681 So.2d 901 (Fla. 4th DCA 1996) (the city was a party and the case was prosecuted by a municipal prosecutor in a case involving a municipal ordinance).

It should also be noted that the Coral Gables City Code says nothing about the City Attorney prosecuting state law violations. Section 2-201(e)(3) allows him to:

> To file, prosecute or defend, for and on behalf of the city, all complaints, suits and controversies to which the city is a party, or to which it is in the city's interests to become a party, before any court or other tribunal.

Compare Fort Lauderdale City Code § 4.12:

> The city attorney shall be the legal advisor … and is further charged with the responsibility of prosecuting offenders against the ordinances of City of Fort Lauderdale …

The City of Coral Gables is not, and has never been, a party to this case. It has made no motion or other application to become a party and Appellant is unaware of any law that would allow the city to become a party. While the City Attorney may prosecute municipal ordinance violations, he has no authority to prosecute state law violations in the trial courts of this Circuit.

All proceedings that took place after Hearing Officer Larin dismissed the ticket were as a result of the improper prosecution by municipal attorneys. This Court

should declare all such proceedings a nullity and reinstate the dismissal. Should the Court follow this approach, it would be unnecessary to reach the remaining issues.

APPELLANT DID COMPLY WITH § 322.15 BY SHOWING HIS LICENSE

It is undisputed that Appellant showed his license to the police, through the closed window of his vehicle. The City Attorney of Coral Gables has taken the position that drivers are required not merely to show their license but to hand it over and physically surrender custody of the license.

Section 322.15 provides, in pertinent part:

> License to be carried and exhibited on demand; fingerprint to be imprinted upon a citation.—
> (1) Every licensee shall have his or her driver license, which must be fully legible with no portion of such license faded, altered, mutilated, or defaced, in his or her immediate possession at all times when operating a motor vehicle and shall present or submit the same upon the demand of a law enforcement officer …. A licensee may present or submit a digital proof of driver license as provided in s. 322.032 in lieu of a physical driver license.
> (2) Upon the failure of any person to display a driver license as required by subsection (1), the law enforcement officer … stopping the person shall require the person to imprint his or her fingerprints upon any citation issued by the officer …, or the officer… shall collect the fingerprints electronically.

The City relies on a recent change to the language of subsection 1. Until recently it stated that the driver "shall **display** the same upon the demand of a law enforcement officer." § 322.15(1), Fla. Stat. (2013) (emphasis added). In 2014 the word "display" was changed to "present or submit," and the last sentence of the current subsection 1 was added regarding digital licenses.

The statute does not require drivers to hand over their licenses. On its face it does not require it at all. The title of the statute says licenses are to be carried and **exhibited** on demand. Subsection 1 says drivers are required to "present or submit" the license without defining those terms. It is unclear whether the two words are intended to have the same meaning or different meanings, and if different when each might apply. Is it the driver's choice to present or submit? Or is that choice up to the officer? The statute doesn't say.

Subsection 2 is important for statutory construction. It refers to the failure to "display" requirement of subsection 1. In other words, subsection 2 indicates that the language in subsection 1 means display. Both the words "display" (from subsection 2) and "exhibit" (from the statute's title) have the plain meaning of "show" rather than hand over or surrender.

Most words have multiple meanings, but Webster defines display as: "to put (something) where people can see it." http://www.merriam-webster.com/dictionary/display

Exhibit is defined as: “to show or reveal (something).” http://www.merriam-webster.com/dictionary/exhibit

Present includes in its definitions: “to offer to view : show.” http://www.merriam-webster.com/dictionary/present. PowerPoint is a well known example of presentation software allowing people to make presentations to audiences by showing slides without handing them over.

Submit does tend to suggest physical handing over of something, but again the statute does not indicate why the legislature chose either/or phrasing “present or submit.” Did it intend that the two words would have different meanings? Under what circumstances would “present” apply as opposed to “submit”? Is that the driver’s choice or the officer’s choice?

It may be helpful to consider the context of the legislation. In adopting the change the legislation that made this change to § 322.15 was described as: “amending s. 322.15, F.S.; authorizing a digital proof of driver license to be accepted in lieu of a physical driver license.”

Chapter 2014-216, Laws of Fla. (2014).

Perhaps the legislature intended that digital licenses would be submitted - physically handed over, while non-digital licenses could merely be presented - shown. The legislature demonstrated zero intent to change how physical licenses would be handled. The intent was plainly to accommodate the possibility of digital drivers licenses in the future, consistent with the change that was just made the year before re-

garding proof of insurance. There was no epidemic of drivers refusing to allow their licenses to be inspected. A cynic might suspect the legislature gave little or no thought to how this change would play out in the real world and how it would affect drivers, police officers or the courts.

Many states have statutes requiring drivers to surrender their licenses in plain language. Florida does not.

In Illinois, for example, the equivalent provision defines display to mean surrender: “For the purposes of this Section, "display" means the manual surrender of his license certificate into the hands of the demanding officer for his inspection thereof.” 625 IL Comp Stat 5/6-112 (2014). Maryland uses the identical language (and even the same statute number): MD Transp Code § 16-112(a) (2013). Connecticut requires drivers to “permit such officer … to take the operator’s license … in hand for the purpose of examination.” CT Gen Stat § 14-217 (2014).

The legislature could have chosen plain language with words like “surrender” or “hand over” but it did not. The plain meaning of the words “exhibit” and “display” do not mean surrender or hand over. For example § 843.085 prohibits the unlawful display of badges. § 843.085, Fla. Stat. (2015). Similarly § 790.10 indicates those carrying weapons or firearms shall not “exhibit the same in a rude, careless, angry, or threatening manner.” § 790.10, Fla. Stat. (2015). Neither of these statutes refer to handing the items over to someone.

It is also important to consider why a police officer might need to hold the license in his hand, as opposed to just viewing it through the window.

At three different points during the trial Sgt. Escobar testified that he needed to hold the license in his hand to check for the hologram.

> THE COURT: I understand. Were you able to read the license?
> THE WITNESS: I could have read it, but I couldn't physically touch it, hold it, **check it for a hologram**, like you can in any other DUI stop or any other stop.
> THE COURT: Is there any way to tell if it was a legitimate license?
> THE WITNESS: Not until he hands it over to me.
> THE COURT: Okay. And are driver's licenses made specially to avoid impostor licenses?
> THE WITNESS: To have a fraudulent license there are many ways. **The only real way, and one that I use, is to grab a driver's license You could shine a flashlight behind it. It illuminates the hologram; hold it at a specific angle. Obviously, the angle is intuitive to my eyes so that I can see the hologram, which it shows another picture.**

Transcript at 48-49 (emphasis added).

> Q. From outside you have said, just to be clear, **you could not tell whether or not there were holograms?**
> A. Correct.
> Q. Those holograms are security devices for licenses, right?
> A. Correct.

Transcript at 58 (emphasis added).

> Q. Did you see anything on the license that indicated to you any reason to suspect it might not be valid?

A. One, I didn't run it or I didn't check it. You had a valid -- or you had what appeared to be a driver's license. I did not know if it was fraudulent. I did not know if it was authentic. I did not know if it was issued by the State of Florida and all their cues to check for driver's licenses.

Q. Did you observe anything that indicated to you that there might be a problem? Other than the fact that you couldn't hold it in your hand, did you observe anything about the license that indicated any potential problem with it?

A. **I couldn't see the hologram, so I wasn't sure if it was a valid license.**

Q. **So you could not see whether there was or was not a hologram, correct?**

A. **I could not verify that it was a valid license because I could not see a hologram.**

Transcript at 72 (emphasis added).

At this point I would suggest that anyone reading this brief go out to your car, open the door, hold your license inside the window and look at it from outside. If you move from side to side the hologram will become apparent. Do it in daylight or in the dark. Use a flashlight if necessary. Or you can just watch my short demonstration on YouTube:

https://youtu.be/hhH2IQujPR4

Escobar's testimony about his inability to determine whether the license was faded or altered (Transcript at 58) is similarly refuted by the video and by common sense. Sheet glass has the property of allowing light to pass through with little or no distortion. This has been widely understood for roughly 1000 years. Sheet glass has been used for this reason in automobiles since the Model T if not earlier.

Police do not need to hold the drivers license in their hands to verify its validity. It's a nonsense argument used to advance their real intent to violate the Fourth Amendment rights of drivers so that police can force the window open.

Appellant adds one last point - that if the statute is interpreted to require handing over the license, it is void for vagueness. E.g. *Perkins v. State*, 576 So.2d 1310, 1312-13 (Fla., 1991) ("[C]riminal statutes must say with some precision exactly what is prohibited. Words and meanings beyond the literal language may not be entertained nor may vagueness become a reason for broadening a penal statute. … [W]hen the language is susceptible of differing constructions, it shall be construed most favorably to the accused."); *Kolender v. Lawson*, 461 U.S. 352 (1983).

REQUIRING LICENSE SURRENDER VIOLATES THE FOURTH AMENDMENT

During the trial Sgt. Escobar was asked whether he had reasonable suspicion regarding the license: "Did you see anything on the license that indicated to you any reason to suspect it might not be valid?" Transcript at 72. Appellant asked this and similar questions three times. Despite the Court sustaining an "asked and answered" objection, he never answered the question. Id.

Appellant respectfully submits that any statute requiring the driver to physically hand over his license violates the Fourth Amendment, unless the officer has proba-

ble cause. In this case (as in all checkpoints and traffic stops) the officer was able to see the license. He was able to read it. He could have written down the pertinent information, or taken a picture, and then used this information to do a DAVID check. Despite his false testimony to the contrary, he could have seen the hologram if he had bothered to try. He made no effort to do any of these things. He did not even have reasonable suspicion. Appellant raised this argument during closing. Transcript at 117.

For purposes of this argument Appellant stipulates that drivers have to show their license in a typical traffic stop or drivers license checkpoint (though not in a sobriety checkpoint). Officers need to verify the identity of a driver before writing a ticket, for example. However police do not need more than that in order to do their job.

Forcing the driver to hand over the license violates the Fourth Amendment in and of itself, as we are supposed to be secure in "our papers and effects," Amend. IV, U.S. Const., and that includes our drivers licenses. It also violates the Fourth because it requires the driver to roll down his window, effectively opening up the interior of the vehicle to a search by the officer. In particular, police routinely claim they detect the odor of alcoholic beverage in DUI cases.

Appellant is unaware of any cases squarely on the issue as to whether a driver has to roll down his window during a traffic stop or checkpoint. In dog sniff cases, the dog sniffs around the outside of the car. E.g. *Rodriguez v. U.S.*, 575 U. S. ____, slip

opinion at 3 (2015); *Illinois v. Caballes*, 543 U.S. 405 (2005). No one has even suggested the dog can sniff inside the window. If Sparky can't do it, neither can Sgt. Escobar.

Appellant acknowledges this is a novel issue with no clear answer, but respectfully suggests that the window is a natural place to draw the Fourth Amendment line.

THE CHECKPOINT WAS OVERBROAD AND OTHERWISE IMPROPER

In City of Indianapolis v. Edmond, 531 U.S. 32, 44 (2000), the US Supreme Court ruled:

> The primary purpose of the Indianapolis narcotics checkpoints is in the end to advance "the general interest in crime control." We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. We cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime. … [W]e decline to approve a program whose primary purpose is ultimately indistinguishable from the general interest in crime control."

Where a checkpoint is overbroad or conducted improperly, everything that follows is tainted. E.g. Bressi v. Ford, 575 F.3d 891 (9th Cir. 2009).

Ostensibly a “Sobriety Checkpoint” (Record at 101), the officers requested the drivers license of every driver stopped at the initial stop. They had a drug-sniffing dog on hand to check for drugs in cars and it was used on certain vehicles. Transcript at 77. Defendants used a license plate reader to check every car driving through, regardless of whether they were brought into the chute. Transcript at 34-37. They conducted a so-called “saturation patrol” and if a car avoided the checkpoint (which Florida law allows) the officers followed the car and looked for an excuse to pull it over to investigate. Transcript at 86-88.

Defendant Escobar was equivocal at best in his trial testimony about the purpose of the checkpoint. On direct he at first admitted the broader purpose:

> Q. Sergeant, what was the purpose of the checkpoint that was held that evening?
>
> A. It was a DUI sobriety checkpoint, in other words, to check for drivers who are impaired, violations of traffic laws, etc.

Transcript at 33.

Then, after appellant requested a readback, Escobar admitted that the purpose in the guidelines “was to check for impaired drivers.” Id.

Later Escobar read the purpose from the guidelines:

> “The sobriety checkpoint is a law enforcement controlled roadblock which is designed to heighten public awareness and the dangers of driving under the influence of alcohol and/or drugs. It is designed to detect and apprehend impaired drivers and to identify drivers of a vehicle with safety violations."

Id. at 39.

Notably none of these purposes asserted for the checkpoint said anything about drivers licenses.

On cross-examination Appellant asked Escobar whether the checkpoint was used for generalized crime control. He did not deny it, instead responding to the questions without answering. Id. at 73-76.

The guidelines document itself is infected with multiple statements of purpose and intent. The guidelines were admitted into evidence at the trial (Transcript at 29-31) but for some reason are not included in the Record prepared by the court clerk. Appellant has uploaded those guidelines to:

http://fairdui.org/wp-content/uploads/2016/03/CGPD-August-2015-DUI-Sobriety-Checkpoint.pdf

The opening sentences identify it as a "sobriety checkpoint … designed to heighten public awareness to the dangers of driving under the influence of alcohol and or drugs. It is designed to detect and apprehend impaired drivers and to identify drivers with vehicle safety violations."

In just the first two sentences vehicle safety violations are added to the DUI purpose. Later in the same paragraph it states: "We will be targeting impaired drivers, enforcing all traffic laws, and any other criminal law violations." That sentence indicates the true intent, as mirrored by Sgt. Escobar's testimony and the facts, to use this checkpoint for generalized crime control in violation of Edmond, *supra*. The "Mission" paragraph adds in ticketing drivers who are unbuckled, thus again

expanding the purpose while also violating county policy. See Miami-Dade State Attorney, The Rap Sheet, October 1, 2007, available online at https://www.miamisao.com/publications/rapsheet/2007/rapsht0710.pdf (at page 2, left column of the pdf).

In a half-hearted attempt to follow Florida law defendants provided public notice of the checkpoint. Record at 101. That notice did not indicate anything about it also being used as a license checkpoint, that a plate reader would be used on every car, that cars would be checked for drugs, nor that cars "avoiding" the checkpoint would be followed. Similarly the sign posted in advance of the checkpoint identified it as a "DUI checkpoint" (Transcript at 40). The goal as stated in that notice was "to create public awareness and to deter people from driving under the influence." Record at 101. There was no reference to driver licenses, drugs, seatbelts, nor anything about vehicle safety inspection.

Defendants used this checkpoint for generalized crime control, which is prohibited by Indianapolis v. Edmond, supra. Everything that followed from the moment of Plaintiff's initial encounter with the checkpoint through his arrest and prosecution is, in the words of Bressi, tainted: "If the roadblock were to be determined unconstitutional on remand, the result might taint the subsequent arrest and citations." Bressi, supra 575 F.3d at 899.

There is no reason to see a drivers license in the initial phase of a sobriety checkpoint. Even in the US Supreme Court case which allowed sobriety check-

points, the drivers license was not requested until after the driver was directed into secondary inspection because signs of impairment were detected:

> All vehicles passing through a checkpoint would be stopped and their drivers briefly examined for signs of intoxication. In cases where a checkpoint officer detected signs of intoxication, the motorist would be directed to a location out of the traffic flow where an officer would check the motorist's driver's license and car registration and, if warranted, conduct further sobriety tests.
> Michigan State Police v. Sitz, 496 U.S. 444, 447 (1990).

Florida Highway Patrol does not ask for a drivers license unless they are conducting a drivers license checkpoint:

> Unless the driver's license check is a designated part of the safety check procedure, members are not to request to see a driver's license. However, if the driver offers the license to a member it may be reviewed. A driver's license that appears valid on its face will be considered as prima facie proof that the driver is in compliance with the Florida driver licensing laws.

FHP Policy Number 17.08.06(G)(1) (rev. 11/23/2015), available online at: http://www.flhsmv.gov/fhp/manuals/1708.pdf

Similarly, the City of Coral Springs does not have the point person check licenses in their sobriety checkpoints.

> Once the point person makes contact with the driver of a vehicle he/she will look for signs of possible impairment (ie: glossy, bloodshot, or watery eyes; slurred speech; odor of an alcoholic beverage; or open container; etc.)

The Coral Springs checkpoint policy (see Chapter 9, section VII) is available at: http://fairdui.org/wp-content/uploads/2016/03/coral-springs-checkpoint.pdf

The purpose stated in the checkpoint guidelines used by defendants for this checkpoint was: "to detect and apprehend impaired drivers and to identify drivers with vehicle safety violations." It said nothing about licenses. While those guidelines did direct officers to ask to "see" the drivers license, there was nothing about requiring drivers to physically hand the license over.

Those guidelines indicated the requirement for the "Contact Line Officer" on page 4 of that pdf, paragraph 7. Officers were instructed to say:

> This is a Coral Gables Sobriety Checkpoint. I'm Officer _____. We are stopping vehicles looking for impaired drivers. You'll only be detained for a few seconds. Please place your vehicle in park. May I see your driver's license?

Appellant placed his license up against the window so the contact officer could see it, as requested. There was nothing in the guidelines about insisting that drivers hand over their licenses. There was nothing about inspecting the license. They were supposed "to determine if they have a license," not to inspect it. Guidelines at page 2, first full paragraph.

Disregarding their guidelines, the officers converted a sobriety checkpoint into a checkpoint for generalized crime control. In Appellant's encounter, they converted it

into a license checkpoint. For other drivers it became a drug checkpoint thanks to the drug-sniffing dog that was employed without any mention in the guidelines. For all drivers it was a license plate checkpoint thanks to the license plate reader that was not in the guidelines. See e.g. Equipment list, Guidelines, page 3.

Drivers who avoided the checkpoint faced a so-called “saturation patrol” encounter when the guidelines for Saturation Patrol said nothing about following avoiders. Guidelines, page 5, paragraph 14. The guidelines specifically said that motorists are permitted to avoid unless an officer has reasonable suspicion. A supervisor, rather than saturation patrol officers, was supposed to observe avoidance. Guidelines at page 2.

The Florida Supreme Court has spoken on the subject of strict compliance with guidelines:

> The requirement of written guidelines is not merely a formality. Rather, it is the method this Court and others have chosen to ensure that the police do not act with unbridled discretion in exercising the power to stop and restrain citizens who have manifested no conduct that would otherwise justify an intrusion on a citizen's liberty. In this country the police are not vested with the general authority to set up "routine" roadblocks at any time or place. Rather, law enforcement was placed on notice by our holding in Jones that the stopping and detaining of a citizen is a serious matter that requires particularized advance planning and direction and **strict compliance** thereafter.

Campbell v. State, 679 So.2d 1168, 1172 (Fla. 1996) (emphasis added); see also Guy v. State, 993 So.2d 77 (Fla. 4th DCA 2008) (conviction reversed where "officers did not strictly adhere to the written plan").

Appellant respectfully submits that the checkpoint guidelines themselves were overbroad as written, that they were even more overbroad as applied by the officers diverging from the guidelines, and that the police failed to observe strict compliance both with regard to their guidelines as well as to the advance notice. The checkpoint thus violated the requirements of both Edmond (overbroad) and Campbell (strict compliance).

CHECKPOINTS VIOLATE THE FOURTH AMENDMENT

This brief would not be complete without reasserting the argument that checkpoints violate the Fourth Amendment:

> 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.

Amend. IV, U.S. Const.

In this case Appellant was seized without a warrant, probable cause, reasonable suspicion, and without any oath or affirmation describing his person or things that

were seized. The US Supreme Court began demolishing the Fourth Amendment during Prohibition in the case of Carroll v. United States, 267 U.S. 132 (1925), creating what became known as the motor vehicle exception so that officers would not need a warrant to stop and search a vehicle. Florida adopted Carroll in 1927, explicitly mentioning the case in the legislation, and it remains the law of the state. Florida Statutes § 933.19.

The Supreme Court continued with several cases including Michigan v. Sitz, supra 496 US 444, eliminating not only the probable cause requirement and even reasonable suspicion, allowing "suspicionless stops" at checkpoints. That approach has been rejected by a few states but adopted by most others, including Florida. E.g. State v. Jones, 483 So.2d 433 (Fla. 1986).

Appellant respectfully submits that this Court should restore the Fourth Amendment and hold that Sitz, Jones and even Carroll were wrongly decided. Following the plain language of the Fourth, police should not be able to stop or search a vehicle without a warrant, particularly describing the person or things to be seized, issued on probable cause supported by oath or affirmation. The US Constitution cannot be amended by legislation or judicial activism, but only by the process laid out in Article V.

Appellant recognizes that this Court is unlikely to make such an heroic ruling, and makes the argument mainly to preserve it should the case reach the Florida Supreme Court or the US Supreme Court.

CONCLUSION

Wherefore Appellant respectfully submits that this Court should reverse the County Court, deem all proceedings after the dismissal a nullity and reinstate the dismissal, hold that § 322.15 is satisfied when a driver shows his license through the closed window, hold that any requirement that drivers surrender their license without probable cause violates the Fourth Amendment, hold that the checkpoint in this case was overbroad and conducted without strict compliance to its guidelines, and further hold that checkpoints are unconstitutional.

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