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 REPLY BRIEF

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## SUMMARY OF ARGUMENT

Appellant submits this short reply brief to clarify a couple points that were muddled by the Appellee's answer brief.

First, Appellee's argument regarding prosecutors would fit in a novel written by Kafka, Orwell, or Lewis Carroll. The illogic shows itself most where they dis-

parage "Defendant's literalism," and where they assert that the court below is not a court.

Second, Appellee mischaracterizes the holding of *Rinaldo v. State*, 787 So. 2d 208 (Fla. 4th DCA 2001). It does not require drivers to hand over their license. That was not the issue in the case. It simply requires drivers "to respond to an officer's requests." Appellant did respond. Further, Rinaldo involved a situation that was not covered by the guidelines. By contrast in this the police went beyond the guidelines.

**PROSECUTORS AND COURTS**

Appellee disparages "Defendant's literalism" in footnote 2 of their Answer Brief at page 10. They are correct in that Appellant does contend that Article V, Section 17, means what it says. Appellee is so terrified of the language used in the provision that they managed to write five pages on the subject without including the text of the provision:

> 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 Reyes Law Firm, as municipal prosecutors, had no authority to prosecute this case in the lower court, and they have no business appearing as prosecutors on this appeal either.

Appellees also assert that the earlier proceedings in this place were not in a "Court of this State." Answer Brief at 11. This is the most absurd and frivolous argument I have seen in my career.

Appellant respectfully suggests that this Court review the papers submitted by Appellees in the lower proceeding, such as at page 17 of the Record, captioned:

> IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

See also R-25 ("requests this Court"); R-27; R-37 (Motion to County Court, Traffic Division); R-56.

Appellees requested that the lower proceeding "be transferred to a County Court Judge" (R-46) and that request was granted. The trial was held in front of County Court Judge Leifman. The Reyes Law Firm appeared along with City Attorney Craig Leen and purported to prosecute that trial.

Judge Leifman identified himself as "Associate Administrative Judge in Charge of Traffic" and that the case was "within my purview, under administrative order by our chief judge." R-24-25.

It is unclear whether Appellees contend that the trial conducted by Judge Leifman was not in a court. The trial transcript indicates it was in County Court. Do they contend that this Court is not a court as well?

Further, the administrative orders in this Circuit that appointed Hearing Officers Carman (Administrative Order 04-15) and Larin (04-22) indicated each would "serve as a Civil Traffic Infraction Hearing Officer **of the County Court** of Miami-Dade County, Florida" (emphasis added).

Counsel also refers to the Rules of Florida Traffic Court. In doing so they ignored (or chose not to mention) Rule 6.040(a):

> Court means any county court to which these rules apply and the judge thereof or any civil traffic hearing officer program and the traffic hearing officer thereof.

Municipal attorneys appearing as prosecutors violates Article V, Section 17. This Court should hold as such.

**RINALDO**

Appellee overstates the holding of *Rinaldo v. State*, 787 So.2d 208 (Fla. 4th DCA 2001). While Appellant certainly dislikes that decision, it does not go as far as the Answer brief suggests.

Appellee relies on this language from *Rinaldo*: "[A] driver who is lawfully stopped for a DUI checkpoint is under a legal obligation to respond to an officer's requests for certain information and documents …." Id. at 212.

Appellant driver did respond to the officers' request for documents. I showed my license through the closed window. The police could see it clearly. They could get any information they wanted from it. They could have asked to see the reverse side but they never did. They could inspect the hologram through the glass if they tried. They didn't. Had they asked I would have responded to that request and shown it to them. I had other documents at the ready, including registration and insurance, had they asked to see them. Appellant was ready and willing to respond to such requests.

*Rinaldo* does appear to reject a driver's right to remain silent in a checkpoint but that is not an issue in this case. The police in this case did not ask Appellant any questions. However it should be noted that the holding is ridiculous, and in light of last week's decision in *State v. Horwitz* (No. SC15-348, Fla.S.Ct., May 5, 2016, recognizing right to "pre-arrest, pre-Miranda silence"), wrong at least in this state.

The issue in *Rinaldo* was that the guidelines didn't cover the scenario that arose:

> [T]he guidelines were silent on directions for dealing with an encounter like the one between Officer Williams and appellant … Although an "ideal" set of guidelines would anticipate that a motorist might refuse to cooperate with police during a roadblock operation, a plan that does not cover such an occurrence is not per se constitutionally invalid.

*Rinaldo* at 212.

That is not the issue in this case. As discussed in Appellant's initial brief (page 20 *et seq*) the officers in this case expanded the purpose of the checkpoint beyond what was provided in the guidelines, converting a sobriety checkpoint into a license checkpoint. They went beyond the instructions in the guidelines, which merely said to ask to see the license (Appellant complied with that request). The guidelines did not indicate the police were to demand surrender of the license. *Rinaldo* does not address this situation. Campbell v. State, 679 So.2d 1168, 1172 (Fla. 1996), does address this situation. It requires strict compliance with guidelines.

No matter how many times Appellee says it (e.g. "It was a … sobriety, safety **and license check** operation," Appellee's Answer Brief at 6 (emphasis added)) this was not a license checkpoint. It was identified as a sobriety checkpoint. Arguably the guidelines authorized a combined sobriety and traffic safety checkpoint. But the guidelines did not authorize a license checkpoint. That was not the purpose.

Unlike *Rinaldo*, this case is not about guidelines not covering the situation. The guidelines covered the situation. The police disregarded their *Campbell* obligation to strictly comply with those guidelines.

## 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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Certificate of Service: I certify that a copy hereof has been furnished to both the Reyes Law Firm and the Miami-Dade State Attorney by e-mail on May 12, 2016.

Certificate of Compliance: This brief complies with the font requirements of Rule 9.210.