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

Case No. 2016-000045-AC-01
Lower Tribunal No. A4LAR8E

WARREN REDLICH,

Appellant,

vs.

STATE OF FLORIDA,

by and through the City of Coral Gables, Florida,

Appellee.

ANSWER BRIEF

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INTRODUCTION

This case involves a driver who admitted in the proceeding below to intentionally refusing to hand over his driver's license at a DUI checkpoint despite receiving repeated requests from a police officer to do so. Judge Leifman was clearly correct to adjudicate the driver guilty of violating section 322.15 of the Florida Statutes. Indeed, based on the evidence presented, and the many admissions made by the driver, this was the only possible outcome supported by the record.

STATEMENT OF THE CASE AND FACTS

On August 19, 2015, Appellant Warren Redlich, a self-described "activist" (T.91-2), was stopped during the course of a Multi-Agency DUI Sobriety Checkpoint on S. Dixie Highway in Coral Gables pursuant to checkpoint guidelines (Exhibit 1, T.29) that had been publicly advertised. T. 28, 31. The purpose of the Checkpoint was to prevent and detect DUI and other traffic violations. T.33, 39.

Appellant, also referred to as Defendant, lives in Palm Beach County and purposely traveled to and through the Coral Gables checkpoint in order to challenge its legality, as he had done before. T.32, 102. He had written a book titled FAIR DUI: How to Stay Sane in a World Gone Madd. T.97. He was

accompanied by Grant Stern who recorded the Checkpoint encounter contrived by Mr. Redlich. T.50, 55, 100.

The car Redlich was driving was directed by police into a chute with twelve other cars. T.35. Typically, the officer's check of each driver lasts about 30-45 seconds before the sober driver is allowed to drive away from the checkpoint. T.35-6, 41.

After being approached by Sgt. Escobar, Redlich was instructed to lower his window and present his driver's license. He refused to roll down his window. T.48, 51. Instead, he pressed the face of his driver's license against the driver's window alongside a flyer he had created, the "Fair DUI" flyer, which had garnered some media attention. T. 94.

The front of the flyer (Exhibit 3, T.77-8) reads as follows:

I Remain Silent
No Searches
I Want My Lawyer
Please put any tickets under windshield wiper.
I am not required to hand you my license - §322.15
Thus I am not opening my window.
I will comply with clearly stated lawful orders.

The back of the flyer instructs the user to "Show them your license, registration and insurance through the window," and that "[y]ou are required to 'display' them, but you don't have to hand them over. So don't open your window."

Consistent with his own flyer's directives, Appellant refused to lower his window, and failed to submit or present his driver's license to officers as required by Section 322.15 (1), Florida Statutes (2015). He was warned that failure to comply with the order to present his license would result in his arrest. T.51.

Officer Escobar was not able to fully examine Defendant's driver's license through the window, nor smell his breath for the odor of alcohol. The back of the driver's license contains safety information such as whether the licensee is required to wear corrective lenses. The license also contains a bar code and a magnetic strip that reveals identifying information when the officer runs it through a reading device. T. 49-50.

After several demands for his license (T.52) and warnings of arrest, police removed Redlich from the vehicle and cited him for violation of Section 322.15(1), Fla. Stat. (2015).

At a traffic hearing conducted by the Hon. Steven Leifman, Defendant was adjudicated guilty as charged. The judge summed up the case this way:

> Over 1,000 citizens die every year because of drivers driving under the influence, which is why these checkpoints have been held to be constitutional. . . . [N[otice gives people an opportunity to stay away from the area if they so choose.
>
> It requires randomization so that it's not arbitrary and capricious . . . . [I]t balances itself with the idea that we are being protected. . . . .

> I think when you are pulled over legitimately, under the statute you are required to show it. And I don't mean show it . . . up against a glass and you give somebody a note. **I think it's clear that it is to be handed to the officer.** I think that's what the statute requires, and I think anything less than that would make absolutely no sense.

T. 123-4 (emphasis added). The judge also observed that Defendant was "endangering this society" by diverting police attention from possibly impaired drivers who "went right by [the checkpoint] and could have killed someone that evening because [He was] trying to prove a point." T. 124.

SUMMARY OF ARGUMENT

A municipality is authorized by statute and Court made rule to prosecute an alleged traffic offender through its attorneys; the State Attorney does not have exclusive authority to do so. Nothing in the Constitution of Florida bars the municipal prosecution of a state traffic statute that was conducted in this case, and a common-sense reading of the applicable statutes and rules authorizes it. Indeed, the authorization is expressly stated in the statute."

Defendant did not comply with Fla. Stat. § 322.15(1) by pressing the face of his license against a closed window and refusing to hand it to the officer when instructed to do so. On the contrary, he violated that statute by refusing to "present or submit" his license to the officer. In context, the word "display" of the license in subsection 2 of the statute is modified by the phrase "present or submit" in

subsection 1: the statutory language is display "as required by subsection 1." Both terms (submit or present) require physically handing the license to the officer. As Judge Leifman ruled, Appellant's action/omission prevented the Officer from looking at the license to see if it was altered or defaced in violation of § 322.15 (1). The back of the license also contains highly relevant safety information such as "restrictions" (e.g., corrective lenses) and "endorsements" (e,g,, non-commercial or other class of license). Crucial to the mission of the Checkpoint, Defendant's refusal to roll down the window prevented the officer from smelling Defendant's breath to detect the odor of alcohol, thus thwarting the prime purpose of the checkpoint.

Defendant's third argument—that requiring physical surrender of the license violates the Fourth Amendment—lacks all merit. No case supports such an argument. And *Rinaldo v. State*, 787 So. 2d 208 (Fla. 4th DCA 2001), of which case Appellant was aware prior to entering the Checkpoint, explicitly holds to the contrary: a driver lawfully stopped at a DUI sobriety checkpoint has an "obligation to respond to an officer's requests for certain information and documents." *Id.* at 212. The lower tribunal properly followed the Fourth District because that decision was binding precedent. *Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992). *Pardo* binds this Court as well.

Fourth, the checkpoint was not a generalized crime control operation. It was a fully constitutional sobriety, safety and license check operation. Further, the Coral Gables Police scrupulously followed the Checkpoint guidelines.

Finally, Defendant argues, for preservation purposes, that traffic checkpoints are *per se* unreasonable searches or seizures. This, of course, is contrary to years of state Supreme Court precedent going back to *State v. Jones*, 483 So.2d 433 (1986). At the federal level, the same rule was later laid down by *Michigan v. Sitz*, 496 U.S. 444 (1990). And this Court obviously has no authority to overrule those decisions of higher courts.

STANDARD OF REVIEW

Each of the issues presented by Appellant is a question of statutory or constitutional interpretation. Questions of law are subject to de novo review. *Travelers Commercial ins. Co. v. Harrington*, 154 So. 3d 1106 (Fla. 2014). There were no disputed issues of material fact at trial, as Defendant freely admitted he did not hand over his license when directed to do so at the sobriety and safety checkpoint.

ARGUMENT

I. Prosecution of the state traffic violation by municipal attorneys was authorized by statute and lawful under the Florida Constitution. The traffic hearing system is not a "court."

A. Section 316.008(2), Florida Statutes (2015) Does Not Conflict with Article V, Section 17, of The Florida Constitution.

Defendant was prosecuted by City of Coral Gables attorneys. Defendant objects to this as violating Art. V, Section 17 of the Florida Constitution, even though such municipal prosecution is specifically authorized by statute and Court Rule.

The Florida Traffic Court Rules, which define prosecutor to include "any attorney who represents a state, county, city, town, or village in the prosecution of a defendant for the violation of a statute or ordinance," were promulgated by the Florida Supreme Court, in accordance with its rule-making authority. In fact, the present applicable definition of "prosecutor" is the same as that which was originally adopted by the Florida Supreme Court. *In re Transition Rule 20,* 306 So. 2d 489, 492 (Fla. 1974) amended sub nom. *In re Transition Rule 20,* Traffic Court Rule 6.156(C), 307 So. 2d 825 (Fla. 1975). While the Florida Traffic Court Rules have been amended various times, including amendments to Rule 6.040, the definition of "prosecutor" has remained consistent. This fact should end the inquiry as to the constitutionality of this provision in light of the fact that the Court has on numerous occasions ratified this definition.

Redlich challenges Fla. Stat. § 316.008(2) as unconstitutional (I.B. at 9-10) because Article V, Section 17, of The Florida Constitution requires that "… the state attorney shall be the prosecuting officer of all trial courts in that circuit and shall perform other duties prescribed by general law. . . ."

But the statute is fully compatible with the Florida Constitution. The terms of Article V, Section 17, of The Florida Constitution and Section 316.008(2), Florida Statutes (2015) do not expressly conflict with or contradict each other; and there is a strong presumption of constitutionality afforded to legislative enactments. *Lewis v. Leon County*, 73 So. 3d 151 (Fla. 2011). All reasonable doubts as to the validity of the statute are to be resolved in favor of constitutionality. *R.J. Reynolds Tobacco Co. v. Hall*, 67 So. 3d 1084 (Fla. 1st DCA 2011), *review denied*, 67 So. 3d 1050 (Fla. 2011). If a statute claimed to be unconstitutional is susceptible of two interpretations, one of which would lead to a finding of unconstitutionality and the other of validity, the court must adopt that construction which will uphold the validity of the statute. *State v. Presidential Women's Center*, 937 So. 2d 114 (Fla. 2006). Under these standards, Section § 316.008(2) cannot be deemed unconstitutional.

Section 316.008(2) confers nonexclusive jurisdiction upon the municipalities:

> 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.

By contrast, Article V, Section 17 of the Florida Constitution *does not state* that State Attorneys shall be the *exclusive* prosecuting officers of the courts of this

State. And as a practical matter, the state attorney rarely, if ever, appears in traffic cases to prosecute Uniform Traffic Citations. Rather, Police Officers from the various law enforcement agencies within Miami-Dade County appear in a quasi-prosecutorial role to seek the adjudication of Defendants in those matters.[1] To invalidate a proceeding based upon the appearance of a legally trained officer of the Court (in essence assisting the officer) as authorized by statute and rule relies on a distinction without a difference.

In order to find the challenged statute invalid, there must be a conflict between it (the Uniform Traffic Control Law) and the Constitution; both "must contradict each other in the sense that both…cannot co-exist." *F.Y.I. Adventures, Inc. v. City of Ocala*, 698 So. 2d 583, 584 (Fla. 5th DCA 1997) (discussing purported conflicts between statutory provisions and municipal ordinance). In other words, "[t]hey are in 'conflict' if, in order to comply with one, a violation of the other is required." *Id*. This is not the case with respect to Section 316.008(2), Florida Statutes (2015), and the Constitution.

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[1] The Miami-Dade State Attorney's Office filed a *Memorandum Regarding Defendant's Notice of Constitutional Question* in support of the City's position in the lower Court, discussing the dire consequences that would result from a finding that only the State Attorney has authority to prosecute non-criminal traffic offenses, both in Miami-Dade County and Statewide, as such a ruling would effectively mean there will be little or no enforcement of the violation of state traffic laws. Memorandum at 3.

Article V, Section 17 does not explicitly state that municipal prosecutors cannot prosecute violations of State statutes. Nor is there any reason to infer such a ban from its wording.[2] On the contrary, its legislative history supports a conclusion of compatibility with Art. V, Section 17.[3] In short, Article V, Section 17 of The Florida Constitution and Section 316.008(2), Florida Statutes (2015) cannot fairly be read to directly conflict with each other. Therefore the statute authorizing prosecution by municipal attorneys should be found constitutional. *Lewis v. Leon County*, 73 So. 3d 151 (Fla. 2011) (Statutes come clothed with a presumption of constitutionality and must be construed whenever possible to effect a constitutional outcome; should any doubt exist that an act is in violation of any constitutional provision, the presumption is in favor of constitutionality.). Municipal Attorneys

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2 Defendant's literalism respecting Art V, §17 leads to the absurd result that only "the" State Attorney can act as "the prosecuting officer of all trial courts in the circuit," thereby excluding the possibility of Assistant State Attorneys appearing on behalf of the State as prosecuting officers. Such a reading would invalidate nearly all of Chapter 27, Florida Statutes, which deals with the duties of the State Attorney, and grants each State Attorney the authority to appoint Assistant State Attorneys.

3 Florida Statutes Section 316.008 was originally enacted in 1971 and has been amended no less than 9 times since, most recently effective July 6, 2011. These amendments occurred against the backdrop of the 1972 vintage of Art V § 17. At least as far back as 1997, the provision of 316.008(2) here at issue has remained substantially the same, in all relevant respects. It can be presumed that during the coexistence of the two provisions at issue, during which time the Statue has been amended multiple times, the legislature was aware of the language of the Florida Constitution and did not view it as incompatible with Section 316.008(2), Florida Statutes.

are therefore lawfully authorized to prosecute state traffic offenses occurring within their boundaries.

B. The Traffic Hearing Officer System Is Not a "Court" of this State as that Term is Used in The Florida Constitution.

Even if the view is taken that Section 316.008(2), Florida Statutes (2015), is unconstitutional, Article V, Section 17 does not apply to proceedings in the Traffic Hearing Officer System. The Courts of this State are established in The Florida Constitution, which provides,

> The judicial power shall be vested in **a supreme court, district courts of appeal, circuit courts and county courts**. **No other courts may be established by the state**, any political subdivision or any municipality. . . . **The legislature may establish by general law a civil traffic hearing officer system for the purpose of hearing civil traffic infractions.**

Art. V, § 1, Fla. Const. (emphasis added). The text of the Constitution makes clear that the only "courts" as that term is used in the Constitution are the supreme court, the district courts of appeal, the circuit courts and county courts. Not only that, but the Constitution prohibits the establishment of any other "courts" by the State. Nowhere is a "Traffic Court" established under the Constitution.

The necessary implication of Art V §1 is that the "Traffic Hearing Officer System" is not a "court" of this state or of the circuits in which they are established. This is underscored by the final sentence of Art. V §1: "The legislature may establish by general law a civil traffic hearing officer system for

the purpose of hearing civil traffic infractions." It follows that, if the traffic hearing officer system is not a court, then the state attorney has no duty to prosecute in that venue.

Additional support for this conclusion comes from Florida Traffic Court Rule 6.010(a), which provides that the Rules "govern practice and procedure in any traffic case and specifically apply to practice and procedure in county courts and before civil traffic infraction hearing officers." Here, the Supreme Court, in adopting this rule, made an express distinction between cases pending in "county courts" and those before civil traffic infraction hearing officers.

II. Defendant's Failure to hand over his license upon demand violated Fla. Stat. § 322.15.

Defendant did not comply with Fla. Stat. § 322.15; on the contrary he violated that statute by refusing to "present or submit" his license to the officer who demanded it. To address Appellants argument concerning the use of the word "display" in subsection 2, in context, the word "display" in subsection 2 of the statute is modified by the phrase "present or submit" in subsection 1; the crucial language is display "as required by section 1." That means display is equivalent to "present or submit." Both terms require physically handing the license to the officer.

In statutory interpretation, Florida courts rely upon dictionary definitions to determine the plain and ordinary meaning of words. *Martinez v. Iturbe*, 823 So. 2d

266, 267 (Fla. 3d DCA 2002). Merriam-Webster defines the verb “present” as “to give or bestow formally.” ["Present." Merriam-Webster.com. Merriam-Webster, n.d. Web. 18 Apr. 2016.] [4] It also defines the verb “submit” as to give (a document, proposal, piece of writing, etc.) to someone so that it can be considered or approved.” ["Submit." Merriam-Webster.com. Merriam-Webster, n.d. Web. 18 Apr. 2016.][5] In contrast the verb “display” is defined as “to put (something) where people can see it” or “to put or spread before the view.” ["Display." *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 18 Apr. 2016.]

Thus, to “submit” or “present” clearly requires a handing over of the license. Holding the license against the inside of the driver’s window is not presenting or submitting. Merely pressing the front of a driver’s license from behind a window, without granting the officer access to the license for inspection, violates the statute.

Recent legislative history reinforces that analysis: in 2014 the legislature amended Florida Statutes Section 322.15 to revise the requirement contained therein regarding the “display” of a physical driver license upon the demand of a law enforcement officer, to instead require motorists to “present or submit” the same upon demand of a law enforcement officer. If the legislature understood that

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[4] http://www.merriam-webster.com/dictionary/present

[5] In fact, Defendant accepts that “submit” requires the physical surrender of the license, stating in his brief: “Submit does tend to suggest physical handing over of something.” I.B. at 13.

display meant the same as "present or submit" this change would have been superfluous.

Defendant's action/omission prevented the Officer from examining the license to see if it was altered or defaced in violation of § 322.15 (1), which mandates that the license "must be fully legible with no portion of such license faded, altered, mutilated, or defaced." The back of the license also contains highly relevant information such as "restrictions" (e.g., corrective lenses) and "endorsements" (e,g,, non-commercial or other class of license). Further, Defendant's refusal to roll down the window prevented the officer from smelling Defendant's breath to detect the odor of alcohol, thus thwarting one of the prime purposes of the checkpoint.

To accept Appellant's strained interpretation would undermine the efficacy of every lawful traffic stop in the state and would create disruption and confusion. Appellant's position is unsound as a matter of law and reasonable police practice.

III. Requiring physical surrender of the license upon lawful demand is reasonable under the Fourth Amendment.

Defendant's third argument—that requiring physical surrender of the license violates the Fourth Amendment—lacks all merit. Indeed, Defendant's brief claims that he is "unaware of any cases squarely on the issue . . . ." I.B. at 18. This is not completely candid. The Transcript shows that he was fully aware of an important case on point. Indeed, he admitted (T.102) that he filed civil suit against the City

and others precisely because of the adverse[6] precedent embodied in *Rinaldo v. State*, 787 So. 2d 208 (Fla. 4th DCA 2001). That case held that a motorist at a DUI Checkpoint did not have a privilege to ignore police officer's request for documents or thwart the officer's ability to observe defendant for alcohol impairment. The *Rinaldo* Court stated that "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, and the driver's refusal to respond to these requests may constitute the misdemeanor offense of obstructing or opposing an officer." *Id.* at 212. If the driver is obligated to hand over documents, he must exit the car or roll down the window to do so.

This is far from "a novel issue with no clear answer." I.B. at 19. Quite apart from *Rinaldo*'s compelling conclusion, argument proceeding from general principles validates the statutory mandate for handing over the license upon demand. Presenting or submitting a driver's license in compliance with an officer's directive at a lawful traffic checkpoint cannot be said to be an "unreasonable" search or seizure.

Defendant admits that the license must be shown. He would draw the constitutional line at the window of the car, I.B. at 19, perhaps analogizing to the

[6] "I agree with you, that Reynaldo [sic] versus State is not favorable to me. That is the reason why I filed in federal court rather than state court. . . . I agree that it's not favorable on checkpoints generally." T.102.

threshold of a house, which an officer may not cross without a warrant (except for exigent circumstances). But unlike entry into a home, the incremental "intrusion" of rolling down the window to hand the license to the officer is *de minimis,* while the incremental gain of relevant safety information is substantial. "In order to safeguard Floridians against such [careless] drivers, motorists should reasonably accept the minor inconvenience which they may endure at a properly run DUI roadblock.*"* *State v. Jones*, 483 So.2d 433, 439 (Fla. 1986)

IV. The checkpoint stop of Mr. Redlich was a reasonable seizure of his person incident to a routine sobriety, safety and license check checkpoint operation. It was not a general crime control operation. It was not "overbroad" in purpose or scope.

Appellant's reliance on *City of Indianopolis v. Edmond*, 531 U.S. 32 (2000), to undercut the legitimacy of the Coral Gables traffic checkpoint is completely misplaced. That case involved drug sniffing dogs at a checkpoint stop designed and intended for *drug enforcement and interdiction*; the drivers were detained for the dog sniffing without individualized suspicion against them. The Supreme Court held that such a program had nothing to do with traffic safety and was indistinguishable from the City's "general interest in crime control." *Id*. at 44. The stops were therefore unreasonable in the absence of cause for the stops. Unlike the checkpoint stop of Mr. Redlich in this case, the stops in *Edmond* were not routine traffic safety stops or sobriety checkpoint stops.

The stop of Mr. Redlich perfectly matched the Fourth Amendment rules established over the years by the U.S. Supreme Court. The Court upheld brief, suspicionless seizures of motorists at a sobriety checkpoint aimed at removing drunk drivers from the road which is exactly what the Coral Gables Checkpoint was designed and operated to do. *Michigan v. Sitz*, 496 U.S 444 (1990). In addition, in *Delaware v. Prouse*, 440 U.S. 648, 663 (1979), the Supreme Court stated that a roadblock to question all oncoming traffic to verify drivers' licenses and vehicle registrations with the interest of serving highway safety would be permissible under the Fourth Amendment. The Florida Supreme Court agrees. *State v. Jones*, 483 So.2d 433, 439 (Fla. 1986).

Combining both purposes in one checkpoint stop is perfectly sensible and constitutionally reasonable. Such a combined-purpose checkpoint was upheld against a fourth amendment challenge by the Eleventh Circuit. ("The Government has shown that the primary purpose of the checkpoint in question was not to engage in general crime control, but instead to police the intersection for drunk driving, to perform routine checks for drivers' licenses and vehicle registration, and to enforce compliance with general traffic laws."). *U.S. v. Regan*, 218 Fed.Appx. 902, 904 (11th Cir. 2007). *Accord, U.S. v. Cole*, 2010 WL 3210963 (N.D.Ga. 2010)

(The roadblock was conducted for the limited, valid purposes of checking driver's licenses, vehicle registrations and driver sobriety.[7])

Indeed, the very case cited by Appellant, *Bressi v. Ford*, 575 F.3d 891 (9th Cir. 2009), I.B. at 19, makes this point for Appellee: "Of course, the Officers were free to set up a roadblock for the purpose of checking the drivers' licenses, vehicle registrations and the sobriety of non-Indian motorists, because the Officers were authorized to enforce state law." *Id.* at 897. "The state's compelling interest in protecting the public from drunk drivers outweighs any minimal intrusion into their privacy which a proper roadblock procedure might cause." *State v. Jones*, 483 So.2d 433, 439 (Fla. 1986).

V. Sobriety checkpoints are lawful under the Fourth Amendment.

Appellant's argument here is a mere formality that would require overruling all existing precedents. "Appellant recognizes that this Court is unlikely to make such a heroic ruling [that checkpoints violate the Fourth Amendment] and makes the argument mainly to preserve it should the case reach the Florida Supreme Court or the U.S. Supreme Court." I.B. at 27. No further opposition to this point is necessary

[7] Defendant also complains of the presence of drug sniffing dogs at the checkpoint. I.B. at 20. As the dogs were not used on him, he has no standing to challenge them. The same is true of the saturation patrol; it did not affect Defendant.

CONCLUSION

The adjudication of Appellant for violating Fla. Stat. § 322.15 should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this document was served via email on counsel for Appellant, wredlich@gmail.com, this 29th day of April, 2016.

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STEVEN J. WISOTSKY

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that this brief was produced in Times New Roman 14-point font.

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