No.

IN THE

SUPREME COURT OF THE UNITED STATES

PAUL BYRD,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

On Petition for Writ of Certiorari to the Florida First District Court of Appeal

PETITION FOR WRIT OF CERTIORARI

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A. QUESTION PRESENTED FOR REVIEW

Whether a "ruse checkpoint" that focuses on those who attempt to avoid the checkpoint violates the Fourth Amendment to the Constitution.

B. PARTIES INVOLVED

The parties involved are identified in the style of the case.

C. TABLE OF CONTENTS AND TABLE OF AUTHORITIES

1. TABLE OF CONTENTS

2. TABLE OF CITED AUTHORITIES

a. Cases

b. Statutes

c. Other Authority

The Petitioner, PAUL BYRD, requests the Court to issue a writ of certiorari to review the opinion of the Florida First District Court of Appeal entered in this case on June 7, 2019. (A-2-5).[1]

D. CITATION TO ORDER BELOW

Byrd v. State, 272 So. 3d 1289 (Fla. 1st DCA 2019).[2]

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257 to review the final judgment of the Florida First District Court of Appeal.

F. CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

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[1] References to the appendix to this petition will be made by the designation "A" followed by the appropriate page number.

[2] On February 10, 2020, the Florida Supreme Court issued an order declining to accept jurisdiction. (A-1).

G. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

The Petitioner was charged in Florida state court with one count of trafficking in cocaine (28 grams or more), one count of possession of hydromorphone, and one count of possession of paraphernalia. The offenses allegedly occurred on February 28, 2014.

Prior to trial, the Petitioner filed a motion to suppress (A-14-20) and motion to dismiss based on the law enforcement officers' use of a "ruse checkpoint" in this case. (A-21-26). A hearing on the motion to suppress was held on February 21, 2017. (A-27-237). At the conclusion of the suppression hearing, the trial court denied the motions. (A-228-229).

The case proceeded to a jury trial in February of 2017. At the conclusion of the trial, the jury returned a verdict finding the Petitioner guilty as charged for all three counts. The trial court sentenced the Petitioner to a total sentence of three years' imprisonment – the minimum mandatory sentence. (A-6-13).

On direct appeal, the Petitioner argued that the trial court erred by denying the motion to suppress/motion to dismiss because the utilization of a "ruse checkpoint" by law enforcement officials violates the Fourth Amendment to the Constitution. The Florida First District Court of Appeal subsequently affirmed the Petitioner's convictions. (A-2-5).

H. REASON FOR GRANTING THE WRIT

The question presented is important.

The question presented in this case is as follows:

> Whether a "ruse checkpoint" that focuses on those who attempt to avoid the checkpoint violates the Fourth Amendment to the Constitution.

As explained below, the Petitioner requests the Court to grant his certiorari petition and thereafter consider this important question.

Prior to trial, the Petitioner filed a motion to suppress (A-14-20) and a motion to dismiss challenging the "ruse checkpoint" utilized by law enforcement officials in this case. (A-21-26). The motions alleged the following facts about the "ruse checkpoint" in effect on the date that the Petitioner's vehicle was stopped:

> 1. On February 28, 2014, members of the Franklin County Sheriff's Office set up an illegal narcotics check point on Highway 98 near Lanark Village in Franklin County, Florida. The probable cause affidavit in this case was minimal and devoid of any mention of the checkpoint but subsequent depositions revealed police misconduct which violate Mr. Byrd's due process rights.
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> 2. The annual Chili Cook-Off took place on St. George Island from February 28 to March 2, 2014. In deposition, law enforcement admitted that it desired to target attendees of the Cook-Off.
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> 3. Two large flashing message boards were placed facing westbound traffic on Highway 98, visible to traffic traveling from the Tallahassee area to St. George Island. One board indicated that there was a "narcotics checkpoint" ahead and the other board indicated that K-9 officers were working ahead. These boards were placed about a quarter to a half a mile east of the old Putnal Lanark Station located at the corner of Putnal Street and Highway 98.
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> 4. Two Patrol vehicles were placed on opposite sides of Highway 98 just west of the intersection of Putnal Street and Highway 98; both of which had their emergency lights activated. There were at least three large traffic cones in the middle of Highway 98 between the patrol vehicles. The Franklin County Sheriff's Office did not stop any

vehicles at this checkpoint.

5. Between the flashing message boards and the marked patrol vehicles is the intersection of Putnal Street and Highway 98. Multiple patrol vehicles and K9 units were on Putnal Street focusing on drivers who made a right hand turn to avoid the illegal checkpoint. Additionally, deputies in unmarked units parked near the flashing message boards waited for drivers to make U-turns to avoid the illegal "narcotics checkpoint."

6. Deputy Coulter observed Mr. Byrd make a right turn onto Putnal Street from US Highway 98. After he made that right turn, allegedly avoiding the illegal "narcotics checkpoint," deputy Coulter claims he observed Mr. Byrd without a seatbelt. At that point, a stop and a K9 sniff occurred, resulting in a positive alert by the K9 unit on Mr. Byrd's vehicle. Upon search of Mr. Byrd's vehicle, various controlled substances were located.

7. As a result of the evidence found pursuant to a search of his vehicle, Mr. Byrd was placed under arrest. Following his arrest, Mr. Byrd made statements to law enforcement that he purchased cocaine. This statement is expected to be used by the State as an admission of guilt by Mr. Byrd.

(A-14-15; A-21-22).

A hearing on the motions was held on February 21, 2017. During the hearing, Lieutenant Eric Bradley Segree testified that the purpose of the "ruse checkpoint" in this case was to "remove the criminal element from the highways, streets, and roadways in the Franklin County area." (A-75). Lieutenant Segree admitted that even though the checkpoint was a "ruse" (i.e., the law enforcement officers were not requiring the vehicles to stop), the officers had to "wave people through" the checkpoint because everyone slowed down when they approached the checkpoint. (A-78-79). Finally, Lieutenant Segree conceded that "[i]f a vehicle was noted attempting to avoid the patrol cars that were parked on Highway 98, the officers were advised to pay closer attention to those vehicles to see if there were any traffic violations . . . ." (A-106).

At the conclusion of the hearing, the trial court denied the motions. (A-228-229). For the reasons expressed below, the Petitioner submits that the trial court erred by denying the motions because "ruse checkpoints" are unconstitutional.

The Fourth Amendment to the Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." This Court has held that "actual" roadside drug checkpoints are unconstitutional. In *City of Indianapolis v. Edmond*, 531 U.S. 32, 48 (2000), the Court held that a narcotics checkpoint whose primary purpose "is ultimately indistinguishable from the general interest in crime control" violates the Fourth Amendment to the United States Constitution. In that case, Indianapolis police had established vehicle checkpoints in an effort to interdict illegal drugs. *See id.* at 34. The roadblocks were staffed by approximately thirty officers who would "stop a predetermined number of vehicles." *Id.* at 35. The checkpoints were generally operated during the day and were identified with signs reading, "NARCOTICS CHECKPOINT ____ MILE AHEAD, NARCOTICS K–9 IN USE, BE PREPARED TO STOP." *Id.* at 35-36 (internal quotation marks omitted). The officers would stop groups of cars, investigating each one while other traffic proceeded without interruption. *Id.* at 36. The Court concluded that the "primary purpose" of the Indianapolis checkpoint operation "was to detect evidence of ordinary criminal wrongdoing." *Id.* at 41. The Court distinguished such a program from those that are "designed primarily to serve purposes closely related to the problems of policing the

border or the necessity of ensuring roadway safety," both of which the Court had previously held to be constitutional. *Id.* at 42-43. *See also Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 451 (1990) (holding that sobriety checkpoints are constitutional); *United States v. Martinez-Fuerte*, 428 U.S. 543, 561-564 (1976) (holding that border checkpoints are constitutional). Despite the Government's argument that "the severe and intractable nature of the drug problem" justified the checkpoint program, the Court "decline[d] to suspend the usual requirement of *individualized suspicion* where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes." *Edmond*, 531 U.S. at 44 (emphasis added).

Following *Edmond*, law enforcement agencies around the country began the practice of setting up "ruse checkpoints" – i.e., the law enforcement officers would set up "drug checkpoint ahead" signs on the highway – even though there was no actual drug checkpoint – and then the officers would stop those vehicles who attempted to avoid the checkpoint. Federal appellate courts who have considered these "ruse checkpoints" have held that avoiding a checkpoint is not a sufficient basis – standing alone – to justify a traffic stop. *See United States v. Neff*, 681 F.3d 1134, 1135, 1138-1141 (10th Cir. 2012) (explaining police tactic of using "ruse checkpoint" signs and holding that a driver's exit from the interstate after seeing ruse check point signs is, by itself, insufficient justification for a vehicle stop); *United States v. Prokupek*, 632 F.3d 460 (8th Cir. 2011) (same).

During the February 21, 2017, hearing, Lieutenant Segree admitted that the

purpose of the "ruse checkpoint" in this case was to focus on those individuals who attempted to avoid the checkpoint. (A-106) ("If a vehicle was noted attempting to avoid the patrol cars that were parked on Highway 98, the officers were advised to pay closer attention to those vehicles to see if there were any traffic violations . . . ."). If an actual drug checkpoint is unconstitutional, then a "ruse checkpoint" that focuses on those who attempt to avoid the checkpoint also violates the Fourth Amendment. As explained in the Petitioner's motion to dismiss:

> Florida courts have analyzed actions by law enforcement agencies and deemed them illegal though. "[P]olice agencies cannot themselves do an illegal act, albeit their intended goal may be legal and desirable." *Kelly v. State*, 593 So. 2d 1060, 1061 (Fla. 4th DCA 1992). . . . [The] Florida Supreme Court has ruled that "the only appropriate remedy to deter . . . outrageous law enforcement conduct is to bar the defendant's prosecution." *State v. Williams*, 623 So. 2d 462, 467 (Fla. 1993), *see State v. Taylor*, 784 So. 2d 1164 (Fla. 2d DCA 2001) (mandating that the dismissal of charges in instances of outrageous police conduct applies, regardless of the defendant's predisposition).
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> 14. In *Williams and Kelly*, law enforcement reconstituted powder cocaine that it had confiscated into crack cocaine. *Kelly*, 593 So. 2d at 1061; *Williams*, 623 So. 2d at 463-64. The crack cocaine was then dispersed to deputies to conduct reverse sting operations. *Williams*, 623 So. 2d at 463-64. The Fourth DCA held that because law enforcement committed an illegal act, in this case making crack cocaine, it violated the defendant's constitutional guarantee of due process. *Kelly*, 593 So. 2d at 1061. The Florida Supreme court has held that evidence gathered from outrageous conduct cannot produce a conviction. *See Williams*, 623 So. 2d at 467; *see also Metcalf v. State*, 635 So. 2d 11 (Fla. 1994) (holding that committal of an illegal act by law enforcement rises to the level of outrageous conduct and warrants dismissal of charges).
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> 15. The Florida Supreme court also came to the same conclusion in *Metcalf v. State,* 635 So. 2d 11 (Fla. 1994) (holding that committal of an illegal act by law enforcement rises to the level of outrageous conduct and warrants dismissal of charges).
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> 16. Impeding traffic is normally a violation under Fla. Stat. § 316.2045(1). Clearly the application of this statute to legal and allowable law enforcement purposes would be both erroneous and counterintuitive. This was not a legal checkpoint under *Edmond* however; the stopping of

> all passengers, and the termination of their freedom of movement was a Fourth Amendment seizure without warrant or probable cause. This is analogous to the creation of crack cocaine in *Williams* and *Kelly*, in all three circumstances the police engaged in illegal activity in order to seek arrests for activities no individualized reasonable suspicion existed for. Fla. Stat. § 316.2045(1) is designed to create safe roadways in order to prevent injury and death. The punishment for this statute is far less than creation of crack cocaine, but the potential for this illegal checkpoint to have caused bodily injury was far greater.
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> 17. The law mandates the dismissal of charges in instances of outrageous police conduct applies, regardless of the defendant's predisposition. *State v. Taylor*, 784 So. 2d 1164 (Fla. 2d DCA 2001). In this case, the outrageous government conduct that led to the arrest of the Defendant mandates a dismissal of all charges.

(A-24-26). Based on the arguments set forth in the Petitioner's motion to dismiss, the Petitioner's constitutional due process rights were violated by the outrageous police conduct in this case. *See* U.S. Const. amends. V and XIV.

Moreover, it was established during the February 21, 2017, hearing that motorists were stopping at the "ruse checkpoint" and they had to be "waved" through by the law enforcement officers. (A-78-79). In *Michigan Department of State Police v. Sitz*, 496 U.S. 444, 450 (1990), this Court cited/quoted its previous decision in *Brower v. County of Inyo*, 489 U.S. 593, 597 (1989), for the proposition that a "Fourth Amendment seizure occurs 'when there is a governmental termination of freedom of movement through means intentionally applied.'" As explained in the Petitioner's motion to suppress:

> The hindering of motorists by the Franklin County Sheriff's Office intentionally terminated their freedom of movement. This constitutes a Fourth Amendment violation of Mr. Byrd's rights prior to the alleged traffic infraction observed by Deputy Coulter, forming the basis for Mr. Byrd's ultimate arrest.

(A-19). It follows that all evidence obtained in violation of the Fourth Amendment

should have been suppressed in this case.

The question presented in this case has the potential to impact numerous criminal prosecutions nationwide. By granting this petition, the Court will have the opportunity to address this important question and thereafter decide whether a "ruse checkpoint" that focuses on those who attempt to avoid the checkpoint violates the Fourth Amendment. Accordingly, for the reasons set forth above, the Petitioner prays the Court to grant his certiorari petition in order to address this important issue.

I. CONCLUSION

The Petitioner requests the Court to grant the petition for writ of certiorari.

Respectfully Submitted,

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