

No. 20-7436

ORIGINAL

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ELEVENTH CIRCUIT

FREDERICK DALE KNIGHT — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FLORIDA FIRST DISTRICT COURT OF APPEAL
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FREDERICK KNIGHT, DC#306918
(Your Name)

BAKER CORRECTIONAL INSTITUTION
20706 U.S. HIGHWAY 90 WEST
(Address)

ANDERSON, FLORIDA. 32087
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

UNDER WHAT CIRCUMSTANCES DOES A NON-CRIMINAL TRAFFIC STOP AND THE SUBSEQUENT OBSERVATION THROUGH THE WINDOW OF STOPPED VEHICLE REVEALING A CYLINDRICAL BROWN CIGARETTE GIVE RISE TO PROBABLE CAUSE TO SEARCH A PERSONAL, REASONABLE EXPECTED ZONE OF PRIVACY?

DOES A TRIAL JUDGE DEPART FROM HIS OR HER ROLE AS A NEUTRAL ARBITER BY EX PARTE AND SUA SPONTE ACTS, CALLING A WITNESS FOR THE STATE PROSECUTOR AND BIFURCATING A HEARING, VIOLATES THE PETITIONER'S CONSTITUTIONAL RIGHT OF DUE PROCESS UNDER THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- STATE OF FLORIDA V. FREDERICK DALE KNIGHT
PLAINTIFF, DEFENDANT,

CASE NO: 2018-CF-6246

FOURTH JUDICIAL CIRCUIT, DUVAL COUNTY,
FLORIDA.

JUDGMENT ENTERED JUNE 21, 2019

- STATE OF FLORIDA V. FREDERICK DALE KNIGHT

APPEAL NO: 1D20-0390

FIRST DISTRICT COURT OF APPEAL
FLORIDA,

JUDGMENT ENTERED NOVEMBER 20, 2020

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the FOURTH JUDICIAL CIRCUIT, FLORIDA court appears at Appendix B to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was NOVEMBER 20, 2020.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: NA, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including NA (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE FOURTH (4) AMENPMENT OF THE UNITED STATES CONSTITUTION

THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSE, 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 PERSONS OR THINGS TO BE SEIZED.

THE FIFTH (5) AND FOURTEENTH (14) AMEND- MENT OF THE UNITED STATES CONSTITUTION

NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW.

STATEMENT OF THE CASE

In the Fourth Judicial Circuit, Duval County, Florida, Case Number: 2010-CF-6246, Frederick Dale Knight, Defendant vs. State of Florida, filed a motion to suppress, (on December 17, 2018), evidence that was illegally obtained by the Jacksonville Sheriff's Office (Agent) Derived from a pretextual traffic stop and subsequently, an arbitrary search of the Defendant's vehicle, without a complete, certain, or specific observation of the alleged marijuana, through the vehicle window, at approximately 12:30 am. (Hunch)

This was a violation of the Defendant's/Petitioner's legitimate expectation of privacy, protected by the Fourth Amendment of the United States Constitution from an unreasonable intrusion into Petitioner's expected zone of privacy; without the prerequisite observed incriminating evidence through the pre-intrusion doctrine.

On February 8, 2019, a hearing on the Petitioner's motion to suppress was held. The following pertinent excerpts from the officer's testimony:

OFFICER DAIGLE TESTIMONY

A traffic stop was conducted for running a stop sign at 12:19 am. (R. 48-52)
No other behavior or driving drew his attention or no smoke was coming from the vehicle nor under the influence of any drugs or alcohol. (R. 56-58)

Daigle completed running the license and came back to the vehicle without a ticket. The stop was complete but was waylaid by Officer Deconti informing about a marijuana blunt on the back floorboard under the seat. (R. 49-60) Officer Deconti told him seeing only a blunt cigarette. (R. 61)

"It was wrapped like a cigarillo". (R. 5, R. 61) No odor of marijuana detected. (R. 59) All he could see is a brown little roach. (R. 62) He could not really tell it was marijuana. Nothing led him to believe the item was contraband or marijuana. (R. 5, R. 63) Daigle gave two (2) complete different descriptions, i.e., "more of a green leafy substance", "he testified it could have been bought out of a 7 – Eleven Store. (R. 77-78) There were no other items on the floorboard in the back seat. (R. 5, R. 36, R. 64) No lights in the vehicle were on. (R. 65)

Daigle denies giving different description of the item, via. color, shape, size under oath. (R. 5, R. 69, R. 78) No item of marijuana submitted as a result of this case in property.

Daigle was shown pictures, provided by the State, taken at the scene, book bag and a cigarette, he testified no green was coming from it. (R. 82-84)

OFFICER CULLEN'S TESTIMONY

Mr. Knight's (Petitioner) stop response was appropriately, ordinary and cool, cooperative encounter. (R. 96) No smell of marijuana. Four officers engaging

with Knight at traffic stop. (R. 97-98) Cullen claims he was the first person to notice marijuana/ cigarette. (R. 56, R. 61, R. 88)

On cross examination he observed a blunt/cigarette, it appeared to be hand rolled or wrapped instead of machine wrapped as a cigarette would be. (R. 101) He seen a green bud sitting nexted to it. (R. 38-39, R. 6 Deconti's statement of his search requesting a supplement property storage card item #13) The bud was about the size of a tip of a pen. (R. 56) He testified items in the photo is perfectly rolled like a machine did it. (R. 108-109, R. 37 photo taken on hood of car, requesting supplement photo disc R. 110) It looked like a cigarette out of a 7 – Eleven grocery store.

OFFICER DECONTI'S TESTIMONY

When someone is arrested for possession of marijuana the evidence is placed in the property room. (R. Deconti's statement, R. 114 requesting a supplement property storage card item #13 withheld from R.O.A. Exhibit 2). He stated the first photo presented, "was the hood of the car, not the floorboard backseat". (R. 6 Deconti statement R. 115-116 requesting supplement disc of evidence).

On cross-examination Deconti testified that the characteristics of marijuana roach is typically "flat" and burned on one end. (R. 37, R. 119-121) He agreed with defense counsel that the item in the photo, State Exhibit, is perfectly machine razor blade cut cigarette, that the spec was placed on the hood, it was not collected in

search of the vehicle. The item in photo would not have given officer's "reasonable suspicion" or an "incriminating nature" to think it was marijuana to warrant a search. He collected the item in the photo a "cigarette". (R. 6 State statement R. 122-123, requesting supplement property storage card withheld from R.O.A. Exhibit 2 item #13)

Defense counsel shows the next photo of the back seat floorboard revealing a back pack on the floor mat looking into the angle he would be in this position. He (Deconti) then agreed that all he saw was a tiny brown something, "not incriminating nature", say, "yes, I'm sorry and not being truthful. (R. 124-125)

Defense counsel argues this was an "unreasonable/ unlawful intrusion" on Mr. Knight's expectation of privacy and a Fourth Amendment violation. Officer Diagle and Cullen following Mr. Knight (Petitioner) in an urban residential community, that he rolled through a stop sign into a five (5) lane 45 MPH expressway with two (2) police cars directly behind him, not under the influence or impaired on drugs. The only credible testimony was a brown object, that "observation/identification" such as this that appears "innocuous or innocent" "not incriminating nature" on their face, the requirement is that it need be more to be immediately apparent/incriminating nature as contraband

Multiple reasons: Alleged observation (pretext), Daigle holding license, four (4) officers present on a traffic stop for a stop sign "show of authority" and demand

Mr. Knight out of his car intimidating him at 12:00 am at night alone. Fourth Amendment analysis is to have a well founded articulate what was collected. (R. 128-131) State counsel argues unreasonable facts to the evidence, (R. 6 Deconti's statement, R. 124-125, R. 115, R. 132-135, R. 13 ticket wrote 1:36 am) That in cannabis officers training and experience can identify its unique look, the item in photo and evidence gives right under "plain view doctrine". (R. 135)

On June 21, 2019, the Honorable Marianne Aho, rendered her opinion, ruling in favor of the State of Florida, denying the Petitioner's Motion to Suppress. (R. 259-278) The order followed Denying the Motion to Suppress. (R. 191)

Judge Aho: "So based upon the totality of the circumstances and all of this testimony that I find to be credible, I find it was a valid stop. I find that the request to step out of the vehicle, based upon the drug investigation, was certainly reasonable and permissible under state and federal law for the reasons I've placed on the record".

APPEAL

The Defendant/Petitioner takes an appeal, the trial court's denial of the motion to suppress, to the First District Court of Appeal, Florida, Case No.: 1D20-0390.

The Petitioner submitted an Initial Brief 26 pages in length, in the month of August 2020, to this respective court. A synopsis of the Brief follows:

“A minor traffic violation cannot be used as a pretext to search for evidence of crimes”, the logic of a person running a stop sign with two (2) police cars behind him a (5) five lane, 45 MPH expressway at 5 MPH and they are not under the influence or impaired. (Kehoe v. State, 521 So.2d 1094) “This court observed that when police realize that they lack a founded suspicion they attempt to justify a stop on some traffic violation,” Id at 1097. The contested testimony at the suppression hearing was that Mr. Knight vehicle failed to make a complete stop at a stop sign on Kenknight Drive, (R. 87) A residential urban community that there officers patrolled 12:00 am at night (R. 87-88, 91 stopping Mr. Knight at 12:19 am but not writing a ticket until 1:36 am (R. 13) even after testifying that Officer Daigle was stopped about the claim of marijuana. (R. 49, R. 60) Daigle did not come back with a ticket but also did not write a ticket until 1:36 am (R. 13) after the arrest. This shows the trial court did error in finding the stop was valid. (Hills v. State, 629 So.2d 152 (Fla. 1st DCA 1993))

A significant identifying characteristics of a police citizen encounter is that the officer cannot hinder or restrict the person(s) freedom to leave or freedom to refuse to answer inquiries and the person may not be detained without a well founded articulable suspicion of criminal activity. (Popple v. State, 626 So.2d 185-188)

Mr. Knight asked to call his attorney before he answered anything because the officers had no justification for the continued restraint/detainment. Four officers engaging with Mr. Knight, with their words and actions, was a “show of authority” in stark contrast to a non-criminal traffic stop, requiring only one officer.

In Mr. Knight’s case there is a pretextual traffic stop, with only a cigarette collected as evidence. To prove officers had probable cause for search and seizure the State must present more than a naked subjective statement of a police officer’s who’s “feeling” based on “experience”, that an accosted citizen is committing a crime i.e., the pre-intrusion observation of the articulated object was not marijuana, warranting an unlawful intrusion into Petitioner’s expected zone of privacy. (R. 37-39, R. 124-125)

Daigle agreed that item in photo has no incriminating nature. Deconti saw what we saw in the photos, “perfectly cylindrical like a manufactured end cigarette”, (Al Capone cigarette with a filter on one end) (R. 62-63, R. 71, R. 77-78, R. 115-116, R. 122-123, R. 124-125) Officer Cullen alleged seeing a bud the size of a tip of a pen, in the dark, through a window, under the backseat with a large book bag on the floor mat and “him only” seen this observation. (R. 56, R. 61, R. 88, R. 101, R. 38-39, R. 108-109) Mr. Knight (Petitioner) at the time of the “non-criminal traffic stop”, gave no threat to the officer’s safety concerns, license

and car clean, no smell of marijuana, not under the influence or impaired, no warrants and not under arrest. Clearly we have an unreasonable/unlawful intrusion into Mr. Knight's Fourth Amendment reasonable expectation of privacy.

REASONS FOR GRANTING THE PETITION

The Fourth (4) Amendment of the United States Constitution protects the people from an abusive government by guaranteeing the people of the United States to be secure in their persons, house, papers, effects against unreasonable searches and seizures, shall not be violated.

In this case at bar, the Government entity (Jacksonville Sheriff's Agents) blatantly and arbitrarily conducted a non-criminal traffic stop and an unreasonable search and seizure of Petitioner's vehicle based on an unarticulated hunch; not immediately apparent of the object/item viewed through the window of Petitioner's vehicle was contraband or incriminating evidence of wrongdoing. Jones v. State, 648 So.2d 669, 678 (Fla. 1994). In unison to the initial traffic stop three other police officers were on the spot engaging with the Petitioner (Mr. Knight) at 12:19 am. These circumstances give light to a pretextual stop as a guise to probe further with unfounded suspicion for incriminating wrongdoing.

THE TESTIMONY AT THE MOTION TO SUPPRESS HEARING

Officer Daigle initiated the non-criminal traffic stop and ran Mr. Knight's Driver's License, coming up clean, he did not write a ticket for a traffic violation at the scene as he was enrooted back to Mr. Knight's vehicle. During the motion to suppress hearing, Officer Daigle testified that Mr. Knight's behavior was normal, no odor of marijuana smoke, nor was Mr. Knight under the influence of any drugs

or alcohol. At this point it was a normal traffic stop. Officer Deconti arrived on the scene and started looking through the back window of the Petitioner's vehicle and observed two black backpacks and informed Officer Daigle of a marijuana blunt/cigarette on the back floorboard under the seat. (12:19 am) In contrast, Deconti testified at the motion to suppress hearing that the characteristics of a marijuana roach are typically "flat and burned on one end" and then agreed with Defense Counsel that the item in the photo (State's Exhibit) is perfectly machine razor blade cut cigarette". "The spec that was placed on the hood, it was not collected in search of the vehicle. Deconti also testified "the item in the photo would not have given Officers reasonable suspicion" or "incriminating nature" to think it was marijuana to warrant a search of the collected item the photo, a cigarette. Defense Counsel shows next photo to Deconti of the back seat floorboard revealing a back pack on the floor mat. Deconti then agreed that all he saw was a tiny brown something; "not incriminating nature", stating "yes I'm sorry".

Officer Daigle gave two (2) complete different descriptions i.e., "more of a green leafy substance" he testified it could have been bought out of a 7 – Eleven store. Daigle testified no lights in the vehicle were on at 12:19 am.

Daigle denies given different descriptions of the item via. color, shape, size under oath. Daigle: "No items of marijuana were submitted as a results of this case,

in property”. Daigle looks at photo taken at scene, book bag and a cigarette; he testified “no green was coming from it”.

Officer Cullen testified “no smell of marijuana”. He observed a blunt/cigarette, “The bud was collected about the size of a tip of a pen”. “The item in photo is perfectly rolled like a machine did it”. “Mr. Knight’s response to the stop was appropriately ordinary and cool, cooperative encounter”.

The Trial Judge Aho, erroneously finds these Officer’s testimony credible, finding the stop valid and finding the request to ask the Petitioner to step out of the vehicle based upon unfounded suspicion, no incriminating evidence for a drug investigation, reasonable under state and federal law.

The decision in this court is in conflict with the decisions of other appellate courts the authorities are as follows:

In *M.L., A Juvenile, Appellant v. State of Florida*, 47 So.3d 911(3rd DCA 2010) Officer Garapino was responding to a call to recover a missing juvenile. Upon locating the Juvenile, M.L., he saw a multi-colored pipe in a red bag about an arm’s reach from M.L.. Officer Garapino picked up the pipe in the red bag. He heard M.L. state “it’s my pipe, it’s not hers”. At that point he placed M.L. in handcuffs and escorted him to the police car. The pipe had marijuana residue. This court ruled the State failed to present evidence that it was immediately apparent to the officer that the partially or completely concealed pipe in the bag constituted

evidence of a crime or illegal paraphernalia, without that, the officer had no right to seize the pipe and no probable cause to arrest M.L..

Chaplan v. State of Florida, 531 So.2d 88, 92 (Fla. 1988) In Chaplan, an automobile accident occurred in front of the Hollywood Florida Police Department involving Chaplan. An officer from the station approached the scene and assisted Chaplan with filling out an accident tow slip for the tow driver. When the officer looked into the front windshield of the car for the Vehicle Identification Number, he observed what he described as “several small rolled burnt cigarette wrappings” on the floorboard. The officer concluded that these were marijuana cigarettes, open the door and discovered baggies of marijuana and cocaine. Petitioner was then arrested and charged with two counts of possession of narcotics. The police officer testified that he did not know what was contained within the partially burned cigarette papers he observed through the windshield of the petitioner’s car. The court ruled, “that the mere observation of an opaque container [such as partially burned cigarette paper], without more, cannot constitute probable cause”. There must be at least an additional objective and reasonably specific element justifying the State agent’s interference of wrongdoing.

In Anderson v. State of Florida, 532 So.2d 4 (2 DCA 1988), the defendant was stopped for speeding and arrested for possession of drug paraphernalia after an officer observed a cut straw inside a motor home. The officer saw no other

evidence of criminal activity. The Anderson Court found a lack of probable cause to enter the vehicle and seize the straw as contraband.

Minnesota v. Dickerson, 508 U.S. 366, 375, 113 S.Ct. 2130, 124 L. Ed. 2d 334 (1993) (If, however, the police lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object, i.e., if it's incriminating character [is not] "immediately apparent", "Horton v. California, 496 U.S. 128, 136, 110 S.Ct. 2301, 110 L. Ed. 2d 112 (1990)] The Plain-View Doctrine cannot justify its seizure".)

The foregoing case laws are analogous to this case. Mr. Knight on the night he was stopped for a non-criminal traffic stop, i.e., allegedly a stop sign violation, exhibited normal behavior, no odor of marijuana smoke, cool and cooperative encounter and no furtive movements. Officer Daigle initiated the stop. While running Mr. Knight's Driver's License three officers engaged Mr. Knight and his vehicle. Officer Deconti started looking in the back window of the Petitioner's vehicle and allegedly seen a marijuana cigarette on the back floorboard under the seat at 12:19 am. At the suppression hearing Deconti recants and said "The item in the photo would not have given officers "reasonable suspicion" or "incriminating nature" to think it was marijuana to warrant a search of the Petitioner's vehicle. Deconti, at the hearing, said he saw a tiny brown something, no incriminating nature, stating "Yes, I'm sorry".

Officer Daigle gives two different descriptions of the item “more of a green leafy substance” and Daigle looking at photo taken at scene; he testified “no green was coming from it”. Both Deconti and Daigle stated no items of marijuana were submitted/collected as a result of this case.

Officer Cullen testifies, “No smell of marijuana, the item in the photo is perfectly rolled like a machine did it”. While Deconti and the other officers involved failed to present evidence/testimony that it was immediately apparent that the object, looking through the window, on the floorboard, under the seat, at 12:19 am constituted evidence of illegal substance i.e. marijuana, and without that, the officers had no right to search the vehicle, a zone of privacy, reasonably expected and protected by the Fourth Amendment from intrusion.

Judge Aho’s ruling and findings based on the testimonies given at the hearing is in conflict with the precedent case laws - decisions of the above cited Appellate and Supreme Courts, State and Federal. (Erroneous Decision)

**JUDGE AHO RECEDED AWAY AND STRAYED
FROM ROLE AS A NEUTRAL ARBITER**

Judge Aho’s actions during the Motion to Suppress Hearing exhibited partially for the States benefit to reopen their case, after resting, deprived Mr. Knight one of the essentials of due process, an impartial magistrate.

Whether intentional or not, Judge Aho gave the appearance of partiality by taking sua sponte actions which benefited the State. Such sua sponte action

deprived Mr. Knight one of the essentials of due process. A judge cannot be both a judge and attorney searching out facts favorable to a party without abandoning his or her judicial neutrality. The trial judge must not enter the fray of giving tips to either side. This impartially conflicts with Livingston v. State of Florida, 441 So.2d 1083 (Fla. 1983); Chastine v. Broome, 629 So.2d 293, 295 (Fla. 4 DCA 1993) The excerpts from the record follow on the next page, in support.

EXPARTE – SUA SPONTE – BIFURCATION

Judge Aho's actions during the Motion to Suppress Hearing exhibited partiality for the States benefit to re-open their case, after resting, deprived Mr. Knight one of the essentials of Due Process, an impartial magistrate.

Excerpts from the "Motion to Suppress" Hearing;

From Judge Aho: "I think it is important that I understand what the argument is", passing the hearing until February 11, 2019 for final argument. On February 11, 2019, the court opened up stating, "The argument is almost complete", we are just addressing open view and/or plain view". (R. 138-139, R. 172-176, See Motion to Suppress ROA) "There was no testimony to resisting or provoked flight/move for safety, no law in Florida allows the court to rule on just argument", "Do you wish to call another witness?" State's response, "They did not wish to call anymore witnesses". The Court in a second sua sponte asked, "But you are not asking to

recall any witness, you are standing on the evidence before the Court?” State: “As of right now, yes your Honor”. (R. 172-176)

Judge Aho has abandoned her judicial neutrality. The Court passed date to April 2, 2019, no motion to reopen oral evidence filed by State but granted by the Court (R. 145) clearly, evidence of Court Judge (Aho) became an active participant by prompting the State and sua sponte recalling a witness. (R. 175-176, R. 145)

The First District Court of Appeal, Florida, entered Judgment, November 20, 2020, Per Curiam Affirmed, the Petitioner’s appeal.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Frederick D Knight

Date: February 17, 2021