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***Florida Supreme Court Affirms Officers' Authority to Order a Driver out of a Vehicle During a Traffic Stop for Officer Safety***

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The Florida Supreme Court recently affirmed what, until recently, had been long standing law: an officer may order a driver out of the vehicle for officer safety during a routine traffic stop without an individualized suspicion of criminal activity.<sup>1</sup> In 1977 the United States Supreme Court decided *Pennsylvania v. Mimm*, which recognized how dangerous traffic stops were and found it objectively reasonable, and therefore, compliant with the Fourth Amendment, to order a driver out of the vehicle during a routine traffic stop.

In a recent case arising from a Tampa Police Department routine traffic stop, Florida's Second District Court of Appeal called this well-settled authority into question. In that case, officers lawfully stopped the defendant for a civil traffic infraction. While the officer was writing the traffic citation and without prolonging the stop, in accordance with recognized law, a canine officer responded for the purposes of performing a canine sweep" of the exterior of the vehicle. Prior to doing so, the officer asked the driver to exit the vehicle to the sweep could be safely performed. The driver refused and was forcefully removed from the vehicle. A search of the driver revealed methamphetamine for which he was charged.

The trial court denied defendant's motion to dismiss and credited the State's argument that, because the stop had not been prolonged beyond that which was necessary to complete the citation, the sweep was lawful. Based on *Mimms*, the officer had the lawful authority to order the driver to exit the vehicle. The Second DCA reversed, holding that the sweep deviated from the mission of the traffic stop and that the sweep, not the traffic stop, caused the officer safety risk. Many argued this was in direct contradiction to Supreme Court precedent and was it was in direct contradiction to a Fifth DCA case which held such an instruction to a driver under the same circumstances was lawful. The State sought and obtained review by the Florida Supreme Court. The Florida Public Defendant Association filed an amicus brief in support of the criminal defendant and the Florida Police Chiefs Association, Florida Sheriff's Association, and the Department of Highway Safety and Motor Vehicles filed a joint amicus brief in support of the State.

In a well-reasoned decision, the Court analyzed and reconciled *Mimms* with the long-standing precedent regarding suspicionless canine sweeps of the exterior of a vehicle stopped for a traffic violation. In affirming an officer's authority to remove a driver for a canine sweep, the Court determined the *Creller* appellate court misread the canine sweep precedent and reached an erroneous conclusion. In doing so, the Court approved existing

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<sup>1</sup> *State v. Creller*, No. SC2022-0524 (Fla. May 23, 2024)

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Florida precedent authorizing the removal of a driver for the purposes of a suspicionless canine sweep during a routine traffic stop.

Law enforcement administrators and officers should ensure their training programs and operational procedures reflect this clarification of the law with regard to the use of canine sweeps during routine traffic encounters.

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