IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CASE NO. 2023-CF-002935

STATE OF FLORIDA

vs.

TOMASZ ROMAN KOSOWSKI
_____/

MOTION FOR REHEARING OF MOTION TO SUPPRESS EVIDENCE ILLEGALLY OBTAINED FROM THE DEFENDANT'S TOYOTA COROLLA

Tomasz Roman Kosowski, by and through his undersigned counsel, pursuant to Rules 3.190(g) and 3.192 of the Florida Rules of Criminal Procedure, hereby requests this Honorable Court to reconsider its denial of the motion to suppress all evidence seized during and as a result of the search of Dr. Kosowski's Toyota Corolla. As grounds therefore, Dr. Kosowski states as follows:

Grounds for Relief

Dr. Kosowski set out in his motion to suppress that law enforcement lacked probable cause to conduct a search of his Toyota Corolla. The Court held, among other holdings, that law enforcement had cause to search the Corolla under the *Carroll* doctrine. The evidence presented at the motion hearing established, however, that even if law enforcement had probable cause to conduct an initial cursory search of the Corolla under the *Carroll* doctrine, the subsequent searches of

the car violated the Fourth Amendment. First, *Carroll* could have only supplied probable cause to conduct a search for the items that were believed to have been removed from 1501 Belcher Road – the last known location of Mr. Cozzi. The objects of the search would have been Mr. Cozzi himself, the wagon, and any other objects that were observed on the 1501 Belcher surveillance videos. When the warrantless cursory search of the Corolla failed to reveal Mr. Cozzi, the wagon, or any of those objects, the basis for a *Carroll* search expired. Second, when the warrantless cursory search was conducted, law enforcement was still drafting the affidavit in support of the search warrant application. The fact that the cursory search revealed no evidence of the purported crime was a material fact that law enforcement omitted from the affidavit. That critical fact was so significant that it would have vitiated any probable cause that might have existed prior to the completion of the cursory search. Third, even assuming *Carroll* provided a basis for law enforcement to conduct a search of the Corolla after making a traffic stop, the agency that conducted the stop within its jurisdiction – Tarpon Springs Police Department – did not conduct the subsequent search. Instead, Largo Police Department took control of the vehicle while in Tarpon Springs' jurisdiction and then conducted the searches. The *Carroll* doctrine did not provide a basis for Largo Police to do so.

A. The *Carroll* Doctrine could not Provide Probable Cause for any Searches Beyond the Initial Warrantless "Cursory" Search

In *Carroll v. United States*, 267 U.S. 132, 153, 155–156, 45 S.Ct. 280, 69 L.Ed. 543 (1925), the Supreme Court held that law enforcement may conduct a warrantless search of a lawfully stopped automobile so long as it has probable cause to believe it will contain evidence of a crime. The Court has since provided that "[t]he principal rationale for this so-called automobile or motor-vehicle exception to the warrant requirement is the risk that the vehicle will be moved during the time it takes to obtain a warrant." *Collins v. Virginia*, 584 U.S. 586, 610, 138 S.Ct. 1663, 201 L.Ed.2d 9 (2018) *citing Carroll*, 267 U.S. at 153; *California v. Carney*, 471 U.S. 386, 390–391, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985) Despite the reasoning underlying *Carroll*, the Court has expanded *Carroll* to hold that "if the police have probable cause to justify a warrantless seizure of an automobile on a public roadway, they may conduct either an immediate or a delayed search of the vehicle." *California v. Acevedo*, 500 U.S. 565, 570, 111 S.Ct. 1982, 114 L.Ed.2d 619 (1991) *citing Chambers v. Maroney*, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970). The Supreme Court has made clear, however, that the *Carroll* automobile search exception to the warrant requirement is not limitless. The Supreme Court indeed recently made clear in *Collins* that the automobile exception to the warrant requirements is *not* "a categorical one that permits the warrantless search of a vehicle anytime, anywhere." *Collins*, 584 U.S. at 598.

In *United States v. Ross*, 456 U.S. 798, 825, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982), the Court clarified that "[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of that vehicle and its contents *that may conceal the object of the search*." *Id.* (emphasis added). In reaching that holding, the Court reasoned "[t]he scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause." *Id.* at 823. The Florida Supreme Court, in interpreting *Ross*, thereby found "[i]ndeed, the scope of a warrantless search of a car 'is defined by the object of the search and the places in which there is probable cause to believe that it may be found.'" *State v. Betz*, 815 So. 2d 627, 631 (Fla. 2002) *quoting id* at 824. "Thus, the crux of the Ross holding was that it is the extent of the law enforcement officer's probable cause in each particular situation that defines the permissible magnitude of the warrantless search." *Id.*

To the extent that law enforcement had any probable cause to conduct a search of the automobile, the probable cause would have been limited to a search for the items that were purportedly believed to have been removed from the 511 Seaview Drive residence – the person of Steven Cozzi and the wagon that was purportedly seen on the 1501 Belcher Road surveillance video. Such a conclusion is consistent with the reasoning that the Court provided in its oral order denying the motion to suppress. The Court reasoned that the lack of evidence found during the search of

the residence supplied probable cause for the search of the Corolla because the person who would have wheeled the wagon out of 1501 Belcher Road must have done something with it. Under that analysis, the objects of any *Carroll* search would have been Mr. Cozzi's person, the purported wagon, and anything else that might have been observed on the 1501 Belcher Road surveillance footage. As the evidence presented at the hearing established, Det. Bolton conducted a "cursory" warrantless search of the Corolla. That cursory search did not uncover Mr. Cozzi, a wagon, or any other potential evidence that was the object of the search. At that point, whatever probable cause that might have existed to support a search under the *Carroll* doctrine ceased to exist. The *Carroll* doctrine did not provide a basis for any further search of the vehicle.

B. Law Enforcement's Failure to Find any Evidence During the Cursory Search Dispelled any Probable Cause that Might have Existed to Support a Search of the Corolla

In addition to the foregoing, and perhaps more importantly, law enforcement's failure to uncover Mr. Cozzi, a wagon, or any other potential evidence during the warrantless search was a material fact the Fourth Amendment required law enforcement to include in the search warrant affidavit. As discussed in greater detail in the motion to suppress, *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), requires a court to reassess a finding of probable when a defendant "'makes a substantial preliminary showing that [(1)] the affiant knowingly

or intentionally or with reckless disregard for the truth included a false statement [or omitted material facts] in the affidavit, and [(2)] that statement [or omitted fact] was necessary to the finding of probable cause.'" *Andrews v. State*, 390 So. 3d 221, 233 (Fla. 2d DCA 2024) (brackets in original) *quoting Pilieci v. State*, 991 So. 2d 883, 893 (Fla. 2d DCA 2008). Law enforcement's failure to reference the results of the cursory search was a critical omission that was made either in reckless disregard for the truth or with actual intent to deceive the court.

The evidence presented at the motion hearing clearly established that Detective Hunt was still drafting a search warrant for the Corolla when the "cursory search" was conducted. Law enforcement's failure to find any evidence during the cursory search was a fact that became relevant and necessary to include in the affidavit for the Corolla search warrant. Detective Hunt was, moreover, present at the scene while was drafting the affidavit. Even if Detective Hunt allegedly did not know that Detective Bolton was searching the car, Bolton certainly knew that Hunt was drafting a search warrant affidavit for the car. Bolton, for his part, drafted the earlier affidavit for the search warrant for the residence, much of which was copied in the Corolla search warrant affidavit. When Bolton found nothing of value in his cursory search, he had an obligation to inform Hunt of that fact, particularly when he knew that Hunt was drafting a search warrant. Furthermore, given that Hunt was on scene drafting the search warrant while Bolton was conducting the warrantless

search, any claims by Hunt to have been unaware of Bolton's cursory search could have been nothing other than willful blindness. Regardless, however, Largo Police searched the Corolla and found nothing prior to the submission of the search warrant application. It was incumbent on law enforcement to inform the jurist who would be considering the search warrant affidavit that that cursory search of the Corolla revealed no body, no wagon, and no other evidence that law enforcement was searching for. At best, the omission of that information from the search warrant affidavit was made in reckless disregard for the truth. At worst, it was a calculated effort to deceive the Court.

The Court reasoned in denying the motion to suppress that the absence of Mr. Cozzi or a wagon during the search of the home would have supplied probable cause for a search warrant for the car. The reason, the Court stated, was that something must have happened to the wagon and whatever else was in it after it was taken out of 1501 Belcher Road. But unbeknownst to the Court, law enforcement had already searched the Corolla and failed to find that evidence by the time the Court was considering the application for the search warrant. The main basis the Court saw for finding probable cause to support a search had, therefore, evaporated by the time law enforcement submitted the application. Under the circumstances, to the extent any probable cause might have existed to support the issuance of a search warrant, the

failure to find evidence during the cursory search was an omitted fact that would have vitiated any such finding.

C. The *Carroll* Doctrine did not Extend to Largo Police Department Conducting a Search of the Corolla when Tarpon Springs Police Department Stopped and Detained the Vehicle in its Jurisdiction

As discussed above, the Supreme Court has made clear that *Carroll* does not permit a "the warrantless search of a vehicle anytime, anywhere." *Collins*, 584 U.S. at 598. On the contrary, *Carroll* and its progeny rely on a lawful traffic stop having first been conducted. Indeed, the justification for the creation of the automobile exception in *Carroll* was the ready mobility of the vehicle and the potential destruction of evidence that could follow it. While *Chambers* allows a lawfully stopped vehicle to be searched even in an area other than the site of the stop, the search authority that *Chambers* authorizes still stems from the lawful traffic stop. Consequently, the *Carroll* doctrine does not permit *any* law enforcement officer *anywhere* unfettered authority to search an automobile anytime.

To the extent probable cause would have existed to conduct a warrantless search of the Corolla under *Carroll*, Tarpon Springs would have been the agency that had cause to conduct the search. Tarpon Springs conducted the traffic stop of the vehicle and detained the vehicle in its jurisdiction. Instead of conducting a search pursuant to *Carroll*, Tarpon Springs stepped aside and allowed Largo Police free rein over the car. From there, and as set out in the motion hearing, LPD detectives

acted in bad faith in conducting a warrantless search of the Corolla and in doing so while the Corolla was in TSPD's jurisdiction. Neither *Carroll* nor *Chambers* gave LPD the authority to do so. That egregious conduct clearly violated Dr. Kosowski's Fourth Amendment right to be free from unreasonable searches.

WHEREFORE, based on the forgoing, the Defendant moves this Honorable Court to grant this Motion and suppress all evidence obtained during the search of the Toyota Corolla. The evidence to be suppressed specifically includes, but is not limited to, the Toyota Corolla itself, two phones found therein, areas of suspected blood, a ballistic vest, and the bag containing masks, a taser, brass knuckles, duct tape and intravenous sedatives with syringes. Dr. Kosowski further moves to suppress the results of any testing performed on any of that evidence and all observations made by law enforcement within that vehicle.

Respectfully Submitted,

s/ *J. Jervis Wise*
J. JERVIS WISE
Brunvand & Wise Law Group
Florida Bar No. 0019181

s/ *Bjorn E. Brunvand*
BJORN E. BRUNVAND
Brunvand & Wise Law Group
Florida Bar No. 0831077

s/ *Debra B. Tuomey*
DEBRA B. TUOMEY
Debra B. Tuomey, LLC.
Florida Bar No. 497681

s/ *Amanda Powers Sellers*
AMANDA POWERS SELLERS
Amanda Powers Sellers, PA
Florida Bar No. 11643

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by email to the Office of the State Attorney, Sixth Judicial Circuit of Florida, at SA6eservice@co.pinellas.fl.us on this 28th day of April 2025.

s/Jervis Wise

J. JERVIS WISE, ESQ.
Brunvand & Wise Law Group
615 Turner Street
Clearwater, Florida 33756
Telephone No. (727) 446-7505
Facsimile No. (727) 446-8147
Email: jervis@acquitter.com
Florida Bar No. 19181
Counsel for the Defendant