

IN THE SUPREME COURT OF FLORIDA

FILED

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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

STATE OF FLORIDA,
Petitioner,

v.

FRANK J. BRADY, et al,
Respondents.

CASE NO. 59,054

SUPPLEMENTAL BRIEF ON REMAND

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TABLE OF CONTENTS

	<u>PAGE</u>
LIST OF CITATIONS	i
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS	3
POINT INVOLVED	4
ARGUMENT	
IN LIGHT OF <u>OLIVER v. UNITED STATES</u> ,	
THE TRIAL COURT ERRED IN GRANTING	
RESPONDENTS' MOTION TO SUPPRESS EVIDENCE SEIZED IN THE "OPEN FIELDS" SEARCH	5-7
CONCLUSION	8
CERTIFICATE OF SERVICE	8

LIST OF CITATIONS

<u>CASE</u>	<u>PAGE</u>
<u>Hester v. United States,</u> 265 U.S. 57 (1924)	6
<u>Katz v. United States,</u> 389 U.S. 347, 361, 88 S.Ct 507, 516 19 L.Ed.2d 576 (1967)	5, 6
<u>Oliver v. United States,</u> 465 U.S. ____ (1984)	2, 5, 6, 8
<u>State v. Brady,</u> 406 So.2d 1093 (Fla. 1981)	5, 6

PRELIMINARY STATEMENT

Petitioner, the State of Florida, was the Prosecution in the trial court, the Nineteenth Judicial Circuit Court of Florida, the Appellant in the Fourth District Court of Appeal, the Petitioner in this Court, and the Petitioner in the United States Supreme Court. Respondents were Defendants in the trial court, Appellees in the Fourth District Court of Appeal, Respondents in this Court, and Respondents in the United States Supreme Court. In this Supplemental Brief, the parties will be referred to as they appear before this Honorable Court, Petitioner and Respondents.

STATEMENT OF THE CASE

The Petitioner, the State of Florida, relies upon its previous brief in this Court for its Statement of the Case, with the following additions:

On October 15, 1981, this Honorable Court, in *State v. Brady*, 406 So.2d 1093 (Fla. 1981), Case No. 59054, approved the decision of the Fourth District Court of Appeal, 379 So.2d 1294, holding that the warrantless open fields search was improper and the evidence seized as result thereof was properly suppressed.

Certiorari was granted by the United States Supreme Court on May 24, 1982, Case No. 81-1636, and on May 21, 1984, that Court vacated this Court's previous judgement and remanded the cause back to this Court for further consideration in light of *Oliver v. United States*, 465 U.S. ____ (1984).

STATEMENT OF THE FACTS

The Petitioner, the State of Florida, relies upon the Statement of the Facts presented in its previous brief to this Honorable Court.

POINT INVOLVED

WHETHER, IN LIGHT OF OLIVER v. UNITED STATES, THE TRIAL COURT ERRED IN GRANTING RESPONDENTS' MOTION TO SUPPRESS EVIDENCE SEIZED IN THE "OPEN FIELDS" SEARCH?

ARGUMENT

IN LIGHT OF OLIVER v. UNITED STATES,
THE TRIAL COURT ERRED IN GRANTING
RESPONDENTS' MOTION TO SUPPRESS EVIDENCE
SEIZED IN THE "OPEN FIELDS"
SEARCH.

The Petitioner maintains that Oliver v. United States, 465 U.S. ___ (1984), is dispositive of the case sub judice, and upon remand this Honorable Court should find that the trial court erred in granting the Respondents' Motion to Suppress.

This Court previously held, in State v. Brady, 406 So.2d 1093 (Fla. 1981), that, pursuant to Katz v. United States, 389 U.S. 347, 361, 88 S.Ct 507, 516, 19 L. Ed.2d 576 (1967), where the open field property owner goes to great lengths to exclude the public from entering his land, evidenced by a locked fence, a surrounding dike, and posted signs, such landowner evidences an expectation of privacy which is considered reasonable regardless of what activities occur within such enclosed open field. This judgement has been vacated by the United States Supreme Court.

Now, pursuant to Oliver, supra, which this Court must consider on the remand of the case sub judice, the asserted expectation of privacy in open fields is not an expectation that society recognizes as reasonable, and there-

fore, in accordance with Katz, supra, Fourth Amendment protections are not warranted. "[A]n individual has no legitimate expectation that open fields will remain free from warrantless intrusion by government officers." Oliver, supra. The rule of Hester v. United States, 265 U.S. 57 (1924), has been reaffirmed, and "...an individual may not legitimately demand privacy for activities conducted out of doors in fields, except in the area immediately surrounding the home." Oliver, supra.

The United States Supreme Court has held, in Oliver, supra, that although steps may be taken to protect privacy within an open field, as evidenced by erect fences, a locked gate, and "No Trespassing" signs, such expectation of privacy shall not be deemed legitimate in the sense required by the Fourth Amendment. The government's intrusion in an open field does not infringe upon the personal and societal values protected by the Fourth Amendment. Oliver, supra. "Certainly the Framers did not intend that the Fourth Amendment should shelter criminal activity wherever persons with criminal intent choose to erect barriers and post no trespassing signs." Oliver, supra.

Therefore, in light of Oliver, supra, the Petitioner maintains that the Fourth District Court of Appeal, in State v. Brady, 379 So.2d 1294 (Fla. 4th DCA 1980), erred in its determination that the trial court properly

granted Respondents' Motion to Suppress. Petitioner respectfully requests that this Honorable Court find that the trial court erred in suppressing the evidence seized in the open fields search.

CONCLUSION

In light of Oliver v. United States, 465 U.S. ____, (1984), Petitioner would respectfully request that this Honorable Court find that the trial court erred in granting Respondents' Motion to Suppress the evidence obtained in the open fields search.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Supplemental Brief on Remand has been mailed to STEVEN M. GREENBERG, ESQUIRE, 744 N.W. 12th Avenue, Miami, FL 33136, ALAN KARTEN, ESQUIRE, 3550 Biscayne Blvd., Suite 504, Miami, FL 33137, BRUCE H. FLEISHER, ESQUIRE, 370 Minorca Avenue, Coral Gables, FL 33134 and to JOEL S. FASS, ESQUIRE, 626 N.E. 124th Street, North Miami, FL 33161, this 6th day of July, 1984.



Of Counsel