IN THE SUPREME COURT OF FLORIDA

ALAN MAX JACOBSON,	:	
Petitioner,	:	
vs.	:	CASE NO. 60,592
THE STATE OF FLORIDA,	:	THIRD DCA CASE NO. 80-234
Respondent.	:	
	:	

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PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF FACTS AND CASE

The defendant was charged by the State of Florida with one count of trafficking in cocaine and one count of possession with intent to sell a controlled substance. The petitioner, defendant in the trial court, filed a motion to suppress with accompanying memorandum of law alleging that the cocaine which he allegedly possessed was seized by virtue of an illegal search and seizure. Hearings were held on petitioner's motion on January 4 and 5, 1980. Detectives William Johnson and William Pearson of the Dade County Public Safety Department testified at the hearings.

Testimony by the police officers revealed that they were employed by the Narcotics Detail at Miami International Airport. At approximately 12:45 P.M. on July 31, 1979, they observed the petitioner accompanied by a male companion named Baker approach the National Airlines counter to inquire as to the time the National Airlines flight was bound for Los Angeles. Both petitioner and Baker carried ticket folders from Western Airline. The National ticket agent advised them that the flight for Los Angeles had already departed. The police officers testified that based on their experience, Los Angeles was a known "narcotics source" city.

According to the testimony of Johnson and Pearson, both petitioner and Baker carried single tote bags, which

the officers felt was minimal luggage for a flight to California. Testimony further indicated that the officers concluded that since each traveller had a Western Airlines ticket, it was unlikely that they checked their baggage with National Airlines curb service prior to entering the airport. Other testimony regarding the defendants included that they were unusually nervous, had arrived late at the airport for the flight to Los Angeles and were young, which the officers found consistent with drug traffickers.

After leaving the National ticket counter, petitioner and Baker were approached by Officers Pearson and Johnson respectively. Officer Pearson identified himself as a police officer and Jacobson agreed to talk with him briefly. At the request of Pearson, petitioner then showed him a one-way airline ticket from Miami to Los Angeles. The ticket was returned to petitioner who then was asked to produce identification and did so, showing officer a Florida driver's license.

The police officers apparently felt there was a discrepancy in petitioner's answers regarding his residency. Pearson then asked the petitioner if he could have permission to search petitioner's tote bag, and advised petitioner that he had the right to withhold consent. Petitioner agreed to the search. At the request of Officer Pearson, petitioner picked up his tote bag and moved approximately 10 to 15 feet from where he was originally stopped. Both petitioner and

the officer knelt on the floor and began going through the luggage. Shortly thereafter, according to Officer Pearson, petitioner noticed handcuffs being placed on his travelling companion, Baker, by Officer Johnson and at that point petitioner ran out of the terminal. Pearson pursued petitioner with the aid of two uniformed police officers. Petitioner was then placed under arrest and taken back to the terminal where a search of his tote bag revealed nothing but a frisk revealed cocaine attached to each of his legs. Petitioner Jacobson did not tesify at the hearing on the motion to suppress.

At the conclusion of the hearing on the motion to suppress and after consideration of argument of counsel and applicable law, the court granted the motion as to both defendants, finding that the intial stop was illegal and that, based on the totality of the circumstances, there was no voluntary consent. On January 17, 1980, the trial court's written order specifically found as follows:

> 1. The observations by the police officers giving rise to the initial stop are not sufficient to constitute an articulable suspicion that defendants had committed, were committing, or were about to commit a crime.
>
> 2. After considering the totality of the circumstances as required by Taylor v. State, 355 So.2d 180 (1978), it most certainly does not appear that there was any voluntary consent to search which would attenuate the initial illegality.
>
> 3. The defendants were "seized" without probably cause for the purpose of finding

> some evidence of a crime, thus all of which followed the illegal search and seizure and is tainted. Wong Sun v. United States, 371 U.S. 471 (1963).

The State appealed to the Third District Court of Appeal which filed its opinion on April 28, 1981, a copy of which is attached to this petition. In its decision, the appellate court reversed the trial court and found that although the initial stop was illegal, that there was a break in the causal chain of events by the defendant's attempt to flee. the court felt there was no showing of any evidence being produced as the result of the initial stop and subsequent search, and that the temporal proximity of the initial illegality to the subsequent seizure was immaterial as a result of the petitioner's flight. Petition for re-hearing was filed with the Third District Court of Appeal.

ISSUE

WHETHER THE SUPREME COURT OF FLORIDA HAS JURISDICTION TO GRANT CERTIORARI UNDER ARTICLE V. SECTION (3)(b)(3) FLORIDA CONSTITUTION, WHEN A DECISION OF A COURT OF APPEALS HOLDING THAT DEPARTURE OR FLIGHT OF AN INDIVIDUAL JUSTIFIED A LATER ARREST OF DEFENDANT AND SEARCH WITHOUT CONSENT WHERE THE INITIAL STOP OF THE PERSON WAS ADMITTEDLY UNJUSTIFIED, IN THAT IT CREATED A CLEAR BREAK IN THE CAUSAL CHAIN OF EVENTS, CONFLICTS ON THAT ISSUE WITH THE HOLDING IN VOLLMER V. STATE, 337 So.2d 1024 (FLA. 2d D.C.A. 1976) AND ISHAM V. STATE, 369 So.2d 103 (FLA. 4th D.C.A. 1979).

ARGUMENT

In Vollmer v. State, 337 So.2d 1024 (Fla. 2d D.C.A. 1976) the defendant, while walking down a Lakeland, Florida

Street at 3:00 A.M., was stopped by a police officer although no evidence of any criminal activity in that area had taken place, and the officer further had no reason to believe that the appellant had committed any crime. The appellant had been watching the officer as his patrol car drove by, and subsequent requests for inspection of identification met with the appellant fleeing the scene of the stop. When the appellant was arrested for resisting an officer a subsequent search of his person revealed contraband. His subsequent motion to suppress was denied. On appeal the Second District held at page 1026:

> We recognize that a brief stop of a suspicious individual, in order to determine his identify or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time. (Citations omitted). And, where the public safety is endangered, identification may be properly requested. Cf. Hardie v. State, Fla. 1976, 333 So.2d 13. But here, there was no evidence of any danger to the public safety and there were no circumstances to justify the police to suspect the appellant of being involved in any criminal activity. Cf. Maruca v. State, Fla. App. 3d 1976, 329 So.2d 427.
>
> The identification furnished the officer by appellant was the product of the stop. Since the initial stop of the appellant by the officer was illegal, the fact that appellant produced an identification contrary to the name he had given and then fled, does not validate the policeman's actions. The appellant here was not required to explain his presence and conduct. Cf. State v. Ecker, Fla. 1975, 311 So.2d 104.

The court went on to hold that the evidence found on the appellant should be suppressed, and cited Wong Sun v. U.S., 371, U.S. 471, 9 L.Ed. 2d 441 83 S. Ct. 407 (1963).

In Isham v. State, 369 So.2d 103 (Fla. 4th D.C.A. 1979) the Fourth District Court of Appeal held that an immediate search without arrest or further investigation was not authorized even where an officer, acting on an anonymous call which accurately gave a detailed description of a suspected narcotics seller, detained and searched the defendant who had tried to flee upon the officer identifying himself and stating that he wanted to talk to defendant. In that case, unlike the case at bar, the court even noted that there existed a founded suspicion sufficient to justify a stop. The record in Isham did not reflect any consent to search and noted no probable cause for arrest before the search.

In the case at bar, the Third District Court of Appeal noted that the stop initially was illegal. It is submitted that the only "clear break in the causal chain of events" was petitioner Jacobson's fleeing the Miami International Airlines Terminal. The court's decision is in direct conflict with the Vollmer and Isham cases, supra, and this court has jurisdiction under the Florida constitution to dispose of the apparent conflicts.

CONCLUSION

We submit that the Supreme Court of Florida should accept jurisdiction to review what we feel is a clear conflict in the law of search and seizure in three district courts of

appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Petitioner was mailed this 15th day of May, 1981, to: THEDA R. JAMES, Assistant State Attorney, Office of Janet Reno, State Attorney, 1351 N.W. 12th Street, Sixth Floor, Miami, Florida 33125; and HONORABLE JIM SMITH, Attorney General of Florida, 401 N.W. 2nd Avenue, Room 820, Miami, Florida 33128.

DANIEL W. LEVIN, ESQ.