

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,  
Petitioner,  
v.  
MELVIN MULLET,  
Respondent.

**FILED**

SID J. WHITE

Case No.

**DEC 12 1983**

CLERK, SUPREME COURT.

By \_\_\_\_\_  
Chief Deputy Clerk

ON DISCRETIONARY REVIEW OF THE DISTRICT  
COURT OF APPEAL OF FLORIDA IN AND FOR THE SECOND DISTRICT

BRIEF OF ~~RESPONDENT~~ ON JURISDICTION

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PRELIMINARY STATEMENT

The Respondent was the defendant in Sarasota County Circuit Court and Appellee in the Second District Court of appeal and will be referred to as Respondent in this brief. Petitioner was the Plaintiff in the trial court and the Appellant in the Second District Court of Appeal and will be referred to as "State" or Petitioner in this brief.

STATEMENT OF THE CASE AND FACTS

On September 8, 1982 an Information was filed by the State Attorney's Office in Sarasota charging appellee with trafficking in cocaine. (R-34) This information was filed as a result of evidence found at appellee's home pursuant to a search authorized by a search warrant issue on August 17, 1982. (R-8-9) The search warrant authorized the police to seize "any and all narcotics and/or other dangerous drugs in violation of Florida Statute 893.135 and 893.13, any paraphernalia commonly associated with the use of such drugs, and any monies connected to the sale of such drugs; or contraband..." (R-9)

At a Suppression Hearing held before the Honorable Paul E. Logan on April 5, 1983 the appellee successfully attacked the search as being unlawful in that it was the result of an over-broad search warrant. (R-68) Appellee's argument was that the search warrant failed to adequately specify the material to be seized thereby leaving the scope of the seizure to the discretion of the executing officer.

A timely Notice of Appeal was filed by the state on April 12, 1983. (R-76)

QUESTION PRESENTED

WHETHER THE CASE SUB JUDICE IS  
IN DIRECT CONFLICT WITH CARLTON  
V. STATE, 418 So.2d 449 (Fla.  
5th DCA 1982).

ARGUMENT

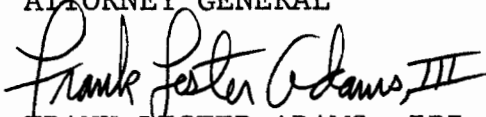
The Second District Court of Appeal in its decision of October 5, 1983 based its affirmance of this case upon the authority of its decision in West v. State, No. 82-1276 (Fla. 2d DCA, September 21, 1983) and which is currently pending before this Court on a certified question of law. The Second District Court of Appeal paired this case, sub judice with West for review by this Court under the rationale of Jollie v. State 405 So.2d 418 (Fla. 1981).

CONCLUSION

WHEREFORE, based upon the Second District's certification that there is a direct conflict with the case sub judice and the case of Carlton v. State, 418 So.2d 449 (Fla. 5th DCA 1982) this Honorable Court should pair this case with West, supra for resolution of the issue in conflict.

Respectfully submitted,

JIM SMITH  
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Larry Byrd, Esquire, 1844 Main Street, Sarasota, Florida 33577, this 9th day of December, 1983.

  
OF Counsel for Petitioner