

W O O A

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant,

v.

Case No. 64,608

MELVIN MULLET,

Appellee.

FILED
SID J. WHITE
JUN 11 1984
CLERK, SUPREME COURT
By *[Signature]*
Chief Deputy Clerk

APPELLANT'S BRIEF ON MERITS

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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 issued 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 overbroad 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) On Appeal, the Second District affirmed the trial courts order of Suppression. (Appendix 1-2) On December 2, 1983, Appellant filed Notice to invoke discretionary jurisdiction of this court.

ARGUMENT

THE SEARCH WARRANT WAS SUFFICIENTLY SPECIFIC
SO AS NOT TO OFFEND FOURTH AND FOURTEENTH
AMENDMENT OF THE CONSTITUTION.

The search warrant in the case sub judice authorized the seizure of "any and all narcotics and/or other dangerous drugs in violation of Florida State Statutes 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." (R 9) The Appellee filed a motion to Suppress all the evidence obtained as a result the execution of the above mentioned search warrant. (R 43-58) At the hearing the Appellee argued Pezzala v. State, 390 So.2d 97 (Fla. 3rd DCA 1980), required that the warrant specifically describe the property. (R 68) After argument by the State, the trial court granted the Motion to suppress on the authority Pezzalla. (R 73) On appeal to the Second District Court of Appeal, the trial court's order of suppression was affirmed on the ground that case could not "be meaningfully distinguished" from West v. State, 439 So.2d 907 (Fla. 2nd DCA 1983). (Appendix page 1-2) In West, the search warrant authorized a search of the defendant's dwelling "for any and all controlled substances found therein." West at 909. The Second District in West followed Pezzella v. State, supra, and held that "when a judge issuing a warrant has the ability and information to enable him to describe with particularity the contraband which is sought, the Constitution requires that he do so." West at 912. However,

this Court quashed West on the basis of Carlton v. State, 9 F.L.W. 80 (March 9, 1984). Appendix page 3).

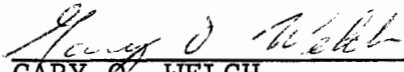
In Carlton, supra, this Court overruled Pezzella, and held that a search warrant which authorized the seizure of "all controlled substances and other matters of [sic] things pertaining or relating to said possessions and sale of controlled substance violations of chapter 893, Florida Statutes" was sufficiently specific, and that it could not distinguish Pezzella on the grounds that it was a search of a home in contrast to an automobile. Accordingly, the descriptive language in the search warrant in the case sub judice is sufficiently specific and the decision of the Second District should be quashed.

CONCLUSION

Based on the above-styled facts arguments and authority, Appellant prays that this Court quash the decision of the Second District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to Larry Byrd, Esquire, 1844 Main Street, Sarasota, Florida 33577, on this 15th day of June, 1984.



OF COUNSEL FOR APPELLANT