OA 11-6.84

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner	)	
vs.	)	CASE NO. 64,956
ROBERT EARL DILYERD, Respondent.	)	5th District No. 82-1127

PETITIONER'S BRIEFS ON MERITS

JIM SMITH
ATTORNEY GENERAL

W. BRIAN BAYLY
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Avenue
Fourth Floor
Daytona Beach, Florida 32014
(904) 252-2005

COUNSEL FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS.

Respondent, Robert Dilyerd, hereinafter referred to as Respondent, along with co-defendant was charged with possession of cocaine by information (R 55). Respondent filed a motion to suppress the cocaine which was denied by the trial court after a hearing (R1-35,115). Respondent then entered a plea of no contest, reserving his right to appeal the denial of his motion to suppress (R 47- 48). On appeal the Fifth District in Dilyerd v State, 444 So.2d 577 (Fla. 5 DCA 1984), held that the trial court erred in denying the motion to suppress the cocaine and reverse the conviction. The Fifth District in Dilyerd acknowledged a conflict with the case of State v Brown, 395 So.2d 1202 (Fla. 3rd DCA 1981). 444 So.2d at 579. The Fifth District also declared that there would be conflict in their opinion with Stevens v State, 354 So.2d 110 (Fla. 3rd DCA 1978), unless the Third District court in Stevens did not put facts in the opinion which would lead to a probable cause finding "regarding a crime or contraband or a weapon, ..." 444 So.2d at 579. Thereafter the State of Florida petitioned this Honorable Court to exercise its discretionary jurisdiction pursuant to Fla. R. App. P. 9.030(a) (2) (A) (iv), ie alleging express and direct conflict in the Dilyerd case with a decision of another district court of appeal or of the supreme court on the same question of law. This Honorable Court after the Respondent filed a brief on jurisdiction accepted the Dilyerd case for review.

Deputy Robert Harper was the only witness to testify in the motion to suppress the cocaine. He testified that he was on duty around 9:41 in the evening of September 5, 1981, and had an occasion at that time to approach a blue mustang (R 11). Deputy Harper explained that the Doctor Phillips Company had problems with teen-agers and other people in the area who would have parties, bring beer kegs, and litter. The Doctor Phillips Company wanted the police to remove the people (R 12). Deputy Harper described the area where he approached the blue mustang as follows:

> The specific area where we were, few paved streets and they were surrounded by orange groves. And most all the streets were dead-ends.
>
> Q: Did it appear to be an area where it was being developed? In other words, the roads were being put in, and houses were going to be built there?
>
> A: Eventually quite possibly, yes. (R 12).

The Deputy went on to tell the judge that the property was owned by the Doctor Phillips Company, and they had asked him to make sure that no one was trespassing on the property (R 12). The Deputy related that he saw this blue mustang parked sideways in the street, and when he put a spotlight on it he saw two people in the vehicle. He also described one of the person's movements as follows:

> ...The passenger, whenever I put

> my spotlight on, leaned forward and appeared to be doing something with his hand on the floorboard of the, of the car.
>
> Q: Placing something under the seat?
>
> A: Possibly. (R 13).

After these observations the Deputy testified that he approaced the car from the passenger's side and also called a back-up deputy to assist him. He obtained identification from both people in the car and waited for the assisting deputy to arrive (R 13). After the other deputy (Duputy Harrison) arrived, Deputy Harper explained that he requested the two passengers to exit their vehicle (R 14). After the two persons were out of the automobile, Deputy Harper proceeded to look under the seat where the passenger had been sitting to see what he had been doing. This passenger was the co-defendant of the respondent's. Upon checking under the seat the officer stated:

> A: Well, I saw obstruction under there, a mirror or something. I pulled it out. And I saw two white lines with something on it. Then I saw little hollow metal tube beneath it. And I also, right after Chappel got out of the car, saw razor blades sitting on the floorboard (R 14).

The deputy was then asked what the purpose was for looking under the passengers seat and he explained, "check for weapons." (R 15). Deputy Harper then was asked if this check had to do with the observation of the co-defendant appearing to be reaching down and possibly placing something under the

seat which Harper relied, "right". (R 15). While Deputy Harper was checking underneath the seat, Deputy Harrison was watching the Respondent and the Co-defendant outside of their car (R 15).

Deputy Harrison explained on the cross-examination that neither subject was placed under arrest until after he had found the substance underneath the car seat (the cocaine) and after Deputy Harrison had search the trunk and found what was believed to be marijuana (R 17). The Court proceeded to ask the deputy if these events ocurred on private or public property to which the deputy replied that he believed it was the former. The deputy also explained that he was not placing either subject under arrest for trespass. His purpose at this time was just to warn everbody to stay off the property. (R 19). The deputy also explained to the judge that the movement in car gave him reason to suspect that these subjects could be armed and dangerous (R 20). Harper reiterated that these subjects were not placed under arrest until cocaine and marijuana was discovered in the vehicle (R 20). So prior to looking under the seat and discovering the cocaine the deputy had no intention whatsoever to arrest these subjects (R 21). The Court specifically ascertained the following information:

> The Court: Normally you would just get them out and check them out and check their I.D and tell them to get off the property?

Answer: For the purpose of identification. (R 21).

Thereafter based upon the following evidence the trial court denied the Respondent's motion to suppress.

POINT

THERE WERE ARTICULABLE FACTS BY WHICH THE LAW ENFORCEMENT OFFICER COULD REASONABLY STOP AND SEARCH FOR WEAPONS TO PROTECT HIMSELF FROM DANGER THUS THE OPINION OF DILYERD V STATE, 440 So.2d 577, (Fla. 5th DCA 1984) SHOULD BE OVERRULED.

Initially Respondent would submit that the opinion in Dilyerd v. State, 444 So.2d 577 (Fla. 5th DCA 1984) is incorrect not only based upon the application of the facts to the law but in reciting the law itself. Petitioner would address the latter contention by quoting from the Dilyerd opinion as follows:

> Florida's stop and frisk statute is not applicable to cars, only persons,... 444 So. 2d at 578.

In Hetland v. State, 387 So.2d 963 (Fla. 1980) this Honorable Court adopted as law the opinion rendered in State v. Hetland, 366 So.2d 831 (Fla. 2d DCA 1979). (Where it was held that a lawful stop and frisk pursuant to § 901.151, Fla. Stat. (1977) could be based upon an anonymous tip given to a police officer). In the Hetland opinion of the Second District, the Court announced:

> We now hold that the Florida stop and frisk law was not intended to, does not, impose any higher standard than that of the Fourth Amendment. 366 So.2d at 836.

As such, § 901.151, Fla. Stat. (1981) must be given no unique or stricter interpretation than that of the Fourth Amendment

to the United States constitution.

In so doing, the case of Michigan v. Long, ___ U.S. ___ 103 S.Ct. 3469, 77 L.ED2d 1201 (1983) is instructive. In Long the defendant was stopped because he was driving his vehicle fast and erratically. When the defendant exited his vehicle he appeared to be intoxicated. As the defendnat returned with the officers to his vehicle apparently to get his automobile registration, the police officer shined his light in the car which revealed a hunting knife on the floorboard. At this point the police officer frisked the defendant, again shined his flashlight on an armrest of the vehicle, saw something protruding from that portion of the vehicle and removed what ultimately turned out to be a pouch of marijuana In justifying the search of the automobile the United States Supreme Court explained:

> Contrary to Long's view, Terry need not be read as restricting the preventative search to the person of the detained suspect...we recognized that investigative detention involving suspects in vehicles are especially fraught with danger to police officers.
>
> ***
>
> In Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed2d. 612 (1972) we held that the police acting upon an informant's tip, may reach into the passengers compartment of an automobile to re-

1 Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)

> move a gun from a driver's waistband even where the gun was not apparent to police from outside the car and that the police knew of its existence only because of the tip. Again, our decision rested in part on our view of the danger presented to police officers in "traffic stop and automobile situations." (103 S.Ct. at 3479).
>
> ***
>
> Finally, we have also expressly recognized that suspects may injure police officers and others by virtue of access to weapons, even though they may not themselves be armed. In the term following Terry,we decided Chimmel v. California, 95 U.S. 752, 89 S.Ct. 204, 23 L.Ed.2d. 685 (1969) which involved the limitations imposed on police authority to conduct a search incident to a valid arrest. relying explicitly on Terry, we held that when an arrest is made, it is reasonable for the arresting officer to search "the arrestee's persons and the area within his immediate control" - construing that phrase to mean the area within which he might gain possession of a weapon or destructable evidence.
>
> ***
>
> In order to provide a "workable rule," id, we held that "articles inside the relatively narrow compass of the passenger compartment of the automobile are in fact generally, even if not inevitably, within the area into which an arrestee might reach in order to grab a weapon" ...(103 S.Ct. at 3480).

The final holding in Michigan v. Long, supra, was summarized

as follows:

> These principles compel our conclusion that the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissable, if the police officers possess a reasonable belief based on "specific and articuable facts which taken together with the rationale inferences from those facts, reasonably warrant" the officers in believing that the suspect is dangerous and the suspect may gain immediate control of the weapon. (103 S.Ct. at 3480).

Other district courts in Florida have applied the same reasoning and law as the Supreme Court did in Michigan v. Long, supra. see, Brown v. State, 358 So.2d 596 (Fla. 2d DCA 1978)(where police were entitled to search a car parked in front of a convenient store where the defendants had been parked for a long time and the police officers noticed a bulge in one of the defendant's clothing as well as furtive gestures by defendant in putting something under the car seat) see Cheatem v. State, 416 So.2d 35 (Fla. 4th DCA 1982) (where the police officers were upheld in making a traffic stop and after seeing the defendant push a towel down between the consel and the seat checking and finding a firearm in the automobile). see, State v. Patrick, 437 So.2d 217 (Fla. 4th DCA 1983) where the defendant was stopped for a motor vehicle infraction, the police officer saw the defendant make a sudden move towards the glove compartment, the defen-

dant exited the car stating he had no gun, but the police officer entered the vehicle and found a gun where the defendant had made the movement). And see, Lyles v. State, 312 So.2d 495 (Fla. 1st DCA 1975) (where a police officer saw a car which was reported as stolen and observed the defendant in the back seat make a concealing motion under the armrest, the Second District held that police officer was justified in removing items from the armrest for his protection). Brown v. State, 358 So.2d 596, Cheatem, Patrick, and Lyles all allowed car searches to protect the officer from the danger of weapons pursuant to § 901.151, Fla. Stat. (1973-1983).

Continuing from the same sentence quoted above in the Dilyerd case, supra the Fifth District said:

> And (the seizure of the cocaine from the automobile) is certainly not applicable here because no probable cause existed to believe either person had a weapon. (444 So.2d at 578).

This quotation could be construed as requiring the police to have separate and independant probable cause to make an arrest above and beyond what is permitted pursuant to § 901.151(5), Fla. Stat. (1981).[2]

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[2]Whenever any law enforcement officer authorized to detain temporarily any person under the provision of subsection (2) has probable cause to believe that any person whom he has temporarily detained, or is about to detain temporarily, is armed with a dangerous weapons and therefore offers a threat to the safety of the officers or any other person, he may search such persons so temporarily detained only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapons...

In State v. Webb, 398 So.2d 820 (Fla. 1981), this Honorable Court had an opportunity to address the issue of probable cause pursuant to the stop and frisk statute. In Webb an arresting officer made a stop of the defendant based upon a Bolo; the Bolo described the defendant particularly and indicated that he was a suspect for two armed robberies on two previous days. The police officer's stop and frisk (which disclosed a concealed weapon on the defendant) was held to be valid pursuant to § 901.151, Fla. Stat. (1979). This Honorable Court in reaching this holding made the following comments:

> ...we also hold what is required for a valid frisk is not probable cause but rather a reasonable belief on the part of the officer that a person temporarily detained is armed with a dangerous weapon.
>
> The Florida stop and frisk law does employ the term probable cause as the basis for a valid frisk, but this term is not utilized in the same sense that the term is used when referring to arrest or search warrants. (398 So.2d at 824)....
> ...it would be unreasonable and contrary to the legislature's intent to require an officer, before he may frisk a person whom he reasonably believes is armed with a dangerous weapon, to have the same probable cause that would be required for an arrest or for a search warrant. ...it is evident that the Florida stop and frisk law does not require probable cause in the same sense that probable cause is required for a search warrant or for an arrest. (398 So.2d at 825).

It would not be necessary to have a probable cause subsection in § 901.151, Fla. Stat. (1981) unless "probable cause" was interpreted specifically within the parameters of that statute. Otherwise "probable cause" as interpreted in § 901.151(5), Fla. Stat. (1981) would merely be redundant. The legislatute is not presumed to have an enacted useless legislation.

The Fourth District in Wilson v. State, 324 So.2d 700 (Fla. 4th DCA 1976) made a similar interpretation of the "probable cause" as did the court in Webb for purposes of § 901.151(5), Fla. Stat. (1981). In Wilson a police officer saw two suspects behind a drug store at night just before the store was to close. One defendant was trying to conceal himself and a co-defendant was back towards a motorcycle which was parked in the rear of the store where vehicles were not usually parked. The Fourth District held the police officer was entitled to stop, interrogate the defendants, and frisk the defendants. In reaching this decision the Fourth District maintain:

> We do not interprete our statute as requiring an officer in every case to note some new or independant fact after the stop which would constitute probable cause to believe the person stopped is armed in order to justify a frisk... a bulge in an individual's pocket or under his belt (citations omitted) is unnecessary to justify suspicion that the person is armed so as to support a frisk. We specifically

> hold that the "probable cause" mentioned in § 901.151(5), Fla. Stat. does not mean probable cause to make an arrest for possession of a weapon. 324 2d at 701.

The same conclusion was reached by the Fourth District Court of Appeal in Brezial v. State, 416 So.2d 818 where a police officer accosted two defendants in deserted bleachers at night and saw a nail like protrusion from one of the suspect's pockets. In holding that the police officer had a right to search the defendant the court maintained that the stop and frisk statute of Florida does not require probable cause in the same sense that probable cause would be required for a search warrant or for an arrest. 416 So.2d at 820.

Continuing with direct quotes from the opinion in Dilyerd, the Fifth District Court stated:

> Furtive stuffing of unknown objects under the seat of a car may make one curious or even suspicious about what was being handled but does not give the police a right to search based on probable cause. (444 So.2d at 578-579).

In Cheatem, supra the Fourth District did find that based upon a traffic stop a police officer was justified in searching a vehicle based upon such furtive stuffing of an object to ensure his safety. Likewise in Patrick, supra the Fourth District held again that based upon a traffic stop the police officer to ensure his safety was justified in searching a automobile based upon a sudden or furtive movement of the

defendant. The First District in Lyles, supra also found a policeman's search of an automobile based upon a concealing motion in the car by a suspect, was lawful.

The Fifth District in Dilyerd (444 So.2d at 579) maintained that the case of Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977) did not apply to the facts in Dilyerd because the frisk involved a person who had a weapon-like bulge in his jacket. Nevertheless the issue in Mimms was whether or not the police officer could order the defendant out of his car in the first place. The Supreme Court held that for the safety of the officer vis a vis assault from the car by the detainee as well as from oncoming traffic was paramount. There was no Fourth Amendment violation to have the detainee exit his car because this action was "de minimis" to the safety of the police officer. So the holding in Mimms does not rule out searching a suspect based upon furtive movements inside an automobile, rather it acknowledges the possibility that an assault could result from inside an automobile. Petitioner submits that it makes precious little difference to the safety of a police officer whether a detainee furtively hides a weapon inside his pockets or whether that weapon is placed underneath a car seat because in both situations the detainee has immediate access to use that weapon against that officer. In Brinegar v. United States, 338 U.S. 160, 69 S.Ct. Rep. 1302 (1949) the Supreme Court maintained:

> In dealing with probable cause, however, as the very name implies we deal with probabilities. These are not technical; they are factual and practical considerations of everyday life on which reasonable and prudent men not legal techincians act. 69 S.Ct. at 1310, 338 U.S. at 175.

Although the Brinegar decision dealt with probable cause to make an arrest, Petitioner submits that the above quote is equally applicable to the facts at bar.

The Fifth District in Dilyerd also maintained:

> The safety of the officers was established when the persons were required to move outside the car and away from the susposed danger zone. 444 So.2d at 579.

The facts of this case (which must be interpreted in favor of the State since the trial court's order is clothed with a presumption of correctness) are contrary to this conclusion. After noting the furtive movement inside the car Deputy Harper indicated that his purpose in searching this area was to find weapons (R 15). He had not decided to arrest either suspect prior to looking under the seat and discovering what turned out to be cocaine (R 16). In fact the officer stated clearly but for the finding of the cocaine (and marijuanna in the trunk) he would have checked the identification of the two detainees and then directed them to go off the property. (R 21). In Wilson, supra the Fourth District disagreed with the conclusion of Dilyerd quoted above by quoting form Terry v. Ohio, 392 U.S. 1, 33, 88 S.Ct.

1868, 1886, 20 L.Ed.2d 889 (1968), Harland, J. concurring, as follows:

> ...just as a full search incident to lawful arrest requires no additional justification, a limited frisk incident to lawful stop must often be rapid and routine. There is no reason why an officer, rightfully but forcefully confronting the person suspected of a serious crime, should have to ask one question and take the risk that an answer might be a bullet.

This Honorable Court also adopted this same quote in its decision of Webb, supra. 398 So.2d at 826. This Court also maintained in Webb:

> When a Terry stop is made, in order to validly frisk the person stopped, "the officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in these circumstances would be warranted in the belief that his safety or that of others was in danger. 392 U.S. at 27, 88 S.Ct. at 1883. (398 So.2d at 822)

In State v. Brooks, 281 So.2d 55 (Fla. 2d DCA 1973) the police officers were on patrol in a high crime area at 4:30 in the morning and heard gun shots. No one was in the area except two black males who were right around the block from the police officers. These two persons indicated they did not hear a shot. At that point the police officers frisked the detainees. Second District held that the police officers were justified in the frisk for their own safety. The review

court in Brooks maintained that the police officers were not expected to turn their backs on the defendants nor "walk backwards to their car keeping an eye on the two men." Likewise in the case at bar Deputy Harper should be entitled to make a brief search for his own safety and should not be required to walk backwards to his car keeping an eye on the defendants as they leave as if he were in a militarized combat zone. In Patrick, supra the Fourth District in justifying a vehicle search based upon a traffic stop, stated:

> Here, however, the motion involved could have reasonably been considered by the officer to conceal or retrieve a weapon; And the officers reaction thereto was therefore reasonable (437 So.2d at 218).

The Fourth District in Patrick also noted that the defendant was free to return to his vehicle. Again, quoting from the Patrick case, the Petitioner would submit the following:

> Let us assume that in this case instead of taking preventive action, the officer after the frisk simply remained at the rear of the vehicle doing the paper work necessitated by the expired tag; and the defendant returned to the vehicle, grabbed the weapon and shot the officer. What then? (437 So.2d at 219).

The United State Supreme Court in Michigan v. Long, supra clearly has rejected the conclusion pronounced in Dilyerd that the safety of the officers was established when the persons were required to move outside the car and away from the supposed danger zone (444 So.2d at 579). Petitioner

would submit that the facts in Michigan v. Long were virtually identical to the facts in the case at bar. The hour was late and the area was rural in the Michigan v. Long case. (103 S.Ct. at 3481). Defendant Long was stopped for a misdemeanor traffic offense and was not frisked outside of the car until the officers observed that there was a large knife in the interior of the car into which the defendant was about to reenter. In upholding the search of Long's car to those areas where the defendant would have immediate control when he reentered the car the United States Supreme Court maintained:

> The Michigan Supreme Court appeared to believe that it was not reasonable for the officers to fear that Long could injure them, because he was effectively under their control during the investigative stop and could not get access to any weapons that might have been located in the automobile. (citation omitted). This reasoning is mistaken in several respects. During any investigative detention, the suspect is "in the control" of the officers in the sense that he "may be briefly detained against his will..." (citations omitted). Just as a Terry suspect on the street may, despite being under the brief control of a police officer, reach into his clothing and retreive a weapon, so might a Terry suspect in Long's position break away from police control and retrieve a weapon from his automobile. (citations omitted). In addition, if the

> the suspect is not placed under arrest, he will be permitted to reenter his own automobile, and he would then have access to any weapon inside. (citations omitted). Or, as here, the suspect may be permitted to reenter the vehicle before the Terry investigation is over, and again, may have access to weapons. In any event, we stress that Terry investigation such as the one that occurred here, involves a police investigation "at close range" (citation omitted), when the officer remains particularly vulnerable in part because a full custodial arrest has not been effective, and the officer must make a "quick decision as to how to protect himself and others from possible danger" (citation omitted). (103 S.Ct. at 3481-3482).

In support of the above reasoning and holding the United States Supreme Court referred to a report which indicated that approximately thirty percent of police shootings occurred when a police officer approached a suspect seated in an automobile. (103 S.Ct. at 3479, footnote 13). This same study was also cited in Williams, supra 371 So.2d at 1076.

The Case of Brown v. State, supra, is also not in accord with the conclusion in Dilyerd which would prohibit police officers from searching a car where the occupants of that car are temporarily secured outside of the vehicle. The Second District in Brown answered that conclusion as follows:

> Although Appellant asserts that it is "incredulous" that he would open fire on the officers after they had

> permitted him to reenter his vehicle, we note that the possibility is not as remote as one might think. (The court then quoted statistics.) As one court has observed (citations omitted), the cemetaries in police stations contain living epitaphs of those dedicated traffic officers who failed to take reasonable precautions for their own protection. More ever, the arrestee may not be the respectable citizen we would like him to be, but rather he may be an individual who may have good reason to avoid prolonged encounter with the police thereby resulting in resort to a weapon or attempted escape. (citation omitted) (358 So.2d at 600).
>
> ***
>
> This protective search may take place even though the occupants have been temporarily removed from the vehicle.
>
> ***
>
> This extension of the scope of a protective search applies only where, at the time of the search, it appears that the suspect should be allowed to return to his vehicle. (358 So.2d at 601).

In the case under review it is clear that the officer had the right to make a protective search because he was going to permit the occupants to get back into their vehicle and leave (R 21).

The opinion in Dilyerd distinquished Brown v. State, supra by stating the following:

> In the earlier Brown case the trial judge could have reasonably found that probable cause existed to believe the defendants were armed and were about to commit a robbery. (444 So.2d at 579).

The Second District in Brown specifically held that the search in question cannot be justified as a search incident to an arrest nor upheld as a search based upon probable cause. 358 So.2d at 598. Although the police officers in Brown noticed a bulge in the waist line of one of the suspects, they also saw the suspect, Thomas, shove his hand under the armrest as if to conceal or retrieve something. The Second District maintained that:

> ...a reasonable self protective search under proper circumstances need not be confined to a personal frisk of the occupants of the vehicle, but should extend to the area of the car reasonably accessible to the occupants. Such areas should at least include the front seat and floor of the vehicle. (citation omitted.) (358 So.2d at 599).

It is clear that the Second District in Brown predicated its holding upon § 901.151(5), Fla. Stat. (1977).

The opinion in Dilyerd also indicated that there was no probable cause estabilised in Stevens v. State, 354 So.2d 110 (Fla. 3d DCA 1978) to uphold the search for weapons by the police officer. 444 So.2d at 579. The First District Court of Appeal in Thomas v. State, 257 So.2d 15 (Fla. 1st DCA 1971) addressed this issue of "probable cause"

to search for weapons during a stop and frisk encounter. The review court in Thomas maintained:

> The court distinquished between the necessity that the officer had probable cause to believe that a crime had been committed and the necessity to believe only that the person is armed and dangerous, regardless of whether probable cause to arrest exists. (250 So.2d at 17).

As discussed supra, there is clearly a distinction between probable cause to arrest and probable cause to search for weapons during legitimate Terry stop.

In the case at bar, Deputy Harper had precious few options. Initially he could have never approached the automobile at all such action would be derelict in a police officer's duties. The other option that Deputy Harper had was to actually make an arrest for an onsight misdemeanor of the two occupants in the automobile. If this option were exercised there certainly would have been a greater infringement on the liberty of the two trespassers. Additionally if the police had to arrange to remove the vehicle, then an inventory would have revealed the cocaine which is the subject of the motion to suppress and prosecution could have then commenced. But Deputy Harper chose not to exercise this extreme option either. But for the furtive motion, Petitioner submits that Deputy Harper would have checked the identification of the two trespassers and ordered them off the property (R 21). In lieu of an arrest, it certainly

would be reasonable and not a great infringement upon the two trespassers to have them leave the automobile temporarily and conduct a minimum search for weapons. It would seem that trespassers have little standing to complain of such actions by Deputy Harper when they very well could have been arrested. When the expectation of privacy for trespassers is weighed against the proteciton and safety of the law enforcement officer who was acting properly and in the scope of his duties, there should be little question that this minimum infringement in the search of the front compartment of the automobile was lawful.

CONCLUSION

Based on the arguments and authorities presented herein, Petitioner respectfully prays this Honorable Court reverse the decision of the District Court of Appeal of the State of Florida, Fifth District.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL

W. Brian Bayly

W. BRIAN BAYLY
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Avenue
Fourth Floor
Daytona Beach, Florida 32014
(904) 252-2005

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by delivery to David A. Henson, Esquire, Assistant Public Defender for Respondent, this 16th day of July, 1984

W. Brian Bayly

W. BRIAN BAYLY
Of Counse.