

075

IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,313

THE STATE OF FLORIDA,

Petitioner,

vs.

CLERK OF THE SUPREME COURT
By: [Signature] Deputy Clerk

CARLOS FRANCO SUCO,

Respondent.

* * * * *

ON PETITION FOR DISCRETIONARY REVIEW

* * * * *

BRIEF OF PETITIONER ON JURISDICTION

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INTRODUCTION

The State of Florida is the petitioner in this Court and was the Appellant in the Third District Court of Appeal.

The Respondent, Carlos Franco Suco, was the defendant in the 11th Judicial Circuit Court and was the Appellee in the Third District Court of Appeal:

Appendix A is:

State v. Suco, _____ So.2d _____ (Fla. 3d
DCA, 11 F.L.W. 2605, 1986) (hereinafter
Suco I)

Appendix B is the rehearing:

State v. Suco, _____ So.2d _____ (Fla. 3d
DCA, 12 F.L.W. 672, 1987) (hereinafter
Suco II).

STATEMENT OF THE CASE AND FACTS

A

THE CASE

The State requests this Court exercise discretionary conflict jurisdiction. This is the result of a unsuccessful state appeal challenging the 11th Judicial Circuit Court suppression of certain evidence.

B

THE FACTS

The essential fact upon which the state proffers this Court should exercise conflict jurisdiction is whether an invited guest has standing to assert a search and seizure challenge.

The defendant sub judice was the landlord of the residence searched. He retained a key for access to the residence. Suco I at 2665. On June 9, 1985 at 9 p.m. the defendant, without the knowledge of his tenant, subsequent to knocking on the door, let himself and a codefendant into the leased premises. Whereupon he sat on the couch ". . . and began to watch television. . . ." Suco I at 2666.

The entry to the residence was observed by Metro-Dade Police officers on assignment patrolling the area for possible home invasion robberies. Id. Further investigation by the officers revealed the tenant had no knowledge the defendant was in the premises. Id.

Two searches of the residence by the officers and their backup resulted in the seizure of money, ledgers, 208 kilos of cocaine and three semi-automatic weapons. Suco I at 2666.

The Third District Court of Appeal held the defendant was an invited guest and had standing to challenge the search. Suco I at 2668; Suco II at 672-3.

POINT ON APPEAL

WHETHER THERE EXISTS AN EXPRESS AND DIRECT CONFLICT BETWEEN THE THIRD DISTRICT COURT OF APPEALS DECISION IN STATE V. SUCO, SUPRA, AND DANIELS V. STATE, 411 SO.2D 1034 (FLA. 1ST DCA 1982) AND MALLORY V. STATE, 409 SO.2D 1222 (FLA. 2D DCA 1982) PET.REV.DEN., 418 SO.2D 1280 (FLA. 1982) SO THAT THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION?

SUMMARY OF ARGUMENT

There exists an express and direct conflict between the Third District Court of Appeal and the First and Second District Courts of Appeal regarding the standing of an invited guest to challenge the validity of a search in the host's residence.

The Third District Court of Appeal, in the case sub judice, has held the guest has standing to assert a constitutional challenge. The Third District Court of Appeals decision ignores principles of Florida law and stare decisis citing Professor LaFave for authority. Diametrically opposed are the decisions of the First and Second District Court of Appeals.

The other district court of appeals have held that an "invited guest" does not have standing to assert the challenge. As a result of these decisions there exists an express and direct conflict upon which this Court should exercise discretionary jurisdiction.

ARGUMENT

THERE EXISTS AN EXPRESS AND DIRECT CONFLICT BETWEEN THE THIRD DISTRICT COURT OF APPEAL DECISION IN STATE V. SUCO, SUPRA AND DANIELS V. STATE, SUPRA, AND MALLORY V. STATE, SUPRA, SO THAT THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION.

Conflict jurisdiction is based upon factual conflicts within the four corners of the opinion. State v. Reaves, 485 So.2d 829 (Fla. 1986). The State submits there exists an express and direct conflict between State v. Mallory, 409 So.2d 1222 (Fla. 2d DCA 1982); Daniels v. State, 411 So.2d 1034 (Fla. 1st DCA 1982) and State v. Suco, ___ So.2d ___ (Fla. 3d DCA 11 F.L.W. 2665, 1987)(Suco I) on rehearing ___ So. 2d ___ (Fla. 3d DCA 12 F.L.W. 672, 1987)(Suco II).

The ultimate fact upon which conflict is based is the defendants in all the cases were "invited guests" in the residences searched. It is this ultimate fact upon which conflict jurisdiction must be based.

The Third District Court of Appeal concluded since the Defendant was an invited guest he was entitled to standing to challenge the search of his tenant's house. Suco I at 2668; Suco II at 672.

It is the State's position, as the Third District Court of Appeals noted in part Suco II 672, that the Third District

Court of Appeal's analysis conflicts with State v. Mallory, supra, and Daniels v. State, supra. The following discussion will demonstrate the conflict upon which this Court should exercise jurisdiction.

In Mallory, supra, the Defendant had been an overnight guest several times at a friends house, he kept personal effects, shared food costs and had access to a hidden key. Furthermore, he was able to deny admittance to third parties. Id. at 1223. The Court ultimately held Mallory had no standing. Id at 1224.

The Mallory court stated in denying Mallory standing to challenge a search:

. . . Murray Mallory . . . was no more than a visitor in the Moyer home. Although ownership is not the only criterion in determining the privacy question, it is certainly important to note that Mallory claimed no financial or ownership interest in the residence. Further, there was nothing in the testimony to indicate that Mallory spent other than an occasional night as Moyer's guest. Mallory stated that he was free to come into the house during the day when Moyer was absent and had done so many times. Again, there is no indication of permanence in this arrangement. Moyer's house was not Mallory's place of residence, despite his freedom of ingress and the fact that he kept personal belongings there.

The central theme in all the cases cited to us is the fact that the defendants considered the residence in question their "home." It Matters not whether the "home" is permanent or temporary as long as it was the place where the defendants were living at the time of the search. Mallory was clearly not living at Moyer's house, even though he felt welcome there at any time.

Id. [Emphasis added].

Clearly, the Defendant sub judice could not considered the leased premises "home". Therefore, there exists a conflict and this Court should accept jurisdiction.

In Daniels, supra, the following facts formed the basis of the courts affirmation of the denial of the motion to suppress:

. . .the trailer was owned by Mr. Hawkins' sister. She had given the keys to her mother along with the authority to rent the trailer to others. On the morning of the day of the search, Mr. Hawkins and the appellant went to the mother's house. They said they had been drinking and needed a place to rest and clean up. She gave them the keys to the trailer and some linens. There they slept until the police arrived that afternoon. . . .

While the trailer was furnished and clothing was found in the closet, none of these effects belonged to either appellant or Hawkins. Appellant had an overnight bag of clothing in the front room. Mr. Hawkins also had some clothing in that room. It does not appear thta

either man had any possessions in any other part of the trailer.

Id. at 1035-6.
[Emphasis added]

The Court held a guest (Daniels) under did not have standing to challenge the search.

Thus, it must be observed the law in Florida, as other District Courts of Appeal hold, guests have no standing to assert Fourth Amendment violations. The Third District Court of Appeals in ignoring the law of Florida, turns to Professor LaFave's treatise for support. The State contends inspite of LaFave and the subsequent Third District Court of Appeal opinion thereon, that the Mallory and Daniels holdings are correct. Therefore, this Court should exercise its discretionary conflict jurisdiction.

CONCLUSION

The State submits this Court should grant jurisdiction based upon the express and direct conflict set forth above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **BRIEF OF RESPONDENT ON JURISDICTION** was furnished by mail to IRA N. LOEWY , BIERMAN, SONNETT, SHOHAT, & SALE, 200 S.E. 1st Street, Suite 500, Miami, Florida 33131, on this 30th day of March, 1987.



RICHARD L. KAPLAN
Assistant Attorney General

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