

TOPICAL INDEX

	<u>PAGE NO.</u>
TABLE OF CITATIONS	ii
SUMMARY OF ARGUMENT	1
ARGUMENT - POINT I	2, 3, 4
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF CITATIONS

	<u>PAGE NO.</u>
<u>Engle v. State</u> , 391 So.2d 245 (Fla. 5th DCA 1980)	3
<u>Major v. State</u> , 380 So.2d 1203 (Fla. 3d DCA 1980)	3
<u>Palmer v. State</u> , 467 So.2d 1063 (Fla. 3rd DCA 1985)	1 - 5
<u>Sagorrias v. State</u> , 39 So.2d 252 (Fla. 1956)	3
<u>State v. Worgin</u> , 418 So.2d 1261 (Fla. 4th DCA 1982)	3
<u>Taylor v. State</u> , 355 So.2d 160 (Fla. 3d DCA 1978)	3
<u>U. S. v. Millian-Rodriguez</u> , 759 F.2d 1558 (11th Cir. 1985)	3
<u>U.S. v. Marshall</u> , 452 F.2d 1282 (5th Cir. 1978)	3
<u>Wainwright v. Taylor</u> , 476 So.2d 699 (Fla. 1985)	4

SUMMARY OF ARGUMENT

POINT I

IF THE FACTS OF A CASE FROM ONE DISTRICT COURT OF APPEAL ARE AT WIDE VARIANCE FROM THE FACTS OF A CASE FROM ANOTHER DISTRICT COURT OF APPEAL, ARE THE DECISIONS RECONCILABLE EVEN IF ONE CASE UPHOLDS A SEARCH AND THE OTHER SUPPRESSES IT?

The decision of the Second District Court of Appeal in the case at bar is not in conflict with the decision in Palmer v. State, 467 So.2d 1063, (Fla. 3rd DCA 1985). The facts in Palmer are in no wise similar to the facts of the instant case, in that in PALMER there was no question of whether Mr. Palmer had consented to the search of his shopping bag prior to the discovery of contraband; he clearly had. In the case at hand, Ms. Hutchinson was ordered to reveal the contents of her purse at the initial contact by uniformed police.

ARGUMENT

POINT I

IF THE FACTS OF A CASE FROM ONE DISTRICT COURT OF APPEAL ARE AT WIDE VARIANCE FROM THE FACTS OF A CASE FROM ANOTHER DISTRICT COURT OF APPEAL, ARE THE DECISIONS RECONCILABLE EVEN IF ONE CASE UPHOLDS A SEARCH AND THE OTHER SUPPRESSES IT?

Yes. Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure, provides that the Supreme Court has discretionary jurisdiction of decisions that "expressly and directly conflict with a decision of another District Court of Appeal or of the Supreme Court on the same question of law;". In the instant case, the law is not in conflict with the law of the case of Palmer v. State, 467 So.2d 1063 (Fla. 3rd DCA 1985). The facts are in conflict.

In Palmer, supra, the Appellant was standing in a train station, when he was engaged in conversation by narcotics officers. Palmer "gave the officers permission to look into his tote bag". Inside, they found several suspicious packages, which they opened, finding cocaine, at 1063. The court upheld the search on two (2) grounds:

(1) that as soon as the officers saw the distinctively wrapped packages, they had probable cause to believe that the packages contained narcotics; and

(2) that Palmer voluntarily gave permission to look into the tote bag, and did not "restrict, withdraw, or limit his consent in any way, even when directly questioned about the packages contents"., at 1064.

In the case at hand, Ms. Hutchinson was confronted in a dark parking lot by a hysterical shopkeeper two (2) uniformed policemen, at least one police car, and she was told that she was suspected of shoplifting. Ms. Hutchinson was not given any options, but was told the police wanted to see what was in her purse. One of the officers testified that she would not have been allowed to leave, if she had tried to.

Ms. Hutchinson did attempt to limit the scope of the search, even after revealing the initial contents, contrary to the facts and holding of Palmer, supra.

The interpretation of Palmer advanced by the State would result in Palmer being in conflict with the following cases:

Major v. State, 380 So.2d 1203 (Fla. 3d DCA 1980)

Taylor v. State, 355 So.2d 160 (Fla.3d DCA 1978)

U.S. v. Millian-Rodriguez, 759 F. 2d 1558 (11th Cir. 1985)

State v. Worgin, 418 So.2d 1261 (Fla.4th DCA 1982)

Sagorrias v. State, 39 So.2d 252 (Fla. 1956)

U.S. v. Marshall, 452 F.2d 1282 (5th Cir. 1978)

Engle v. State, 391 So.2d 245 (Fla. 5th DCA 1980)

The decision in the case at bar does not conflict with Palmer, or any of the above cited cases.

In Wainwright v. Taylor, 476 So.2d 699 (Fla. 1985), this court stated that, "Our concern in cases based on our conflict jurisdiction is the precedential effect of those decision which are incorrect and in conflict with decisions reflecting the correct rule of law", at 670.

That concern has not been violated by the decision in the instant case.

CONCLUSION

The decision in the case at bar does not expressly and directly conflict with that of Palmer v. State, 467 So.2d 1063 (Fla. 3rd DCA 1985). Therefore, the discretionary jurisdiction of the Supreme Court does not lie, and the matter should be declined.

Respectfully submitted,



MARSHALL G. SLAUGHTER, ESQUIRE
Post Office Box 226
Bartow, Florida 33830
(813) 533-2100
Attorney for Respondent