IN THE SUPREME COURT OF FLORIDA

WILLIE MAE ROBINSON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 72,583
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
	)	

REPLY BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

Petitioner was the Appellant in the District Court of Appeal and the defendant in the Criminal Division of the Seventeenth Judicial Circuit in and for Broward County. Respondent was the Appellee and the prosecution in these respective Courts. In the brief, the parties will be referred to as they appear before this Honorable Court.

The following symbol will be used:

R = Record on Appeal

STATEMENT OF THE FACTS

The respondent has provided its own statement of the facts while not specifically disputing any facts contained in the petitioner's brief. Several differences between these statements should be noted, however, in the interest of accuracy and completeness.

The respondent has asserted in its brief that there was apparently no objection to the car being towed and that no request was made to try to reach the true lessee prior to the car being searched. However, there was direct testimony in the trial court that the petitioner had asked the officer to let her call Betty Reilly, the lessee, and to let the lessee come pick up the car and take petitioner home (R-36). The officer responded that the car would be impounded, and the officer did not remember and did not dispute her testimony regarding a request for an alternative to impoundment (R-228-29, 36).

The respondent has asserted that petitioner did not make any reference to the lessee. However, the facts are that petitioner specifically stated that the lessee had placed the vehicle in the joint possession of herself and the driver Mr. McClendon (R-34-35).

Petitioner also established that when asked if anything in the car belonged to her, she replied that nothing in the car belonged to her, but when the officer began to look into the trunk she told the officer that some things "in the back belonged to her" (R-17-18, 28).

The judge in the trial court expressly found that petitioner had standing to contest the stop (R-43). The judge denied the motion to suppress on the ground that once evidence of a felony was found that the officer had the right then to impound the vehicle (R-43-44). However, the officer gained knowledge of a felony only after the officer impounded the vehicle without notifying the occupants that they could provide an alternative to impoundment (R-17). The District Court of Appeal held that this Court's decision in Miller v. State, 403 So.2d 1307 (Fla. 1981), is no longer valid.

SUMMARY OF ARGUMENT

Petitioner relies on the summary in his initial brief.

ARGUMENT

WHETHER THE CERTIFIED QUESTION, VIZ.:

> DOES THE 1983 AMENDMENT TO ARTICLE I SECTION 12 OF THE FLORIDA CONSTITUTION, COUPLED WITH THE COLORADO V. BERTINE DECISION, OVERRULE MILLER V. STATE, PROVIDING THE POLICE ARE NOT ACTING IN BAD FAITH?

SHOULD BE ANSWERED IN THE NEGATIVE?

The respondent has dealt at length with the fact that the Supreme Court has held that a vehicle inventoried pursuant to express and detailed local police procedures upon impoundment is not violative of the Fourth Amendment to the United States Constitution. Colorado v. Bertine, 479 U.S. ____, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987). The petitioner does not dispute the fact that the Fourth Amendment does not require the particular impoundment procedure that this Court has established under Miller.

However, the respondent has devoted a brief paragraph at the conclusion of its argument to responding to petitioner's assertion that there is a distinction between impoundment procedures, whereby a determination of the necessity for impoundment is made, and the subsequent inventory procedures which occur after a determination of whether to impound.

Colorado v. Bertine does not invalidate Florida's impoundment procedure. In Miller this Court determined that impoundments of the kind involved in this case are initiated for the protection of the owner's property. The determination of when to

impound is made pursuant to the Miller procedures by determining if the occupant of owner of the vehicle has available a reasonable alternative to impoundment, thus eliminating any necessity to impound the property for the protection of the owner or possessor.

In Colorado v. Bertine, supra, the Boulder Police Department procedures determined the impoundment question by the officer considering alternatives to impoundment instead of requiring the owner or possessor to do so. The Supreme Court in the Bertine case upheld those detailed procedures.

However, the amendment to Article I Section XII, of the Florida Constitution requiring this Court to follow the U.S. Supreme Court's Fourth Amendment decisions does not necessitate that Florida follow the city of Boulder's impoundment procedures. Such an interpretation would be an unexpected extension of the intent of the public in adopting the amendment to Article I, Section XII of the Florida Constitution. Florida's impoundment procedures precede issues of search and seizure under the Fourth Amendment.

We submit that Florida's impoundment procedure under Miller, by which a determination is made of whether to impound a vehicle, is simply not in violation of the Fourth Amendment to the United States Constitution as interpreted by the United States Supreme Court in Colorado v. Bertine, supra, and that the District Court opinion holding such should be quashed.

CONCLUSION

Wherefore, based on the foregoing it is respectfully requested that the Court direct this cause to be remanded with instructions that the motion to suppress be granted.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Alfonso M. Saldana, Assistant Attorney General, 111 Georgia Avenue, Elisha Newton Dimick Building, West Palm Beach, Florida 33401 this 12th day of August, 1988.

Louis G. Carres

LOUIS G. CARRES
Assistant Public Defender