

SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,

vs.

MICHAEL W. GREEN,
Respondent.

CASE NO. 72,998

FILED
APPELLATE
OCT 2 1989
CLERK SUPREME COURT
By _____
Deputy Clerk

ON REVIEW
FROM THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT OF FLORIDA

RESPONDENT'S
AMENDED RESPONSE BRIEF

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PRELIMINARY STATEMENT

Respondent was the Appellant/Defendant in the lower court and will be referred to in this brief as Respondent. Petitioner was the Appellee and prosecution in the lower court and will be referred to in this brief as Petitioner.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Statement of Case and Facts submitted by Petitioner and offers the following supplement.

After Respondent was arrested by Officer Ferrick and told that his vehicle was obstructing the normal flow of traffic, Respondent requested to move his vehicle off the road. Officer Ferrick advised Respondent that he would not be allowed to move the vehicle off the road and that the vehicle would be towed to the police department impound lot.

In addition to being tried before a jury for possession of controlled substances and drug paraphernalia, Respondent was also brought to trial for driving under the influence of alcoholic beverages or controlled substances. The jury acquitted Respondent of this charge.

SUMMARY OF ARGUMENT

Petitioner seeks review of the decision in Green v. State, 528 So.2d 1233 (Fla. 1st DCA 1988), asserting that this Court has jurisdiction pursuant to Article V, §3(b)(3), Florida Constitution (1980) and Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure to resolve direct conflicts between decisions of the district courts. The decision of Green v. State, Id., is not, however, in direct conflict with the decision in State v. Williams, 516 So.2d 1081 (Fla. 2d DCA 1987) or Robinson v. State, ___ So.2d ___, 13 F.L.W. 1244 (Fla. 4th, May 25, 1988).

In State v. Williams, supra, the court held that the search was valid as incident to a lawful arrest. Thus, the concern of the court in Williams, supra, regarding the validity of an inventory search was dictum. Accordingly, there is no direct conflict between the decisions in Green v. State, supra, and Williams v. State, supra.

Moreover, the decision of the Fourth District in Robinson v. State, ___ So.2d ___, 13 F.L.W. 1244 (Fla. 4th DCA, May 24, 1988), is in accord with the decision in Green v. State, supra. The Fourth District and the First District, respectively, held invalid an inventory search conducted in violation of the requirements enunciated by this Court in Miller v. State, 403 So.2d 1307 (Fla. 1981), although the Fourth District in Robinson, supra, certified a question to this Court to be of great public importance.

Inasmuch as no direct conflict between the decisions of the First District in the instant case and the decision of another District Court of

Appeal has been demonstrated, jurisdiction for review is not vested in this Court. Accordingly, review of the decision in Green v. State, 528 So.2d 1233 (Fla. 1st DCA 1988) should be denied.

ARGUMENT

WHETHER THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL.

Respondent suggests that the jurisdiction of this Court should not be invoked in the instant case. The decision of the court in Green v. State, 528 So.2d 1233 (Fla. 1st DCA 1988) reversed the trial court's denial of Respondent's motion to suppress evidence seized pursuant to an inventory search of his automobile conducted after Respondent's request to move his automobile was denied and the officer advised Respondent that the automobile would be impounded without affording Respondent any alternative to impoundment.

In Caplan v. State, ____ So.2d ____, 13 F.W.L. 461 (Fla., August 19, 1988), this Court held that the police are not entitled to conduct an inventory search of a vehicle where the driver has requested assistance from the police in having the vehicle towed but did not transfer custody of the vehicle to the police. In so ruling, this Court cited Miller v. State, 403 So.2d 1307 (Fla. 1981), for the proposition that the police must act in good faith and not use an inventory search as a subterfuge to conduct a warrantless search for incriminating evidence. The decision of this Court in Miller, supra, respecting a vehicle owner's right to alternatives to impoundment remains viable.

In State v. Williams, 516 So.2d 1081 (Fla. 2d DCA 1987), the Court reversed the suppression of evidence by the trial court holding that the search

was valid as incident to a lawful arrest. Thereafter, the Second District Court of Appeal offered as dictum a concern that the Miller decision of the Supreme Court had been eroded by the 1983 amendment to Article I, Section 12 of the Florida Constitution.

In Robinson v. State, ____ So.2d ____, 13 F.L.W. 1244 (Fla. 4th DCA, May 25, 1988), the Court recognized the dictum of the Second District that suggested the Miller opinion's requirement that a reasonable alternative to impoundment be offered no longer existed. The Robinson court, however, affirmed the trial court's suppression of evidence for failure to offer a reasonable alternative to the automobile owner prior to impoundment. The Robinson court followed this Court's decision of Miller v. State, 403 So.2d 1307 (Fla. 1981). Although the Robinson court certified a question of great public importance to this Court questioning whether the opinion delivered in Miller, supra, had been overruled by the 1983 amendment to Article I, Section 12 of the Florida Constitution, the decision of Robinson, supra, is not in conflict with the decision of the First District in Green v. State, 528 So.2d 1233 (Fla. 1st DCA 1988).

Inasmuch as the Robinson decision is actually in accord with the case at bar, this Court's jurisdiction to resolve direct conflict should not be invoked. Moreover, the jurisdiction of this Court should not be invoked to resolve conflict between the decision in the case at bar and decision of the Second District in State v. Williams, 516 So.2d 1081 (Fla. 2d DCA 1987), as the decision in Williams actually rested upon the Court's determination that the

search was conducted incident to a lawful arrest. Thus, the language of the Williams Court regarding whether a defendant need be offered an alternative to impoundment to validate an inventory search of an automobile was dicta and fails to create a direct conflict with the case at bar. Accordingly, this Court should not exercise its jurisdiction pursuant to Article V, §3(b)(3), Florida Constitution (1980) and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv).

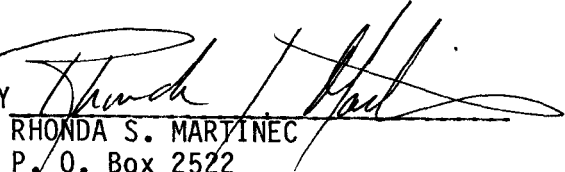
CONCLUSION

Based on the foregoing argument, Respondent respectfully requests the Court to deny jurisdiction in this cause and affirm the decision of the District Court of Appeal, First District.

Respectfully submitted,

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