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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NO. 72,998

MICHAEL W. GREEN,

Respondent.

_____/

PETITIONER'S REPLY BRIEF

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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NO.

MICHAEL W. GREEN,

Respondent.

_____/

PETITIONER'S REPLY BRIEF

PRELIMINARY STATEMENT

Petitioner, the State of Florida, Appellee/ Plaintiff below, will be referred to herein as "the State." Respondent, Michael W. Green, Appellant/defendant below, will be referred to herein as "Respondent." References to the record on appeal will be by the symbol "R" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

The State here incorporates by reference the statement of the case and facts in its Brief on the Merits, and accepts Respondent's additions thereto in his response brief, but the State would note that a loaded .38 caliber revolver was found under Respondent's car seat (R 110).

SUMMARY OF ARGUMENT

The State will omit a formal summary of argument here as the argument herein is within the page limit for summaries of argument.

ARGUMENT

ISSUE ON APPEAL

THE DISTRICT COURT OF APPEAL ERRED IN REVERSING THE RESPONDENT'S CONVICTION FOR POSSESSION OF CONTROLLED SUBSTANCES AND DRUG PARAPHERNALIA WHERE THE COURT RELIED ON MILLER V. STATE FOR THE PROPOSITION THAT A REASONABLE ALTERNATIVE TO AUTOMOBILE IMPOUNDMENT MUST BE OFFERED TO AN ARRESTEE.

At the outset, the State would note that this Court accepted jurisdiction of the instant cause pursuant to a conflict between district courts of appeal. The Second District in State v. Williams, 516 So.2d 1081 (Fla. 2d DCA 1987), and the Fourth District in Robinson v. State, __ So.2d __, 13 F.L.W. 1244 (Fla. 4th DCA May 25, 1987), both called into question the continuing validity of Miller v. State, 403 So.2d 1307 (Fla. 1981), which mandates that an arresting officer notify the arrestee of alternatives to automobile impoundment. Both courts found that Miller is no longer good law in light of Colorado v. Bertine, __ U.S. __, 107 S.Ct. 378, 93 L.Ed.2d 739 (1987), and Article I, Section 12 of the Florida Constitution, while the First District relied on Miller in its opinion below.

In Robinson, supra, the district court certified the following question, the answer to which the State herein conceded would be dispositive of the cause at bar;

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?

The Respondent now comes before this Court and seeks to litigate an issue which (1) was not presented to the district court below, and (2) was not the issue upon which this Court granted review. Review was granted herein based on the conflict between district courts regarding the "reasonable alternatives to impoundment" issue, and not on Respondent's new argument that the subsequent inventory search was somehow impermissibly conducted.

The State submits that this Court's decision in Robinson v. State on January 5, 1989 (reported at 14 F.L.W. 23 and submitted by the State as supplemental authority herein) in which this Court answered the certified question in the affirmative, conclusively supports the State's position and mandates reversal of the First District Court of Appeals' decision below. That decision below was specifically decided on the basis of Miller v. State, supra, and that ruling regarding impoundment is the narrow issue before this Court.

In the interest of "covering all the bases", however, the State will now address the merits of the contentions in Respondent's brief:

A) Respondent claims that since he requested to move his car off the road after his arrest, the officer should have let him. This is absurd as the record demonstrates that Respondent was intoxicated at the time. He was even driving on the wrong

side of a four lane highway when the officer first saw him. The officer would have been out of his mind to let Respondent back in his car, as Respondent could easily have rammed the officer and/or the patrol car and fled. Also, a loaded handgun was subsequently found underneath Respondent's car seat, so clearly, letting Respondent back in his car to move it would have been foolish.

B) Respondent further contends that the officer conducting the subsequent inventory search exceeded permissible bounds by looking inside the suitcase on Respondent's back seat. This is clearly wrong, because once the officer discovered the concealed weapon underneath the seat and the cocaine and paraphernalia in the console, he was authorized to search the entire vehicle. Rivera v. State, 373 So.2d 64 (Fla. 3d DCA 1979), M.C.J. v. State, 444 So.2d 1001, pet. denied 451 So.2d 849 (Fla. 1st DCA 1984).

CONCLUSION

Based on the above argument and citations of legal authority, Petitioner prays this Honorable Court reverse the decision of the District Court below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to Ms. Rhonda S. Martinec, Daniel, Komarek & Martinec, Post Office Box 2522, Panama City, Florida, 32402, this 16th day of February, 1989.

BRADLEY R. BISCHOFF
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