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STATEMENT OF THE CASE AND FACTS

Petitioner was convicted of possession of more than 20 grams of marijuana in the Circuit Court of the Fifteenth Judicial Circuit of Florida. On his appeal to the District Court of Appeal, Fourth District, he contended that the trial court erred reversibly in denying his motion to suppress because cornering petitioner, a ticketed passenger in a non-public area, a north-bound bus, is not a voluntary "street" encounter. The district court affirmed on the authority of its recent opinion in State v. Avery, 13 F.L.W. 1816 (Fla. 4th DCA August 3, 1988) (Appendix - 1). State v. Avery is pending discretionary review in Supreme Court Case No. 73, 289 on a certified question of great public importance as follows:

MAY EVIDENCE, OBTAINED AS A RESULT OF DEPEN-
DANT'S CONSENT TO SEARCH, BE SUPPRESSED BY THE
TRIAL COURT AS "COERCED" UPON THE SOLE GROUND
THAT THE OFFICER(S) BORDERED A BUS (OR OTHER
PUBLIC TRANSPORT) AND RANDOMLY SOUGHT CONSENT
FROM PASSENGERS?

Id. at 1818. (Appendix - 4).

Petitioner McPherson timely filed his notice to invoke the discretionary review jurisdiction of this Court. This brief on jurisdiction follows.

SUMMARY OF ARGUMENT

The decision of the district court in McPherson v. State, is a per curiam opinion which cites as controlling authority a decision, State v. Avery, that is now pending review before this Court in Case No. 73,289. State v. Avery, **13** F.L.W. 1816 (Fla. 4th DCA August **3**, 1988) (Appendix - 2-10), certified to this Court a question of great public importance. Consequently, this Court has jurisdiction to review the decision in petitioner's case under Article V, Section 3(b)(4) of the Florida Constitution.

ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW THE DECISION IN PETITIONER'S CASE BECAUSE THE DISTRICT COURT CITED AS CONTROLLING AUTHORITY A DECISION THAT IS NOW PENDING REVIEW IN THIS COURT.

In affirming petitioner's conviction against his challenge that the marijuana was discovered during an illegal search, the district court expressly relied upon its own decision in State v. Avery, 13 F.L.W. 1816 (Fla. 4th DCA August 3, 1988), in which it certified to this Court a question of great public importance. Mr. Avery filed his notice of discretionary review on the certified question on November 2, 1988, and it is now pending review in this Court under Case No. 73,289.

This Court has jurisdiction to review the decision in petitioner's case because the district court's per curiam opinion cited as controlling authority a decision, State v. Avery, which is now pending review in this Court on a question of great public importance. Jollie v. State, 405 So.2d 418 (Fla. 1981), State v. Brown, 475 So.2d 1 (Fla. 1985).

Accordingly, petitioner requests this Court to accept jurisdiction pending review of the decision in State v. Avery, supra, and to order briefs on the merits from both parties.

CONCLUSION

Based on the foregoing, the district court's citation PCA to State v. Avery, which is pending review in this Court, is a case that passes upon a question certified to be great public importance and allows this Court to exercise its jurisdiction pursuant to Article V, Section 3(b)(4) of the Florida Constitution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by courier, to JOAN FOWLER, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida 33401, this 14th day of November, 1988.

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