

IN THE SUPREME COURT OF FLORIDA

CASE NO. 73,637

DOROTHY CROSS,
Petitioner,

-vs-

THE STATE OF FLORIDA,
Respondent.

FILED
SID J. CLERK

FEB 8 1989 C

CLERK, SUPREME COURT
By: *pl*
Deputy Clerk

ON APPLICATION FOR DISCRETIONARY REVIEW

PETITIONER'S BRIEF ON JURISDICTION

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit
of Florida
1351 N.W. 12th Street
Miami, Florida 33125
(305) 545-3078

N. JOSEPH DURANT, JR.
Assistant Public Defender
Florida Bar No. 021365

Counsel for Petitioner

TABLE OF CONTENTS

INTRODUCTION.....1
STATEMENT OF THE CASE AND FACTS.....2
QUESTION PRESENTED.....4
SUMMARY OF ARGUMENT.....5
ARGUMENT.....6

THE DECISION OF THE THIRD DISTRICT COURT OF
APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH
THE DECISION OF THIS COURT IN CAPLAN v. STATE,
531 So.2d 88 (Fla. 1988).

CONCLUSION.....8
CERTIFICATE OF SERVICE.....9

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGES</u>
<u>CAPLAN v. STATE</u> 531 So.2d 88 (Fla. 1988).....	6
<u>NIELSON v. CITY OF SARASOTA</u> 117 So.2d 731 (Fla. 1960).....	6

IN THE SUPREME COURT OF FLORIDA

CASE NO.

DOROTHY CROSS,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON APPLICATION FOR DISCRETIONARY REVIEW

INTRODUCTION

Petitioner, Dorothy Cross, was the defendant in the trial court and the appellant in the Third District Court of Appeal. Respondent, the State of Florida, was the prosecution in the trial court and the appellee in the District Court of Appeal. In this brief, the parties will be referred to as they stood in the trial court. All references are to the defendant's appendix, paginated separately and identified as "A".

STATEMENT OF THE CASE AND FACTS

The state appealed from a pre-trial order granting the defendant's pretrial motion to suppress cocaine found in her valise. The salient facts heard on the motion to suppress are as follows:

Detectives observed the defendant at Miami Amtrak Station. She was carrying a small coach bag. They approached her and identified themselves as police officers. She agreed to speak with them. She showed her ticket and identification. The items were returned and one of the detectives told her they were having a problem with narcotics being transported through the train station. He then asked for permission to search her bag, advising her that she need not consent if she did not want to. She said it was okay to search. In the course of searching the detective discovered a hard, baseball shaped object wrapped in brown tape. The detectives testified that, in their more than twenty years combined experience as narcotics detectives, they had seen cocaine packaged on "hundreds of occasions." One of them, without asking permission of the defendant, cut into the baseball-shaped object and found cocaine.

Based on the foregoing facts, the trial court suppressed the cocaine and ruled that (1) the detective did not have probable cause to believe that the baseball-shaped object wrapped in tape contained contraband and (2) cutting into the object exceeded the scope of the consent. At the first hearing, the Third District Court agreed with the trial court and affirmed. State v. Cross, 13 F.L.W. 270 (Fla. 3d DCA January 26, 1988). However, en banc,

the District Court on December 27, 1988, reversed the suppression order and made the following findings:

"Once the detectives found the taped, baseball-shaped object, in light of their many years experience in narcotics work, they had probable cause to believe that Cross was carrying contraband The revelation of cocaine through the further examination of the object was nothing more than a search incident to a valid arrest."

(A. 2).

Notice of invocation of this Court's discretionary jurisdiction to review the decision of the District Court of Appeal was filed January 25, 1989.

QUESTION PRESENTED

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN CAPLAN v. STATE, 531 So.2d 88 (Fla. 1988)?

SUMMARY OF ARGUMENT

The District Court's holding that the mere observance of a baseball-shaped object often used for packaging cocaine was sufficient to afford probable cause to search the object directly conflicts with Caplan v. State, 531 So.2d 88 (Fla. 1988) wherein this Court held that "the mere observance of an opaque container commonly used to transport contraband does not, without more, give rise to probable cause to search."

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN CAPLAN v. STATE, 531 So.2d 88 (Fla. 1988).

This Court's jurisdiction to review decisions of District Courts of Appeal because of alleged conflict is invoked by (1) the announcement of a rule of law which conflicts with a rule previously announced in a district court or this Court, or (2) the application of a rule of law to produce a different result in a case which involved substantially the same facts as a prior district court or Supreme Court decision. Nielson v. City of Sarasota, 117 So.2d 731 (Fla. 1960). The opinion in question falls into the latter category. Accordingly, this Court's exercise of its discretionary jurisdiction to review the decision in question is warranted.

The clear cut conflict between this Court's decision in Caplan v. State, 531 So.2d 88 (Fla. 1988) and opinion sought to be reviewed was clearly and succinctly analyzed in the following from Judge Ferguson's dissenting opinion below:

A rule governing probable cause to search opaque containers which could hold either innocent or illegal contents was set forth recently by the Florida supreme court. In Caplan v. State, 531 So.2d 88 (Fla. 1988), the court held that "the mere observation of an opaque container, without more, cannot constitute probable cause. There must be at least an additional objective and reasonably specific element justifying the state agent's inference of wrongdoing." Caplan, 531 So.2d at 92.

The opaque container in Caplan was a hand-rolled cigarette, which in common experience, is more likely to contain contraband than is a ball-shaped and taped package. Holding that the hand-rolled cigarette must be suppressed, the court wrote that even if the officer possessed the expertise to recognize illegal narcotics, "the mere observance of an opaque container commonly used to transport contraband does not, without more, give rise to probable cause to search." Caplan, 531 So.2d at 92. Here, when the officers stopped Mrs. Cross, opened her luggage, and rummaged through her undergarments in public view, there was no evidence of the "something more" justifying an inference of wrongdoing required for probable cause to search a container other than the outer one for which consent was given.

(A. 5).

CONCLUSION

Based on the foregoing argument and authorities cited, petitioner requests this Court to exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal.

Respectfully submitted,

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit
of Florida
1351 N.W. 12th Street
Miami, Florida 33125
(305) 545-3078

BY: N. Joseph Durant, Jr.
N. JOSEPH DURANT, JR.
Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, JULIE S. THORNTON, Assistant, Suite N-921, 401 N.W. 2nd Avenue, Miami, Florida 33128, this 3rd day of February, 1989.



N. JOSEPH DURANT, JR.
Assistant Public Defender