IN THE SUPREME COURT OF FLORIDA

JOSEPH SERPA,

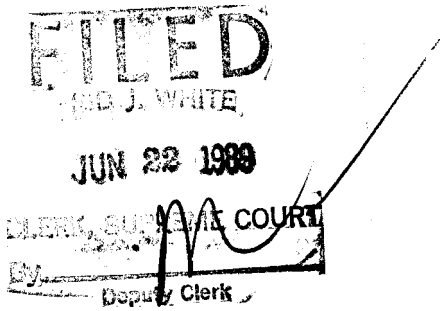
Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. 74,145



RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, Joseph Serpa, the criminal defendant and appellant in the case below will be referred to as "petitioner." Respondent, the State of Florida, the prosecuting authority and appellee below, will be referred to as "the State."

References to the one-volume record on appeal will be designated "(R:)."

All emphasis will be supplied by the State.

STATEMENT OF THE CASE AND FACTS

The State does not accept petitioner's Statement of the Case and Facts to the extent it is biased and conclusory and would substitute the following:

Petitioner was charged by information with possession of cocaine in excess of **400** grams (R **416).** Petitioner filed motions to suppress physical evidence and statements (R **417-421)** which were denied (R **90-91).** Petitioner was subsequently found guilty of possession of cocaine in an amount between **200** and **400** grams and sentenced for a five-year mandatory minimum (R **436-437).**

The charges arose from the following facts: Detectives Guess and Leiner entered a Greyhound bus (R 21). They were wearing their green jackets which clearly identify themselves as police officers with the Broward Sheriff's Office. When they approached the petitioner, they identified themselves as narcotics officers and petitioner agreed to speak with them (R 8, 10). They told petitioner of the narcotics problem in South Florida and asked if he would consent to a voluntary search of his bags which he had a right to refuse (R **10-11).** Petitioner pointed out his bag and asked whether they wanted to conduct the search on or off the bus (R 11). Petitioner was again advised that he need not consent to the search; nonetheless, he placed his bag on the aisle seat and unzipped the bag so Detective Leiner could conduct the search (R **11-12).** Leiner located the illegal narcotics, placed petitioner under arrest and read him

his Miranda warnings (R 12-13). Petitioner was given a Miranda form at the office and signed a waiver of consent to search (R 12-13). Petitioner later admitted that he knew he was carrying cocaine in the bag and that he was transporting it for money (R 39).

Petitioner appealed to the Fourth District Court of Appeal. The Fourth District Court of Appeal affirmed the conviction and certified the following question which was also certified to this Court in Avery v. State, 531 So.2d 182 (Fla. 4th DCA 1988), as being of great public importance:

> May evidence, obtained as a result of defendant's consent to search, be suppressed by the trial court as "coerced" upon the sole ground that the officer(s) boarded a bus (or other public transport) and randomly sought consent from passengers?

Petitioner filed a notice to invoke discretionary jurisdiction and subsequently filed its brief on the merits. This answer brief follows.

SUMMARY OF THE ARGUMENT

The Fourth District properly affirmed the trial judge's denial of petitioner's motion to suppress based upon its decision of State v. Avery. For the same reasoning established in Avery v. State, and subsequently fortified by the United States Supreme Court in United States v. Sokolow, the decision of the Fourth District Court of Appeals below must be approved.

ARGUMENT

THE TRIAL COURT CORRECTLY DENIED PETITIONER'S MOTION TO SUPPRESS WHERE NO SEIZURE OF PETITIONER OCCURRED AND PETITIONER VOLUNTARILY CONSENTED TO THE SEARCH.

The ruling of the trial judge on a motion to suppress comes to this Court clothed with a presumption of correctness; this Court should not substitute its judgment for that of the trial judge, but rather, should defer to the trial judge's authority as a fact-finder. Wasko v. State, 505 So.2d 1314 (Fla. 1987). The reviewing court interprets evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling. McNamara v. State, 357 So.2d 410 (Fla. 1978).

Petitioner alleges that its motion to suppress was erroneously denied. In an effort to support this theory, petitioner claims the following: the police actions, without a founded suspicion of criminal activity, tainted any alleged consent; the totality of the situation supported a finding of coercion; and the government intrusion invaded petitioner's right to privacy. On the contrary, as the trial court accurately stated below, as the State correctly argued on appeal, and as affirmed by the Fourth District Court of Appeal in reliance on State v. Avery, 531 So.2d 1182 (Fla. 4th DCA 1988), petitioner voluntary consented to the search of his luggage pursuant to a voluntary police/citizen encounter.

For the reasons capably expressed by the Fourth District's majority opinion in State v. Avery, and by the State in its brief in this Court in Avery, both of which are appended to this brief, this Court should answer the certified question in the negative. The State's position has been further fortified by the recent decision of the United States Supreme Court in United States v. Sokolow, 3 FLW Fed. 242, 245 (April 3, 1989), confirming that the need to stem drug trafficking in our nation's airports authorizes the police to approach and speak with travelers who may even mildly arouse their suspicions.

In sum, this Court should approve the decision of the Fourth District Court of Appeal.

CONCLUSION

WHEREFORE, Respondent, the State of Florida, respectfully submits that this Honorable Court should APPROVE the decision of the Fourth District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Answer Brief on the Merits" has been furnished by courier to: CHERRY GRANT, ESQUIRE, Assistant Public Defender, The Governmental Center, 301 N. Olive Avenue/9th Floor, West Palm Beach, Florida 33401 this 20th day of June, 1989.

Of Counsel