

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

KENNETH ATWOOD FORRESTER,

Appellant,

v.

CASE NO. 88-688

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT OF
AND FOR OKALOOSA COUNTY, FLORIDA

Aug 19 * 9 PM '88

INITIAL BRIEF OF APPELLANT

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STATE OF FLORIDA,

:

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INITIAL BRIEF OF APPELLANT

I PRELIMINARY STATEMENT

A one volume record on appeal will be referred to as "R" followed by the appropriate page number in parentheses. All proceedings below were before Circuit Judge G. Robert Barron.

II STATEMENT OF THE CASE

An information filed in the circuit court for Okaloosa on August 12, **1987** charged Kenneth Forrester with the possession of less than 20 grams of marijuana and the possession of cocaine (R 1-2). Forrester later filed a Motion to Suppress (R 3-7) which the court, after hearing evidence and argument on the matter, denied (R 8-9).

Forrester then pled nolo contendere to the charges, specifically reserving his right to appeal the trial court's order denying his Motion to Suppress (R 23). The court adjudged him guilty of those offenses and placed him on three years probation for the possession of cocaine offense and one year probation for the marijuana offense (R 28). The terms of the probation were to run concurrently with one another (R 28).

This timely appeal follows.

III STATEMENT OF THE FACTS

Deputy Johnson of the Okaloosa County Sheriff's office went to the Scampi Restaurant in Okaloosa County on October 27, 1987 because someone had reported some criminal mischief afoot (R 4). When he got there, the person who reported the incident said that someone had scratched his car, but he did not want the incident reported (R 37). He went on to say that he believed Forrester had drugs in his car which was parked in the restaurant parking lot (R 34). Officer Johnson called Deputy Davis, who came to the restaurant with his "K-9 dog, Brutus" (R 4). Davis walked the dog around several cars, and it alerted to the presence of drugs in Forrester's car and another car (R 5).

Forrester was in the kitchen of the restaurant cooking or preparing food (R 36), and Deputy Johnson went in and asked him to step outside and stand by his car (R 36, 39).

Deputy Davis asked Forrester to open his car, which he did (R 40). The two officers then searched the car and found the cocaine and marijuana (R 40-41, 47).

IV CONCLUSION

THE UNDERSIGNED COURT-APPOINTED COUNSEL FOR APPELLANT IS UNABLE TO MAKE A GOOD FAITH ARGUMENT THAT REVERSIBLE ERROR HAS OCCURRED IN THE TRIAL COURT.

After reviewing the record on appeal, and after researching the applicable law, the undersigned has concluded that no good faith argument can be made in support of the statement of judicial acts to be reviewed. Forrester claimed in his Motion to Suppress the police lacked probable cause to search his car. As to that claim, see, Cardwell v. State, 482 So.2d 512 (Fla. 1st DCA 1986); United States v. Place, 462 U.S. 696, 103 S.Ct 2637, 77 L.Ed2d 110 (1983).

This brief is being filed in order to comply with the requirements of Anders v. California, 386 U.S. 738 (1967) and this Court's opinion in Smith v. State, 496 So.2d 971 (Fla. 1st DCA 1986). Counsel requests that this Court enter an order allowing appellant a reasonable period of time in which to file his own brief, and thereafter observe the requirements of State v. Causey, 503 So.2d 321 (Fla. 1987.)

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the forgoing Initial Brief of Appellant has been furnished by hand delivery to, Helen Nelson, Assistant Attorney General, The Capitol, Tallahassee, Florida, and a copy has been mailed to appellant, KENNETH ATWOOD FORRESTER, c/o Buford Forrester, Post Office Box 207, Cowarts, Alabama, on this 10 day of August, 1988.



DAVID A. DAVIS