

IN THE SUPREME COURT OF FLORIDA

TYRONE E. SHAW,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 -----)

CASE NO. 74,298

FILED

SID J. WHITE

JUL 17 1989

CLERK, SUPREME COURT

By _____

Deputy Clerk

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, Tyrone E. Shaw, the criminal defendant and appellant in the case below, review granted, Case No. 74,298 (Fla. 1989), 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 Record on Appeal will be designated "(R)."

All emphasis will be supplied by the State.

STATEMENT OF THE CASE AND FACTS

The State accepts the Petitioner's statement of the case and facts, as it appears at pages 1 through 3 of his initial brief, to the extent the statement represents an accurate, non-argumentative recitation of the proceedings below, and only to the extent necessary for the resolution of the issues raised on appeal. The State accepts the statement subject to the additions and clarifications below:

In the instant case Detective Trawinsky and Detective Katz boarded a northbound Greyhound bus passing through Fort Lauderdale. The Petitioner was a passenger on that bus. The officers proceeded to the rear of the bus. (R 7). They began to do consent searches on everyone in the bus until they finally reached the Petitioner. (R 14). Upon reaching the Petitioner Detective Trawinsky asked if he could speak to him for a moment. (R 7). Petitioner said yes. (R 7). Detective Trawinsky identified himself and Detective Katz as police officers by a show of his badge and identification. (R 7). It was explained to Petitioner that Florida was having problems with narcotics and weapons leaving the state and that the police were soliciting the public's cooperation through voluntary consent to search of luggage in order to help resolve the problem. (R 7,15). Petitioner was asked if he would voluntarily give his consent to a search of his luggage which the Petitioner responded affirmatively. He was told by Detective Trawinski that he did not have to consent to the search and that he had a right to refuse. (R 7,20).

At no time was the Petitioner's egress or ingress blocked. Petitioner had no problem understanding English and he clearly understood everything that was said by the Detective. (R 8). Petitioner voluntarily pulled down a grey tote bag from the overhead rack and unzipped it for the Detective. (R 7). At the very top of the bag was a brown taped wrapped package which the Petitioner explained contained marijuana. (R 9).

The Petitioner was arrest and verbally advised of his rights by Detective Trawinski. He was then transported to the airport narcotic office for processing. (R 8). There the Petitioner was read his Miranda rights again. Petitioner signed a Miranda rights form and a consent to search form. (R 9,24). A through search of the Petitioner's remaining luggage revealed four more brown wrapped packages containing marijuana and cocaine. (R 9). After Petitioner signed the Miranda rights form, he stated to the police that he had bought the contraband for \$5,000. and intended to sell the contraband in Alabama. (R 11,22).

Petitioner's witness, Elizabeth Talbot, testified that she taught Petitioner mainly on an auditory bases using time language masters. She testified that the Petitioner would have to see it, hear it, and write it before understanding it. In the instant case Petitioner was verbally told his rights (R 8), he was then read his rights from a form, and he read the consent form, and he signed both forms. (R 17). Detective Trawinske testified that the Petitioner had no

problem with English and understood him completely. (R 8).

Moreover the Petitioner's behavior indicates that he did

understand what was said to him.

SUMMARY OF ARGUMENT

The Detective's approach of Petitioner on the bus amounted to a voluntary encounter not triggering any Fourth Amendment protections. Petitioner voluntarily agreed to speak to the Detective, and gave his consent to a search of his bag and, in fact, pulled the tote bag down from the rack and unzipped the bag for the Detective. Since Petitioner did freely and voluntarily consent to a search of his bag, the Petitioner's motion to suppress was properly denied by the trial court.

ISSUE

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?

ARGUMENT

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, the State submits that this Court should answer the above question in the negative. The State would add here that its position has been further fortified by the recent decision of the United States Supreme Court in United States v. Sokolow, 3 FLW Fed. **S242, 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.

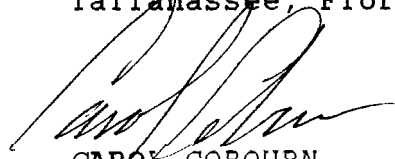
In sum, the State contends that this Court should approve the decision of the Fourth District and affirm the conviction of the Petitioner.

CONCLUSION

WHEREFORE respondent, the State of Florida, respectfully submits that this Honorable Court should APPROVE the decision of the Fourth District and AFFIRM the conviction of the Petitioner.

Respectfully submitted,

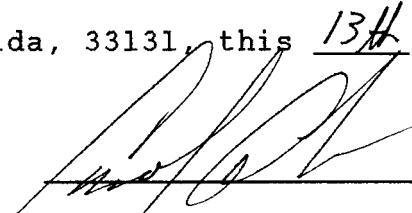
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail/courtier to THOMAS F. ALMON, Attorney for Petitioner, 1024 Alfred I. duPont Building, 169 East Flagler Street, Miami, Florida, 33131, this 13th day of July, 1989.



Of Counsel