OIA 1-11-90

THE SUPREME COURT OF FLORIDA

CASE NO. 84,421

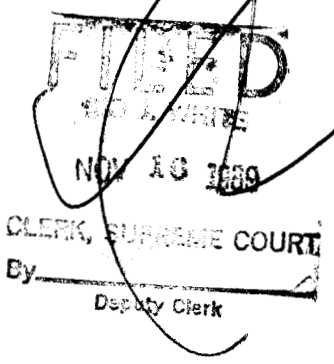
VINCENT NELSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.



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AN APPEAL FROM THE DISTRICT COURT OF APPEAL OF THE FOURTH DISTRICT

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ANSWER BRIEF OF RESPONDENT

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

PATRICIA G. LAMPERT
Assistant Attorney General
Florida Bar #747394
111 Georgia Avenue, Suite 204
West Palm Beach, Florida 33401
Telephone: (407) 837-5062

Counsel for Respondent

TABLE OF CONTENTS

	PAGE
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	
POINT INVOLVED	
THE TRIAL COURT CORRECTLY DENIED PETITIONER'S MOTION TO SUPPRESS.	4-7
CONCLUSION	8
CERTIFICATE OF SERVICE	8

TABLE OF CITATIONS

CASE	PAGE
Caso v. State, 524 So.2d 422 (Fla. 1988)	7
Cohen v. Mohawk, 137 So.2d 222 (Fla. 1962)	7
Combs v. State, 436 So.2d 93 (Fla. 1983)	6
Ensor v. State, 403 So.2d 349 (Fla. 1981)	6
McNamara v. State, 357 So.2d 411 (Fla. 1978)	6
Nelson v. State, 546 So.2d 49, 50 (Fla. 4th DCA 1989)	5
Palmer v. State, 286 A.2d 572 (Md. App. 1972)	5
State v. Damico, 513 S.W.2d 351 (Mo. 1974)	5
State v. Ellison, 455 So.2d 424 (Fla. 2nd DCA 1984)	6
State v. LeCroy, 435 So.2d 354 (Fla. 4th DCA 1983)	6
Stuart v. State, 360 So.2d 406 (Fla. 1978)	6
United States v. Hargrove, 647 F.2d 411, 413 (4th Cir. 1981)	4
United States v. Hensel, 672 F.2d 578. 579 (6th Cir.) cert. denied 457 U.S. 1107, 102 S.Ct. 2907, 73 L.Ed.2d 1316 (1982)	4
United States v. Lanford, 838 F.2d 1351 (5th Cir. 1988)	4

PRELIMINARY STATEMENT

Petitioner was the defendant and appellant and Respondent was the prosecution and the appellee in the criminal division of the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida and the Fourth District Court of Appeal, respectively.

In the brief, the parties will be referred to as they appear before this Honorable Court of Appeal, except Respondent may also be referred to as the State.

The following symbol will be used:

"R" Record on Appeal

STATEMENT OF THE CASE AND FACTS

The State accepts the Petitioner's statement of the case and facts as substantially true and correct.

SUMMARY OF THE ARGUMENT

The trial court correctly denied petitioner's motion to suppress. As a thief driving a stolen car does not have standing to contest a search of that car, petitioner, a thief, has no standing to contest his own stop when he places himself in that vehicle.

Regardless of the standing issue, the denial of the motion to suppress is proper. A warrantless seizure of objects within an officer's plain view may be made when the officer is in a place where he is lawfully allowed to be and inadvertantly comes upon an object openly visible which constitutes evidence. Regardless of whether the petitioner had standing to contest his own stop, the officer was lawfully in the area and observed the car and its license tag in plain view.

Therefore, no matter what the reason was for the trial court permitting the evidence of the stolen car, it is clearly admissible. Accordingly, the trial court's ruling must be affirmed.

ARGUMENT

POINT INVOLVED

THE TRIAL COURT CORRECTLY DENIED PETITIONER'S MOTION TO SUPPRESS.

The petitioner disputes the admission of his driving a stolen vehicle, claiming the officer had no founded suspicion to stop or probable cause to make an arrest. Specifically, the petitioner contends that despite his lack of expectation of privacy in the stolen car, he should still have standing to refute an alleged improper stop of that car. The State disagrees, as a thief driving a stolen car does not have standing to contest the stopping of the vehicle.

It has already been established that a driver of a stolen car lacks a legitimate expectation of privacy. United States v. Lanford, 838 F.2d 1351 (5th Cir. 1988); United States v. Hensel, 672 F.2d 578, 579 (6th Cir.), cert. denied 457 U.S. 1107, 102 S.Ct. 2907, 73 L.Ed.2d 1316 (1982); United States v. Hargrove, 647 F.2d 411, 413 (4th Cir. 1981). Therefore, the defendants in the above-cited cases lacked standing to challenge the search of the automobile. What distinguishes these decisions from the case at bar is that these decisions involve situations in which it does not appear that there was any basis for claiming that the car searched was the fruit of an illegal arrest of the defendant.

In this case, the petitioner was stopped on a mere hunch and was subsequently charged with grand theft of the

vehicle in which he was stopped. Petitioner's wrongful and illegitimate presence in the vehicle should negate any "standing" he would ordinarily have to contest his own stop. No valuable social purpose could conceivably be served by extending the protection of the Fourth Amendment to a thief in the enjoyment of a stolen vehicle. Palmer v. State, 286 A.2d 572 (Md. App. 1972). Therefore, if petitioner does not have standing to contest a search of a stolen car, society should recognize that petitioner is not protected if he places himself in that vehicle. Nelson v. State, 546 So.2d 49, 50 (Fla. 4th DCA 1989).

Courts seem to have skirted the issue of whether a thief driving a stolen car has standing to contest its stop. Somewhat unique is State v. Damico, 513 S.W.2d 351 (Mo. 1974) where the stolen car was searched at the police station as a consequence of the driver/defendant's earlier arrest. The court concluded that because the defendant" had no proprietary or possessory interest in the vehicle he cannot challenge the legality of the search, even if the arrest was unlawful (a question we do not reach)." Accordingly, as a thief driving a stolen vehicle does not have standing to contest a search of the same, he should not have standing to contest its stop when he wrongfully places himself in that vehicle.

However, regardless of whether the petitioner has standing to contest the stop, the Fourth District was correct in not suppressing evidence of the stolen car. The ruling of a trial court on a motion to suppress comes to the appellate court

clothed with a presumption of correctness; the reviewing court must interpret the evidence, reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling. McNamara v. State, 357 So.2d 411 (Fla. 1978)

It is well-established that a warrantless seizure of objects within the plain view of an officer may be made when the officer is in a place where he has a lawful right to be, when he inadvertently comes upon an object which is openly visible and it is immediately apparent to the officer that the object constitutes evidence. See Ensor v. State, 403 So.2d 349 (Fla. 1981); State v. Ellison, 455 So.2d 424 (Fla. 2nd DCA 1984).

In the instant case, the officer was lawfully patrolling the area and observed the vehicle and its license tag in plain view (R 32). The stop of the vehicle is irrelevant because the license tag was clearly in view of the officer. Thus, despite the propriety of the stop, the car would inevitably have been discovered as stolen pursuant to the license tag being in open view. See State v. LeCroy, 435 So.2d 354 (Fla. 4th DCA 1983).

Therefore, no matter what the reason was for the trial court allowing the evidence, the evidence of the stolen vehicle is clearly admissible. Combs v. State, 436 So.2d 93 (Fla. 1983); Stuart v. State, 360 So.2d 406 (Fla. 1978). A conclusion or decision of the trial court will generally be affirmed, even when its based on erroneous reasoning, if the evidence or an

alternative theory supports it. Caso v. State, 524 So.2d 422 (Fla. 1988). Thus this Court is obliged to affirm the trial court's ruling, regardless of the reasoning given. Cohen v. Mohawk, 137 So.2d 222 (Fla. 1962).

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Honorable Court affirm the decision of the Fourth District Court of Appeal.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

PATRICIA G. LAMPERT
Assistant Attorney General
Florida Bar #747394
111 Georgia Avenue, Suite 204
West Palm Beach, Florida 33401
Telephone: (407) 837-5062

Counsel for Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by courier to Anthony Calvello, Assistant Public Defender, 9th Floor, Governmental Center, 301 N. Olive Avenue, West Palm Beach, Florida 33401, this 14th day of November 1989.

Of Counsel

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