IN THE SUPREME COURT OF FLORIDA

VINCENT NELSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 74,421

PETITIONER'S AMENDED BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the Defendant in the Criminal Division of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida and the Appellant in the District Court of Appeal, Fourth District. Respondent was the prosecution and Appellee in the lower courts. In this brief, the parties will be referred to as they appear before this Court.

The symbol "R" will denote record on appeal.

STATEMENT OF THE CASE AND FACTS

Petitioner was charged by way of an information filed in the Fifteenth Judicial Circuit with grand theft. He filed a written motion to suppress physical evidence seized from him as a result of an unlawful search by Office Woodward and "any evidence seized subsequent to Officer Woodward's stop of the Defendant must be suppressed as fruit of the poisonous tree."

A hearing was held on Petitioner's motion. The parties stipulated to the facts. The facts of this case as found by the Fourth District Court of Appeal in the instant decision, Nelson v. State, 14 F.L.W. 1543 (Fla. 4th DCA June 28, 1989) were as follows:

> In the early morning hours of April Fool's Day, 1987, appellant sat behind the driver's wheel alone in a car backed in the driveway of a house to which he had no connection. As a West Palm Beach police officer approached, appellant started the car to pull out onto the street. The officer blocked the car with his police cruiser forcing appellant to stop in the driveway. The officer learned from the police dispatcher that the car was stolen. Appellant was arrested and charged with Grand Theft. Appellant entered a no contest plea reserving the right to appeal the trial judge finding appellant lacked standing to object to the stopping of the stolen car.

F.L.W. at 1543.

A timely Notice of Appeal was filed by Petitioner with the Fourth District Court of Appeal.

Judge Garrett writing for the majority affirmed the decision of the trial court holding: "If the driver of a stolen car does not have standing to object to a search of the car, then the driver of a stolen car does not have standing to object to a seizure of the car. ... Since Appellant had no right to start the car, he had no right to object to its stop." Judge Stone filed a written dissent.

Petitioner file a timely Notice of Review with this Court.

SUMMARY OF THE ARGUMENT

The decision, at bar, expressly and directly conflicts with this Honorable Court's decision in State v. Jones, 483 So.2d 433 (Fla. 1986), the Second District's decisions in Wulff v. State, 533 So.2d 1191 (Fla. 2d DCA 1988) and State v. Delaney, 517 So.2d 696 (Fla. 2d DCA 1987) and the Third District's decision in State v. Scott, 481 So.2d 40 (Fla. 3d DCA 1985), rev. denied, 492 So.2d 1335 (Fla. 1986) on the Fourth Amendment standing issue. Petitioner was subject to an illegal stop or seizure within the meaning of the Fourth Amendment. Thus Petitioner has standing to contest the illegal stop of his person irrespective of the fact that he did not have a reasonable expectation of privacy in the area searched.

ARGUMENT

POINT

PETITIONER HAS PROPERLY INVOKED THE JURISDICTION OF THIS COURT SINCE THE OPINION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THIS COURT AND THAT OF OTHER DISTRICT COURTS OF APPEAL

To properly invoke the "conflict certiorari" jurisdiction of this Court, Petitioner must demonstrate that there is "express and direct conflict" between the decision challenged herein, and those holdings of other Florida appellate courts or this Honorable Court on the same rule of law to produce a different result than other state appellate courts faced with the substantially same facts. Dodi Publishing v. Editorial America, S.A., 385 So.2d 1369 (Fla. 1980); Jenkins v. State, 385 So.2d 1356 (Fla. 1980); Article V, § 3(b)(3), Fla. Const. (1980); Fla.R.App.P. 9.030(a)(2)(iv).

The sole issue decided by the Fourth District was whether Petitioner-defendant had standing to raise Fourth Amendment issues with respect to evidence observed in open view following an unlawful stop. The majority held that Petitioner lacked standing to do so. This opinion of the Fourth District Court of Appeal, Nelson v. State, 14 F.L.W. 1543 (Fla. 4th DCA June 28, 1989) (See Appendix) expressly and directly conflicts with the decision of this Honorable Court in State v. Jones, 483 So.2d 433 (Fla. 1986), the Second District's decision in Wulff v. State, 533 So.2d 1191 (Fla. 2d DCA 1988) and State v. Delaney, 517 So.2d