IN THE SUPREME COURT OF FLORIDA

WILLIE REYNOLDS,

Petitioner,

v. CASE NO. 75,832

STATE OF FLORIDA,

Respondent.

_____/

REPLY BRIEF OF PETITIONER ON THE MERITS

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REPLY BRIEF OF PETITIONER ON THE MERITS

ARGUMENT

ISSUE I

THE FOURTH AMENDMENT DOES NOT PERMIT A PER SE RULE THAT ALL PERSONS SUSPECTED OF DRUG TRAFFICKING MAY BE HANDCUFFED WHEN DETAINED FOR INVESTIGATION ON LESS THAN PROBABLE CAUSE AND THEREFOR CONSENT TO SEARCH IS PRESUMPTIVELY TAINTED IF GIVEN DURING A PERIOD OF ILLEGAL DETENTION IN HANDCUFFS.

A. HANDCUFFING

The state does not want to acknowledge what the District Court explicitly held: All persons suspected of drug dealing can be handcuffed incident to detention on less than probable cause. That is the rule which the District Court announced and applied here.

Significantly, the state confesses the District Court's error of fashioning an overinclusive rule when it says "The question as framed by the District Court does not lend itself to a yes or no answer. The line between an investigative stop

and an arrest cannot be determined by any per se rule". (state's brief at 1).

Despite that concession, which matches petitioner's argument, the state inconsistently defends the District Court's holding by asserting that a per se rule of handcuffing suspected drug dealers is permissible. Both the trial and appellate courts applied this per se rule without regard to the specific facts; in doing so those courts perpetuated and approved the automatic handcuffing policy of the Tallahassee Police Department.

The difficulty engendered by the District Court's opinion is exposed by trying to apply it. The state's brief mentions in vague terms "suspected large scale cocaine traffickers". (state's brief at 3). How should the courts or police distinguish "small scale" from "large scale" traffickers? Does the policy apply to any street seller, or only those possessing more than 28 grams, the minimum for trafficking[1]? How sure must the police be that a trafficking amount is present? Does this rule extend to simple possession as well?

Since the District Court's conclusion was bolstered by reference to the "irrationality" produced by cocaine, the police could likely interpret the decision as license to handcuff any person detained on suspicion of merely possessing cocaine. That is a danger of the District Court's ruling. It

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[1]Section 893.135(1)(b), Florida Statutes (1989).

promotes wholesale invasion of liberty without regard for the circumstances of the detention or rights of the individual.

The most telling weakness in the state's argument is its utter failure to recite any facts about petitioner or the stop from which a reasonable inference of danger would arise. All the testimony was anecdotal; no testimony explained the necessity for handcuffing when the officers confronted petitioner under the circumstances unique to this case. In summary, the lower courts wrongly upheld the seizure by applying a per se rule not justified by the facts.

Without reasonable suspicion based on specific facts tending to show the person is armed, the seizure of a person by handcuffing on less than probable cause violates the Fourth Amendment. Terry v. Ohio, 392 U.S. 1 (1968); see, Florida v. Royer, 460 U.S. 491, 506-07 (1983) ("Even in the discrete category of airport encounters, there will be endless variations in the facts and circumstances, so much variation that it is unlikely the courts can reduce to a sentence or a paragraph a rule that will provide unarguable answers to the question whether there has been an unreasonable search or seizure in violation of the Fourth Amendment").

The District Court's ruling here is an attempt to envelop an unpredictable number of individual circumstances with one simple rule. As the court presaged in Royer, the effort must be deemed a failure because the factual variations are too diverse. What is reasonable in one context may not be in another. That is why the reasonableness determination must allow

for consideration of the totality of the circumstances, not just, as here, relying on one fact that overrides all others.

The opinion of the District Court plainly authorizes a per se rule in contravention of the totality of circumstances test, and should be quashed.

B. CONSENT

The state does not explain how the lower court's rulings on consent can be upheld when an improper legal standard for consent was used. If the custody was illegal, the consent was presumptively tainted. Norman v. State, 379 So.2d 643 (Fla. 1980). The lower courts did not apply the correct standard and therefor, if the custody was illegal, the ruling on consent must be reversed. Bostick v. State, 554 So.2d 1153 (Fla. 1989).

ISSUE II

WHETHER A PROBATIONARY SPLIT SENTENCE VIOLATES DOUBLE JEOPARDY BY ALLOWING COURTS TO IMPOSE A DISPOSITIONAL ALTERNATIVE NOT AUTHORIZED BY THE LEGISLATURE.

Petitioner agrees with the state that this issue should be decided with Glass v. State, Case No. 75,600.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to Virlindia Doss, Assistant Attorney General, The Capitol, Tallahassee, Florida, and a copy has been mailed to petitioner, Willie Reynolds, #559772, 2616A Springhill Road, Tallahassee, Florida, 32304, this 26th day of June, 1990.

MICHAEL J. MINERVA