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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner

v.

CASE NO.: 76,404

ANNIE HESTER,

Respondent.

_____ /

PETITIONER'S BRIEF ON THE MERITS

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ISSUE

IF A MOTOR VEHICLE IS LAWFULLY STOPPED BY A LAW ENFORCEMENT OFFICER AND THE DRIVER CONSENTS TO THE OFFICER SEARCHING THE VEHICLE, DOES THE CONSENT GIVEN EXTEND TO THE SEARCH OF A BROWN PAPER BAG FOLDED-OVER, WITHIN THE VEHICLE WHICH IS NEITHER LOCKED NOR SEALED?

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PRELIMINARY STATEMENT

Respondent, ANNIE HESTER, Appellant/defendant below, will be referred to herein as "Respondent." Petitioner, the State of Florida, will be referred to herein as "Petitioner". References to the record on appeal will be by the symbol "R" followed by the appropriate page number in parentheses.

STATEMENT OF THE CASE AND FACTS

Respondent was charged with trafficking in cocaine in an amount of 400 grams or more, and driving with a suspended driver's license (R 443). The following facts are taken from the appellate opinion in this case:

At a pretrial suppression hearing, evidence indicated a Florida Highway Trooper, on routine duty November 21, 1987, and while in the process of responding to an accident call on the Florida Turnpike, passed a vehicle with its high beam lights on. Subsequently, the accident call was cancelled and the trooper pulled his vehicle off to the right shoulder of the road to wait for the vehicle with the high beam lights to approach from the rear. The vehicle was stopped by the trooper, who then approached the driver's side, requesting of the appellant her driver's license and vehicle registration. The trooper testified it was his routine procedure to ask people whom he stopped if they would consent to a search because of the presence of an extensive drug problem in Florida. Appellant indicated she was the owner of the vehicle and consented to the search of the vehicle. The trooper went to the back of the vehicle with her, and with her car keys, opened the hatchback. The search of the contents of the trunk of the vehicle produced nothing.

The trooper continued his search of the inside of the vehicle, after requesting a passenger to remove herself from the vehicle. The interior of the vehicle was then searched by the trooper. He first found a handbag in the back seat of the car and went through it. It was absent any contraband. He then found on the passenger side of the vehicle a brown paper bag which was "sitting there. It was folded over." He observed two wrapped packages inside the bag which he suspected to be two kilo size packages containing cocaine.

The appellant was arrested and placed in the trooper's patrol car. The trooper then continued the search of the vehicle and there he found another handbag, containing an unlabeled pill bottle of four or five pieces of cocaine rock.

Hester v. State, 563 So.2d 191, 192 (Fla. 4th DCA 1990). At no time did the Respondent withdraw or limit her consent to the search.

The trial court denied Respondent's motion to suppress (R 94), and after a trial, Respondent was found guilty as charged (R 457). On appeal, the Fourth District Court of Appeal reversed the trial court's order denying the motion to suppress and ordered the Respondent discharged, but certified the following as a question of great public importance:

If a motor vehicle is lawfully stopped by a law enforcement officer and the driver consents to the officer searching the vehicle, does the consent given extend to the search of a brown paper bag folded-over, within the vehicle, which is neither locked nor sealed?

Notice to invoke this Court's discretionary jurisdiction was timely filed on July 17, 1990, and a briefing schedule was issued on January 23, 1992.

SUMMARY OF ARGUMENT

The U.S. Supreme Court's decision in Florida v. Jimeno,
infra, is dispositive of the issue in this case. The appellate
court's reversal of Respondent's convictions must be quashed.

ARGUMENT

ISSUE I

IF A MOTOR VEHICLE IS LAWFULLY STOPPED BY A LAW ENFORCEMENT OFFICER AND THE DRIVER CONSENTS TO THE OFFICER SEARCHING THE VEHICLE, DOES THE CONSENT GIVEN EXTEND TO THE SEARCH OF A BROWN PAPER BAG FOLDED-OVER, WITHIN THE VEHICLE WHICH IS NEITHER LOCKED NOR SEALED?

Pursuant to a valid stop for a traffic infraction, the state trooper who stopped the Respondent informed her of the problem of illegal drugs being transported on the Florida Turnpike (R 11). The trooper asked the Respondent for her consent to search her car and the Respondent consented to a search (R 12). On the floorboard of the passenger side of the front seat was a brown paper bag which was folded over (R 16). The bag contained two kilograms of cocaine (R 17). The trial court denied Respondent's motion to suppress (R 94).

On appeal, the Fourth District Court of Appeal reversed the denial of the motion to suppress, holding that

The scope of allowable searches appears to be limited to the vehicle, and does not extend to any type of container within the vehicle. The question of closure is a question which must be established by the evidence. In this case, the brown paper bag, folded over and with contents not visible, would qualify as a closed or sealed container and, therefore, fell outside the cope of the consent to search the vehicle. *State v. Jimeno*, 550 So.2d 1176 (Fla. 3d DCA 1989); *Shelton v. State*, 549 So.2d 236 (Fla. 3d DCA 1989); *rev. dismissed*, 557 So.2d 867 (Fla. 1990); *Gonzales v. State*, 547 So.2d 253 (Fla. 4th DCA 1989).

563 So.2d 191, 193 (Fla. 4th DCA 1990).

The appellate court went on to certify the following question as one of great public importance:

If a motor vehicle is lawfully stopped by a law enforcement officer and the driver consents to the officer searching the vehicle, does the consent given extend to the search of a brown paper bag folded-over, within the vehicle, which is neither locked nor sealed?

Hester, supra at 193.

On May 23, 1991, the United States Supreme Court reversed this Court's opinion in State v. Jimeno. In Florida v. Jimeno, 500 U.S. ___, 114 L.Ed.2d 297, 111 S.Ct. 1801 (1991), the U.S. Supreme Court held that

The scope of a search is generally defined by its expressed object. *United States v. Ross*, 456 U.S. 798 (1982). In this case, the terms of the search's authorization were simple. Respondent granted Officer Trujillo permission to search his car, and did not place any explicit limitation on the scope of the search. Trujillo had informed respondent that he believed respondent was carrying narcotics, and that he would be looking for narcotics in the car. We think that it was objectively reasonable for the police to conclude that the general consent to search respondent's car included consent to search containers within that car which might bear drugs. A reasonable person may be expected to know that narcotics are generally carried in some form of a container. "Contraband goods rarely are strewn across the trunk or floor of a car." *Id.*, at 820. The authorization to search in this case, therefore, extended beyond the

surfaces of the car's interior to the paper bag lying on the car's floor.

114 L.Ed.2d at 303.

On remand to this Court, this Court quashed the decision of the district court of appeal affirming the suppression of the evidence found in the Jimenos' car and remanded the case for trial. State v. Jimeno, 588 So.2d 233 (Fla. 1991).

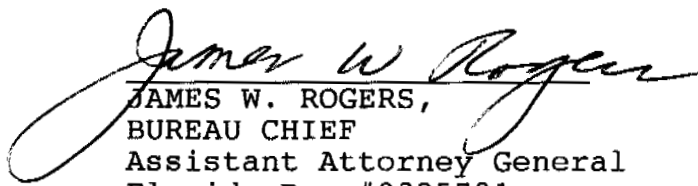
As the facts of the instant case and Jimeno are identical regarding the consent, the search, and the contraband found in a paper bag on the floor of the car, pursuant to Article I, Section 12, of the Florida Constitution, this Honorable Court should to apply the holding in Jimeno to the instant case and answer the certified question in the affirmative, thereby reinstating the Respondent's convictions.

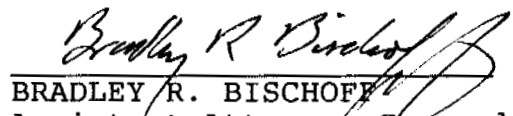
CONCLUSION

Petitioner urges this Honorable Court to answer the certified question in the affirmative and affirm the trial court's order denying Respondent's motion to suppress evidence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to GENE F. REIBMAN, Esq., counsel for respondent, 600 N.E. 3rd Avenue, Fort Lauderdale, Florida 33304, this 17th day of February, 1992.


BRADLEY R. BISCHOFF
Assistant Attorney General