IN THE SUPREME COURT OF FLORIDA

CASE NO. 78,033

THE STATE OF FLORIDA,

Petitioner,

vs.

TROY SINGLETON,

Respondent.

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ON APPLICATION FOR DISCRETIONARY REVIEW

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BRIEF ON JURISDICTION

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## INTRODUCTION

The petitioner, the State of Florida, was the prosecution in the trial court, and the appellee in the Third District Court of Appeal. The respondent, Troy Singleton, was the defendant in the trial court, and the appellant in the Third District Court of Appeal. This brief refers to the parties as they stand before this Court. The symbol "A." designates the appendix attached to this brief.

## STATEMENT OF THE CASE AND FACTS

The respondent disagrees with the following assertion contained in the petitioner's Statement of the Case and Facts: "The Third District held that, even though the Respondent had stolen the car and at the time of the search was no longer driving the car, the Respondent still had standing to challenge the lawfulness of the search of the car." (Petitioner's Brief on Jurisdiction at 2).

The Third District Court of Appeal's opinion merely states that, upon the holding in Nelson v. State, 16 F.L.W. 225 (Fla. March 28, 1991), it is reversing the order of the trial court which denied a motion to suppress on the ground of lack of standing. (A. 1-2). According to the opinion, the trial court's order "reads in part as follows:"

> "'ORDERED AND ADJUDGED that said Motion be, and the same is hereby denied. Defendant did not have the permission or consent of the owner of the subject vehicle and was not driving said vehicle at the time of the said search and therefore lacks the requisite legal standing to challenge the search thereof. U.S. v. Peters, 791 F.2d 1270.'"

(A. 1-2).

The Third District Court of Appeal reversed, without additional comment, and returned the cause to the trial court for further proceedings, commencing with a hearing on the motion to suppress. (A. 2). It also reversed the trial court's order denying the return of the defendant's property, "in light of our initial ruling, without prejudice." (A. 2).

## QUESTION PRESENTED

WHETHER THE DECISION IN THE INSTANT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT'S DECISION IN NELSON V. STATE, 16 F.L.W. 225 (FLA. MARCH 28, 1991), AND THE FIFTH DISTRICT'S DECISION IN TONGUE V. STATE, 544 SO.2D 1173 (FLA. 5TH DCA 1989).

## SUMMARY OF ARGUMENT

There is no express and direct conflict between the decision of the Third District Court of Appeal in this case and the decisions in Nelson v. State, 16 F.L.W. 225 (Fla. March 28, 1991), and Tongue v. State, 544 So.2d 1173 (Fla. 5th DCA 1989).

Contrary to the petitioner's assertion, the Third District Court of Appeal's opinion does not hold that the driver of a stolen vehicle, who no longer is in possession of the vehicle, has standing to challenge the lawfulness of the search of the vehicle. The opinion neither states such a holding, nor does it set forth a factual premise from which such a holding could be inferred, not even the conclusion, so heavily relied upon by petitioner, that the automobile was "stolen." Indeed, the opinion, like the order it reverses, contains no facts regarding the circumstances of the search and seizure, and thus cannot even be factually compared with the decisions in Nelson and Tongue, much less shown to be in conflict with those decisions.

Even assuming arguendo that it can be inferred that a stolen vehicle is involved, the most that can be concluded from the opinion is that that fact alone does not, under all circumstances, resolve the question of standing. That is a far cry from the holding supposed by the petitioner, namely, that, as a matter of law, a thief has standing to challenge a search of the stolen property. It is also perfectly consistent with Nelson and Tongue, and, in fact, follows from this Court's rejection in Nelson of the contention that the driver of a stolen vehicle has no fourth amendment protection whatsoever, regardless of the

circumstances.

Neither Tongue nor Nelson stand for the broad proposition urged by the petitioner that the driver of a stolen car can never challenge the introduction of evidence seized from the car. As Nelson makes clear, there are circumstances where even a thief can challenge the introduction of evidence unreasonably seized. Fourth amendment standing is determined by an inquiry into the totality of the circumstances surrounding the search and seizure, not by labelling the defendant a thief. The decision of the Third District Court of Appeal in this case, which reverses and remands for a hearing, is consistent with that proposition, and follows from it.

Because the petitioner has not demonstrated the required express and direct conflict, discretionary review should be denied.

## ARGUMENT

### THERE IS NO EXPRESS AND DIRECT CONFLICT BETWEEN THE INSTANT CASE AND EITHER NELSON V. STATE, 16 F.L.W. 225 (FLA. MARCH 28, 1991), OR TONGUE V. STATE, 544 SO.2D 1173 (FLA. 5TH DCA 1989).

The Third District Court of Appeal's decision in this case does not expressly and directly conflict with either Nelson v. State, 16 F.L.W. 225 (Fla. March 28, 1991), or Tongue v. State, 544 So.2d 1173 (Fla. 5th DCA 1989). The decision does not state a rule of law that is in conflict with Nelson or Tongue, nor does it present a conflicting application of the same rule of law to the same controlling facts.

Contrary to the petitioner's assertion, the Third District Court of Appeal did not hold that "the driver of a stolen automobile who no longer has possession of that automobile, has standing to challenge the lawfulness of the search of that automobile." (Petitioner's Brief on Jurisdiction at 5). (See A. 1-2). The opinion does not state such a holding. Nor does it present a factual premise from which such a holding could be inferred.

After reciting the trial court's order -- which found no standing because the defendant did not have the permission or consent of the vehicle's owner and was not driving it at the time of the search -- the Third District Court of Appeal reversed, "upon the holding in Nelson v. State," and, without additional comment, remanded the cause for further proceedings, commencing with a hearing on the motion to suppress. (A. 1-2). No other facts regarding the circumstances of the search and seizure, or the defendant's standing to challenge it, are set forth in the

opinion. (A. 1-2).

Notably absent from the opinion is the factual premise for the petitioner's entire argument, namely, that the respondent was the "driver of a stolen automobile." (Petitioner's Brief on Jurisdiction at 5). The opinion does not mention a stolen automobile, and does not say that the respondent either stole or drove the automobile involved. (A. 1-2). Accordingly, the opinion provides no basis for the holding supposed by the petitioner.

There is also no basis for the petitioner's conclusion that the instant case involves the same facts as Tongue. (Petitioner's Brief on Jurisdiction at 7). The opinion in this case, like the order it reverses, does not describe the circumstances of the search and seizure. To the contrary, it remands for a hearing to determine those circumstances. (A. 1-2). It does not assert, as the petitioner suggests, that the automobile involved was stolen, or that "no physical evidence was taken from Respondent's person;" and it provides no basis whatsoever for the petitioner's legal conclusions about where the respondent did or did not have a legitimate expectation of privacy. (Petitioner's Brief on Jurisdiction at 7). (See A. 1-2). Indeed, because, unlike Nelson and Tongue, the decision in this case does not describe the circumstances of the search and seizure, it cannot even be compared with those decisions, much less shown to be in conflict with them.

Even assuming arguendo that it can be inferred that a stolen vehicle is involved, the most that can be concluded from the

opinion is that that fact alone does not automatically resolve the question of standing, regardless of any other circumstances. That is a far cry from the holding supposed by the petitioner, namely, that, as a matter of law, a thief always has standing to challenge a search of the stolen property. It is also perfectly consistent with Nelson and Tongue, and, in fact, follows from this Court's rejection in Nelson of the argument that the driver of a stolen vehicle has no fourth amendment protection whatsoever, regardless of the circumstances.

Contrary to the petitioner's assertion, neither Nelson nor Tongue stand for a broad, per se rule that the driver of a stolen car can never challenge the introduction of evidence seized from the car. (See Petitioner's Brief on Jurisdiction at 5, 7). As Nelson makes clear, and Tongue implies, there are circumstances where even a thief can challenge the introduction of evidence unreasonably seized. More fundamentally, neither case authorizes the shortcut in the fourth amendment inquiry suggested by the petitioner's argument. Fourth amendment standing is determined by an inquiry into the totality of the circumstances surrounding the search and seizure, not by labelling the defendant a thief. The decision of the Third District Court of Appeal, which remands this case for further proceedings, commencing with a hearing, is consistent with that proposition, and follows from it.

Because the petitioner has not demonstrated the required express and direct conflict, discretionary review should be denied.

## CONCLUSION

This Court should deny discretionary review.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded by mail to the Office of the Attorney General, MICHAEL J. NEIMAND, 401 N.W. Second Avenue, Suite N-921, Miami, Florida 33128 this 21st day of June, 1991.

Louis Campbell
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