

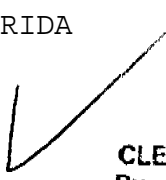
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**FILED**

IN THE SUPREME COURT OF FLORIDA

SIDJ. WANTE

OCT 6 1997



CLERK, SUPREME COURT  
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Chief Deputy Clerk

STATE OF FLORIDA,

Petitioner,

vs.

Case No. 91,065

JOHNNY TITUS,

Respondent.



PETITIONER'S REPLY BRIEF

ROBERT BUTTERWORTH  
ATTORNEY GENERAL  
Tallahassee, Florida

CELIA TERENCE  
Bureau Chief  
Florida Bar No.: 0656879

BARBRA AMRON WEISBERG  
Assistant Attorney General  
Florida Bar No.: 29580  
1655 Palm Beach Lakes Blvd.  
Suite 300  
West Palm Beach, FL 33401  
(561) 688-7759

Counsel for Petitioner

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THIS COURT HAS JURISDICTION TO REVIEW THE  
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THE FOURTH DISTRICT COURT OF APPEAL IMPROPERLY  
REWEIGHED AND MISAPPLIED THE FACTS AND  
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PRELIMINARY STATEMENT

Petitioner, STATE OF FLORIDA, was the plaintiff in the trial court and the appellee in the district court and will be referred to herein as 'Petitioner" or "State." Respondent, Johnny Titus, was the defendant in the trial court and the appellant in the district court and will be referred to herein as 'Respondent" or "Defendant."

The following symbols will be used:

R = Record on appeal

T = Transcripts

A = Appendix

STATEMENT OF THE CASE AND FACTS

The State relies on the Statement of the Case and Facts as set forth in Petitioner's Brief on the Merits.

SUMMARY OF THE ARGUMENT

This Court has jurisdiction to review the opinion rendered by the Fourth District Court of Appeal in Titus v. State, 22 Fla. L. Weekly D1645 (Fla. 4th DCA 1997). The Fourth District Court of Appeal expressly and directly certified conflict with the Third District Court of Appeal's opinion in State v. Batista, 524 So. 2d 481 (Fla. 3d DCA 1988).

The Fourth District Court of Appeal erred in reversing the order denying suppression and the following conviction. The trier-of-fact properly found that the evidence presented showed that Respondent did not have a reasonable expectation of privacy in the kitchen area where he was arrested for possession of cocaine and drug paraphernalia.

## ARGUMENT

### POINT I

THIS COURT HAS JURISDICTION TO REVIEW THE DECISION RENDERED BY THE FOURTH DISTRICT COURT OF APPEAL IN TITUS v. STATE, 22 Fla. L. Weekly D1645 (Fla. 4TH DCA 1997).

This Court has jurisdiction to review the decision rendered below. The Fourth District Court of Appeal expressly and directly certified conflict with the Third District Court of Appeal's opinion in State v. Batista, 524 So. 2d 481 (Fla. 3d DCA 1988) "on the same question of law." Rule 9.030 (2) (A) (iv). That question is whether a tenant of an unlocked and unsecured multifamily residence has a reasonable expectation of privacy in the common areas.

In State v. Batista, the Third District held that "no resident of the unlocked and unsecured premises and apartment building . . . could have had such a reasonable expectation of privacy in those shared areas." The officers involved in Batista entered the grounds of the apartment building by scaling a six-foot high wall at the rear of the property and followed the defendant into the hallway of the building where he was apprehended. Therein, as in the case at bar, the public had unimpeded access to the building through the front entrance. Consequently, the Court reversed the

order which suppressed cocaine seized from the defendant.

Contrary to Respondent's allegations, the facts of the two cases are similar and they involve application of the same question of law. Thus, the Fourth District Court of Appeal properly certified conflict. This Court has jurisdiction to review the conflict created by the Fourth District Court of Appeal regarding an individual's expectation of privacy in the common areas of a rooming house unsecured from the public at large.



POINT II

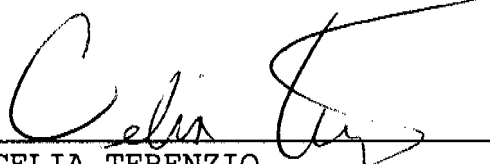
THE FOURTH DISTRICT COURT OF APPEAL IMPROPERLY REWEIGHED AND MISAPPLIED THE FACTS AND ERRONEOUSLY ANALYZED FOURTH AMENDMENT LAW WHEN IT FOUND THAT RESPONDENT HAD A REASONABLE EXPECTATION OF PRIVACY IN THE COMMON AREA OF A ROOMING HOUSE THAT WAS UNSECURED FROM USE BY THE GENERAL PUBLIC.

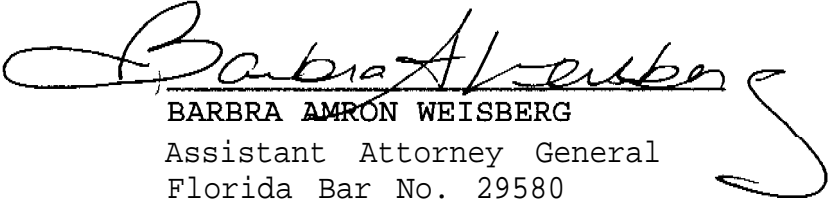
The State relies on the Argument portion of Petitioner's Brief on the Merits.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities cited herein, the State respectfully requests that this Honorable Court accept jurisdiction, reverse the Fourth DCA's holding in Titus v. State, 22 Fla. L. Weekly D1645 (Fla. 4th DCA July 2, 1997) and reinstate the order denying Respondent's motion to suppress, as well as his conviction.

Respectfully submitted,  
ROBERT A. BUTTERWORTH  
Attorney General  
Tallahassee, Florida

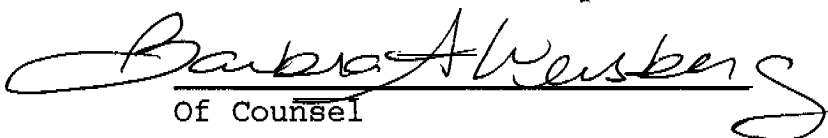
  
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CELIA TEREZIO  
Assistant Attorney General  
Bureau Chief  
Florida Bar No. 0656879

  
\_\_\_\_\_  
BARBARA AMRON WEISBERG  
Assistant Attorney General  
Florida Bar No. 29580  
1655 Palm Beach Lakes Boulevard  
Suite 300  
West Palm Beach, FL 33401-2299  
(561) 688-7759

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Petitioner's Reply **Brief**" has been furnished by Courier to: LOUIS G. CARRES, Assistant Public Defender, Criminal Justice Building/6th Floor, 421 Third Street, West Palm Beach, FL 33401, this <sup>2<sup>RD</sup></sup>    day of October 1997.

  
Barbara Weisberg  
Of Counsel