

IN THE SUPREME COURT OF FLORIDA

ROBERT THOMAS, :
 :
 Petitioner, :
 :
 vs. : Case No. 93,070
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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ATTORNEYS FOR PETITIONER

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ISSUE

WHETHER THE EVIDENCE SEIZED FROM THE
PETITIONER'S AUTOMOBILE AFTER HE
LEFT THE AUTOMOBILE VOLUNTARILY AND
WAS ARRESTED ON A WARRANT WHILE HE
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SUPPRESSED.

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ARGUMENT

ISSUE

WHETHER THE EVIDENCE SEIZED FROM THE PETITIONER'S AUTOMOBILE AFTER HE LEFT THE AUTOMOBILE VOLUNTARILY AND WAS ARRESTED ON A WARRANT WHILE HE WAS OUTSIDE THE VEHICLE SHOULD BE SUPPRESSED.

The Respondent cites State v. Smith, 662 So. 2d 725 (Fla. 2d DCA 1995), for the proposition that "there is no distinction made between occupants of a vehicle and recent occupants." Respondent's brief page 6. The Respondent's reliance on Smith is misleading. In Smith, the defendant was the driver of an automobile occupied by a front-seat passenger. Smith parked the automobile in a motel parking lot and was approached by police who conducted a consensual encounter with both men. The police discovered two outstanding warrants for the passenger's arrest. The officer then placed the passenger under arrest and removed him from the passenger seat. The officer asked Smith to get out of the car so he could search it. As Smith got out of the car, he left behind a black bag containing cocaine.

From the facts described in the case, it is obvious that the passenger in Smith was arrested while still in the car. That arrest allowed the officer to search the car. For that reason, the

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passenger was an actual occupant and not a recent occupant. Furthermore, reason to arrest arose while the passenger was still seated in the vehicle.

The Respondent's argument centers on the fact that the arrest was not a pretext to search the automobile. This argument bypasses the issue entirely. In State v. Bennett, 516 so. 2d 964 (Fla. 5th DCA 1987), the officers could have arrested Bennett at any time, but waited until he was in his car. In this case, there was no connection at all between the arrest and the car. The Petitioner had exited the car before probable cause arose to arrest him. For that reason, Belton does not apply.

The Petitioner additionally relies on his argument in his initial brief in response to the Respondent's brief.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to John M. Klawikofsky, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this _____ day of October, 1999.

Respectfully submitted,

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