ORIGINAL

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC00-2135

THE STATE OF FLORIDA,

Petitioner,

-vs-

SHELTON SCARLET,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

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INTRODUCTION

The Petitioner, the State of Florida, was the Appellee below. The Respondent, the Shelton Scarlet was the Appellant below. The parties will be referred to as they stand before this Court. The letter "A." will designate the appendix to this brief.

STATEMENT OF TYPE SIZE AND FONT

The size and style of type used in this brief is 12 point Courier New.

STATEMENT OF THE CASE AND FACTS

Respondent was placed on probation for a term of one year for burglary of an occupied dwelling. An affidavit of violation of probation was filed charging Respondent with committing the offense of trafficking in cocaine; failing to pay restitution; and failing to complete 100 hours of community service. The order of revocation of probation found Respondent guilty of all three violations. (A. 2).

The cocaine charge emanated from a traffic stop. On that charge, the trial court found the search to be without probable cause, without founded suspicion, and without a warrant or consent. Respondent alleged that the drugs were not his. At the probation violation hearing, however, the trial court admitted the seized cocaine on the ground that the exclusionary rule did not apply. The court revoked Respondent's probation and sentenced him to 54 months in state prison. (A. 2).

The Respondent appealed to the Third District. The Third District reversed finding that the evidence admitted at the revocation hearing was seized in violation of the Fourth Amendment. (A. 1). The Third District found that this Court has held that in the absence of a controlling federal decision directly on point, evidence obtained through an unlawful search is inadmissible in a probation revocation hearing. See *State v. Cross,* 487 So. 2d 1056 (Fla. 1986). It found that since then the United States Supreme

Court has held that such evidence is admissible in parole revocation hearings. ***See*** *Pennsylvania Parole Bd. v. Scott,* 524 U.S. 367 (1998). The Third District then found parole revocation hearings and probation revocation hearings are very different proceedings. Thus, the Third District held that *Scott* does not overturn *Cross* and evidence discovered during an unlawful search is not admissible in a hearing to revoke probation. (A. 2-3).

The Third District then reversed and remanded for further proceedings, as it was not clear from the record that on the two remaining probation violation findings, the trial court would have revoked Respondent's probation or entered the same sentence. (A. 3).

The Third District then stayed its mandate. The Petitioner then timely invoked this Court's discretionary jurisdiction

QUESTIONS PRESENTED

WHETHER THE DECISION OF THE LOWER COURT EXPRESSLY *AND* DIRECTLY CONFLICTS WITH THE FOURTH DISTRICT'S DECISION IN JOHNSTON V. STATE, 25 FLA. L. WEEKLY D2076 (FLA. 4th DCA AUGUST 30, 2000)?

SUMMARY OF THE ARGUMENT

In the instant case, the Third District ruled that evidence obtained through an unlawful search is inadmissible in a probation revocation hearing. This decision is in express and direct conflict with *Johnston v. State*, 25 Fla. L. Weekly D2076 (Fla. 4th DCA August 30, 2000) which ruled that evidence obtained through an unlawful search is admissible in a probation revocation hearing.

ARGUMENT

THE DECISION OF THE LOWER COURT EXPRESSLY *AND* DIRECTLY CONFLICTS WITH THE FIFTH DISTRICT'S DECISION IN JOHNSTON V. STATE, 25 FLA. L. WEEKLY D2076 (FLA. 4th DCA AUGUST 30, 2000).

In the instant case, the Third District held that evidence obtained through an unlawful search is inadmissible in a probation revocation hearing. In so doing, the Third District rejected the State's position that the United States Supreme Court's decision in *Pennsylvania Parole Bd. v. Scott,* 524 U.S. 367 (1998), which held that such evidence is admissible in parole revocation proceedings, has overruled this Court's decision in *State v. Cross,* 487 So. 2d 1056 (Fla. 1986). Instead the Third District found that *Cross,* which held that evidence obtained through an unlawful search is inadmissible in a probation revocation hearing, is still the controlling law since *Scott* dealt with parole and not probation. Thus, controlling precedent from the United States Supreme Court on the issue does not exit. Therefore, *Cross* is still controlling in Florida.

This decision is in express and direct conflict with *Johnston V. State,* 25 Fla. L. Weekly D2076 (Fla. 4th DCA August 30, 2000) which ruled that *Scott* overruled *Cross.* Thus, the Fourth District held that evidence obtained through an unlawful search is admissible in a probation revocation hearing. (A. 4-6).

CONCLUSION

WHEREFORE, based on the preceding authorities and arguments, the State respectfully requests that the Court exercise its discretionary jurisdiction to review this cause.

Respectfully Submitted,

ROBERT A. BUTTERWORTH
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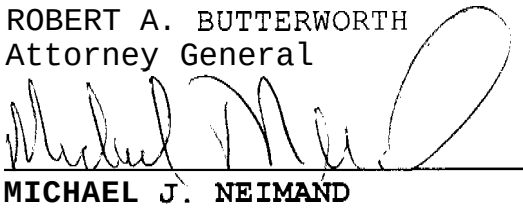

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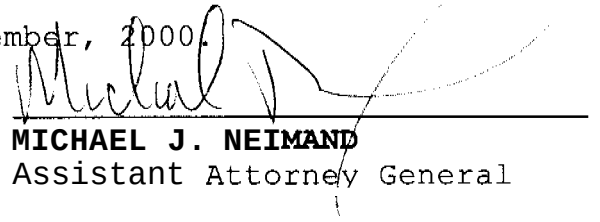
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **BRIEF ON JURISDICTION** was furnished **by** mail to **MANUEL ALVAREZ,** Attorney for Respondent, 1320 N.W. 14th Street Miami, Florida, 33125, on this 19 day of September, 2000.



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