ORIGINAL

IN THE SUPREME COURT

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 RESPONDENT ON JURISDICTION

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INTRODUCTION

The Petitioner, the State of Florida, was the appellee below. The Respondent, Shelton Scarlet, was the appellant below. The partioes will be referred to as they stand in this Court,

STATEMENT OF TYPE SIZE AND FONT

The size and style of type used in this brief is 14 point Times New Roman.

STATEMENT OF THE CASE AND FACTS

For purposes of this brief, the Respondent accepts the Petitioner's recitation of the procedural history and facts underlying this cause as substantially accurate.

QUESTION 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

The Third District held in the case *sub judice* that the United States Supreme Court's decision regarding the inapplicability of the Fourth Amendment's exclusionary rule to parole revocation proceedings, under the rationale of *Soca* v. *State*, 673 So. 2d 24 (Fla. 1996), did not apply to probation revocation proceedings. This decision is in express and direct conflict with *Johnston v. State, 25* Fla. L. Weekly D2076 (Fla. 4th DCA August 30,2000).

ARGUMENT

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).

The Respondent admits that the Third District's holding in the instant case 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). The Respondent agrees, therefore, that this Court should exercisejurisdiction and resolve the conflict.

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities, the Respondent respectfully agrees that this Court should exercise its discretionary jurisdiction to review this cause.

Respectfully submitted,

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Appendix

NOT FINAL UNTIL TIME **EXPIRES**
TO FILE **REHEARING** MOTION
AND, IF FILED, **DISPOSED OF.**

IN THE DISTRICT COURT OF **APPEAL**

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. *2000*

SHELTON SCARLET,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

CASE NO, 3D99-3040

LOWER TRIBUNAL NO. 3D99-3040

Opinion filed August 16, *2000.*

***An* Appeal from the Circuit** Court **for** Dade County, **Robert N. Scola, Jr., Judge.**

Bennett H. Brummer, Public Defender, and Manuel Alvarez, Assistant Public Defender, for appellant.

Robert A. Butterworth, Attorney General, and Michael J. Neimand, Assistant Attorney General, for appellee.

Before **JORGENSON and** SORONDO, **JJ., and** NESBITT, Senior **Judge.**

PER CURIAM.

Defendant appeals from a re vocation of probation, arguing that the evidence admitted at his revocation hearing was seized in violation of the Fourth **Amendment. For** the **following reasons, we**

reverse and **remand.**

Defendant 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 defendant 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 finds defendant guilty of all three violations.

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. Defendant 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 defendant's probation and sentenced him to 54 months in state prison; defendant appeals; we reverse.

The Florida **Supreme** 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). 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). However, a parole hearing is substantively different, as it is not part of

a criminal prosecution. A parole hearing is an administrative proceeding conducted by non-lawyers in a non-judicial setting; "traditional rules of evidence generally do not apply." Id. at 366. "The exclusionary rule, moreover, is incompatible with the traditionally flexible, administrative procedures of parole revocation." Id. at 365. Probation revocation hearings, however, are under the court's jurisdiction and generally lead to sentencing hearings that require the appointment of counsel. See Floyd v. Parole and Probation Comm'n, 509 So. 2d 919 (Fla. 1987). In short, parole revocation hearings and probation revocation hearings are very different proceedings.

Scott does not overturn Cross. Evidence discovered during an unlawful search is not admissible in a hearing to revoke probation. See Soca v. State, 673 So. 2d 24 (Fla. 1996); Lawson v. State, 751 So. 2d 623 (Fla. 4th DCA 1999).

The State asked this court to certify this question to the Florida Supreme Court. We decline to do so, as the Florida Supreme Court has spoken so clearly on this matter.

In sum, we reverse and remand for further proceedings, as it is not clear from the record that on the two remaining probation violation findings, the trial court would have revoked defendant's probation or entered the same sentence. See Largaespado v. State, 658 So. 2d 189 (Fla. 3d DCA 1995).