

**ORIGINAL**

**IN THE SUPREME COURT OF FLORIDA**

**FILED**  
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**FEB 09 2001**

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**STATE OF FLORIDA,**

Petitioner,

v.

FSC Case No. **SC01-319**  
2d DCA Case No. 2D99-1346

**KELLEN LEE BETZ,**

Respondent.

\_\_\_\_\_ /

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

**PETITIONER'S BRIEF ON JURISDICTION**

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**PRELIMINARY STATEMENT**

The record on appeal is divided into three volumes, the first two sequentially numbered with stamped numbers on the lower right of each page, from 1 to 60. Supplemental volume one (the third volume), containing the transcript of the hearing on the motion to suppress, is separately numbered by the court reporter pages 3 through 51. In order to be consistent with the appellant's numbering system, when referring to the motion to suppress the reporters number will be added to the record number, as if the transcript of the hearing started on page 63.

### STATEMENT OF THE CASE AND FACTS

The trial court denied Respondent's motion to suppress evidence of marijuana found in a container inside a briefcase in the trunk of his car. The Second District reversed the trial court's order. The Second District held, though the search of the passenger compartment of Mr. Betz's vehicle was lawful, the search of the trunk was illegal. The Court concluded, "[N]o facts articulated by the officer suggested that he had probable cause to believe that Mr. Betz had concealed additional contraband in the trunk, and without those additional facts a search of the trunk was unreasonable under the Fourth Amendment." Betz v. State, 26 Fla. L. Weekly D 304 (Fla. 2nd DCA January 24, 2001).

The operative facts are set out in the opinion and are:

In the early evening hours of March 9, 1998, Mr. Betz was driving a red Pontiac Fiero when two City of Clearwater officers on routine patrol observed that the Fiero's left headlight was extinguished and stopped the vehicle. Mr. Betz quickly exited the car, closing the door behind him, and awaited the police officer. While asking Mr. Betz for his driver's licence, the officer smelled a "very strong odor of marijuana coming directly out" of the rolled down window of the Fiero. He also observed grey smoke in the vehicle. From experience, the officer was familiar with the smell of burning marijuana. When he then noticed the marijuana odor emanating from Mr. Betz's shirt, the officer advised Mr. Betz that he was about to search the Fiero's trunk. Before doing so the officer patted down Mr. Betz for weapons and contraband. He felt a

long, cylindrical, hard object between four to six inches long which he could hear crinkling and rustling as he grabbed it. As the officer expected, the object, when seized, proved to be a plastic baggie containing some green plant matter that looked and smelled like marijuana. The officer placed Mr. Betz under arrest, searched the car and ultimately, the trunk. Inside the trunk was a briefcase; inside the briefcase was a metal box; and inside the metal box was a second bag of marijuana. The first bag weighed approximately 12.6 grams and the second approximately 10.7 grams.

ID. at 304

**SUMMARY OF ARGUMENT**

The Second District Court of Appeal's decision in the instant case expressly and directly conflicts with the Fifth District Court's decision in State v. Jarrett, 530 So. 2d 1089 (Fla. 5th DCA 1988).

**ARGUMENT**

**ISSUE**

THE SECOND DISTRICT COURT OF APPEAL'S DECISION  
IN BETZ V. STATE, 26 FLA. L. WEEKLY D304 (FLA.  
2d DCA JANUARY 24, 2001) EXPRESSLY AND  
DIRECTLY CONFLICTS WITH THE FIFTH DISTRICT  
COURT OF APPEAL

The State asserts that the District Court decision in this cause is in direct and express conflict with the Fifth District's decision in State v. Jarrett, 530 So.2d 1089 (Fla. 5th DCA 1988). The Florida Constitution, article V, section 3(b)(3), authorizes this Court to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or with a decision of the Florida Supreme Court.

This Court has identified two basic forms of decisional conflict, which properly justify the exercise of jurisdiction under section 3(b)(3) of the Florida Constitution. Either (1) where an announced rule of law conflicts with other appellate expressions of law, or (2) where a rule of law is applied to produce a different result in a case that involves "substantially the same controlling facts as a prior case. . . ." Nielsen v. City of Sarasota, 117 So. 2d 731, 734 (Fla. 1960). Furthermore, it is not necessary that a district court explicitly identify conflicting court decisions in its opinion in order to create an express conflict under section 3(b)(3). Ford Motor Co. v. Kikis, 401 So. 2d 1341 (Fla. 1981).



The rule of law announced by the court in Betz conflicts with the expression of law announced by the Fifth District Court of Appeal in State v. Jarrett, 530 So.2d 1089 (Fla. 5th DCA 1988).

The district court in Jarrett stated:

The Supreme Court of the United States, in the case of Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280, 284, 69 L.Ed. 543 (1925), held that "if the search and seizure [of an automobile] without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid." Thus, the law is clear that a police officer is authorized to conduct a warrantless search of an automobile when the police officer has probable cause to believe that the automobile contains contraband. The Supreme Court further held, in the case of United States v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 2173, 72 L.Ed.2d 572 (1982), that, "if probable cause justifies the search of a lawfully stopped automobile, it justifies a search of every part of the automobile and its contents that may conceal the object of the search." (emphasis supplied). See also Wells v. State, 492 So.2d 1375 (Fla. 5th DCA 1986).

The record in the instant case establishes that Trooper Santiago had probable cause to believe that defendant's automobile contained contraband since, as he approached the automobile, he detected the odor of burnt cannabis emanating from the automobile. See State v. Langer, 516 So.2d 310 (Fla. 3d DCA 1987); State v. Wells, 516 So.2d 74 (Fla. 5th DCA 1987). It necessarily follows, therefore, that based upon this probable cause Trooper Santiago was authorized to conduct a warrantless search of defendant's automobile and, under Ross, this authority to search

included the authority to search the trunk of the automobile. See State v. Bennett, 481 So.2d 971 (Fla. 5th DCA 1986); State v. Scotti, 428 So.2d 771 (Fla. 4th DCA 1983). Accordingly, the order of the trial court which granted the motion to suppress the cocaine seized from the trunk of defendant's automobile is reversed and this case remanded to the trial court for proceedings consistent with this opinion.

State v. Jarrett, 530 So.2d 1089,1090, 1091 (Fla. 5th DCA 1988)

See also State v. Reed, 712 So.2d 458,460 (Fla. 5th DCA 1998).

The district court's decision in the instant case is in conflict with the Fifth District in that the Second District Court of Appeal holds that probable cause to search for contraband only extends to the passenger compartment of the automobile, whereas the Jarrett court held that probable cause to search the car for contraband extends to the whole car, including the trunk.

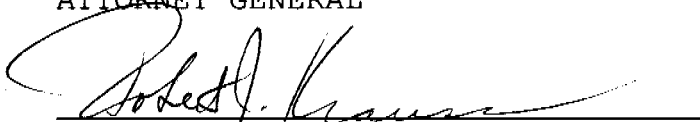
Accordingly, this Court should grant jurisdiction in the instant case and review the Second District Court of Appeal's decision.


**CONCLUSION**

Based on the Second District Court of Appeal's opinion, as well as the foregoing arguments and authorities, the State respectfully requests that this Honorable Court grant jurisdiction in the instant case.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Robert D. Rosen, Asst. Public Defender, Public Defender's Office, P.O. Box 9000-Drawer PD, Bartow, Florida 33831 on this 7<sup>th</sup> day of February, 2001.

  
COUNSEL FOR PETITIONER

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

  
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