

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

FSC No.

L.T. No.: 2D00-1611

GARY ALAN MATHESON,

Respondent.

-----/

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JURISDICTIONAL BRIEF OF PETITIONER

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STATEMENT OF THE CASE AND FACTS

The respondent, appealed his conviction and sentence for three counts of possessing a controlled substance and one count of possessing drug paraphernalia based upon the trial court's denial of his motion to suppress the contraband found in his vehicle.

In May 1999, Razor, a certified and trained narcotics detection dog with the Hillsborough County Sheriff's Office, was called upon to sniff Matheson's car after deputies stopped him for a traffic infraction. Matheson refused a routine request for permission to search his car and the deputy called for Razor's assistance. Matheson v. State, 28 Fla. L. Weekly D1791 (Fla. 2d DCA 2003).

Razor alerted to the car where the officers found a bag containing drug paraphernalia, including syringes and spoons, as well as hydrocodone tablets, morphine tablets, and methamphetamine. Razor's handler, Deputy Grecco, testified that he and Razor had been assigned to each other since August 1997, and Razor was certified to detect marijuana, cocaine, heroine and subsequently to detect methamphetamine. Although, the Second District, in its opinion, states that Deputy Grecco testified he had not maintained a record of Razor's false alert rate, the trial court and record on appeal contain all of

Razor's training and certification records as well as his field activity sheets which show his performance, or track record, in the field.

The Second District determined that a narcotics detection dog's alert to a defendant's vehicle was insufficient to establish probable cause to establish that the deputies had probable cause to search defendant's car, and that the fact a dog has been trained and certified, standing alone, is insufficient to give officers probable cause to search based on the dog's alert. Matheson, slip. op. at 6.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the supreme court or another district court of appeal on the same point of law. Fla. R. App. P. 9.030(a)(2)(A)(iv).

SUMMARY OF THE ARGUMENT

Petitioner, the State of Florida, alleges conflict between the holding in the instant case and the Third District's decision in Vetter v. State, 395 So. 2d 1199 (Fla. 3d DCA 1981), review denied.

ARGUMENT

THE DECISION OF THE SECOND DISTRICT IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE THIRD DISTRICT'S DECISION IN VETTER V. STATE , 395 So. 2d 1199 (Fla. 3D DCA 1981), review denied (1981).

The Second District's opinion states that Razor's alert to the defendant's vehicle was insufficient to provide the officers with probable cause because a narcotics detection dog that has been trained and certified, standing alone, is insufficient to give officers probable cause to search. The State respectfully submits that the opinion in the instant case is in conflict with the Third District Court of Appeal's opinion in Vetter v. State, 395 So. 2d 1199 (Fla. 3d DCA 1981), review denied (1981).

In Vetter, supra, the court held that the representation in the search warrant that the narcotics detection dog was properly trained conferred probable cause standing alone for the search. In light of the foregoing, the State respectfully submits that the Second District's opinion misapprehends Razor's alert on the defendant's vehicle.

Accordingly the state contends that this opinion expressly and directly conflicts with the decision of another district court of appeal. Furthermore, the standards set forth in Matheson should be reconsidered in light of Vetter.

CONCLUSION

In light of the foregoing facts, arguments, and authorities, Petitioner respectfully requests that this Honorable Court exercise its discretionary jurisdiction under Art. V, Section 3(b)(3), Fla. Const., to resolve the conflict outlined above.

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 Celene Humphries, Special Assistant Public Defender, P.O. Box 9000, Drawer PD, Bartow, Florida 33831-9000, Dade City, Florida 33525 on this 2nd day of April 2004.

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).

COUNSEL FOR PETITIONER