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STATEMENT OF THE CASE AND FACTS

Respondent adds the following pertinent facts: At the hearing on the motion to suppress, the officer was asked about the narcotic detection dog's track record, but could not quantify it. Gibson v. State, 32 Fla. L. Weekly D2550 (Fla. 2d DCA, filed Oct. 26, 2007). Under these facts, the district court determined that the State failed to meet its burden of proving probable cause to search the car. Id.

SUMMARY OF THE ARGUMENT

This Court should decline to exercise its discretionary jurisdiction in this case, despite the certified conflict stated by the district court. This case does not expressly and directly conflict with the decisions in State v. Coleman, 911 So.2d 259 (Fla. 5th DCA 2005), and State v. Laveroni, 910 So.2d 333 (Fla. 4th DCA 2005), in that those decisions involved cases in which the trial court did not permit the state to present evidence on the dog's track record. In this case, the canine officer was questioned about the track record, but could not quantify it. This court should decline to accept jurisdiction in this case.

ARGUMENT
ISSUE

WHETHER THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION IN THIS CASE IN WHICH NO DIRECT CONFLICT EXISTS WITH STATE V. COLEMAN, 911 So.2d 259 (FLA. 5th DCA 2005), AND STATE V. LAVERONI, 910 So.2d 333 (Fla. 4th DCA 2005)?

In Laveroni the district court held that the trial court erred in not permitting the state to recall witnesses to testify about the narcotics dog's qualifications. Because the intermediary appellate court feared the issue might arise on remand, the district court explained in dicta why it did not agree with Matheson v. State, 870 So.2d 8 (Fla. 2d DCA 2003).

In Coleman the district court held that the trial court had erred in excluding evidence of a narcotics dog's track records simply because the physical written records were no longer available. The district court did not direct the trial court to deny the motion to suppress. In remanding the case to the trial court, the district court additionally explained that it was following the Fourth District's rationale in Laveroni. The Coleman court remanded the case to the trial court for additional evidence to be presented and to permit the state to present the testimony about the dog's track records.

Because Coleman and Laveroni are cases holding that the trial court improperly ruled to keep the state from presenting evidence of a police dog's track records, those case are not in direct and express conflict with Gibson. Here the canine officer was asked

about the narcotic dog's track record, and the officer said he could not answer what percentage of time Sirius, the dog, was accurate. The state had the opportunity to present the evidence of the dog's reliability, but the handler could not provide it. The handler did admit that drugs are not always found when the dog alerts. This case then presents a vastly different circumstance than the situations presented in Coleman and Laveroni. While the district courts in Coleman and Laveroni in dicta indicated disagreement with Matheson, the fourth and fifth district courts indicated the defense could present evidence to challenge the reliability of the canine. In this case, there was no evidence to be presented by either party to prove what the dog's track record is. Essentially the state in this case is seeking a ruling that once it presents some evidence of a dog's certification and training, probable cause is established, regardless of a complete lack of evidence of a dog's track record. This case then presents a different circumstance from that in Coleman and Laveroni, in which the trial court restricted the state's presentation of otherwise available evidence about the dog's track record. From these differences, it is apparent that the Coleman and Laveroni are not in direct and express conflict with Gibson. This being so, this Court should decline to exercise its discretionary jurisdiction over the certified conflict.

CONCLUSION

Based on the arguments and authorities presented herein, this Court should decline to exercise its discretionary jurisdiction to resolve the certified conflict.

CERTIFICATE OF SERVICE

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