

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

FSC No.

L.T. No.: 2D06-2106

RANDY DEWAYNE GIBSON,

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

Respondent appealed the trial court's order denying his dispositive motion to suppress the cocaine, drug paraphernalia and concealed weapon found in his vehicle, after a narcotic's detection dog had alerted to his vehicle. The K-9's handler testified the narcotics detection dog was certified and had completed 400 hours of training. No testimony was elicited from the officer regarding the K-9's track record.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision in which a district court of appeal has expressly and directly certified conflict with a decision of this court or another district court of appeal on the same point of law. Fla. R. App. P. 9.030(a)(2)(A)(vi).

SUMMARY OF THE ARGUMENT

The Second District Court of Appeal, certified conflict between the holding in the instant case and 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, according to Laveroni and Coleman, the State can make a prima facie showing of probable cause to search based on a narcotics detection dog's alert by demonstrating that the dog has been trained and certified.

ARGUMENT

THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THE FIFTH DISTRICT IN STATE V. COLEMAN, 911 SO. 2D 259 (FLA. 5TH DCA 2005), AND STATE V. LAVERONI, 910 SO. 2D 333 (FLA. 4TH DCA 2005), AS THE SECOND DISTRICT HAS CERTIFIED CONFLICT WITH BOTH DECISIONS.

Relying on its opinion in Matheson v. State, 870 So. 2d 8 (Fla. 2d DCA 2003)¹, the Second District Court of Appeal rejected the argument that the State can make a prima facie showing of probable cause for a search based on a narcotics detection dog's alert by demonstrating that the dog has been properly trained and certified. The Second District Court of Appeal held that the fact that a dog has been trained and certified to detect narcotics, standing alone, does not justify an officer's reliance on the dog's alert to establish probable.

This concept is in direct and express conflict with the holdings of the Fourth and Fifth District Courts of Appeal in State v. Coleman, 911 So. 2d 259 (Fla. 5th DCA 2005), and State v. Laveroni, 910 So. 2d 333 (Fla. 4th DCA 2005), both of which hold that the State can make a prima facie showing of probable cause based on a narcotics detection dog's alert by

¹This Court originally accepted jurisdiction of Matheson but, in an order dated March 3, 2005, after oral argument was heard, this Court discharged jurisdiction and dismissed the proceedings. See State v. Matheson, 880 So. 2d 1212 (Fla. 2004).

demonstrating the dog has been properly trained and certified.

CONCLUSION

In light of the foregoing facts, arguments, and authorities, Petitioner respectfully requests that this Honorable Court exercise its discretionary jurisdiction under Art. V, § 3(b)(4), 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 Carol J.Y. Wilson, Assistant Public Defender, P.O. Box 9000–Drawer PD, Bartow, Florida 33831-9000 this 19th day of November, 2007.

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