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STATEMENT OF THE CASE

This case arises by certification of the Fourth District Court of Appeals of the following question:

MAY THE POLICE WITHOUT ARTICULABLE SUSPICION BOARD A BUS AND ASK AT RANDOM, FOR, AND RECEIVE CONSENT TO SEARCH A PASSENGER'S LUGGAGE WHERE THEY ADVISE THE PASSENGER THAT HE HAS THE RIGHT TO REFUSE CONSENT TO SEARCH?

The certification arises from a denial of a motion to suppress without findings, delivered orally from the bench. The Fourth District gleaned the factual basis of the Trial Court's decision from the transcript of the hearing, which factual basis appears in the dissent to an initial per curiam affirmance.

STATEMENT OF THE FACTS

Two men, easily identifiable as police officers, and with the permission of the bus company, boarded an interstate bus during a stopover in Fort Lauderdale.

The officers approached a passenger seated in the rear of the bus and began asking that individual some cursory questions.

The officers identified themselves and asked the Appellant about his destination. After receiving a response, the officers asked if they could see the Appellant's bus ticket and identification. The Appellant complied with the officers' request. At that point the officers asked whether the Appellant would consent to a search of his luggage. The Appellant was informed that he had the right to refuse the officers' request, but nevertheless gave his voluntary consent to the search which produced controlled substances.

ISSUE ON APPEAL

MAY THE POLICE WITHOUT ARTICULABLE  
SUSPICION BOARD A BUS AND ASK AT RANDOM,  
FOR, AND RECEIVE CONSENT TO SEARCH A  
PASSENGER'S LUGGAGE WHERE THEY ADVISE  
THE PASSENGER THAT HE HAS THE RIGHT TO  
REFUSE CONSENT TO SEARCH?

## ARGUMENT

The question certified by the Fourth District Court of Appeals is as follows:

MAY THE POLICE WITHOUT ARTICULABLE SUSPICION  
BOARD A BUS AND ASK AT RANDOM, FOR, AND  
RECEIVE CONSENT TO SEARCH A PASSENGER'S  
LUGGAGE WHERE THEY ADVISE THE PASSENGER THAT  
HE HAS THE RIGHT TO REFUSE CONSENT TO SEARCH?

In light of substantial evolutionary changes in the procedure utilized by Broward County Deputies since the apprehension of Terrence Bostick, it is believed that the precise certified question is moot as to current enforcement procedures. Law enforcement is, of necessity, in a constant state of flux, yet constitutional rights remain a fixed point of paramount concern to the Sheriff of Broward County. Further initiative has long since been taken by the Sheriff of Broward County to insure that vital fundamental rights will continue to be protected while maintaining a responsive posture to the everchanging demands of drug law enforcement.

There can be no question that the "war" against drugs is a serious and complicated problem with no easy or single solution. On October 14, 1982, President Ronald Reagan addressed this complex problem in a speech at the United States Department of Justice, declaring "war" on drugs and pledging an unshakable commitment "to do what is necessary to end the drug menace."

Likewise, the Honorable Nick Navarro, Sheriff of Broward County, cannot ignore the potential hazard to passengers created by the tenuous situation on commercial buses in Broward County.

While not among the facts in evidence, the following information is respectfully submitted in the hope that it will aid the Court in reaching its ultimate decision. From January, 1986 until September, 1987, over 776 pounds of cocaine and 3,626 pounds of marijuana were seized on buses travelling within Broward County. In a single incident in July, 1986, over 60 pounds of approximately 90% pure cocaine was seized from an armed courier. This incident and others translates into millions of dollars worth of illegal contraband being smuggled aboard buses through Broward County by frequently armed drug couriers. Moreover, during the same time period, 45 firearms were seized which have included: semi-automatic handguns fitted with a silencer, stolen handguns and one semi-automatic machine gun. An alarming number of these and other weapons were taken from the drug couriers themselves. Other individuals, from whom firearms were seized, may have been present to protect the drugs.

Such illegal drug activity is inevitably accompanied by the potential risks of narco-terroristic activity, drug "rip-offs" and tragic loss of life. Thus, the Broward Sheriff's concern in striking a constitutional balance between individual liberty and the dire need of law enforcement to combat this pervasive problem is inextricably linked to the safety of families and children who have unwittingly placed themselves in the potentially hazardous environment aboard certain commercial buses. It is the totality of this condition which demands the attention and action of the Sheriff.

As a procedural safeguard, the notion of "voluntary consent" provides a firm foundation for the constitutional validity of searches when the individual has been advised that he (or she) has the right to refuse the officer's request. See Florida v. Royer, 460 U.S. 491 103 S.Ct. 1319, 75 L.Ed.2d. 229 (1983); United States v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870, 65 L.Ed.2d. 497 (1980); State v. Frost, 374 So.2d. 393 (3d DCA, 1979).


The procedure currently being followed by Sheriff's Deputies reflects this concern for individual rights as guaranteed by the Fourth Amendment and the need to safeguard the public. This is precisely why the Broward Sheriff's Office, by seizing the initiative, has recognized that individual rights will continue to be both respected and protected while Sheriff Navarro's commitment to fighting the war against drugs and protecting human life remains steadfast.

Respectfully submitted,

By: Edward A. Hanna, Jr.  
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CERTIFICATION

IT IS HEREBY CERTIFIED that a true copy of the foregoing was mailed this 13th day of October, 1987 to Robert A. Butterworth, Jr., Attorney General of Florida, Tallahassee, Florida; Georgina Jimenez-Orosa, Assistant Attorney General, 111 Georgia Avenue, #204, West Palm Beach, Florida 33401; Kenneth P. Speiller, Esq., & Max P. Engel, Esq., 1461 N.W. 17th Avenue, Miami, Florida 33125; Clerk, Florida Supreme Court, 500 South Duval Street, Tallahassee, Florida 32399.

By:   
EDWARD A. HANNA, JR.