

IN THE SUPREME COURT OF FLORIDA

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CASE NO: 70,996

TERRENCE BOSTICK,
Petitioner,
vs.
STATE OF FLORIDA,
Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

REPLY BRIEF OF PETITIONER

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TABLE OF CONTENTS

| | <u>PAGE</u> |
|------------------------------|-------------|
| TABLE OF CITATIONS ----- | ii |
| INTRODUCTION ----- | 1 |
| ARGUMENT ----- | 2-6 |
| CONCLUSION ----- | 7 |
| CERTIFICATE OF SERVICE ----- | 8 |

TABLE OF CITATIONS

| | <u>PAGE</u> |
|---|-------------|
| <u>Delaware v. Prouse,</u> 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d. 660 (1985) ----- | 2,4 |
| <u>Huffman v. State,</u> 500 So. 2d 349 (Fla. 4th DCA 1987) ----- | 5 |
| <u>Snider v. State,</u> 501 So. 2d 609 (Fla. 4th DCA 1986) ----- | 2 |
| <u>State v. Jones,</u> 483 So. 2d 433 (Fla. 1986) ----- | 2,4 |
| <u>State v. Jones,</u> 454 So. 2d 774 (Fla. 3rd DCA 1984) ----- | 2 |
| <u>State v. Kerwick,</u> 12 FLW 2239 (Fla. 4th DCA September 16, 1987) ----- | 3,6 |
| <u>State v. Schwartzbach,</u> 12 FLW 2380 (Fla. 4th DCA October 7, 1987) ----- | 2,6 |

INTRODUCTION

Petitioner, TERRANCE BOSTICK, hereby reaffirms the Introduction, Statement of the Case and Statement of the Facts in his Initial Brief.

A R G U M E N T

Respondent's argument begins with the heart of its contention, that is that there is no difference between a person on a bus or in the terminal. Petitioner contends that there is a difference and that difference requires a two-tiered test for cases such as this. First, was the bus properly boarded and second, once on the bus was the police conduct coercive.

Respondent cites to the case of State v. Jones, 454 So. 2d 774 (Fla. 3rd DCA 1984) which involved a person standing on the street. Respondent points to no cases which state that there is no difference between a person in a terminal or on a bus (as pointed out in Petitioner's Initial Brief, Judge Glickstein, in his dissent in Snider v. State, 501 So. 2d 609 (Fla. 4th DCA 1986) notes a distinction and the Courts have found distinctions between persons in public and in their means of transportation, see Delaware v. Prouse, 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed 2d 660 (1975) and State v. Jones, 483 So. 433 So. 2d 433 (Fla. 1986).

It should also be noted that since the filing of the Initial Brief two other cases seem to make note of the difference. The first is State v. Schwartzbach, 12 FLW 2380 (Fla. 4th DCA October 7th, 1987) in which Judge

Anstead, in a special concurrence, adopted the language of the trial court in finding that, "(t)he prospect of being a seated passenger on a commercial public transportation vehicle and seeing police officers come on board with their badges prominently displayed checking each passenger is an intimidating and coercive situation in and of itself."

The other recent case is State v. Kerwick, 12 FLW 2239 (Fla. 4th DCA September 16th, 1987) in which the Court adopted the trial court's ruling which stated in part:

Despite the apparent protections of Article One, Section 23 of the Florida Constitution, commonly referred to as a "right of privacy", the evidence in this cause has evoked images of other days, under other flags, when no man traveled his nation's roads or railways without fear of unwarranted interruption, by individuals who held temporary power in the Government. The spectre of American citizens being asked, by badge-wielding police, for identification, travel papers-in short a *raison d'etre*- is foreign to any fair reading of the Constitution, and its guarantee of human liberties. This is not Hitler's Berlin, nor Stalin's Moscow, nor is it white supremacist South Africa. Yet in Broward County, Florida, these police officers approach every person on board buses and trains ("that time permits") and check identification, tickets, ask to search luggage-all in the name of "voluntary cooperation" with law enforcement-to the shocking extent that just one officer, Damiano, admitted that during the previous nine months, he himself, had searched in excess of three thousand bags! In the Court's opinion, the founders of the Republic would be thunderstruck. It certainly shocks the Court's conscience that the American public would be "asked", at badge-point, without the slightest suspicion, to interrupt their schedules, travels and individual liberties to permit such intrusions. This Court would ill-expect any citizen to reject, or refuse, to cooperate when faced with the trappings

of power like badges and identification cards. And these officers know that-that is one reason that they display those trappings.

We do not hear these same alarm bells being sounded with regard to consensual encounters on the street or in other public places and that is presumably because there is a difference between being on the street or in an airport or train or bus station and being in your car or on board the plane, train or bus.

Respondent admits, as they must, that the officers had no reason to suspect petitioner of any illegal activity and say that because of this he was free to refuse to speak with them (Answer Brief of Respondent, page 12). This is a fact known by every practitioner of criminal law but it is questionable as to the extent of the public's awareness. Even if the general public were aware of the fact how many would put that knowledge to use when confronted by the types of situations which arise in these cases i.e. armed police officers standing over you asking about drugs while you are seated on a bus.

Respondent argues that there is no difference between the encounter on the bus and in the terminal because the bus was boarded while it was at a stop (Answer Brief, page 13). This is akin to saying that the rulings of Delaware v. Prouse, supra and State v. Jones, supra need not be followed if the police set up their roadblocks at a stop sign or toll booth.

In this regard Respondent argues that the person is free to ignore the police (a point already discussed herein) or to leave the bus. First, it is doubtful that many people would

have the knowledge or fortitude which would enable them to get up, push past the officers and leave the bus. Second, the question arises as to leave the bus to what end? Petitioner was not at his starting or destination point. He would run the risk of being stranded in a strange city with no means of transportation.

Respondent also argues that the boarding of the bus is allowable because it was done with the consent of the bus line. This is simply not supported by the record in this case. While it is true there was testimony that the officers regularly board buses and that the drivers see and acknowledge this, that testimony is just as susceptible to an interpretation of mere acquiescence to the police (this is an argument strengthened by the deposition excerpts provided to this Court by Amicus Curiae in his Motion to Supplement the Record). The testimony in this case shows that the police did not have a ticket, a warrant or any specific permission which would allow them to board that bus.

In support of their argument Respondent cites to Huffman v. State, 500 So. 2d 349 (Fla. 4th DCA 1987). That case merely states that many people are arrested on buses and that buses are used to transport drugs. It also notes that innocent persons as well as drug couriers use buses for transportation. It does not state that there is any cooperation or consent by the bus line.

Respondent examines the voluntariness of Petitioner's consent (Answer Brief, page 16-19). Petitioner will rely on his argument in his initial brief on this point and would only

point out that because of the previously cited cases of State v. Schwartzback, supra and State v. Kerwick, supra there appears to be some support for a holding that these types of searches are per se coercive.

Respondent provided a brief reply to the Brief Amicus Curiae filed by the Law Office of Joseph S. Paglino. This argument is, once again, based on the presumption that there is no difference between the person on the bus or in the bus terminal. As has been amply demonstrated this presumption must fail and this is fatal to their reply argument.

Finally, Petitioner would briefly respond to the Brief Amicus Curiae filed by Edward A. Hanna, Jr., for Nick Navarro. The Statement of Facts contains a statement that the boarding of the bus was done with the permission of the bus company. As has already been pointed out this is simply not supported by the record in this case, especially in light of the deposition excerpts attached to the Motion to Supplement the Record.

The brief goes on to state that a large amount of drugs, as well as a number of weapons, has been seized from buses in Broward County. What the brief does not say is if these items were legally seized. Under our law of search and seizure the ends do not justify the means. It is axiomatic that you cannot use the results of a search to justify the search.

It is Petitioner's position that the manner in which these buses are boarded is illegal and the seizures made do not make it legal. Likewise the fact that drugs or weapons are found does not justify the coercive methods used by the police.

C O N C L U S I O N

The certified question should be answered in the negative because of the illegal boarding procedures and coercive methods used by the police. At the very least, this case should be remanded with instructions to reverse the ruling on the Motion to Suppress and discharge the Petitioner.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed to Gerogina Jimenez-Orosa, Assistant Attorney General, 111 Georgia Avenue, Suite 204, West Palm Beach, Florida 33401; Joseph S. Paglino, 88 N.E. 79th Street, Miami, Florida 33138, and Edward A. Hanna, Jr., 2600 S.W. 4th Avenue, Fort Lauderdale, Florida 33315, this 28th day of October, 1987.


Of Counsel