

THE SUPREME COURT OF FLORIDA

CASE NO. 73,637

DOROTHY CROSS,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

FILED  
SID J. WHITE

FEB 27 1989

CLERK, SUPREME COURT

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ON PETITION FOR DISCRETIONARY REVIEW

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BRIEF OF RESPONDENT ON JURISDICTION

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## INTRODUCTION

The Petitioner, Dorothy Cross, was the defendant in the trial court and the appellee in the District Court of Appeal, Third District. Respondent, the State of Florida, was the prosecution in the trial court and the appellant in the district court. The symbol "A" will be used to refer to the appendix attached to petitioner's brief, followed by the appropriate page number.

## STATEMENT OF THE CASE AND FACTS

During a police-citizen encounter at the Miami Amtrak Station, the defendant agreed to speak with detectives and, upon request, produced identification and her train ticket. (A.2). The train ticket was issued in the name of Dorothy Edmond, the defendant's alleged maiden name, while the identification bore the name of Dorothy Cross. (A.2). These items were returned to the defendant and the detectives then asked permission to search the defendant's small coach bag that she was carrying. (A.2). The defendant was advised that she could refuse the search. (A.2). The defendant nonetheless consented. (A.2) . During the search the detectives discovered a hard, baseball-shaped object wrapped in brown tape. (A.2). Further examination of the object revealed cocaine. (A.3) .

At the suppression hearing the detectives testified that, in their more than twenty years' combined experience as narcotics detectives, they had seen cocaine packaged in a similar manner on many prior occasions. (A.2). Detective Facchiano testified that he had seen cocaine packaged in a similar manner on "hundreds of occasions". (A.2). In reversing the order of suppression, the Third District Court of Appeal held:

Once the detectives found the taped, baseball-shaped object, in light of their many years of experience in narcotics work, they had probable cause to believe that Cross was carrying cocaine. [cites omitted]. The detectives, therefore, had probable cause to arrest Cross and to seize the taped object.

(A.3).

QUESTION PRESENTED

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN CAPLAN v. STATE, 531 So.2d 88 (Fla. 1988)?

SUMMARY OF ARGUMENT

The decision of the District Court is wholly consistent with this Court's decision in Caplan v. State, 531 So.2d **88** (Fla. 1988). The decision demonstrates the factors contributing to the determination of probable cause including 1) a train passenger with a ticket and identification that do not match, 2) the observance of a distinctively wrapped package, and 3) testimony from seasoned narcotics detectives that they have observed cocaine package in this manner on hundreds of occasions. Because the defendant has failed to demonstrate that the decision of the District Court directly and expressly conflicts with a decision of another district court or of this Court, this Court should decline to exercise its discretionary jurisdiction to review the decision below.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISION OF THIS COURT IN CAPLAN v. STATE. 531 So.2d 88 (Fla. 1988).

The decision of this Court in Caplan v. State, 531 So.2d 88 (Fla. 1988), held that the mere observance of an opaque container, that could hold either innocent or illegal contents, will not create probable cause in the absence of other facts. The instant case is wholly consistent with that decision. As noted in the Caplan decision the "other factors" which might provide probable cause for a search, in conjunction with the observance of an opaque container, are that "the container (1) is of a type commonly used to hold narcotics, (2) is at a known narcotics transaction site, and (3) is determined to be narcotics-related based on the observations of police officers with sufficient experience and expertise in such matters." Caplan v. State, *supra* at 91, n.2.

In this case, the detectives, who had twenty years combined experience as narcotics detectives, were engaged in a police-citizen encounter at the Miami Amtrak Station. During the encounter the detectives discovered that the defendant's identification bore the name Dorothy Cross while her ticket was issued in the name Dorothy Edmond. During a

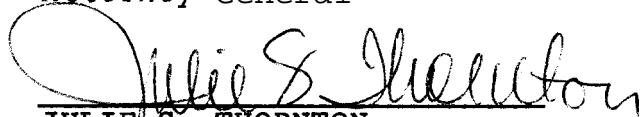
consensual search of the defendant's small coach bag, the detectives observed a distinctively shaped and wrapped package. One detective testified that he had seen cocaine packaged in this way on hundreds of occasions and the other had seen cocaine packaged this way on many prior occasions, (A.2). Thus the other factors which contributed to the probable cause in the instant case include the fact that (1) the defendant was travelling under a name which did not match her identification, (2) the detective had seen cocaine packaged in this distinctive manner on hundreds of occasions, and (3) the detectives had vast experience in narcotics work and determined that the package contained cocaine. These factors, particularly the observance of the distinctive packaging by experienced narcotics detectives, supplied the "additional objective and reasonably specific element justifying the State agent's inference of wrongdoing." Caplan v. State, supra at 92. See P.L.R. v. State, 455 So.2d 363 (Fla. 1984). Accordingly, the decision of the district court is consistent with this Court's decision in Caplan.

CONCLUSION

Based upon the foregoing, the State would urge that this Court refuse to exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal where the decision neither expressly nor directly conflicts with a decision of another district court of appeal or of this Court. Rule 9.030(a)(2)(A)(iv), Fla. R.App.P.

Respectfully submitted,

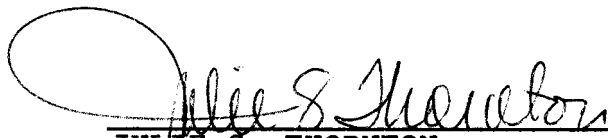
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON JURISDICTION was furnished by mail to N. JOSEPH DURANT, JR., Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125, on this 23 day of February, 1989.



JULIE S. THORNTON  
Assistant Attorney General

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