IN THE SUPREME COURT OF FLORIDA

JOSEPH SERPA, Petitioner, vs. STATE OF FLORIDA, Respondent.	)	Case No. 74,145

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PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

The Petitioner was the Appellant in the court below and the defendant in the trial court. Respondent was the Appellee in the court- below and the prosecution in the trial court. In the brief the parties will be referred to as they appear before this Honorable Court. A copy of the district court's opinion is attached to this brief as the Appendix.

The following symbols will be used in this brief:

"R"	Record on Appeal:
"A"	Appendix.

STATEMENT OF THE CASE AND FACTS

Petitioner was charged by information with possession of cocaine or a mixture containing cocaine in excess of 400 grams (R 16). He filed a motion to suppress physical evidence claiming the evidence was found pursuant to his unlawful stop in a Greyhound bus (R 419-421) and a motion to suppress statements claiming they were obtained as the result of the illegal detention (R 417-418).

An evidentiary hearing was held on the motion. The hearing revealed the following facts: Two detectives with the Broward County Sheriff's Office, Guess and Lenier, were waiting at the Ft. Lauderdale Greyhound bus depot on November 2, 1987 to meet each northbound bus as it arrived at the station (R 15, 16). Their goal was to meet each bus and to search each and every passenger (R 16). Contacts with passengers were almost never made in the terminal but rather made on the buses themselves (R 17). Detective Guess testified that she has personally searched approximately 40 bags a day for the past one year and four months (R 14).

Petitioner was a passenger on a bus that arrived approximately 11:30 p.m. from Miami (R 55). The stop was not a scheduled stop to discharge passenqers or give them a break in travel but rather was merely to pick up departing passengers and leave immediately thereafter (R 19). The bus remains in Ft. Lauderdale only five minutes (R 19). The detectives had no prior knowledge of or tips about. Petitioner (R 17).

The two detectives entered the bus wearing their green raid jackets which identify them as sheriff's officers (R 21). Starting at the back of the bus they spoke with each passenger and searched each passenger's luggaqe (R 7-8). Petitioner was sitting in a window seat in approximately the middle of the bus (R 8). The officers approached, one standing in the aisle and the other standing behind the seat (R 11). They identified themselves with badges and identification cards (R 8, 10). They told Petitioner that there was a problem with narcotics in south Florida and would he consent to a search of his bags (R 11). Petitioner got his bag from overhead, asked if the search was to be done on or off the bus, and unzipped the bag (R 11, 12). The baq was then searched and cocaine was Eound in a jacket lining (R 12). Petitioner was arrested and his Miranda warnings read (R 12-13). Thereafter Petitioner made incriminating statements admitting he knew cocaine was in the bag and that he was transporting it as a way to relieve himself of a drug debt (R 39).

The trial court found that Petitioner freely and voluntarily consented to the search and that his statements were freely and voluntarily given (R 90-91). Petitioner's case proceeded to trial. His motions to suppress were renewed during trial (R 232).

Following trial. a verdict of guilty was returned to the lesser included offense of possession of cocaine in an amount between 200 and 400 qrams. Petitioner was adjudicated guilty and sentenced to prison for the five year mandatory minimum sentence with credit for time served, and given the statutory fine (R

436-437). Petitioner appealed to the Fourth District Court of Appeal (R 448). That court affirmed the conviction but certified the following question:

> May evidence obtained as a result of defendant's consent to search, be suppressed by the trial court as "coerced" upon the sole ground that the officer(s) boarded a bus (or other public transport) and randomly sought consent from passengers?

(A 1). The question is the identical question certified to this Court in State v. Avery, 531 So.2d 182 (Fla. 4th DCA 1988) Supreme Court case 73,289. On May 5, 1989 Petitioner timely filed a notice to invoke discretionary jurisdiction of this Court. On May 18, 1989 this Court issued an order setting a briefing schedule for this cause.

SUMMARY OF THE ARGUMENT

The police actions, without a founded suspicion of criminal activity, tainted any alleged consent. The police actions of cornering Petitioner, a ticketed passenger on a northbound bus, with their badges prominently displayed, was not a mere consensual encounter. Petitioner was not in a public place when police approached him, rather he was a ticketed passenger aboard a bus who had the right to be left alone in the midst of his journey. By boarding the bus without tickets, the police were exercising a superior right not enjoyed by other citizens to approach Petitioner and question him regarding his travel plans, destination, and luggage. Assuming that no founded suspicion of criminal activity was required, at a minimum police may only interfere with travellers in the stream of commerce if such is done with written guidelines to prevent unbridled police discretion and with sufficient warnings so that travellers will not be surprised by the interference.

Assuming arguendo that there was no arbitrary intrusion, Petitioner's consent to the search was not voluntary but was mere acquiescence to the authority of the police officers. No matter how subtle the implied coercion to consent, the resulting consent is invalid. Here the police cornering Petitioner with an accusatory request, combined with the other factors, indicate a coercion that a layman would not feel free to ignore.

Assuming, arguendo that no violation of the right to be free from unreasonable searches and seizures occurred, the intrusion, without any suspicion of illegal activity, into Petitioner's privacy by boarding the bus and questioning him in the midst of his journey violated Petitioner's right to be left alone under Article I, Section 23, of the Florida Constitution. Without any suspicion of illegal activity occurring on the bus, there was no compelling state interest to board the bus. More importantly, whatever state interest was involved, it was not being attempted through the use of the least intrusive means. Consequently, the resulting intrusion was in violation of Petitioner's right to be let alone under Article I, Section 23, of the Florida Constitution.

ARGUMENT

THE TRIAL COURT ERRED IN DENYING PETITIONER'S MOTION TO SUPPRESS.

There are three legitimate reasons for suppressing the evidence in the instant case. Petitioner submits that: (a) the police actions, without a founded suspicion of criminal activity, tainted any alleged consent; (b) the totality of the circumstances demonstrate coercion; and (c) the government intrusion invaded Petitioner's right to privacy under Article I, Section 23, of the Florida Constitution. Petitioner will address each of these issues below.

A.

The police actions, without a founded suspicion of criminal activity, tainted any alleged consent.

The Fourth Amendment is designed "to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." United States v. Martinez-Fuerte, 428 U.S. 543, 96 S.Ct. 3074, 3081, 49 L.Ed.2d 1116 (1976). To reach its decision the district court was required to first conclude the act of the officer's boarding the bus, displaying authority, and standing over a bus passenger in a narrow bus aisle while questioninq him, without a founded suspicion of criminal activity, was a mere voluntary "encounter" rather than an interference with a cognizable privacy right so as to vitiate the alleged consent.

Was the activity in the instant case merely a consensual encounter between police and a citizen that does not implicate the Fourth Amendment as discussed in United States v. Mendenhall, 446 So.2d 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980)? True, the Fourth Amendment does not prohibit voluntary interaction between the police and citizens because "there is nothing in the Constitution which prohibits a policeman from addressing questions to anyone on the streets." Terry v. Ohio, 392 U.S. 1, 34, 88 S.Ct. 1868, 1886, 20 L.Ed.2d 889 (1968). Such a consensual street encounter between police and a citizen is premised on police officers enjoying "the liberty (again, possessed by every citizen) to address questions to other persons." Id. at 31, 32-33, 88 S.Ct. at 1885-1886. "Ordinarily the person addressed has an equal. right to iqnore his interrogator and walk away." Id. An "encounter" becomes a detention as soon as a reasonable person would have believed he was not free to leave. Florida v. Royer, 460 So.2d 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983); United States v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 reh'g, denied, 448 U.S. 908, 100 S.Ct. 3051, 65 L.Ed.2d 1138 (1980); Nease v. State, 484 So.2d 67 (Fla. 4th DCA 1986). Application of this standard makes it clear that there is evidence to support a finding that in this case there was a detention and not merely a consensual encounter.

In his dissent in Snider v. State, 501 So.2d 609 (Fla. 4th DCA 1986) Judqe Glickstein correctly perceived that approaching a ticketed passenger aboard a bus is not like approaching a citizen on the street. Unlike the situation in Royer or Mendenhall,

Petitioner was not approached in a street or public area where people are free to come and go. Petitioner was seated on a bus, in the midst of a journey, for which he had legally purchased a ticket. Only ticketed passengers and employees of Greyhound bus lines would board this northbound bus. These police officers were previously authorized by the Greyhound bus lines to board the buses and question the passengers (R 65, 21-22). Accordingly, the officers boarding the northbound bus to confront the seated, ticketed passengers, while wearing green raid jackets identifying them as police and displaying their badges requesting to examine travel documents, clearly entailed a show of authority similar to a conductor on a train or a bus employee who would board its common carrier to make sure the passengers' papers were in order. These officers were exercising a superior right not enjoyed by any other citizen to approach Petitioner and question him regarding his travel plans, destination, and luggage. Cf., Alvarez v. State, 515 So.2d 286, 290 (Fla. 4th DCA 1987) (person in sleeping car on trail should legitimately expect that "his or her privacy will not be intruded upon, with the possible exception of a brief entry by a ticket collector, or encounters in the passageway with other similarly ticketed passengers or train personnel").

A passenger aboard a bus has a special privacy interest to be let lone which he may not enjoy in more public places. This is emphasized by Justice Douglas, a well-known guardian of First Amendment rights, in his concurring opinion in Lehman v. City of Shaker Heights, 418 U.S. 298, 94 S.Ct. 2714, 41 L.Ed.2d 770

(1974) where he recognized that even precious First Amendment rights would have to give way to the special interest of a bus passenger to be let alone:

> The First Amendment, however, draws no distinction between press privately owned, and press owned otherwise. And if we are to turn a bus or streetcar into either a newspaper or a park, we take great liberties with people who because of necessity become commuters and at the same time captive viewers or listeners.
>
> In askinq us to force the system to accept his message as a vindication of his constitutional riqhts of the commuters. While petitioner clearly has a right to express his views to those who wish to listen, he has no right to force his message upon an audience incapable of declining to receive it. In my view the right of the commuters to be free from forced intrusions on their privacy precludes the city from transporting its vehicles of public transportation into forums for the dissemination of ideas upon this captive audience.

419 U.S. at 306-307, 94 S.Ct. at 2719 (emphasis added). Justice Douglas further noted that bus passengers are captive and not free to ignore the activities on a bus by merely exiting like people in other public places. In the present case Petitioner would not feel reasonably free to leave the bus since Ft. Lauderdale was not even a scheduled stop (R 19). He could only leave if he were to forfeit his journey. [1]

Since Appellant was already a traveller in the stream of commerce, the rule of Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979), should apply here. In that case the Court held that invasion into privacy by conducting a license and

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1 This may explain why no one on this "pretty near to capacity" bus refused to be searched (R 28-29).

registration check of persons travelling the highway cannot be arbitrary; there must be at least a reasonable suspicion that the law is being violated. Since Appellant was already a passenger on a common carrier, he must have, and he asserts he did have, the same rights as all other travellers.[2]

Of course, under some limited circumstances police may invade the privacy of travellers. However, the intrusion cannot be random or arbitrary. For example, in Jones v. State, 483 So.2d 433 (Fla. 1986) this Court recognized that there must be written guidelines and specific procedures created to ensure that arbitrary intrusions into the liberties of citizens do not occur:

> Paramount among all other considerations, the fourth amendment requires that all seizures be based on either: (1) specific evidence of an existing violation; (2) a showing that reasonable legislative or administrative standards are met: or (3) a showing that officers carry out the search pursuant to a plan embodying specific neutral criteria which limit the conduct of the individual officers.. .. We agree and find that it is essential that a written set of uniform guidelines be issued before a roadblock can be utilized ... so as to minimize the discretion of field officers, thereby restricting the potential intrusion into the public's constitutional liberties. Written guidelines should cover in detail the procedures which field officers are to follow at the roadblock.

483 So.2d 438 (emphasis added) (citations omitted). In addition, in United States v. Martinez-Fuerte, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976) the Court emphasized that the intrusion into privacy that occurred was not unconstitutional during a

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2 There should be no less protection afforded those who, because of financial considerations, must travel by bus or train, than to those who own cars.

permanent roadblock because the "subjective intrusion -- the generating of concern or even fright on the part of lawful travellers" is appreciably less than a roving roadblock. 96 S.Ct. at 3083. The Court also noted that "motorists using these highways are not taken by surprise as they know, or may obtain knowledge of, the location of the checkpoints and will not be stopped elsewhere." Id. In otherwords, assuming that there is a statutory authorization for interfering into the privacy rights of a traveller,[3] there must be minimum guidelines and some type of warning to the public of the potential interference. In this case there were no guidelines for the police to follow nor warnings to the passengers that the police were going to board the bus and ask questions. As noted by Judge Anstead's dissent in the Avery case, citing a trial judge, the traveller does not know how many times he will be intruded upon during his trip:

> In so ruling, I have some strong personal reservations about the drug interdiction program described herein, in spite of the fact that drug smuggling is a major problem in our society today. The procedure is inherently intrusive on a person's right of privacy. It invites abuse and tends to diminish fourth amendment protections. For example, how may times must- a person be confronted with this procedure while he is travelling from Miami to New York City? And, where will it all. end, i.e., can it be used on board airlines during a layover? Can police officers go through a neighborhood, knocking on doors and asking for consent to search houses in their war against drugs?

[3] Border Patrol agents had the statutory authorization to interrogate those believed to be aliens. Martinez-Fuerte, 96 S.Ct. at 3080 ftnt.8.

531 So.2d at 198, (emphasis added). This arbitrary intrusion which is without warning and is potentially unlimited is like the random intrusions which the Supreme Court does not tolerate:

> We concluded there that random roving patrol stops could not be tolerated because they "would subject the residents ... [border] areas to potentially unlimited interference with their use of the highways, solely at the discretion of the Border Patrol officers.... [They] could stop motorists at random for questioning, day or night, anywhere within 100 air miles of the 2,000-mile border, on a city street, a busy highway, or a desert road...." Ibid. There also was a grave danger that such unreviewable discretion would be abused by some officers in the field. Ibid.
>
> Routine checkpoints stops do not intrude similarly on the motoring public. First, the potential interference with legitimate traffic is minimal. Motorists using these highways are not taken by surprise as they know, or may obtain knowledge of, the location of the checkpoints and will not be stopped elsewhere.

Martinez-Fuerte, 96 S.ct. at 3083 (emphasis added).

Any consent after the arbitrary intrusion into Petitioner's privacy was invalid, State v. Frost, 374 So.2d 593 (Fla. 3d DCA 1979), or tainted the voluntariness of any consent. Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75. L.Ed.2d 229 (1983). There can be no valid consent unless there is clear and convincing evidence of an unequivocal break in the chain of illegality between the unlawful detention and the purported consent. Norman v. State, 379 So.2d 643, 646-647 (Fla. 1980); Elsleger v. State, 503 So.2d 1367 (Fla. 4th DCA 1987). Here, there was no such break.

The fact that Petitioner was advised of his right to refuse is not an unequivocal break in the chain of illegality. This statement was given during the same time as the coercive circumstances were occurring. In Norman v. State, 379 So.2d 643, 647 (Fla. 1980), this Court made it clear that consent is voluntary "only if there is clear and convincing proof of an unequivocal break in the chain of illegality sufficient to dissipate the taint of prior official illegal action." Because the coercive circumstances occurred at the same time as the warning, the state cannot prove that there was clear and convincing evidence that the warning disspated those circumstances.

In addition, it should be noted that Petitioner was probably never given an effective advisement of his riqht to refuse to consent. The officers had consent forms available but did not use them because of time contraints (R53). They keep the forms in their airport office and only present them for signature once a person is already under arrest and handcuffed to a wall (R 52). Under these circumstances, the simple advisement of the right to refuse consent was not an effective advisement as required. See, Schneckloth v. Bustamonte, 412 U.S. 218, 231, 93 S.Ct. 2041, 2050, 36 L.Ed.2d 854 (1973) (advisement is not dispositive because it normally is impracticle to inform of the detailed requirements of an effective warninq). The advisement during the time of the intimidating circumstances, is not an unequovical break in the chain of illeqality.

B.

The totality of the circumstances demonstrates coercion.

Assuming arguendo that there was no arbitrary intrusion involved in this case, the totality of the circumstances nevertheless demonstrate that Petitioner's consent was mere acquiescence to police authority. As explained in Schneckloth v. Bustamonte, 412 U.S. 227, 228-229, 93 S.Ct. 2041, 2048, 36 L.Ed.2d 854 (1973), no matter how subtle the implied coercion, the resulting consent is invalid:

> But the Fourth and Fourteenth Amendments require that a consent not be coerced, by explicit or implicit means, by implied threat or covert force. For, no matter how subtly the coercion was applied, the resulting "consent" would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is directed. In the words of the classic admonition in Boyd v. United States, 116 U.S. 616, 635, 6 S.Ct. 524, 535, 29 L.Ed.2d 746:
>
> > "It may be that it is the obnoxious thing in its mildest and least repulsive form: but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of the courts to be watchful for the constitutional rights of the citizen, and aqainst any stealthy encroachments thereon."

In the present case Petitioner as a ticketed passenger aboard a bus, knowing that police were not aboard as ticketed passengers, would reasonably believe that the police were aboard the bus only due to their special status. Petitioner had no warning that the police regularly boarded buses. In fact the stop in Ft. Lauderdale is not even scheduled as such. When questioning Petitioner the police stood over him and behind him in the narrow aisle of the bus. By telling Petitioner that there was an investigation into smuggling and then requesting to search his luggage, the police request was implicitly accusatory. Certainly, no reasonable person, with the exception of trained judges and lawyers, would feel free to ignore the intrusion into his privacy by police.[4] This is exemplified by the shocking number of these searches which have occurred. Officer Guess alone gets "consent" to search at least 40 bags daily and has done so for one year and four months (as of April 1988) (R 14). If she works only one hundred days a year that amounts to 5,320

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[4] Indeed, these are the very comments by Judge Letts in his dissent in Bostick v. State, 510 So.2d 321, 323 (Fla. 4th DCA 1987):

> Moreover, my version of common sense tells me that a paid and ticket passenger will not voluntarily forfeit his destination and get up and exit a bus in the middle of his journey, during a temporary stopover while the policemen, one with a pouched qun in his hand, are standing over him in a narrow aisle asking him questions and requesting permission to search his luggage. It is not a question of whether he actually was free to leave, as all of us trained lawyers know he was. The test is whether a layman would reasonably be expected to believe he was free to leave under these circumstances. I conclude he would not.

bags searched since she began her assignment. If she works a normal five day week this officer alone as of April 1988 has searched in excess of 13,000 bags.

It is well-settled that for consent to be valid it cannot be mere acquiescence to apparent police authority. Lockwood v. State, 470 So.2d 822 (Fla. 2d DCA 1985); Mosley v. State, 335 So.2d 880 (Fla. 4th DCA 1976); Bailey v. State, 319 So.2d 22, 27 (Fla. 4th DCA 1975). The circumstances in this case support a finding that Petitioner merely acquiesced to apparent police authority. The following portion of State v. Rerwick, 512 So.2d 347 (Fla. 4th DCA 1987) further illustrates how coercive these bus intrusions are:

> "Even if the Rulings of Law made herein were not amply supported by the evidence, the Court would find extremely troublesome the admitted policies of these Broward deputies regarding 'encounters' with the public. 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 imaqes of the days, under other flags, when no man travelled his nations'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-weilding police for identification, travel papers -- in short a raison d'etre -- is foreign to any fair reading of the Constitution, and its quarantee of human liberties. This is not Hitler's Berlin, or Stalin's Moscow, or it is the 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 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 Repub-

> lic would be thunderstruck. It certainly shock's 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. It is much like the feeling that an ordinary citizen has on seeing a patrol car behind him, or observing blue lights flashing, or being confronted by a police officer asking uuestions.

512 So.2d at 348-349 (emphasis added). The show of authority and intrusion into Petitioner's privacy in this case requires that the motion to suppress be granted.

C.

Invasion into the right of privacy guaranteed under Article 1, Section 23, of the Florida Constitution.

Assuming, arguendo that no violation of the right to be free from unreasonable searches and seizures guaranteed by the United States Constitution occurred, the intrusion, without any suspicion of illegal. activity, into Petitioner's privacy by boarding the bus and questioning him in the midst of his journey violated Petitioner's right to be let alone under Article I, section 23 of the Florida Constitution.

Article I, section 23, reads as follows:

> **Section 23. Right to privacy. --** Every natural person has the right to be let alone from government intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right to access to public records and meetings as provided by law.

Fla.Const., Art. I, §23. Section 23 "expressly and succintly provides for a strong right of privacy not found in the United States Constitution." Winfield v. Division of Pari-Mutuel Wagering, Department of Regulation, 477 So.2d 544, 548 (Fla. 1985). As explained by this Court's opinion in Winfield the right to be let alone from governmental intrusion was made as strong as possible by excluding words such as "unreasonable" or "unwarranted":

> The citizens of Florida opted for more protection from governmental intrusion when they approved article I, section 23, of the Florida Constitution. This amendment is an independent, freestanding constitutional provision which declares the fundamental right to privacy. Article I, section 23, was intentionally phrased in strong terms. The drafters of the amendment rejected the use of the words "unreasonable" or "unwarranted" before the phrase "governmental intrusion" in order to make the privacy right as strong as possible. Since the people of this state exercised their prerogative and enacted an amendment to the Florida Constitution which expressly and succintly provides for a strong right or privacy not found in the United States Constitution, it can only be concluded that the right is much broader in scope than that of the Federal Constitution.

477 So.2d at 548 (emphasis added). This Court also noted that it is the state's, and not the federal government's, responsibility to protect the personal privacy of its citizens to be let alone by other people:

> However as previously noted, the United States Supreme Court has also made it absolutely clear that the states, not the federal government, are responsible for the protection of personal privacy: "the protection of of a person's right to privacy --his right to be let alone by other people -- is, like the protection of his property and of his very life, left larqely to

> the law of the individual States.'' Katz v. United States, 389 U.S. 347, 350-51, 88 S.Ct. 507, 511, 19 L.Ed.2d 576 (1967).

Id. Thus, Section 23 must be relied upon to determine if Petitioner's right to be let alone during his journey was violated.

It must be recognized that Section 23 is not an absolute guarantee against all governmental intrusion. However, the right to privacy is a fundamental right and it is the burden of the state to justify the intrusion into that right. Winfield, supra at 546. The state's burden was defined by this Court in Winfield, supra, as follows:

> The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means. See, Estate of Greenberg, 390 So.2d 40 (Fla. 1980).

477 So.2d at 547.

In the present case there was no compelling state interest to board a bus and question its occupants without any suspicion that an illegal activity was occurring on the bus. Assuming arguendo that there was a compelling state interest, the state interest was not being attempted through the use of least intrusive means. The police operation of obtaining truly voluntary cooperation from the public would only be advanced, and not compromised, if it occurred in the less coercive atmosphere of the station or terminal. Aside from the psychological coercion of questioning the passengers on board the bus minutes before it is to leave, there is no necessity in boarding the bus and cornering passengers to conduct police business where there is no founded suspicion of criminal activity. The police could as

easily conduct its business inside of the station without the resulting intrusion into an individual's rights to be let alone during his travels.[5]

Petitioner's right to be let alone under Article I, Section 23, if such words mean anything, was violated in the instant case.

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5 What is generally not revealed in the bus cases is how many times the right to be let alone is violated. However, one officer using this technique over a nine month period searched over 3,000 bags. State v. Kerwick, 512 So.2d 347, 348 (Fla. 4th DCA 1987), and Officer Guess here has searched between 5,000 and 13,000 bags in a sixteen month period (R14).

CONCLUSION

Based on the foregoing argument and authorities cited therein, Petitioner requests this Honorable Court to reverse the decision of the district and trial courts and order the motion to suppress granted.

Respectfully submitted,

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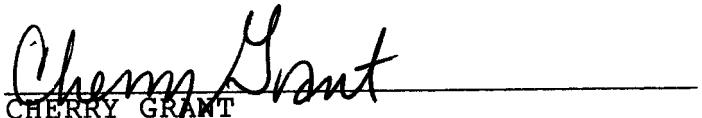

CHERRY GRANT
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Florida Bar No. 260509

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Deborah Guller, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401 by courier this 8 day of June, 1989.

Counsel for Petitioner