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VINCENT NELSON,
Petitioner,
vs.
STATE OF FLORIDA,
Respondent.

CASE NO. 74,421

PETITIONER'S INITIAL BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, Vincent Nelson, the criminal defendant below will be referred to as "Petitioner-defendant."

Respondent, the State of Florida, the prosecuting authority below will be referred to as "Respondent" or the "State."

Reference to the record on appeal will be designated "R."

STATEMENT OF THE CASE

Petitioner-defendant was charged by way of an information filed in the Fifteenth Judicial Circuit with the grand theft of an automobile. R 20. On February 26, 1988, Petitioner-defendant filed a written motion to suppress physical evidence obtained from Petitioner-defendant as a result of an unlawful stop by Officer Woodward and "any evidence seized subsequent to Officer Woodward's stop of the Defendant [Petitioner] must be suppressed as fruit of the poisonous tree." R 32-33.

A hearing on Petitioner's motion to suppress physical evidence was held. The parties stipulated to the facts of the case. R 3. At this hearing Respondent-State's only argument in opposition to Petitioner's motion to suppress was that Petitioner lacked standing to bring this motion to suppress. R 3-7. The prosecutor argued that "we are dealing with an alleged thief of that vehicle who clearly cannot be considered to have any ability of privacy." R 8.

Petitioner maintained that he did have standing to contest the legality of his stop. Petitioner's trial counsel argued that Petitioner could object to the illegal stop and seizure of his person. R 3. Citing State v. Beja, 451 so.2d 882 (Fla. 4th DCA 1984), Petitioner's counsel argued that Petitioner had standing to challenge his own stop and "challenge the stopping of the vehicle since his personal freedom and liberty were intruded upon by that act. That is the theory upon which we are travelling, that

when he is stopped, his personal liberties were intruded upon." R 6.

The trial court denied Petitioner's motion to suppress evidence finding that Petitioner did not have standing to bring the motion. R 9. The trial court also found that there was no founded suspicion or probable cause for the stop of Petitioner. R 6. The trial judge ruled as follows at the conclusion of the motion hearing:

THE COURT: It's a standing issue. He decided to stop, physically stop the car by blocking its exit from the driveway, which is certainly a stop. Did he have probable cause, founded suspicion? No. Does it make any difference? No, because this guy doesn't have standing because it's a stolen automobile.

MR. MALOVE [Petitioner's counsel]: Doesn't he have standing against those kinds of stops? I think Baschia [sic.] says you can't do that.

THE COURT: It doesn't say you can't arrest guys.

MR. MALOVE: He's going to plead no contest and you need to make a finding that the issue is standing, is really dispositive.

THE COURT: There is no probable cause.

MR. MALOVE: The Court's issue of standing. If the Fourth [District Court of Appeal] agrees with you, then Vincent [Petitioner] will have to perform the 18 months probation. If the Fourth [District Court of Appeal] agrees with me, then the case, I guess, will be nol pros.

R 9-10.

Petitioner then pled nolo contendere to the charge expressly reserving the right to appeal the denial of his motion to suppress.

R 11-12.

Petitioner filed a timely Notice of Appeal to the Fourth District Court of Appeal. R 39. The Fourth District in a written

opinion, Nelson v. State, 546 So.2d 49 (Fla. 4th DCA 1989) (See Appendix) affirmed the lower court's decision. Judge Garrett writing for the court held that Petitioner, the driver of a stolen vehicle, lacked standing to object to the stopping of the stolen vehicle he was driving. Judge Stone in his written dissent stated that "the trial court erred in finding that the defendant had no standing to challenge the illegality of his stop, but that is not to say that any specific evidence sought to be produced is necessarily the fruit of the poisonous tree" of the illegal stop, or that the inevitable discovery or independent source exceptions may not apply." Id. at 50 (Stone, J., dissenting).

A timely Notice of Appeal was filed by Petitioner with the Fourth District Court of Appeal.

STATEMENT OF THE FACTS

At the hearing on Petitioner's motion to suppress the parties stipulated to the facts of the case. R 3.

On April 1, 1987, at approximately 12:22 p.m., Officer Woodward of the West Palm Beach police department observed a yellow two door Mercury automobile occupied by Petitioner in a driveway at 1504 Florida Avenue in West Palm Beach, Florida. As Officer Woodward continued to drive down Florida Avenue, Petitioner started the motor vehicle and began to drive out of the driveway. R 5, 32. The officer noted that it was a drug neighborhood and he saw some activity. R 9. Officer Woodward decided to investigate Petitioner's presence in this area. He pulled his police vehicle directly in front of the Petitioner's path causing Petitioner to bring his vehicle to an immediate stop. R 9, 32. The trial judge found that Office Woodward "decided to stop, physically, stop the car by blocking its exit form the driveway which is certainly a stop." R 9.

Officer Woodward requested the police dispatcher to "run" the license tag number of this vehicle thorough the police department's computer whereupon it was determined that the vehicle Petitioner was occupying had been reported stolen. Petitioner was subsequently taken into custody and charged with the grand theft of the automobile. R 32; See also probable cause affidavit of Office Woodward, R 17-18.

The facts of this case as found by the Fourth District Court

of appeal in the instant decision, Nelson v. State, supra, were as follows:

In the early morning hours of April Fool's Day 1987, appellant sat behind the driver's wheel alone in a car backed in the driveway of a house to which he had no connection. As a West Palm Beach police officer approached, appellant started the car to pull out onto the street. The officer blocked the car with his police cruiser forcing appellant to stop in the driveway. The officer learned from the police dispatcher that the car was stolen. Appellant was arrested and charged with Grand Theft. Appellant entered a no contest plea reserving the right to appeal the trial judge's finding appellant lacked standing to object to the stopping of a stolen car.

Id. at 49.

SUMMARY OF THE ARGUMENT

The trial court denied Petitioner-defendant's motion to suppress physical evidence. The trial judge ruled that the arresting officer did not have probable cause to arrest Petitioner or founded suspicion to make the stop. However the trial court found that Petitioner-defendant did not have standing to raise this Fourth Amendment violation.

Petitioner contends that he clearly has standing to contest his own improper stop and illegal arrest by the officer regardless of his lack of expectation of privacy in the stolen vehicle he was driving. This Honorable Court held in State v. Jones, 483 So.2d 433, 435 (Fla. 1986) that "[u]nquestionably, stopping any automobile and detaining its occupant constitutes a seizure within the meaning of the Fourth Amendment to the United States Constitution." The Fourth Amendment violation here involves an illegal seizure of a person and the evidence derived therefrom as fruit of that illegality not a warrantless search of a stolen vehicle or a seizure of an item found therein.

ARGUMENT

THE TRIAL COURT REVERSIBLY ERRED IN DENYING PETITIONER- DEFENDANT'S MOTION TO SUPPRESS PHYSICAL EVIDENCE

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures...." Under the Fourth Amendment whenever a police officer accosts an individual and restrains his freedom of movement he has "seized" that person. This Honorable Court held in State v. Jones, 483 So.2d 433, 435 (Fla. 1986), that "[un]questionably, stopping any automobile and detaining its occupant constitutes a seizure within the meaning of the Fourth Amendment to the United States Constitution."

The only issue presented in this case is standing. Petitioner concedes that as the driver of a stolen vehicle he did not have a legitimate expectation of privacy in the stolen vehicle and thus would not have standing to contest any warrantless search of the vehicle. See United States v. Hensel, 672 F.2d 578 (6th Cir. 1982), cert. denied, 457 U.S. 1107 (4th Cir. 1981). However Petitioner maintains that he does have standing to contest his own unauthorized stop and illegal arrest by the officer. The issue here related to a seizure of a person not a warrantless search of a stolen vehicle.

In State v. Scott, 481 So.2d 40 (Fla. 3d DCA 1985), rev. denied, 492 So.2d 1335 (Fla. 1986), the trial court granted the defendant's motion to suppress cocaine seized during the search of a vehicle he was driving at the time. The Third District rejected

the State's contention that the defendant lacked "standing" to contest the seizure. The Third District held:

...contrary to the state's contention, based on Rakas v. Illinois, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978), that the defendant lacked "standing" to contest the search because he did not own the vehicle, it is necessarily the case that one may challenge a seizure incident to his own arrest on the ground that the arrest itself was illegal. Kersey v. State, 58 So.2d 155 (Fla. 1952); Hansen v. State, 385 So.2d 1081 (Fla. 4th DCA 1980), cert. denied, 392 So.2d 1379 (Fla. 1980); see State v. Conger, 183 Conn. 386 439 A.2d 381 (1981) (even driver of stolen car may challenge vehicle search on ground of illegality of stop or arrest, because such search follows violation of personal right to free movement; distinguishing Rakas as not involving any challenge to the constitutionality of the initial stop or arrest); LaFave, Search and Seizure § 11.3 (1978), and cases collected at 282-91 (Supp. 1985).

Id. at 40 [Emphasis supplied].

In Wulff v. State, 533 So.2d 1191 (Fla. 2d DCA 1988), the Court held that the passenger of an automobile stopped by the police had standing to object to the initial stop of the automobile. The Court explained:

The appellant argues only that he should have been allowed to present evidence on the narrower threshold question whether the stop of the vehicle in which he was a passenger was lawful. He is correct, of course, that the detention of his person in the stop of the car by police constituted a 'seizure' within the meaning of the fourth amendment. State v. Jones, 438 So.2d 433 (Fla. 1986). It follows then that he has standing to object to the initial stop of the vehicle in which he was a passenger, and he should have been heard on his claim that the stop of the vehicle was done without a founded suspicion of illegal activity. State v. Delaney, 517 So.2d 696 (Fla. 2d DCA 1987).

Id. at 1191-1192.

Likewise at bar, Petitioner the subject of an illegal stop, has standing to object to the initial stop of the vehicle

regardless of his lack of expectation of privacy in the stolen vehicle he was driving. The Fourth Amendment violation here involves an illegal seizure of a person and the evidence derived therefrom as fruit of that illegality. The violation here does not involve a warrantless search of a stolen vehicle or the seizure of an item found therein. For this reason the decision cited by Judge Garrett in the Nelson opinion, United State v. Hargrove, 647 F.2d 411 (4th Cir. 1981)¹ is inapplicable to the instant situation.

The trial court correctly found that there was no founded suspicion for the stop or probable cause for the arrest of Petitioner. R 6, 9-10. It follows that he has standing to object to the initial illegal stop. See Jones, Scott, Wulff, and State v. Conger, 183 Conn. 386, 439 A.2d 381, 384 (1981). Since Petitioner has standing to contest his arrest and stop, the trial court erred in denying his motion to suppress the physical evidence i.e. the motor vehicle. All evidence obtained as the fruit of the illegal stop and arrest should be suppressed. See Wong Sun v. United States, 371 U.S. 488 (1963).

¹ In Hargrove, the Fourth Circuit held that where defendant was driving a stolen car at time he was stopped he did not have a legitimate expectation of privacy in the car he was driving and lacked standing to object to a search of vehicle. Id. at 413.

CONCLUSION

Based on the foregoing Argument and the authorities cited therein, Petitioner-defendant respectfully requests this Honorable Court to reverse the decision of the Fourth District Court of Appeal.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Patricia Lampert, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida 33401 by courier this 25th day of October, 1989.



Of Counsel