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STATEMENT OF THE CASE AND FACTS

The Respondent accepts the Petitioner's Statement of the Case and Facts as accurate.

SUMMARY OF THE ARGUMENT

The Second District Court of Appeal properly reversed that portion of the lower court's opinion allowing an improper trunk search of the Respondent's vehicle. The automobile exception to the warrant requirement did not support the police search of Mr. Betz's trunk. No facts articulated by the arresting officer supported a finding the officer had probable cause to conduct a search of the trunk after a search of the passenger compartment revealed no additional contraband.

## ARGUMENT

### ISSUE

THE SECOND DISTRICT COURT OF APPEAL DID NOT ERR IN REVERSING THE TRIAL COURT'S ORDER DENYING MR. BETZ' MOTION TO SUPPRESS THE MARIJUANA FOUND IN THE TRUNK OF HIS VEHICLE, BASED UPON THE TOTALITY OF THE EVIDENCE (as restated by Respondent).

The Second District of Appeal properly held the police search of a metal box found inside a briefcase located inside the trunk of Mr. Betz's car exceeded the scope of a lawful warrantless search. Neither the "search incident to arrest" exception nor the "automobile exception" allowed a search of a closed container in the trunk. Contrary to the arguments of the Petitioner, the Second District did not "misapprehend" the factual basis for the search. The appellate court properly distinguished these two exceptions to the warrant requirement and correctly applied them to the facts of the present case.

Pursuant to New York v. Belton, 453 U.S. 454 (1981), the Second District held the search of the passenger compartment of Mr. Betz's vehicle was legal following his lawful arrest. Once Herrold detected the smell of cannabis emanating from the car's interior and Mr. Betz's clothing, he had probable cause to search Mr. Betz and the car's interior for contraband and weapons. Belton holds such an

automobile search is limited to the passenger compartment of the car since the rest of the car is not within the reach of the defendant. In order for the police to search the trunk of a car without a valid search warrant, the automobile exception to a search warrant must support the legality of the search. This exception states that a police officer may make a warrantless search of a vehicle if there is probable cause to believe it contains evidence of a crime, and it is likely that, due to exigent circumstances, the vehicle will be unavailable by the time a warrant is obtained. See Carroll v. U.S., 267 U.S. 132, 153-154 (1925). In United States v. Ross, 456 U.S. 798 (1982), cited by the Second District in its opinion, the U.S. Supreme Court held the scope of the automobile exception can extend to containers within the automobile if probable cause justifies such a search. Such a search was not justified in the present case.

The Petitioner quotes language from Ross which appears to support the Petitioner's position that probable cause always allows a search of the entire vehicle. However, the Petitioner ignores the following language from Ross:

The scope of a warrantless search of an automobile...is defined by the object of the search and the places in which there is probable cause to believe it may be found. Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable

cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab.

Id. at 824. Officer Herrold lacked probable cause to believe Mr. Betz had any contraband in the trunk of his car. Herrold claimed the odor of cannabis was present on Mr. Betz's person and in the passenger compartment of the car. Therefore, he could legally search Mr. Betz's person and the passenger compartment of the car.

The Jarrett case relied on by the Petitioner held that where an officer smells the odor of burnt cannabis emanating from an automobile, that officer has probable cause to conduct a warrantless search of that vehicle including the trunk. See State v. Jarrett, 530 So. 2d 1089 (Fla. 5th DCA 1988). In Betz, the Second District held that the Petitioner's reliance on this case was "unpersuasive" given the subsequent U.S. Supreme Court case of California v. Acevedo, 500 U.S. 565, 567 (1991). See Betz v. State, 26 Fla. L. Weekly D304 n.1 (Fla. 2d DCA Jan. 24, 2001).

Acevedo further addressed the issue of when closed containers found inside a car may be searched following Carroll and Ross. In Acevedo, police observed the defendant Acevedo leave an apartment known to contain marijuana, with a brown paper bag the size of marijuana packages they had seen earlier. He placed the bag in his car's trunk, and, as he drove away, they stopped the car, opened the trunk and the bag, and found marijuana. Id. at 567. The U.S.

Supreme Court held that in a search extending only to a container within an automobile, the police may search the container without a warrant where they have probable cause to believe that it holds contraband or evidence. Id. at 580. Based on their own observations, the officers had probable cause to search the trunk, but they did not have probable cause to search the entire vehicle. The Court stated "the police did not have probable cause to believe that contraband was hidden in any other part of the automobile and a search of the entire vehicle would have been without probable cause and unreasonable under the Fourth Amendment." Id. Taken together, Ross and Acevedo require police officers to have specific probable cause to believe they will find the object of their search in the places in which they conduct the search.<sup>1</sup> The police must end their search once they have searched that specific area. Any search conducted in an area where they do not have probable cause to believe they will find the object of their search is unreasonable and any evidence obtained from that search must be suppressed. As stated by the Second District in Betz, Acevedo effectively overruled the Jarrett court's holding that odor from the passenger compartment could, by itself, give rise to probable cause that cannabis existed

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<sup>1</sup> In Wyoming v. Houghton, 526 U.S. 295 (1999), a case extensively quoted by the Petitioner, the U.S. Supreme Court extended the Ross and Acevedo holdings to include passengers' containers as well. There were no passengers in the present case.

in a closed container in the trunk of an automobile. Based on Acevedo, in order for Officer Herrold to have conducted a legal warrantless search of Mr. Betz's trunk, the officer would have had to have probable cause that not only did Mr. Betz possess contraband, but that Mr. Betz specifically had contraband in a container in the trunk. Herrold lacked this probable cause.

Herrold claimed he smelled burning marijuana and saw grey smoke in the vehicle. Based on this testimony, the scope of his search should have been limited to places in which there was probable cause to believe he would find evidence of freshly smoked marijuana. Since the officer never observed anything to indicate Mr. Betz put anything inside the metal box in the briefcase located in the car's trunk, the officer could not have had probable cause to believe he would find therein the object of his search.

Herrold's warrantless search of the passenger compartment of Mr. Betz's car was lawful either as a search incident to arrest or under the automobile exception since Herrold had probable cause to search the car's interior. However, Herrold's search of this part of the car came up empty. If Herrold had discovered more marijuana within the car then he may have had probable cause to extend his search to the trunk of the car and to any containers within. See U.S. v. Riedesel, 987 F.2d 1383 (8th Cir. 1993); U.S. v. Randle, 67 F. Supp 2d 734 (E.D. Mich. 1999); U.S. v. Watson, 697 A.2d 36 (D.C.

App. 1997). He did not. Herrold first smelled and observed cannabis smoke. He then discovered Mr. Betz smelled of cannabis and possessed a small amount on his person. After the thorough search of the interior of the car revealed no further contraband, the officer's probable cause to search was extinguished. See United States v. Nielsen, 9 F.3d 1487 (10th Cir. 1993) (smell of burnt marijuana gave officer probable cause to search passenger compartment but not the trunk). At that time he should have had no further reason to believe the object of his search would be found in the trunk, let alone in a closed container within a closed briefcase inside the trunk.

The Jarrett case relied upon by the state was decided several years prior to the Acevedo decision. The Fifth District's holding in Jarrett that probable cause to search one part of a vehicle gives probable cause to search the entire vehicle is contrary to Acevedo where the U.S. Supreme Court held that probable cause to search one part of a vehicle cannot justify a search of the entire vehicle. The Second District Court of Appeal correctly applied the Ross and Acevedo holdings to the present case. Far from "car[ving] out a new and unjustified exception to Ross" as the Petitioner would have it, the Betz ruling is perfectly consistent with the U.S. Supreme Court holdings in Ross and Acevedo, as well as other cases following those holdings (see above). The Second District's holding in Betz should not be overturned.



CONCLUSION

In light of the foregoing reasons, arguments, and authorities, the Respondent respectfully asks this Honorable Court to affirm the opinion of the Second District Court of Appeal in Betz v. State, 26 Fla. L. Weekly D304 (Fla. 2d DCA Jan 24, 2001).

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Richard M. Fishkin, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this \_\_\_\_\_ day of November, 2001.

CERTIFICATION OF FONT SIZE

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Respectfully submitted,

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