IN THE SUPREME COURT OF FLORIDA

WILLIAM MICHAEL YULE,	:	
Petitioner,	:	
vs.	:	Case SC05-1335
		No.
STATE OF FLORIDA,	:	
Respondent.	:	
	:	

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

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TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE

In the Circuit Court for Polk County, the state filed an information charging Petitioner, William Michael Yule, with possession of methamphetamine and possession of drug paraphernalia. [R25] Petitioner filed a pre-trial motion to suppress physical evidence and his statements, arguing that law enforcement had committed an unlawful search and detention. [R36-39] After conducting a hearing on this motion on August 8, 2003, the trial court granted the motion. [R86-88] The court ruled the evidence obtained from the search could not be used to prove a new criminal offense, citing to this court's decisions in Croteau v. State, 334 So. 2d 577 (Fla. 1976), and Grubbs v. State, 373 So. 2d 905 (Fla. 1979). Respondent filed a notice of appeal.

On June 29, 2005, the Second District Court of Appeal reversed the trial court's order granting the motion to suppress. State v. Yule, 30 Fla. L. Weekly D1606 (Fla. 2d DCA June 29, 2005). (Append. I) Petitioner filed a notice of intent to seek the discretionary jurisdiction of this court.

STATEMENT OF THE FACTS

Petitioner shared a residence with Stacy Ellison, who was on probation. [T46] A relative of Ellison alleged to Ellison's probation officer, Leticia Jaimes, that Ellison was selling narcotics from this residence. [T44] Pursuant to the allegation, Jaimes and another probation officer went to the residence. [T45,48,60] Two detectives, Kevin Matheny and Mike Burdette, accompanied the probation officers for safety reasons. [T46,48,60] When they arrived, the law enforcement officers observed Ellison in her car preparing to leave. [T47] Jaimes informed Ellison that they wanted to search the residence for narcotics. [T47] Ellison agreed to the search. [T48]

The probation officers, the detectives, and Ellison entered the residence. [T48,61-62] The two detectives had not requested nor received permission to enter the home. [T71] Although the two detectives were not in police uniform, Burdette wore a hood over his head. [T56,61] When the two detectives entered the residence, they ordered the occupants, including Petitioner, to remain inside. [T49-50] Along with Ellison, the probation officers went into a bedroom. [T63] Meanwhile, the detectives remained in the living room where Petitioner and a woman were present. [T63] Burdette asked

Petitioner if he had any weapons. [T63] Petitioner responded that he had a knife and took it out of a pocket. [T64] He handed it to Burdette. [T64] Burdette then asked Petitioner if he had anymore weapons, Petitioner responded negatively, lifting up his shirt and turning around to display the lack of weapons. [T64-65] Burdette claimed he then saw an "empty pen cartridge sticking out of the rear of his pocket." [T64] The cartridge had a white residue in it. [T64,75] The detective believed the cartridge was used to ingest methamphetamine. [T64] After patting Petitioner down, the detective discovered four other cartridges in his pocket. [T64]

The detectives arrested Petitioner and read his Miranda rights. [T64,66] Petitioner then told the detectives that a tinfoil "boat" was underneath a couch. [T65] Petitioner also admitted to smoking methamphetamine earlier that day. [T65]

SUMMARY OF THE ARGUMENT

The decision of the Second District Court of Appeal conflicts with this courts decisions in Croteau v. State, 334 So. 2d 577 (Fla. 1976) and its progeny. In Croteau this court held that fruits of a search conducted pursuant to a probation condition permitting warrantless searches are only admissible in probation revocation hearings. The lower court abrogated this holding by permitting admission of the evidence to prosecute new criminal offenses against a non-probationer. This court should accept jurisdiction of this case to correct the Second District's departure from this court's established law.

ARGUMENT

ISSUE

DOES THE DECISION OF THE LOWER COURT CONFLICT WITH THIS COURT'S DECISION IN CROTEAU V. STATE, 334 SO. 2D 577 (FLA. 1976), AND ITS PROGENY BY RULING ADMISSIBLE TO PROVE NEW CHARGES EVIDENCE OBTAINED AS A RESULT OF A PROBATION CONDITION PERMITTING WARRANTLESS SEARCHES OF A RESIDENCE?

Law enforcement unlawfully detained Petitioner and conducted a search when they entered his residence without a warrant and without suspicion of his being involved in criminal activity. The Second District Court of Appeal upheld this intrusion, in part, based on the authority provided by a condition of Stacy Ellison's probation. Petitioner shared the residence with Ellison. The probation condition permitted warrantless searches of the residence of the probationer. As recognized by the dissent in the lower court's opinion, the majority decision is contrary to decisions of this court. This court, beginning in Croteau v. State, 334 So. 2d 577 (Fla. 1976), has firmly established that fruits of such warrantless probationary searches are only admissible in a subsequent probation revocation hearing, not a new criminal proceeding.

A warrantless search of a home is only proper if accompanied by probable cause of criminal activity and by

exigent circumstances. Zakrzewski v. State, 866 So. 2d 688 (Fla. 2003). This court in Croteau established a limited exception to the warrant requirement by holding that a probation officer can conduct a warrantless search of the residence of a probationer, even in the absence of exigent circumstances, where a probation condition permits such warrantless searches. Croteau, 334 So. 2d at 580. However, this rule is subject to an important caveat, that any evidence seized as a result of this probationary status be admissible only in a probation revocation hearing, not as part of a separate criminal prosecution. Id. In this holding, this court recognized that a defendant charged with a new offense is entitled to protections afforded under the Forth Amendment despite the defendant's probationer status. It is only at the probation revocation hearing where Fourth Amendment protections are limited.

This court affirmed the ruling in Croteau in Grubbs v. State, 373 So. 2d 905 (Fla. 1979), and Soca v. State, 673 So. 2d 24 (Fla. 1996). In Grubbs this court ruled that a condition of probation that required a probationer to always consent to a warrantless search by a probation officer or a police officer violated Article I, section 12 of the Florida Constitution and the Fourth Amendment to the United States Constitution. Grubbs, 373 So. 2d at 910. This court noted that a search would be valid if the evidence obtained as a

result of the search were used only in a probation revocation hearing. Id. at 907. In Soca this court reiterated, "[A] probation officer's right to search is based on our holding in *Grubbs*, wherein we expressly limited the use of the fruits of such a search to probation proceedings." Soca, 678 So. 2d at 28. The trial court granted the motion to suppress based on the above-cited cases, ruling that the fruits of the detention and search were admissible in a probation revocation hearing but not to prove the new charges faced by Petitioner. The Second District, however, rejected the trial court's reliance on this court's cases. Noting that the defendants in Croteau and Grubbs were both on probation, the Second District ruled those cases inapplicable because Petitioner was not a probationer. The court reasoned that law enforcement had the right to enter Petitioner's residence based on the probation condition applicable to Ellison and once inside had the right to seize contraband in plain view.

The Second District's dismissal of Croteau and its progeny was misplaced. As noted by the dissenting opinion of Judge Canady, the majority decision results in the anomaly of a probationer being afforded more protection from a warrantless search than a non-probationer like Petitioner. If the detectives had found contraband in Ellison's possession under similar circumstances to those present in their encounter with Petitioner, the evidence of the contraband

would only be admissible at a probation revocation hearing. Under the majority decision, however, Petitioner, the non-probationer, is not entitled to the same result of inadmissibility. The majority decision of the Second District reached this untenable result because of its limited interpretation of this court's decisions. The court failed to recognize that the authority to enter the residence was solely based on the condition of probation permitting warrantless searches and that this court has limited the impact of such a condition by limiting the admissibility of the fruits of such a search.

The Second District has expanded the effect of a probation condition requiring warrantless searches beyond what this court has held in Croteau, Soca, and Grubbs. In doing so, the lower court's decision conflicts with these cases. Contrary to the decision, Petitioner's expectation of privacy was not reduced as a result of his roommate being on probation. This court should correct this abrogation of its holdings and affirm Petitioner's right to be free from a warrantless search of his residence by exercising discretionary jurisdiction of this case.

CONCLUSION

Based on the above arguments and authorities, Petitioner respectfully requests that this court exercise its discretionary jurisdiction of this case under Florida Rule of Appellate Procedure 9.030(2)(A)(iv).

APPENDIX

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CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Jonathan P. Hurley, Concourse Center #4, 3507 E. Frontage Rd. - Suite 200, Tampa, FL 33607, (813) 287-7900, on this _____ day of August, 2005.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

_____

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