IN THE SUPREME COURT OF FLORIDA

H. D., a child,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO:
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
	)	

PETITIONER'S JURISDICTION BRIEF

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AUTHORITIES CITED

PRELIMINARY STATEMENT

The Petitioner was the Respondent in the Fourth District Court of Appeal and the Respondent was the Petitioner in that Court.

In the brief, the parties will be referred to as they appear before this Honorable Court.

STATEMENT OF THE CASE AND FACTS

Petitioner was charged by a petition alleging deliquency with burglary and grand theft. Petitioner's trial counsel filed a motion to suppress petitioner's statements to police because the statements were taken without a written waiver of counsel attested to by two witnesses in violation of Rule 8.290(d)(4) Rules of Juvenile Procedure. The motion was denied.

On appeal to the District Court of Appeal, Fourth District, Petitioner's conviction was upheld on the authority of Jordan v. State, 334 So.2d 589 (Fla. 1976)(Appendix 1). The Court of Appeal subsequently denied Petitioner's motion for rehearing and for request for certification of decision (Appendix 2). Petitioner thereupon noticed his intention to invoke the discretionary jurisdiction of this Court on January 24, 1984.

This jurisdictional brief follows.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL SUB JUDICE DIRECTLY AND EXPRESSLY CONFLICTS WITH DECISIONS OF THE FIRST DISTRICT COURT OF APPEAL ON THE QUESTION OF WHETHER RULE 8.290(d)(4) OF THE FLORIDA RULES OF JUVENILE PROCEDURE REQUIRING THAT WAIVER OF COUNSEL BE IN WRITING AND ATTESTED TO BY TWO WITNESSES APPLIES TO OUT-OF-COURT STATEMENTS MADE TO POLICE OFFICERS.

This Court has jurisdiction to review a decision of a district court of appeal which "expressly and directly conflicts with that of another district court of appeal." Article V, Section 3(b)(3), Florida Constitution (1980 amendment).

The Court below created conflict by announcing a rule of law in the case at bar directly contrary to that announced in M.L.H.v. State, 399 So.2d 13 and S.L.W., a child, v. State, ___ So.2d ___, Case No. AS-175, opinion filed December 2, 1983, 8FLW 2814 (Fla. 1DCA 1983), in regard to the application of Florida Rule of Juvenile Procedure 8.290(d)(4).

Rule 8.290(d)(4) of Florida Rules of Juvenile procedure provides in pertinent part:

A waiver of counsel made in court shall be record; a waiver made out of court shall be in writing with not less than two attesting witnesses. Said witnesses shall attest the voluntary execution thereof(e.s.) at 2814.

In M.L.H. v. State, supra, a police officer took a statement from M.L.H. without first obtaining a written waiver of counsel attested to by two attesting witnesses. The First District Court of Appeal in M.L.H., supra, applied Rule 8.290(d)(4) to a police interrogation

situation and reversed M.L.H's conviction explaining:

> To safeguard the rights of the accused and to assist the state in showing the voluntariness of waivers of counsel, the supreme court has mandated by rule that two witnesses attest to the voluntary execution of a juvenile's waiver of his right to counsel. We are convinced under the facts of this case that the failure to comply with the rules of juvenile procedure in conjunction with appellant's inability to read or write invalidates his confession.
>
> At 14.

In S.L.W., supra, a police officer took a statement from S.L.W. without first obtaining a written waiver of counsel from him. The First District Court of Appeal reaffirmed its holding in M.L.H., supra, that Rule 8.290(d)(4) applies to police interrogation situations and is mandatory; there was no discussion of a totality of circumstances approach. The Court reversed S.L.W.'s conviction explaining:

> In the present case the lower court was of the view that this rule applied only to waivers before the court, the public defender, or an intake officer, but was not applicable to police officers in general, therefore he overruled S.L.W.'s objection. The State reasserts this argument and also contends that Section 39.03(1)(b) rather than the rule of procedure governs this case. This interpretation is incorrect. The rule applies to situations involving police officers and therefore to the present case. In addition, compliance with the rule is mandatroy, see M.L.H v. State, 399 So.2d 13 (Fla. 1st DCA 1981). The failure to comply in this case renders inadmissible the inculpatory statements, which defense counsel sought to suppress, made by S.L.W. to the police officer.
>
> At 2814.

In the present case, Officer Stufano did not obtain a written waiver of counsel from Appellant attested to by two witnesses as was the situation in M.L.H., supra, and S.L.W., supra. The trial court denied Appellant's motion to suppress Appellant's statement because of a violation of the mandatory procedures set out in Rule 8.290(d)(4) Rules of Juvenile Procedure. The Fourth District Court of Appeal rejected the authority of M.L.H., supra, and S.L.W., supra, and affirmed Appellant's conviction stating:

> "Finding that Rule 8.290(d)(4) of the Florida Rules of Juvenile Procedure tracks Rule 3.111(d)(4) of the Florida Rules of Criminal Procedure we affirm on the authority of Jordan v. State, 334 So.2c 589 (Fla. 1976).

Appendix 1.

In Jordan v. State, supra, this Honorable Court interpreted the adult counterpart to Rule 8.290(d)(4), Rule 3.111(d)(4), Fla.R.Crim.Pro. This Honorable Court held that there is no constitutional requirement that a waiver be written and signed in the presence of two witnesses in order for the statement to be free from suppression if otherwise shown to be voluntary. The Court also rejected the idea that Rule 3.111(d)(4) applies to a police interrogation situation.

The Fourth District Court's decision in the present case, thus, directly conflicts with M.L.H., supra, and S.L.W., supra, in its construction of Rule 8.290(d)(4), Rules of Juvenile Procedure. In particular as to whether it applies to police interrogation situations and whether any statement taken in violation of the rule is subject to suppression.

It is especially appropriate that this Court take jurusdiction over this cause because the State is appealing S.L.W., supra on the exact same issue. The State has filed a rehearing motion in S.L.W. and is requesting the First District, inter alia to certify the question: whether a court rule, specifically, Fla.R.Juv.Pro., 8.290(d)(4) is applicable in a police interrogation siguation. In fact, the State cites Jordan v. State, 334 So.2d 589 (Fla. 1976) as support for its position and as being in conflict with S.L.W., supra.

Thus, the instant issue which has never been specifically addressed by this Court unquestionably presents for this Court's consideration an issue of great importance. The issue is and will continue to be a recurring legal issue, and in light of the holding of the First District Court of Appeal in M.L.H., supra, and S.L.W, supra, it is necessary for this Court to resolve this important issue. This Court should therefore exercise its discretion and accept jurisdiction in this case.

CONCLUSION

Based upon the foregoing argument and the authorities cited therein, Petitioner respectfully requests this Honorable Court to accept jurisdiction of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to JOY B. SHEARER, ESQUIRE, Assistant Attorney General, 111 Georgia Avenue, West Palm Beach, Florida, by courier, this 1st day of February, 1984.

Cathleen Brady