

IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,766

MAJOR VANCE,

Petitioner

vs.

THE STATE OF FLORIDA,

Respondent.

**FILED**  
SID J. WHITE  
SEP 17 1984  
CLERK, SUPREME COURT  
By: *[Signature]*  
Chief Deputy Clerk

\* \* \* \* \*

ON PETITION FOR DISCRETIONARY REVIEW

\* \* \* \* \*

BRIEF OF RESPONDENT ON JURISDICTION

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS.....	ii
PREFACE.....	1
STATEMENT OF THE CASE.....	2
QUESTION PRESENTED.....	3
ARGUMENT.....	4-5
CONCLUSION.....	6
CERTIFICATE OF SERVICE.....	7

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
Gragg v. State, 429 So.2d 1204 (Fla. 1983).....	4, 5
Solomon v. State, 442 So.2d 1030 (Fla. 1st DCA 1983).....	4
Vance v. State, 452 So.2d 994 (Fla. 3d DCA 1984).....	1, 4

OTHER AUTHORITY

790.10, Florida Statutes.....	2, 4
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## PREFACE

The Petitioner, Major Vance, was the Appellant in the District Court of Appeal and the Defendant in the trial court. The Respondent, the State of Florida, was the Appellee in the District Court of Appeal and the Prosecution in the trial court. In this brief, the parties will be referred to as they appear before the trial court.

The opinion of the District Court of Appeal herein is reported at Vance v. State, 452 So.2d 994 (Fla. 3d DCA 1984).

I

STATEMENT OF THE CASE

The Petitioner's Statement of the Case is substantially accurate except for his characterization of the evidence, thus:

"[T]he single act of exhibiting a firearm in the presence of two persons, as was reflected by the trial evidence. . ."

Petitioner's Brief, at p. 1.

The evidence below was, to the contrary, consistent with a finding that there were two displays of the firearm within the meaning of Section 790.10, Florida Statutes.

II

QUESTION PRESENTED

WHETHER THIS COURT SHOULD EXERCISE  
ITS DISCRETIONARY JURISDICTION?

### III

#### ARGUMENT

THIS COURT SHOULD DECLINE DISCRETIONARY REVIEW.

The Third District Court of Appeal in the present cause recognized on the face of its opinion that it was declining to find fundamental error, where such a finding was the basis to review the defendant's complaint in Solomon v. State, 442 So.2d 1030 (Fla. 1st DCA 1983). Vance v. State, 452 So.2d 995, at n. 1 (Fla. 3d DCA 1984). However, in Solomon the central issue was the proper construction of Section 790.10, Florida Statutes. Id., In the present cause the District Court never reached that issue because of the Defendant's procedural default. Id., at 995. A conflict with the central issue in Solomon is not presented. This cause is therefore not worthy of plenary review and the exercise of this Court's discretionary jurisdiction where review would not reach the only major issue. Jurisdiction would be more appropriately exercised when the issue in Solomon has been squarely presented and decided in another District Court opinion.

The present decision is also not in conflict with Gragg v. State, 429 So.2d 1204 (Fla. 1983). Unlike Gragg, the District Court assumed without deciding that the jury in the

present cause had exercised its pardoning power. 452 So.2d at 996, n. 2. Additionally unlike Gragg whether the jury had entered a pardon or not was not the decisional basis for the present opinion.



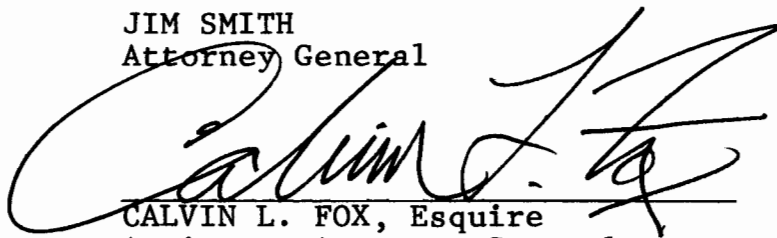
IV

CONCLUSION

WHEREFORE, upon the foregoing, the Respondent, THE STATE OF FLORIDA, submits that the exercise of discretionary jurisdiction is inappropriate herein.

RESPECTFULLY SUBMITTED, on this 13<sup>th</sup> day of September, 1984, at Miami, Dade County, Florida.

JIM SMITH  
Attorney General


A large, stylized handwritten signature in black ink, appearing to read "Calvin L. Fox". The signature is written over a horizontal line.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON JURISDICTION was caused to be served by mail upon BETH C. WEITZNER, Assistant Public Defender, 1351 N. W. 12th Street, Miami, Florida 33125, on this 13<sup>th</sup> day of September, 1984.



CALVIN L. FOX, Esquire  
Assistant Attorney General

ss/