IN THE FLORIDA SUPREME COURT

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GEORGE W. BURCH,

Petitioner,

vs.

CASE NO. 66,493

STATE OF FLORIDA,

Respondent.

CD J. WHILE MAR 4 1985 CLERK, SUPREME COURT By_____Chief Deputy Clerk

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

George W. Burch, the criminal defendant and appellant in <u>Burch v. State</u>, 10 F.L.W. 167 (Fla. 1st DCA Jan. 11, 1985), will be referred to herein as Petitioner. The State of Florida, the prosecution and appellee below will be referred to herein as Respondent.

Respondent has attached hereto an appendix containing the opinion of the lower court.

STATEMENT OF THE CASE AND FACTS

Respondent, for purposes of resolving the narrow jurisdictional issue raised herein, accepts as accurate Petitioner's Statement of the Case and Facts set forth at page 2 of his jurisdictional brief.

STATEMENT OF JURISDICTION

Petitioner seeks to invoke this Court's discretionary review of the decision below pursuant to Article V, Section 3(b)(3) of the Constitution of the State of Florida and Fla. R.App.P. 9.030(a)(2)(A)(iv) on the ground that said decision is in express and direct conflict with a decision of another district court of appeal on the same question of law. Respondent agrees that there is conflict between the decision of the lower court and another district court of appeal.

ARGUMENT

RESPONDENT CONCURS WITH PETITIONER'S ASSERTION THAT THE REQUISITE CONFLICT BETWEEN THE DECISION BELOW AND THAT OF ANOTHER DISTRICT COURT OF APPEAL HAS BEEN ESTABLISHED.

Respondent agrees that the apparent conflict between <u>Burch v. State</u>, 10 F.L.W. 167 (Fla. 1st DCA Jan. 11, 1985), <u>review pending</u>, Case No. 66,471, <u>Weems v. State</u>, 451 So.2d 1207 (Fla. 2d DCA 1984), <u>discretionary review pending</u>, Case No. 65,593 and <u>Harvey v. State</u>, 450 So.2d 926 (Fla. 4th DCA 1984) should be resolved and adds that the merits of this cause are so interwoven with the certified question in <u>State v.</u> <u>Burch</u>, Case No. 66,471, that Respondent joins in Petitioner's request that this Court grant discretionary review in this cause pursuant to Article V, Section 3(b)(3) of the Constitution of the State of Florida and Fla.R.App.P. 9.030(a)(2)(A)(iv).

CONCLUSION

Based upon the foregoing argument and the authority cited herein, Respondent submits that Petitioner has established the requisite conflict for purposes of invoking this Court's discretionary review of the decision below.

WHEREFORE, Respondent respectfully moves this Honorable Court to grant conflict certiorari review over the decision below, set the cause for oral argument, and following briefing on the merits, affirm the sentence sought to be reviewed.

Respectfully submitted:

JIM SMITH ATTORNEY GENERAL

Assistant Attorney General

The Capitol Tallahassee, Florida 32301 (904) 488-0600

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded to Glenna Joyce Reeves, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida 32302, this 4th day of March, 1985.

Harry & Printy GARY LF PRINTY