

FILED

SID J. WHITE

MAR 28 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
 v.)
)
 KEITH HENRIQUEZ,)
)
 Respondent.)
)
)
)
 _____)

Florida Supreme Court Case No. 66782
(4th DCA Case No. 83-2365)

PETITIONER'S BRIEF ON JURISDICTION

JIM SMITH
Attorney General
Tallahassee, Florida

LEE ROSENTHAL
Assistant Attorney General
111 Georgia Avenue - Suite 204
West Palm Beach, Florida 33401
(305) 837-5062

Counsel for Petitioner

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS	i
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
POINT INVOLVED	3
SUMMARY OF THE ARGUMENT	3 (a)
ARGUMENT	
<u>POINT INVOLVED</u>	4-6
PETITIONER PROPERLY INVOKES THE DISCRETIONARY JURISDICTION OF THIS HONORABLE COURT, AS THERE IS EXPRESS AND DIRECT CONFLICT BETWEEN THE DECISIONS OF THIS COURT AND THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL ISSUED IN THE INSTANT CASE.	
CONCLUSION	7
CERTIFICATE OF SERVICE	7

TABLE OF CITATIONS

<u>CASE</u>	<u>PAGE</u>
<u>Borges v. State,</u> 415 So.2d 1265, 1267 (Fla. 1982)	4,5
<u>Mancini v. State,</u> 312 So.2d 732, 733 (Fla. 1975)	5
<u>Portee v. State,</u> 447 So.2d 219 (Fla. 1984)	4,5
<u>State v. Carpenter,</u> 417 So.2d 986 (Fla. 1982)	4,5
<u>State v. Gibson,</u> 452 So.2d 553, 556-58 (Fla. 1984)	4,5

OTHER AUTHORITIES

Art.V, Section 3(b)(3) <u>Fla.Const.</u> (1980)	4
Rule 9.030(a)(2)(A)(iv), <u>Fla.R.App.P.</u>	4

PRELIMINARY STATEMENT

The petitioner was the appellee in the Fourth District Court of Appeal and the prosecution in the trial court. The respondent was the appellant and the defendant, respectively, in those lower courts.

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

The Appendix is a conformed copy of the appellate court's opinion. All emphasis has been added by petitioner unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

On appeal, the Fourth District Court of Appeal vacated Respondent's conviction for resisting arrest with violence. Respondent's convictions for battery on a law enforcement officer, failure to exhibit a driver's license, and reckless driving were affirmed. Petitioner file a motion for rehearing on January 10, 1985, which was denied on March 13, 1985.

The district court vacated Respondent's conviction for resisting arrest with violence, because:

[T]he State relied upon evidence of a single, continuous incident to prove the allegations of both counts.
(Appendix, pg. 3).

Therefore, the district court concluded that Respondent could not be convicted of both battery on a law enforcement officer and resisting arrest with violence, and cited Portee v. State, 447 So.2d 219 (Fla. 1984), and Borges v. State, 415 So.2d 1265, 1267 (Fla. 1982), as controlling authority. (Appendix, pg. 2).

POINT INVOLVED

WHETHER PETITIONER PROPERLY INVOKES THE DISCRETIONARY JURISDICTION OF THIS HONORABLE COURT, AS THERE IS EXPRESS AND DIRECT CONFLICT BETWEEN THE DECISIONS OF THIS COURT AND THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL ISSUED IN THE INSTANT CASE?

SUMMARY OF THE ISSUE

By holding resisting arrest with violence to be a lesser included offense of battery on a law enforcement officer by virtue of the facts in the case, the Fourth District Court's opinion is in direct conflict with this Court's holding in State v. Carpenter, infra.

ARGUMENT

PETITIONER PROPERLY INVOKES THE DISCRETIONARY JURISDICTION OF THIS HONORABLE COURT, AS THERE IS EXPRESS AND DIRECT CONFLICT BETWEEN THE DECISIONS OF THIS COURT AND THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL ISSUED IN THE INSTANT CASE.

Petitioner seeks to establish this Court's "conflict" jurisdiction under Art.V, Section 3(b)(3), Fla.Const. (1980) and Rule 9.030(a)(2)(A)(iv), Fla.R.App.P. Conflict exists between the instant decision and the decisions in State v. Carpenter, 417 So.2d 986 (Fla. 1982); See also, State v. Gibson, 452 So.2d 553, 556-58 (Fla. 1984).

In its opinion, the Fourth District Court of Appeal held that the trial court committed reversible error by convicting and sentencing respondent for both battery on a law enforcement officer and resisting an officer with violence, since the State relied upon evidence of a single, continuous incident to prove the allegations of both counts. In support of its opinion, the district court cited this Court's holdings in Portee v. State, 447 So.2d 219 (Fla. 1984), and Borges v. State, 415 So.2d 1265, 1267 (Fla. 1982).

Conflict jurisdiction is properly invoked when a district court of appeal either (1) announces a rule of law which conflicts with a rule previously announced by the Supreme Court or another district, or (2) applies a rule of law to produce a different result in a case which involves substan-

tially the same facts as another case. Mancini v. State, 312 So.2d 732, 733 (Fla. 1975). The court below created conflict in the latter way by applying a rule of law contrary to that announced in State v. Carpenter, 417 So.2d 986 (Fla. 1982), and State v. Gibson, 452 So.2d 553, 556-58 (Fla. 1984).

Petitioner suggests that the Fourth District overlooked the holding in State v. Carpenter, supra, in which this Court expressly stated that resisting arrest with violence and battery on a law enforcement officer are offenses which may be violated by a single transaction without violating the double jeopardy clause of the Fifth Amendment.

Petitioner also submits that the Fourth District misapplied this Court's holdings in Borges v. State, supra, and Portee v. State, supra, when the district court found resisting arrest with violence to be a lesser included offense of battery on a law enforcement officer (Appendix, pg. 4).

In State v. Carpenter, supra at 988, this Court stated:

Under Section 843.01, Florida Statutes (1979), one could obstruct or oppose a law enforcement officer by threatening violence and still at the same time not be committing a battery on the law enforcement officer as proscribed in Section 784.07, Florida Statutes (1979). In applying the Blockburger test the courts look only to the statutory elements of each offense and not to the actual evidence to be presented at trial or the facts as alleged in a particular information. (citation omitted)

Despite the above language, the Fourth District Court considered facts alleged in the information to reach its conclusion.

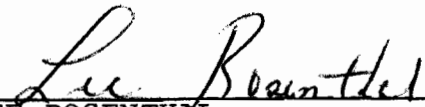
There is a need for this Honorable Court to resolve this issue so that appellate and trial courts will have a well-defined and workable rule of law to guide them. Petitioner therefore respectfully requests this Honorable Court accept jurisdiction in this cause.

CONCLUSION

WHEREFORE, based on the foregoing reasons and authorities cited therein, petitioner respectfully requests this Honorable Court accept discretionary jurisdiction in the instant case.

Respectfully submitted,

JIM SMITH
Attorney General
Tallahassee, Florida



LEE ROSENTHAL
Assistant Attorney General
111 Georgia Avenue - Suite 204
West Palm Beach, Florida 33401
(305) 837-5062

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished this 26th day of March, 1985 by mail/courier, to ELLEN MORRIS, ESQUIRE, Assistant Public Defender, 224 Datura Street, 13th Floor, West Palm Beach, Florida 33401.



Of Counsel