

IN THE SUPREME COURT OF FLORIDA

CASE NO. 67,846

THE STATE OF FLORIDA,

Petitioner,

**FILED**  
NOV 20 1985

vs.

NOV 20 1985

CLERK, SUPREME COURT

By JAMES LENARD Chief Deputy Clerk

Respondent.

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ON PETITION FOR DISCRETIONARY REVIEW

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ANSWER BRIEF OF RESPONDENT ON JURISDICTION

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Florida  
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### INTRODUCTION

The state has sought discretionary review by this Court of an opinion of the Third District Court of Appeal. The state was the appellee in the district court and the respondent James Lenard was the appellant below.

Citations are abbreviated as follows:

(A) - Appendix attached hereto consisting of the opinion of the Third District Court of Appeal.

### STATEMENT OF THE CASE AND FACTS

The respondent accepts the state's statement of the case and facts.

### SUMMARY OF ARGUMENT

The decision of the Third District Court of Appeal in this case Lenard v. State, may conflict with the Fifth District's decision in Wright v. State, 471 So.2d 1295 (Fla. 5th DCA 1985); however, respondent urges this Court not to accept jurisdiction in this case.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN LENARD V. STATE DIRECTLY MAY CONFLICT WITH THE FIFTH DISTRICT'S DECISION IN WRIGHT V. STATE, 471 So.2d 1295 (Fla. 5th DCA 1985) BUT RESPONDENT URGES THIS COURT NOT TO TAKE JURISDICTION.

The state is seeking discretionary review in this Court on the grounds the lower court's decision expressly and directly conflicts with this Court's decision in State v. Neil, 457 So.2d 481 (Fla. 1984) and with the Fifth District's decision in Wright v. State, 471 So.2d 1295 (Fla. 5th DCA 1985), regarding the applicability of Neil to pipeline cases: cases pending at the time Neil was decided wherein the defendant properly objected to the state's use of peremptory challenges of prospective black jurors based solely on race.

The respondent acknowledges that this Court has already accepted conflict jurisdiction of several cases on this identical issue and that conflict may exist with Wright. Respondent, however, urges this Court not to accept jurisdiction in this case and points out that conflict jurisdiction has not been accepted as of yet by this Court in Wright. In the event this Court does take jurisdiction, respondent requests this Court to simply stay any further proceedings in this case pending resolution of the issue by this Court in the earlier cases.

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Safford v. State, 463 So.2d 378 (Fla. 3d DCA 1985), review granted August 23, 1985; Jones v. State, 466 So.2d 301 (Fla. 3d DCA 1985), review granted August 23, 1985; Castillo v. State, 466 So.2d 7 (Fla. 3d DCA 1985), review granted August 23, 1985.

CONCLUSION

Based upon the foregoing, respondent acknowledges this Court may accept discretionary review of this case, but urges this Court not to accept jurisdiction.

Respectfully submitted,

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of Florida  
1351 Northwest 12th Street  
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BY: Marti Rothenberg  
MARTI ROTHENBERG  
Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, 401 Northwest Second Avenue, Miami, Florida, this 18<sup>th</sup> day of November, 1985.

Marti Rothenberg  
MARTI ROTHENBERG  
Assistant Public Defender