

IN THE SUPREME COURT OF THE

STATE OF FLORIDA

Case No. 68,440

KENDRA SUE MACIAS, )  
Petitioner, )  
-vs- )  
STATE OF FLORIDA, )  
Respondent. )

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BRIEF IN SUPPORT OF JURISDICTION

[Petition for Writ of Certiorari  
to the Fourth District Court of  
Appeal of the State of Florida]

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TABLE OF CONTENTS

	<u>PAGE</u>
STATEMENT OF THE CASE . . . . .	1
SUMMARY OF ARGUMENT . . . . .	2
REASON FOR GRANTING WRIT . . . . .	3
CONCLUSION . . . . .	5
CERTIFICATE OF SERVICE . . . . .	5

TABLE OF CITATIONS

<u>MACHIN v. STATE,</u> 213 So.2d 499 (Fla. 3 DCA 1968), cert. denied 221 So.2d 747 (Fla. 1968) . . . . .	2
<u>WELLS v. STATE,</u> 468 So.2d 1087 (Fla. 3 DCA 1985) . . . . .	2

STATEMENT OF THE CASE

The Petitioner was found guilty by a jury in the County Court of Broward County, of the offense of Driving While Under the Influence of Alcoholic Beverages, on 14 July 1983. She timely appealed and the Circuit Court of Broward County, sitting in its Appellate capacity, issued, on 8 May 1985, its decision reversing the Petitioner's conviction and remanded for new trial [See A. 1 to this Brief].

Thereafter, the State of Florida sought review of the matter in the District Court of Appeals of Florida, Fourth District, which Court, on 22 January 1986, authored a seven (7) page opinion quashing the Circuit Judge's Order and reinstated Petitioner's conviction [See A. 2 to this Brief].

The Petitioner then filed her Petition for Rehearing, Motion to Certify Conflict [See A. 3 to this Brief], which was denied by the Court on 12 February 1986.

Notice of Certiorari followed.

SUMMARY OF ARGUMENT

The Petitioner, in her Brief upon Jurisdiction, urges this Court to find that the Fourth District Court of Appeals has created conflict with the Third District Court of Appeals when, in reversing the decision of the Circuit Judge, the Fourth District in considering Machin v. State, 213 So.2d 499 (Fla. 3 DCA 1968), cert. denied 221 So.2d 747 (Fla. 1968), and Wells v. State, 468 So.2d 1087 (Fla. 3 DCA 1985) [which cases Petitioner relied upon] stated that as to those two Third District cases, "We respectfully disagree with the results in those cases." [opinion at Page 6].

This disagreement is upon Fifth Amendment issues, and creates conflicts between the Districts, for which certiorari will lie.

REASONS FOR GRANTING WRIT

THE DECISION OF THE FOURTH DISTRICT  
COURT OF APPEALS CREATES CONFLICT  
WITH DECISIONS OF THE THIRD DIS-  
TRICT COURT OF APPEALS ON MATTERS  
RELATIVE TO FIFTH AMENDMENT TESTI-  
MONIAL COMMUNICATIONS.

The lengthy opinion by the District Court outlines some of the facts germane to this issue, at least for purposes of this Jurisdictional Brief.

At the direction of the Trial Court Judge and upon the request of the State, the Petitioner was compelled to speak [for purposes of comparing the quality of her voice on the night of her arrest to that time in the courtroom] and, under the direction of the arresting policeman, to perform "roadside sobriety tests" that she had performed on the night of her arrest.

The District Court outlined what it felt was the law on the subject, relying mostly upon Federal case law, and finding the requirements of the Trial Court vis a vis the Petitioner was grounded upon "non testimonial" actions.

The Appeals Court, in its ruling, noted that there are two Third District Court of Appeals cases, Machin v. State, 213 So.2d 499 (Fla. 3 DCA 1968), cert. denied 221 So.2d 747 (Fla. 1968) and Wells v. State, 468 So.2d 1087 (Fla. 3 DCA 1985), which Petitioner contended were Florida law cogently on point to the issues presented. The Fourth District

Court of Appeals acknowledged those cases and states, "We respectfully disagree with the results in those cases." [at Page 6].

This, the Petitioner submits, is sufficient to invoke the certiorari jurisdiction of this Court to review this most important of issues, for the Fourth District Court of Appeals has created conflict with the Third District Court of Appeals of Florida.

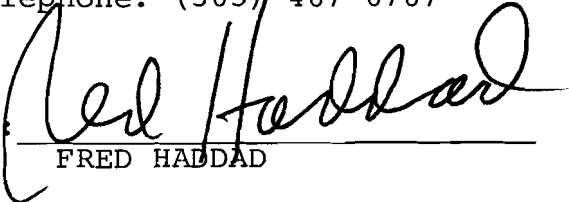
CONCLUSION

On the basis of the foregoing, the Petitioner prays that this Court issue its Writ of Certiorari, and thereafter do as seems just and proper under the circumstances.

Respectfully submitted,

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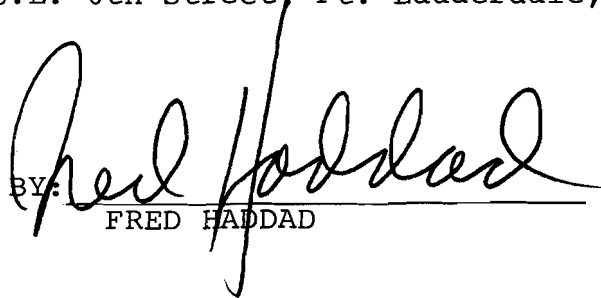
BY:

  
FRED HADDAD

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to JOAN FOWLER ROSSIN, ESQUIRE, Assistant Attorney General, 111 Georgia Avenue, Room 204, West Palm Beach, FL 33401, and to PAUL ZACKS, ESQUIRE, Assistant State Attorney, Broward County Courthouse, 201 S.E. 6th Street, Ft. Lauderdale, FL 33301, this 18 March 1986.

BY:

  
FRED HADDAD