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PRELIMINARY STATEMENT

Respondent was the prosecution and Petitioner the defendant in the Criminal Division of the County Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida.

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

All emphasis has been added by Respondent unless otherwise indicated.

STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case as found on page one of her brief.

POINT ON APPEAL

WHETHER THE DECISION OF THE COURT
BELOW EXPRESSLY AND DIRECTLY CONFLICTS
WITH DECISIONS OF THE THIRD DISTRICT
COURT OF APPEAL ON MATTERS RELATIVE TO
THE FIFTH AMENDMENT, SO THIS COURT'S
CONFLICT JURISDICTION HAS NOT BEEN
ESTABLISHED?

SUMMARY OF THE ARGUMENT

Petitioner has failed to establish conflict between the opinion sub judice and any other opinion of another district court of appeal or of this Honorable Court, and this Court should decline to accept jurisdiction over this case.

ARGUMENT

THE DECISION OF THE COURT BELOW DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH DECISIONS OF THE THIRD DISTRICT COURT OF APPEAL ON MATTERS RELATIVE TO THE FIFTH AMENDMENT, SO THIS COURT'S CONFLICT JURISDICTION HAS NOT BEEN ESTABLISHED.

Petitioner claims that the decision of the Fourth District Court of Appeal in the instant case conflicts with two decisions of the Third District Court of Appeal: Machin v. State, 213 So.2d 499 (Fla. 3d DCA), cert. denied 221 So.2d 747 (Fla. 1968) and Wells v. State, 468 So.2d 1087 (Fla. 3d DCA 1985). Respondent maintains that Petitioner has not demonstrated conflict with other state appellate decisions from the face of the decision sub judice, that the decision does not conflict with other decisions, and that this Honorable Court therefore lacks jurisdiction to grant Petitioner's application for discretionary review.

It is well-settled that in order to establish conflict jurisdiction, the decision sought to be reviewed (and not opinions or reasons contained therein or in a dissent) must expressly and directly create conflict. Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980). Petitioner has not and cannot demonstrate that the decision of the Fourth District Court of Appeal in the instant case expressly and directly conflicts with another state appellate decision. The instant case involved the trial court's direction that

Petitioner state her name for the purpose of showing her normal voice characteristics; and perform the same roadside tests which were administered the night of Petitioner's arrest (Slip opinion at p. 2). The District Court held that these actions were not testimonial in nature (Slip opinion at p. 6).

The instant facts are distinct and distinguishable from those in the decisions of the Third District Court of Appeal. Machin, supra, involved a defendant demonstrating his running gait. Wells, supra, involved the display of tatoos. The actions are dissimilar.

Since it is evident that the Court's holding below is not in express and direct conflict with other appellate decisions, it is apparent that Petitioner is seeking to invoke this Court's jurisdiction in a thinly veiled attempt to pursue another appeal. Such a use of this Court's jurisdiction is not permitted. Sanchez v. Wimpey, 409 So.2d 20 (Fla. 1982). The Court has repeatedly condemned such misguided efforts to invoke its discretionary jurisdiction and has repeatedly emphasized the need for finality in district court of appeal decisions. Jenkins, supra. The legal principles discussed by the fourth district in its decision below do not conflict with the cases cited by Petitioner. Ford Motor Co. v. Kikis, 401 So.2d 1341 (Fla. 1981). Petitioner's reliance on extraneous material in his brief speaks for itself; conflict in the decision is not present.

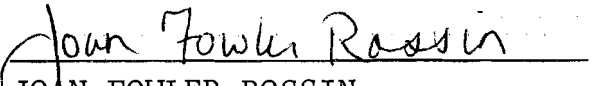
This Court's discretionary jurisdiction is directed to a concern with decisions as precedents as opposed to adjudications of the rights of particular litigants. Mystan Marine, Inc. v. Harrington, 399 So.2d 200 (Fla. 1976). Therefore, as Petitioner has failed to show any express and direct conflict between this case and other state appellate cases, discretionary jurisdiction has not been established in the case sub judice and this Honorable Court lacks jurisdiction to grant Petitioner's application for discretionary review.

CONCLUSION

Since no conflict between the decision in the instant case and other appellate decisions has been established, Respondent would ask that this Court decline to accept jurisdiction in this case.

Respectfully submitted,

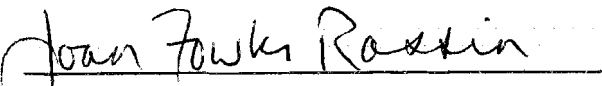
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Respondent's Brief on Jurisdiction has been furnished this 26th day of March, 1986, by United States Mail, to: FRED HADDAD, ESQUIRE, Sandstrom & Haddad, 429 South Andrews Avenue, Ft. Lauderdale, Florida 33301.


OF Counsel