

9-19

IN THE SUPREME COURT OF FLORIDA

ARDEN M. MERCKLE,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

FILED
AUG 26 1987
CLERK, SUPREME COURT
By _____
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Case No. 70,778

REVIEW OF THE DECISION OF THE DISTRICT COURT
OF APPEAL, SECOND DISTRICT
STATE OF FLORIDA

BRIEF OF RESPONDENT ON JURISDICTION

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SUMMARY OF THE ARGUMENT

The standard applied by the finder of fact and the standard applied by a reviewing appellate court are distinct. As such, the petitioner's position that the appellate court has created conflict by not applying the standard for the finder of fact on appeal is erroneous.

ARGUMENT

ISSUE

THERE IS NO CONFLICT BETWEEN THE INSTANT
OPINION AND THAT OF OTHER FLORIDA APPELLATE
COURTS.

Article V, Section 3(b)(3), of the Florida Constitution and Rule 9.030(A)(2)(a)(iv), Florida Rules of Appellate Procedure provides for discretionary jurisdiction in this court where the decision of a District Court of Appeal expressly and directly conflicts with a decision of another District Court on the same question of law. To be "expressly" in conflict there must be a conflict of decisions. Jenkins v. State, 385 So.2d 1356 at 1359 (Fla. 1980). Petitioner submits that this Court's holding in Jenkins requires that there be a conflict in the text of the opinions. The "direct" requirement excludes those cases which are distinguishable by operative facts. See Wilson v. Southern Bell Telephone and Telegraph Co., 327 So.2d 220 (Fla. 1976).

The petitioner cites to the cases which announce the standard by which circumstantial evidence is judged to be sufficient by the finder of fact. There is nothing in the opinion which states that this was not the standard applied and instructed below. Petitioner suggests that the circumstantial evidence standard is what should be applied on appeal. This is incorrect and there is no conflict on this point. As a general rule, appellate courts are not to reweigh the evidence and interpose themselves as the finder of fact. The proper role of the appellate court is to merely review the evidence for legal

sufficiency. Tibbs v. State, 397 So.2d 1120 (Fla. 1981). This is exactly what was done. Slip opinion at page 3.

CONCLUSION

There is no conflict on the sufficiency of evidence issue and this Court should refrain from exercising jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Frank Ragano, Esquire, 620 E. Twiggs Street, Tampa, Florida 33602, this *25th* day of August, 1987.



OF COUNSEL FOR RESPONDENT