

IN THE SUPREME COURT OF FLORIDA

CASE NO.

71,416

THE STATE OF FLORIDA,

Petitioner,

vs.

RUSSELL SANBORN,

Respondent.

FILED  
NOV 5 1977  
CLERK  
U.S. SUPREME COURT

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**ON PETITION FOR DISCRETIONARY REVIEW**

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BRIEF OF PETITIONER ON JURISDICTION

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## INTRODUCTION

The Petitioner, The State of Florida, was the Appellee in the District Court of Appeal of Florida, Third District and the prosecution in the trial court, the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida. The Respondent, Russell Sanborn, was the Defendant in the trial court. The parties will be referred to in this brief as they stand before this Court. The symbol "A" will be utilized to designate the Appendix to this Brief. All emphasis is supplied unless the contrary is indicated.

## STATEMENT OF THE CASE AND FACTS

Respondent was convicted on two counts of kidnapping, as well as other charges (A.1). On appeal, the District Court rejected Respondent's challenge to the sufficiency of the evidence to support the kidnapping convictions (A.2-3). However, the District Court still reversed the kidnapping convictions and remanded for new trial on the grounds that the trial court erred in failing, after being requested, to instruct the jury on the lesser included offense of false imprisonment. In so doing the Third District acknowledged conflict with Williamson v. State, 12 F.L.W. 1656 (Fla 4 DCA July 8, 1987), which decision holds that false imprisonment is not a necessarily lesser included offense of kidnapping and therefore the failure to give said instruction is not per se reversible error (A.3).

QUESTION PRESENTED

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN THE INSTANT CASE, EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION IN WILLIAMSON V. STATE, 12 F.L.W. 1656 (FLA. 4 DCA JULY 8, 1987).

### SUMMARY OF THE ARGUMENT

The Third District, in the instant case, has held that false imprisonment is a lesser included offense of kidnapping. This is a direct conflict with the holding in Williamson v. State, 12 F.L.W. 1656 (Fla. 4 DCA July 8, 1987) which hold that false imprisonment is not a lesser included offense of kidnapping. This Court should accept jurisdiction of this cause in order to maintain uniformity on the issue throughout the State.

## ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN THE INSTANT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION IN WILLIAMSON V. STATE, 12 F.L.W. 1656 (FLA. 4 DCA JULY 8, 1987).

In Williamson v. State, 12 F.L.W. 1656 (Fla. 4 DCA July 8, 1987) the Court held that false imprisonment is not a lesser included offense of kidnapping. It so held despite the inclusion of false imprisonment as a lesser included offense in the criminal jury instructions.

In the instant case, the Third District held that false imprisonment was indeed a lesser included offense of kidnapping and therefore the failure to give the requested instruction mandated reversal. The Third District recognized Williamson, supra, but declined to follow it.

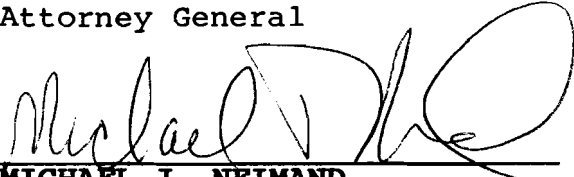
The decision in the instant case directly and expressly conflicts with Williamson and therefore the exercise of discretionary review in this cause is warranted.

**CONCLUSION**

Based upon the foregoing, Petitioner requests this Court to grant discretionary review in this cause.

Respectfully submitted,

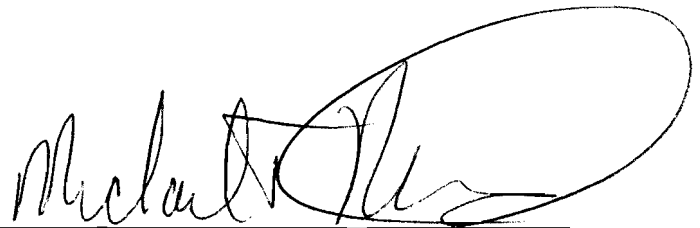
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **BRIEF ON JURISDICTION** was furnished by mail to **JOHN LIPINSKI, Esq.**, Attorney for Respondent, 15912 S. W. 92 Avenue, Miami, Florida 33157 on this 2 day of November, 1987.



**MICHAEL J. NEIMAND**  
Assistant Attorney General

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