IN THE SUPREME COURT OF FLORIDA

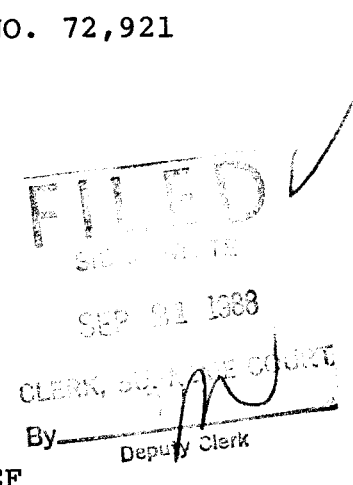
CHARLES L. STOCKTON,

PETITIONER,

-VS- CASE NO. 72,921

STATE OF FLORIDA,

RESPONDENT.



RESPONDENT'S JURISDICTIONAL BRIEF

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ISSUE

THIS COURT SHOULD DECLINE TO ACCEPT JURISDICION IN THAT THE OPINION OF THE LOWER TRIBUNAL IS NOT IN DIRECT AND EXPRESS CONFLICT WITH PRIOR DECISIONS WHICH HOLD THAT THE REASONABLE LIMITATION OF TIME FOR ARGUMENT RESTS IN THE DISCRETION OF THE TRIAL COURT AND WHAT IS REASONABLE TIME DEPENDS UPON THE FACTS AND CIRCUMSTANCES OF EACH CASE AND NO HARD AND FAST RULE CAN BE PRESCRIBED NOR IS THERE CONFLICT WITH PRIOR DECISIONS THAT WHEN A JURY REQUEST REINSTRUCTION THE COURT MAY LIMIT SUCH REINSTRUCTION TO THE SPECIFIC CHARGES REQUESTED.

The cases relied upon by petitioner do not conflict with prior decisions concerning the question of exercise of the trial court's discretion allotting a reasonable time for closing argument. In **May v. State,** 89 Fla. 78, 103 So. 115 (1925) the court held that the time allowed for closing argument is within the discretion of the trial court and unless the trial court unreasonably limits the time allowed the trial court's decision will not be reversed on appeal. What amounts to a reasonable time was held to depend upon the facts and circumstances of each case. In **Hickey v. State,** 484 So.2d 1271 (Fla.5th DCA), **rev.den.,** 442 So.2d 1335 (Fla.1986) and in **Neil v. State,** 451 So.2d 1058 (Fla.5th DCA 1984) the same legal standard enunciated in **May v. State, supra,** was applied. The reasonableness of the exercise of the trial court's discretion as to length of closing argument is to be determined by the facts and circumstances on a

case by case basis. The majority opinion in the instant case also applies this standard and does not conflict with the cases relied on by petitioner. The fact that the cases cited by petitioner may have determined that based on the particular facts and circumstances of those cases a trial court's limitation on closng argument was unreasonable is not an express and direct conflict with the instant case. In order to invoke discretionary jurisdiction Rule 9.030(2)(a)(iv) requires an express and direct conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law. The lower tribunal in the instant case applied the same principle of law as the cases relied on by petitioner on the question of limitation of closing argument. Therefore, petitioner has failed to demonstrate the necessay conflict to invoke this Court's discretionary jurisdiction.

In addition the cases relied upon by petitioner are factually distinguishable from the instant case and thus a different result in their outcome can be readily explained. In **Hickey v. State, supra,** defense counsel had engaged in numerous improper trial tactics and confrontations with the trial judge which later led the trial court to cite defense counsel for criminal contempt. The trial court apparently limited defense counsel's closing argument because of his improper conduct during the trial. On apeal the court reversed the trial court's limitation of closing argument as an improper way to punish a

lawyer for improper tactics. In the instant case no such question or motive to punish defense counsel is evident in the record.

In **Neil v. State, supra,** the issues were much more complex than in the instant case and thus the trial court's twenty-five minute limitation on closing arguments was considered unreasonable. Neil was charged with first degree murder and the question of premeditation was sharply contested. The court also noted that the **Neil** case "raised the novel and complex spouse abuse defense, combining theories of self-defense and temporary insanity." **Id.** 1060. In the instant case no such complex issues were involved. Petitioner admitted being at the scene and firing a pistol. The sole question to be decided was whether the shot fired by petitioner resulted in the victim's death. This is not a complex issue and the trial court reasonably concluded that thirty minutes for closing argument was sufficient to summarize the evidence on this question to the jury. Thus based on the facts and circumstances in the instant case the trial court's ruling as to limitation of closing arguments was reasonable and was consistent with the legal principle on that point consistently followed by Florida courts.

Petitioner also claims that the opinion of the District Court in the instant case conflicts with **Hedges v. State,** 172 So.2d 824 (Fla.1965) and other cases which hold that a defendant is entitled to a reinstruction on excusable and justifiable homicide when the jury requests reinstruction on manslaughter. In **Hedges** the jury requested reinstruction on all the different degrees of unlawful homicide including manslaughter. In the instant case the jury requested reinstruction on the difference between second and third degree murder but not on manslaughter. In **Henry v. State,** 359 So.2d 864 (Fla.1978) the jury also requested clarification between first and second degree murder. In **Henry v. State, supra,** this Court cited **Hysler v. State,** 85 Fla. 153, 95 So. 573 (1923) which established the principle that it is proper for a judge to limit the repetition of the charges to those especially requested by the jury because any additional instruction might needlessly protract the proceedings. This Court in **Henry** specifically considered and distinguished the **Hedges** case. This Court noted that in **Hedges** the jury had specifically requested reinstruction on manslaughter and that therefore the requested reinstruction was incomplete without reinstruction on excusable and justifiable homicide as a necessary concomitant of manslaughter. This court found that **Henry** was distinguishable from **Hedges** because the jury in **Henry** did not request re-instruction on manslaughter. In the instant case the jury also did not request reinstruction on manslaughter

but limited its request to clarification of the distinction between second and third degree murder. The district court opinion in the instant case is consistent with the **Henry** decision and does not conflict with **Hedges** and its progeny. Therefore this Court should decline to accept jurisdiction because no conflict has occurred.

CONCLUSION

Based on the foregoing argument and citations of authority respondent requests that this Court deny jurisdiction to review the decision by the lower tribunal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Jurisdictional Brief has been forwarded to P. Douglas Brinkmeyer, Assistant Public Defender, Post Office Box 671, Tallahassee, FL 32302, via U. S. Mail, this 21st day of September 1988.

William A. Hatch
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