

IN THE SUPREME COURT OF FLORIDA

DERINDA EDWARDS,)
))
 Petitioner,)
))
v.))
))
STATE OF FLORIDA,)
))
 Respondent.)
))
_____)

CASE NO. 73,286

FILED
I.
By: [Signature]
CLERK OF COURT

BRIEF OF RESPONDENT ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida and the Appellant in the District Court of Appeal, Fourth District. Respondent was the prosecution and Appellee and the lower courts.

In the brief the parties will be referred to as they appear before this Honorable Court. All emphasis in this brief is supplied by Respondent unless otherwise indicated.

The following symbols will be used:

"A"	Appendix
"AB"	Petitioner's Brief

STATEMENT OF THE CASE AND FACTS

Respondent accepts only page one (1) of the Petitioner's Statement of the Case and Facts as the remaining portions of the Statement are inaccurate. Respondent would thus submit the following statement which is germane to the issues upon which Petitioner has requested this Court to exercise its discretionary jurisdiction:

1. Regarding the issue of the cross-examination of the victim regarding her drug use the Petitioner sought to cross-examine the victim as to her drug use at times other than the date of the incident and the trial. Defense counsel told the court that he also wanted to bring in reputation evidence of the victim's drug use through the testimony of other witnesses. Defense counsel also told the court that he didn't know the affect of drugs on the victim but that it was for the jury to determine.

The trial court allowed Petitioner to proffer the testimony of the victim regarding her drug use. The victim testified during the proffer that she had used drugs on and off for the past twenty years and that from June, 1986 until the attack, she had been clean. She got addicted to the pain medication she had been given for her wounds in December, after the attack. After the proffer, the court ruled that Petitioner could only ask the victim if she had used drugs on the day, or days pre-

ceding the incident and whether she was using drugs at the time of the trial. The court specifically stated that questions regarding drug use at other times were irrelevant unless Petitioner wished to present medical testimony as to the affects of long-term drug use. During cross-examination of the victim, Petitioner did inquire as to her drug use.

2. Regarding the issue of the cross-examination of James Jackson Petitioner sought to cross-examine witness James Jackson regarding his alleged bias against the Petitioner. Petitioner sought to attack Jackson's credibility by showing that he was biased because he blamed Petitioner for the shooting death of a close friend. During that episode, Petitioner had pulled a knife on someone and when he shot at her, he missed and shot and killed Jackson's friend. Petitioner sought to bring out Jackson's alleged bias against her by cross-examining Jackson as to this incident. However, Petitioner asked that the State be prevented from going into the fact that a knife was used in the prior incident. The trial court ruled that cross-examination of Jackson as to this matter would "open the door" for the State to inquire further on redirect. Petitioner then cross-examined Jackson as to the prior incident to show his bias against Petitioner. On redirect, the State examined Jackson along the same line initiated by Petitioner. Petitioner's use of a knife during that incident was then brought out (R 48-49).

SUMMARY OF THE ARGUMENT

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 other state appellate decisions pursuant to Florida Constitution Art. V. Section 3(b)(3). Therefore, this Honorable Court should decline to accept jurisdiction of the case.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL DOES NOT PRESENT DIRECT AND EXPRESS CONFLICT UNDER THE MEANING OF ARTICLE V OF THE FLORIDA CONSTITUTION: THEREFORE THE SUPREME COURT'S JURISDICTION CANNOT BE PROPERLY EXERCISED.

Petitioner seeks review of the district court's decision below through conflict jurisdiction pursuant to Article V, Section 3 (b)(3), Fla. Const. (1980) and Fla. R.App.P. 9.030(a)(2)(A)(iv). Respondent respectfully requests this Honorable Court to decline to take jurisdiction in this case, since Petitioner presents no legitimate basis for the invocation of this Court's discretionary jurisdiction.

It is well-settled that in order to establish conflict jurisdiction, the decision sought to be reviewed directly create conflict. Mancini v. State, 312 So.2d 232 (Fla. 1973).. 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 District Court in its decision below held that the trial court did not err in limiting Petitioner's cross-examination of the victim regarding her drug use and treatment. **Al-**though the trial court allowed Petitioner to cross-examine the victim as to her drug use on the day or days preceding the incident and whether she was on drugs at the time of the trial the trial court declined to allow cross-examination regarding

drug use at other times on grounds of relevancy unless Petitioner wished to present medical testimony as to the affects of long time drug use. The district court held that this ruling was entirely proper and declined to extend the scope of cross-examination into this area.

The District Court's holding does not conflict with the First District's holding in Cruz v. State, 437 So.2d 692 (Fla. 1st DCA 1983), or Morrell v. State, 335 So.2d 836 (Fla. 1st DCA 1976). In Cruz the First District held it was error for the trial court to disallow cross-examination regarding a witnesses drug use either before or during the offense. In Morrell the First District held that it was error to disallow cross-examination that the victim was addicted to narcotics and was on methadone at the time of trial. Here cross-examination regarding the victim's drug use before, or during the offense and at the time of trial was allowed. Clearly, there is no conflict between the case sub judice and these other appellate decisions.

There is also no conflict between the instant case and State v. Wilson, 509 So.2d 1281 (Fla. 3d DCA 1987). The issue regarding the cross-examination of James Jackson was not decided on grounds of preservation but rather upon the theory that Petitioner "opened the dorr" to the State's questioning. It is thus clear that this holding is not in conflict with Wilson since Wilson is inapplcable to the case sub judice.

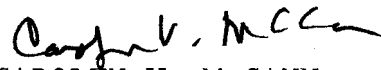
It is thus evident that Petitioner seeks to invoke this Honorable Court's jurisdiction in a thinly veiled attempt to pursue a second appeal. Such a use of the Court's jurisdiction is not permitted. Sanchez v. Wimpey, 409 So.2d 20 (Fla. 1982). The Court has repeatedly condemned such misguided efforts to invoke its discretionary jurisdiction and has repeatedly emphasized the need for finality in district court of appeal decisions. Jenkins v. State, 385 So.2d 1356 (Fla. 1980). Petitioner has failed to show express and direct conflict between the decision sub judice and any other state appellate decision and Respondent therefore maintains that this Honorable Court lacks jurisdiction to grant Petitioner's application for discretionary review.

CONCLUSION

Based upon the foregoing argument and authorities cited therein, the Respondent respectfully requests that this Honorable Court decline to accept jurisdiction of the cause.

Respectfully submitted,

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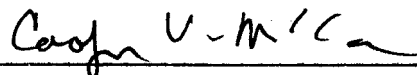


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Brief of Respondent on Jurisdiction" has been furnished by courier to Allen J. DeWeese, Esquire, Assistant Public Defender, Fifteenth Judicial Circuit, The Governmental Center, 301 N. Olive Avenue/9th Floor, West Palm Beach, Florida 33401 this 21st day of November, 1988.



Of Counsel