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IN THE SUPREME COURT OF FLORIDA

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ANTONIO MARTINEZ,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

CASE NO. _____
Fourth DCA Case No. 88-1511

PETITIONER'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
AUTHORITIES CITED	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF THE ARGUMENT	4
ARGUMENT	

POINT INVOLVED

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF ANOTHER DISTRICT COURT OF APPEAL.	5
CONCLUSION	9
CERTIFICATE OF SERVICE	9

AUTHORITIES CITED

<u>CASES</u>	<u>PAGE</u>
<u>Dodi Publishing v. Editorial America, S.A.,</u> 385 So.2d 1369 (Fla. 1980)	5
<u>Fields v. State,</u> 402 SO.2d 46 (Fla. 1st DCA 1981)	7
<u>Jenkins v. State,</u> 385 So.2d 1356 (Fla. 1980)	5
<u>The Florida Star v. B.J.F.,</u> 530 So.2d 286 (Fla. 1988)	5
 <u>OTHER AUTHORITIES</u>	
<u>Florida Constitution</u> (1980) Article V, Section 3(b)(3)	5
<u>Florida Rules of Appellate Procedure</u> Rule 9.030(a)(2)(iv)	5

PRELIMINARY STATEMENT

The Petitioner was the appellant in the Fourth District Court of Appeal and the defendant in the trial court. The Respondent was the appellee and the prosecution, respectively, in those lower courts. In the brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "A" will be used to refer to the appendix which includes the decision of the district court of appeal.

STATEMENT OF THE CASE AND FACTS

The relevant portion of the district court's decision shows Petitioner pleaded nolo contendere reserving the right to appeal the denial of a motion to suppress his statements (A1). The evidence showed after Petitioner's arrest he was advised of his rights pursuant to Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) several times (A1-2). Petitioner orally confessed to a murder (A2). A set of Miranda warnings was given to Petitioner prior to taking his taped confession (A2). The following occurred at that time:

[Deputy] . . . If you don't have money for a lawyer, the county will pay for a lawyer that can represent you at that time in court, do you understand?

[Defendant] Okay.

[Deputy] (Indiscernible) and to have a lawyer present, you can do that, do you understand that?

[Defendant] But what about if I don't have any money?

[Deputy] But do you understand the rights I am reading to you, do you understand? Do you want to talk to us?

[Defendant] Yes.

(A2-3) (footnotes omitted). Petitioner argued that after the statement, "But what about if I don't have any money," after being told of the right to have an attorney, was made further questioning should be limited thereafter to clarifying that statement to determine if Petitioner would want counsel if available at no cost. Petitioner's argument was rejected in the trial court (A4). Petitioner appealed.

On May 31, 1989, the Fourth District Court of Appeal affirmed the trial court (A1-5). Petitioner filed a motion for rehearing which was denied on June 28, 1989 (A8). The Fourth District Court of Appeal stayed issuance of the mandate during this Court's review (A9). On July 26, 1989, Petitioner timely filed a notice to invoke this Court's discretionary jurisdiction.

SUMMARY OF THE ARGUMENT

The instant decision sought to be reviewed is in express and direct conflict with Fields v. State, 402 So.2d 46 (Fla. 1st DCA 1986). Thus, this Court has jurisdiction to review the instant case. The conflict presented is an important one. This Court should accept jurisdiction of this cause.

ARGUMENT

THE DECISION OF **THE** FOURTH DISTRICT COURT OF
APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH
DECISIONS OF ANOTHER DISTRICT COURT OF APPEAL.

Petitioner invokes this Court's "conflict" jurisdiction under Article V, § 3(b)(3), Florida Constitution (1980), and Fla.R.App.P. 9.030(a)(2)(iv). Article V, § 3(b)(3) provides that review may be sought of decisions of district courts of appeal that "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law."

Conflict jurisdiction is properly found when the decision sought to be reviewed and those holdings of other Florida appellate courts or this Honorable Court applies a rule of law to produce a different result than other state appellate courts faced with substantially the same facts. Dodi Publishing v. Editorial America, S.A., 385 So.2d 1369 (Fla. 1980); Jenkins v. State, 385 So.2d 1356 (Fla. 1980); Article V, § 3(b)(3), Fla. Const. (1980); Fla.R.App.P. 9.030(a)(2)(iv).

Recently this Court in The Florida Star v. B.J.F., 530 So.2d 286, 288 (Fla. 1988) explained that "it is not necessary that conflict actually exist for this Court to possess subject-matter jurisdiction, only that there be some statement or citation in the opinion that hypothetically could create conflict if there was another opinion reaching a contrary result."

In the present case the Fourth District Court of Appeal was presented with whether the police must cease all custodial interrogation once an accused makes a statement regarding his inability to afford counsel in response to being informed he has a right to counsel. The majority opinion quotes the following relevant portion of a tape made immediately prior to Petitioner's confession:

[Deputy] . . . If you don't have money for a lawyer, the county will pay for a lawyer that can represent you at that time in court, do you understand?

[Defendant] Okay.

[Deputy] (Indiscernible) and to have a lawyer present, you can do that, do you understand that?

[Defendant] Rut what about if I don't have any money?

[Deputy] But do you understand the rights I am reading to you, do you understand? Do you want to talk to us?

[Defendant] Yes.

(emphasis supplied).

(A2-3) (footnotes omitted). The majority opinion cited to the trial court's finding that Petitioner had been fully explained his rights previously and, despite the fact that Petitioner did not fully comprehend his rights, the police actions of continuing interrogation without any clarification after Petitioner's question was permissible. The district court affirmed the trial court's denial of the motion to suppress. Whether the majority's decision is correct, or incorrect, is not relevant at this point.

However, the majority decision of the district court conflicts with the First District Court of Appeal's decision in Fields v. State, 402 So.2d 46 (Fla. 1st DCA 1981).

Like the present case, in Fields v. State, supra, despite the fact that the defendant had previously been repeatedly advised of and indicated that he understood his Miranda rights, the defendant responded, "I can't afford to get one" when asked if he wanted a lawyer:

Appellant was, in formal terms, repeatedly advised of and said that he understood his Miranda rights, but upon being asked if he wanted a lawyer his response was that "I can't afford to get one." Appellant's interrogators did not then or at anytime thereafter make any further statement or clarification regarding his right to counsel.

402 So.2d at 47.

Unlike the decision sought to be reviewed, the court held in Fields that "... appellant's statement regarding his inability to afford an attorney shows plainly that appellant did not intelligently comprehend the meaning of his Miranda rights to have counsel even if he could not afford the cost." 402 So.2d at 47. In other words, the same facts in Fields and the instant case have resulted in different results. The two cases conflict.¹

¹ It should also be noted that in the present case Petitioner's taped confession was made after he had made other confessions. These facts would not diminish any conflict. In Fields, supra, other confessions which were made prior and subsequent to the defendant's confession in question were also held to be inadmissible where the defendant made the statement about not affording an attorney. Likewise, in this case Petitioner's prior confessions would not be admissible where Petitioner made a statement which indicated that he was unaware of his right to counsel even though he could not afford one.


Because the conflict with Fields is both direct and express this Court has jurisdiction to review the instant case. Moreover, the conflict presented is an important one. The conflicting decisions have demonstrated that the district courts have taken different approaches in evaluating strikingly similar facts to yield completely opposite results. With different precedents existing in Florida, the desired uniformity of results in similar cases will not be achieved. Thus, the present conflict is one of importance and presents the type of inter-district conflict which can only be resolved by this Court. Therefore, this Court should accept jurisdiction of this cause and proceed to dispose of the issues after briefing on the merits by the parties.

CONCLUSION

This Court may and should exercise its discretion to review the decision of the district court.

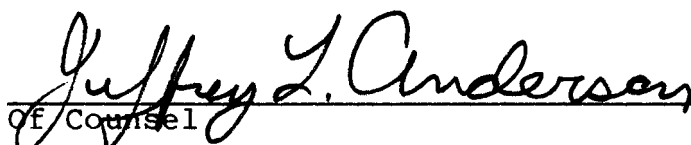
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to SYLVIA H. ALONSO, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401 by courier this 2d day of August, 1989.


of Counsel