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IN THE SUPREME COURT OF FLORIDA

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WILLIAM LEGGETT,
Petitioner,

v.

CASE NO. 74,856

STATE OF FLORIDA,
Respondent.

AMENDED PETITIONER'S BRIEF ON JURISDICTION

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SECOND JUDICIAL CIRCUIT

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
I PRELIMINARY STATEMENT	1
II STATEMENT OF THE CASE AND FACTS	2
III SUMMARY OF ARGUMENT	3
IV ARGUMENT	4
<u>LEGGETT V. STATE, 14 F.L.W. 1348 (FLA. 1ST DCA JUNE 2, 1989) AND LEGGETT V. STATE, 14 F.L.W. 2106 (FLA. 1ST DCA, OPINION ON REHEARING FILED SEPT. 7, 1989) EXPRESSLY AND DIRECTLY CONFLICTS ON THE SAME QUESTION OF LAW WITH GLENDENING V. STATE, 536 SO.2D 212 (FLA. 1988) AND JAGGERS V. STATE, 536 SO.2D 321 (FLA. 2D DCA 1988).</u>	4
V CONCLUSION	9
CERTIFICATE OF SERVICE	9
APPENDIX	

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
Coy v. Iowa, ___ U.S. ___, 108 S.Ct. 2798, 101 L.Ed.2d 857 (1988)	5
Glendening v. State, 536 So.2d 212 (Fla. 1988)	2,4
Jaggers v. State, 536 So.2d 321 (Fla. 2d DCA 1988)	2,4
Leggett v. State, 14 F.L.W. 1348 (Fla. 1st DCA June 2, 1989)	2
Leggett v. State, 14 F.L.W. 2106 (Fla. 1st DCA, opinion on rehearing September 7, 1989)	2
 <u>STATUTES</u>	
Section 92.53, Florida Statutes (1987)	4
Section 92.53(1), Florida Statutes	5
Section 92.53(7), Florida Statutes	5

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I. PRELIMINARY STATEMENT

William Leggett was the defendant in the trial court and appellant before the district court. He will be referred to in this brief as "petitioner," "defendant," or by his proper name.

Filed with this brief is an appendix containing a copies of the district court's opinion and documents pertinent to the jurisdiction of the Court. Reference to the appendix will be by use of the symbol "A" followed by the appropriate page number in parentheses.

11. STATEMENT OF THE CASE AND FACTS

By opinion dated June 2, 1989, the district court rejected, on authority of Glendening v. State, 536 So.2d 212 (Fla. 1988), petitioner's argument that it was error to have allowed the state to videotape the allege child victim's testimony in light of his constitutional right to face-to-face-confrontation of the witnesses against him (A-1-2). Leggett v. State, 14 F.L.W. 1348 (Fla. 1st DCA June 2, 1989). Petitioner filed a timely motion for rehearing, arguing that petitioner had raised issues in addition to the singular confrontation issue identified in the opinion issued June 2, 1989.

Petitioner argued on rehearing that the court had overlooked the fact that the trial court had failed to make the requisite statutory findings, had overlooked the lack of evidence that the child would suffer emotional harm if force to appear in open court, and had overlooked the decision of the second district in Jaggers v. State, 536 So.2d 321 (Fla. 2d DCA 1988)(A-3-11). By opinion on rehearing dated September 7, 1989, petitioner's motion for rehearing was denied (A-12-14). Leggett v. State, 14 F.L.W. 2106 (Fla. 1st DCA, opinion on rehearing September 7, 1989).

Notice to invoke discretionary jurisdiction was timely filed October 6, 1989 (A-15-16).

111. SUMMARY OF ARGUMENT

Since the actual argument is within the page limitations for a summary of argument, to avoid needless repetition a formal summary of argument will be omitted here.

IV. ARGUMENT

LEGGETT V. STATE, 14 F.L.W. 1348 (FLA. 1ST DCA JUNE 2, 1989) AND LEGGETT V. STATE, 14 F.L.W. 2106 (FLA. 1ST DCA, OPINION ON REHEARING FILED SEPT. 7, 1989) EXPRESSLY AND DIRECTLY CONFLICTS ON THE SAME QUESTION OF LAW WITH GLENDENING V. STATE, 536 SO.2D 212 (FLA. 1988) AND JAGGERS V. STATE, 536 SO.2D 321 (FLA. 2D DCA 1988).

Petitioner asserts the two opinions issued by the lower tribunal in his case expressly and directly conflict on the same question of law with Glendening v. State, supra, and Jaggers v. State, supra, thereby conferring discretionary jurisdiction in this Court.

As noted in the original opinion and the opinion on rehearing, petitioner contended that it was error to allow the state to present the testimony of the alleged victim of a charge of aggravated child abuse through the use of videotape. The two opinions note that petitioner argued both that the trial court had failed to make the requisite statutory findings, and that the procedure violated his constitutional right of confrontation. Petitioner's claims were rejected on authority of Glendening, and the district court ruled further that the Jaggers case was not controlling. Petitioner will now demonstrate that, in reality, the district court's ruling conflicts with both Glendening and Jaggers.

In Glendening, the Court held that Section 92.53, Florida Statutes (1987), which under certain circumstances allows the use of videotaped testimony of a child of alleged abuse in lieu of trial testimony, was not unconstitutional for being in

violation of the constitutional right to confront witnesses. In making this ruling, the Court distinguished the statute held unconstitutional by the Supreme Court of the United States in Coy v. Iowa, ___ U.S. ___, 108 S.Ct. 2798, 101 L.Ed.2d 857 (1988). In particular, the Glendening Court stressed that the requirement of individualized findings contained in our statute remedied the constitutional defects of the generalized Iowa statute involved in Coy, which did not require any such findings. The Court in Glendening also noted that the trial court in that case did make case specific findings.

Our statute does, indeed, require specific findings. Section 92.53(1), Florida Statutes, provides that "On...a finding that there is a substantial likelihood that a victim or witness...would suffer at least moderate emotional or mental harm if he were required to testify in open court...the trial court may order the videotaping..." In addition, Section 92.53(7), Florida Statutes, provides: "The court shall make specific findings of fact, on the record, as to the basis for its ruling under this section."

Here, the opinion on rehearing notes that "...the trial court failed to set forth a specific basis for its finding that emotional harm would result if the children were forced to testify at trial." The district court pointed out that "...the trial judge had simply stated that its ruling was based on the testimony at the hearing." (A-13).

It is thus manifest that here, unlike Glendening, there was not an adequate case specific finding, and that the

statutory procedures were not even substantially followed. By affirming petitioner's conviction on a record in which the trial court merely stated that its ruling was based on the testimony presented, and in which a specific basis for the ruling is absent, petitioner argues that the district court's decision, rather than following Glendening, actually conflicts with Glendening.

Petitioner argues in addition that the decision in his case conflicts with Jaggers. After pointing out that here, as in Jaggers, the trial court simply stated that its ruling was based on the testimony presented at the hearing, the district court went on to opine that the generalized finding in Jaggers was not the true reason the district court in Jaggers reversed for a new trial. In particular, the district court here said that "...a close reading of Jaggers reveals that the court's primary concern was not the nature of the trial court's ruling, but with the quality of the testimony on which the ruling was based." (A-13).

Petitioner strongly disagrees. The Jaggers court was highly concerned with the generalized nature of the trial court's ruling, as illustrated by the following portion of Jaggers:

The policy behind section 92.53 is for the purpose of shielding child witnesses from the trauma of courtroom testimony in cases where substantial likelihood of trauma has been specifically found by the court after a proper hearing. It is this requirement of individualized findings under section 92.53, which the Florida Supreme Court in Glendening II found distinguished this statute from the

generalized statute assailed in Coy. In so holding, the Glendening II court recognized that the policy of protecting child victims of sexual abuse from probable trauma in a given case qualified as such an important public policy of the type acknowledged in Coy.

Although there is no constitutional infirmity with the procedure outlined under section 92.53, those procedures were not properly followed in this case. A review of the record reflects that the trial court did not make the required findings of fact under section 92.53(7) necessary to support its determination that the two child witnesses whose testimonies were video taped, would suffer at least moderate emotional or mental harm if they were required to testify in open court. Such a case-specific finding mandated by section 92.53 is precisely what renders that statute constitutional, because the statute is closely tailored to protect the child victim only in those particular circumstances were [sic] it is deemed necessary.

As stated previously, the trial court did not set forth the specific basis for finding that the daughter or stepdaughter would suffer moderate emotional trauma by testifying at the trial against Jaggers. All the court stated was that its decision was based on the testimony of the guardian ad litem for the children.

536 So.2d at 329 (emphasis supplied).

In the instant case the trial court made a general finding only and the district court affirmed. In Jaggers, the trial court made a general finding only and the second district reversed. Not only was the Jaggers court troubled with the generalized finding made there, but felt the very lack of a case specific finding rendered the procedure followed in that case unconstitutional. The instant case and Jaggers conflict, notwithstanding the district court's reliance upon its perceived differences between the evidence in that case and

this one. Even assuming there was a difference in the quality of the testimony of the witness in Jaggers and that presented here, the quote from Jaggers set out above quite compellingly establishes that the lack of a specific finding was integral, if not controlling, in the decision to reverse.

V. CONCLUSION

Based upon the foregoing, petitioner contends that he has demonstrated that the decision in his case conflicts with Glendening and Jaggers. Petitioner requests the Court to so rule and require the parties to file briefs on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to James W. Rogers, Assistant Attorney General, The Capitol, Tallahassee, Florida, and a copy has been mailed to appellant WILLIAM LEGGETT, #008599, Lawtey Correctional Institution, Post Office Box 229, Lawtey, Florida, 32058, on this 27th day of October, 1989.



CARL S. MCGINNES