

FILED

SID J. WHITE

MAY 15 1992

CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

Case No. 79,220

RUFUS FORD,

Respondent.

ON DISCRETIONARY REVIEW FROM THE
SECOND DISTRICT COURT OF APPEAL, STATE OF FLORIDA

SUPPLEMENTAL JURISDICTIONAL BRIEF

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Petitioner
COUNSEL FOR ~~RESPONDENT~~

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JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court that expressly and directly conflicts with a decision of another district court on the same question of law as well as to review the decision of a district court that is certified to be in direct conflict with a decision of another district court of appeal. Fla.R.App.P. 9.030(a)(2)(iv) and (vi).

STATEMENT OF THE CASE AND FACTS

On April 21, 1992, the Third District Court of Appeal announced its decision in the case of Hernandez v. State, 17 F.L.W. D1048 (Fla. 3rd DCA 1992) which certified conflict with the decision of the Second District in Ford v. State, 592 So.2d 271 (Fla. 2d DCA 1991). This Supplemental Brief on Jurisdiction follows.

SUMMARY OF THE ARGUMENT

Because the Third District has certified conflict with the Second District on the same point of law as dealt with in Ford v. State, infra, this Court should accept discretionary jurisdiction over Ford.

ARGUMENT

WHETHER THIS COURT SHOULD ACCEPT JURISDICTION
OVER FORD V. STATE BASED UPON EXPRESS AND
DIRECT CONFLICT WITH HERNANDEZ V. STATE?

The instant decision of the district court has been found to be in conflict with Hernandez v. State, 17 F.L.W. D1048 (Fla. 3rd DCA April 21, 1992) at footnote 2. The Third District expressed direct conflict and certified the same to this Honorable Court. Thus, since the time that the State wrote its initial Brief on Jurisdiction, an additional ground for discretionary jurisdiction has arisen. Accordingly, this Court is urged to accept jurisdiction over the lower court case based upon certified direct and express conflict.

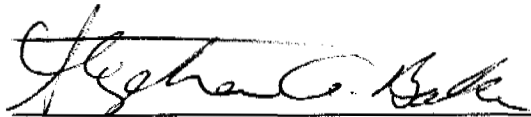
Petitioner cannot find any authority addressing the issue of whether the Florida Supreme Court can accept discretionary jurisdiction over a case pending acceptance where the additional grounds urged for jurisdiction arise after the brief on jurisdiction was first written. Conceptually, however, such should make no procedural or substantive difference. After all, should this Court accept the Hernandez case for review, it will necessarily approve or disapprove Ford. The best interests of justice and uniformity throughout the state will best be served by acceptance of jurisdiction over Ford so that the only two cases addressing this particular aspect of the Confrontation Clause can be decided.

CONCLUSION

This Court has discretionary jurisdiction to review the decision below, and this court should exercise its jurisdiction to consider the merits of Petitioner's arguments.

Respectfully submitted

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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to STEPHEN KROSSCHELL, Assistant Public Defender, Polk County Courthouse, P.O. Box 9000-Drawer PD, Bartow, Florida 33830 on this 13th day of May, 1992.



COUNSEL FOR PETITIONER

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

Case No. 79,220

RUFUS FORD,

Respondent.

MOTION TO ACCEPT SUPPLEMENTAL JURISDICTIONAL BRIEF

COMES NOW the Petitioner, by and through the undersigned Assistant Attorney General, and for his Motion to Accept a Supplemental Jurisdictional Brief, states as follows.

1. On January 29, 1992, Petitioner served its Jurisdictional Brief on Respondent. The stated grounds for jurisdiction were that the district court had expressly construed a provision of the state of federal constitutions. Art. V Sec. 3(b)(3) Fla. Const. (1980); Fla.R.App.P. 9.030(a)(2)(ii). As of the date of this Motion, this Honorable Court has not decided whether to accept jurisdiction over this case.

2. On April 21, 1992, the Third District Court of Appeal decided Hernandez v. State, 17 F.L.W. D1048 (Fla. 3rd DCA 1992) wherein the Court expressed direct conflict with the Second

District's opinion in the instant case. See footnote number 2 in Hernandez wherein the Court certifies conflict with Ford v. State, 592 So.2d 271 (Fla. 2d DCA 1991).

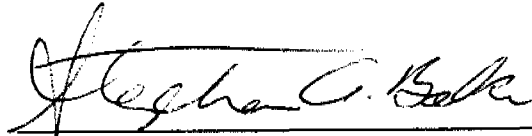
3. Ergo, it now plainly appearing that the lower court decision in Ford is in express and direct conflict with a decision of another district court of appeal, it is now requested that this Honorable Court accept jurisdiction of this case under Fla.R.App.P. 9.030(a)(2)(iv) and (vi).

4. It makes little conceptual difference whether the "conflict" existed at the time the lower court opinion was written or that, as in the instant situation, the conflict arose during the pendency of this case while in front of this Court. After all, if this Court accepts jurisdiction in Hernandez, it will necessarily decide the same issue as posed in Ford. Accordingly, no substantial issue of justice will be at all served by declining to accept jurisdiction of the Ford case merely because the additional ground for jurisdiction arose during the pendency of the case but after the original ground for jurisdiction was already argued by Petitioner.

WHEREFORE, Petitioner respectfully requests that this Honorable Court accept the State's Supplemental Brief on Jurisdiction.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

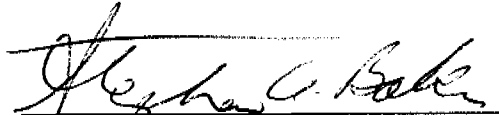


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