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CLERK, SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

PAUL RIDLEY,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

Case No. 80,293

PETITIONER'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF ARGUMENT	3
ARGUMENT	4
THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL BELOW WHICH CITES AS CONTROLLING AUTHORITY A CASE WHICH CONFLICTS WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL.	4
CONCLUSION	8
CERTIFICATE OF SERVICE	8

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Amaya v. State</u> , 580 So.2d 885 (Fla. 2d DCA 1991)	2-6
<u>Jollie v. State</u> , 405 So.2d 418 (Fla. 1981)	5, 6
<u>State v. Ashley</u> , 17 F.L.W. D1455 (Fla. 4th DCA June 10, 1992)	2-6
<u>Brown v. State</u> , 474 So.2d 1 (Fla. 1985)	3, 5, 6

OTHER AUTHORITIES

FLORIDA STATUTES

Section 790.02(2)	2
Section 790.25	2
Section 790.25(5)	2, 4, 6

FLORIDA CONSTITUTION

Article V, § 3(b)(3)	3-5
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FLORIDA RULES OF APPELLATE PROCEDURE

Rule 9.030(a)(2)(iv)	5
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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 appellee in the Fourth District Court of Appeal. Respondent was the prosecution and the appellant below.

In the brief, the parties will be referred to as they appear before this Honorable Court.

The following symbol will be used:

R = Record on Appeal

STATEMENT OF THE CASE AND FACTS

Petitioner Paul Ridley was charged with carrying a concealed firearm in violation of section 790.02(2), Fla. Stat. (1989). He sought dismissal on the basis that he fell within the exception of section 790.25(5), Fla. Stat. (1989), which permits possession of a firearm not accessible for immediate use, within a vehicle. Petitioner contended that because the unloaded forearm was under the driver's seat and separated from the ammunition which was under the passenger seat, he fell within section 790.25, Fla. Stat. (1989). The lower court granted Petitioner's motion to dismiss.

On appeal by Respondent the Fourth District Court of Appeal reversed this disposition, citing its prior decision in State v. Ashley, 17 F.L.W. D1455 (Fla. 4th DCA June 10, 1992) (Appendix 1-3) which noted a conflict with Amaya v. State, 580 So.2d 885 (Fla. 2d DCA 1991) (Appendix 4-5). The second district in Amaya, supra, held under similar facts that the exception under section 790.25, Fla. Stat. (1989) prevails (Appendix 4-5).

The fourth district in Ashley, supra, rejected the Amaya, supra Court's interpretation of section 790.25, Fla. Stat. (1989). The identical issue has been raised by Petitioner here. Ashley is presently pending before this Court (Appendix 6-7).

Petitioner noticed his intent to invoke this Court's discretionary jurisdiction to review this case on July 30, 1992. This jurisdiction brief follows.

SUMMARY OF ARGUMENT

The present case cites as authority another decision of the Fourth District Court of Appeal, State v. Ashley, 17 F.L.W. D1455 (Fla. 4th DCA June 10, 1992), which notes conflict with a decision of the Second District Court of Appeal, Amaya v. State, 580 So.2d 885 (Fla. 2d DCA 1991). Since this case and Ashley, supra, both in the Fourth District, are both in express and direct conflict with the decision of the Second District, this Court has jurisdiction to review the decision in Petitioner's case. Article V, § 3(b)(3), Florida Constitution; Brown v. State, 474 So.2d 1 (Fla. 1985).

ARGUMENT

THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL BELOW WHICH CITES AS CONTROLLING AUTHORITY A CASE WHICH CONFLICTS WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL.

Article V, § 3(b)(3) of the Constitution of Florida empowers this Court to review a decision of a district court of appeal which expressly and directly conflicts with a decision of another district court of appeal on the same question of law. In State v. Ashley, 17 F.L.W. D1455 (Fla. 4th DCA June 10, 1992) (Appendix 2-3), the Fourth District held that the statutory exception under 790.25(5), Fla. Stat. (1989) which permits a citizen to possess a firearm within a vehicle where it is not accessible for immediate use did not apply to an unloaded firearm (Appendix 2-3). In State v. Ashley, the Fourth District rejected the analysis of the Second District in Amaya v. State, 580 So.2d 885 (Fla. 2d DCA 1991) and noted conflict with Amaya v. State, supra (Appendix 3). This Court therefore has jurisdiction to review State v. Ashley, which is presently pending (Appendix 6-7).

In Amaya v. State, supra, the Second District reversed denial of dismissal for carrying a concealed firearm. In Amaya v. State, supra, the Second District held an unloaded firearm under the passenger seat separate from bullets and a clip fell within the statutory exception under section 790.25(5).

In the present case, the Fourth District reversed the dismissal of the charge of carrying a concealed firearm, which was unloaded under the driver's seat and separate from ammunition and

clip. The issue here is identical to that in Ashley v. State, supra, and Amaya v. State, supra.

This Court has jurisdiction to review the decision in Petitioner's case because the District Court here relied upon the decision in Ashley v. State. In Ashley v. State, the Fourth District specifically acknowledge conflict with the Second District in Amaya v. State. Article V, § 3(b)(3), Florida Constitution; Rule 9.030(a)(2)(iv), Fla.R.App.P.; Cf. State v. Brown, 474 So.2d 1 (Fla. 1985) (permitting this Court's discretionary review where the district court had relied for its disposition of a case on another case which certified a question to the Court of great public importance); Jollie v. State, 405 So.2d 418 (Fla. 1981). Moreover, Ashley v. State is currently pending before this Court (Appendix 6-7). Moreover, Judge Dell, dissenting in Ashley v. State, supra, cited the reasoning of the Second District in Amaya v. State as a basis for affirming dismissal (Appendix 3).

In Jollie v. State, 405 So.2d 418 (Fla. 1981), this Court held that, where a district court of appeal per curiam decision cites as controlling authority a decision which is either pending review in or has been reversed by this Court, prima facie express conflict jurisdiction has been demonstrated, allowing this Court to exercise its jurisdiction. This Court observed that:

no litigant can guide the district court's selection of the lead case, and that the randomness of the district court's processing would control the party's right of review unless the citation PCA is itself made eligible for review before this Court.

Thus, this Court recognized the inequity arising from "the luck of the draw" in a district court's determination of which

among several similar cases it would decide with a written statement of reasoning, on the basis of which a litigant could obtain conflict jurisdiction, and which it would decide by way of a per curiam affirmance, ordinarily not reviewable in this Court. In order to avoid such unjust and arbitrary results, this Court determined that it could accept for review those cases citing to another case pending before it. In State v. Brown, 475 So.2d 1 (Fla. 1985), this Court extended that rule to a situation where the district court had relied for its disposition of a case on another case which certified a question to the Court of great public importance.

This case therefore presents the same equitable concern as that which inspired this Court to accept jurisdiction in Jollie and Brown, supra. Consequently, this Court has jurisdiction to resolve the issue presented in Petitioner's case, which is exactly the same one presently before this Court in State v. Ashley, supra.

Moreover, the instant case presents an issue which this Court should resolve.

Petitioner's case, like State v. Ashley and Amaya v. State involves an important question of law regarding the parameters of the legislature's intent in 790.25(5) to allow the lawful use of firearms.

By virtue of the Fourth District's citation to State v. Ashley as controlling authority, Petitioner's case presents the same issue for review as Ashley. Since State v. Ashley is now before this Court, jurisdiction of the instant case should be accepted. State v. Brown, supra; Jollie v. State, supra.


Accordingly, Petitioner requests this Court to accept jurisdiction and to order briefs on the merits from both parties.

CONCLUSION

Based on the foregoing arguments and the authorities cited therein, Petitioner respectfully requests this Court to accept jurisdiction in his case.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Carol Cobourn Asbury, Assistant Attorney General, Elisha Newton Dimick Building, Room 240, 111 Georgia Avenue, West Palm Beach, Florida 33401 this 4th day of August, 1992.



Counsel for Petitioner