

**FILED**

SID J. WHITE

SEP 28 1992

CLERK, SUPREME COURT;

By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

THOMAS SHEPPARD,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. 80, <sup>418</sup>~~263~~

DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

RESPONDENT'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

PAGE NO.

SUMMARY OF THE ARGUMENT ..... 1

ARGUMENT..... 2

THE SECOND DISTRICT RECOGNIZED THIS CASE IS  
IN CONFLICT WITH A CASE FROM THE FIRST  
DISTRICT COURT OF APPEAL ON THE SAME ISSUE OF  
LAW

CONCLUSION..... 3

CERTIFICATE OF SERVICE..... 3

TABLE OF CITATIONS

PAGE NO.

Johnson v. State,  
589 So.2d 1370 (Fla. 1st DCA 1991).....1-2

McCall v. State,  
583 So.2d 411 (Fla. 4th DCA 1991).....2

State v. Johnson,  
Nos. 79,150 & 79,204 (January 14, 1992).....1

OTHER AUTHORITIES

Chapter 89-280, Laws of Florida.....2

Section 775.084, Florida Statutes.....2

SUMMARY OF THE ARGUMENT

Although the Second District Court of Appeal recognized its opinion in this case was in conflict with the First District's opinion in Johnson v. State, 589 So.2d 1370 (Fla. 1st DCA 1991), *rev. granted*, State v. Johnson, Nos. 79,150 & 79,204 (January 14, 1992), this Court should not exercise its discretionary jurisdiction in this case since there are other cases pending on the same issue.

ARGUMENT

THE SECOND DISTRICT RECOGNIZED THIS CASE IS  
IN CONFLICT WITH A CASE FROM THE FIRST  
DISTRICT COURT OF APPEAL ON THE SAME ISSUE OF  
LAW

The Second District Court of Appeal in its opinion in this cause indicated that Chapter 89-280, **Laws** of Florida, which amended Section 775.084, **Florida Statutes**, **does** not violate the **single** subject rule. The court **went** on to acknowledge that the First District had reached the **opposite conclusion** in Johnson v. State, 589 So.2d 1370 (Fla. 1st DCA 1991). The **second** District **was following** the position taken by the Fourth District in McCall v. State, 583 So.2d 411 (Fla. 4th DCA 1991).

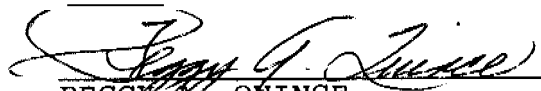
Both McCall and Johnson are pending before this Court.

CONCLUSION

Respondent acknowledges there is conflict with this case and the Johnson case which is pending review in this Court.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

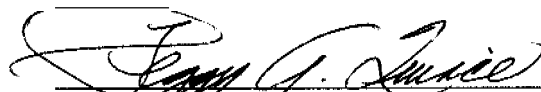


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent On Jurisdiction has been furnished by U.S. Mail, postage prepaid, to Deborah Brueckheimer, Assistant Public Defender, P.O. Box 9000-Drawer PD, Bartow, Florida 33830, this 25th day of September, 1992.

  
Of Counsel for Respondent