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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

TEDD J. POPPLE,  
Petitioner,

vs.

STATE OF FLORIDA,  
Respondent.

Case No. 80,696

PETITIONER'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, In and For Indian River County, Florida, and the appellant in the Fourth District Court of Appeal. Respondent was the prosecution and the appellee 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 Tedd J. Popple was charged by two-count Information with possession of drug paraphernalia in violation of section 893.147, Fla. Stat. (1991) and with possession of cocaine in violation of section 893.13(1)(f) (R 42-43). He sought suppression of physical evidence (cocaine and a pipe) and statements, on the basis that the stop was not supported by a founded suspicion of unlawful conduct. He contended that he was seated in a legally parked car in a residential area in the middle of the day and was not involved in any unlawful activity when the officer came up to his vehicle and directed him to exit. The lower court denied Petitioner's motion to suppress and Petitioner entered a plea of nolo contendere to each charge, reserving his right to appeal the denial of the suppression motion.

On appeal by Petitioner, the Fourth District Court of Appeal affirmed this disposition by written opinion, holding that there was not a stop here but a "consensual encounter" and that directing Petitioner to exit his vehicle did not turn the "consensual encounter" into a stop (Appendix 1-8). The majority recognized that this ruling conflicted with Brown v. State, 577 So.2d 708 (Fla. 2d DCA 1991) and with Jackson v. State, 579 So.2d 871 (Fla. 5th DCA 1991) (Appendix 1-5, 9-10, 11-12). The Second District in Brown, supra and the Fifth District in Jackson, supra, held under similar facts that ordering an accused out of a vehicle was a detention which requires a founded suspicion (Appendix 9-10, 11-12).

Judge Anstead dissented, stating that the stop was not supported by a founded suspicion and thus unlawful (Appendix 5-8). Judge Anstead relied upon Brown, supra and Jackson, supra as well as the more recent case from the Second District, Gano v. State, 17 F.L.W. 1422 (Fla. 2d DCA June 3, 1992) as bases for reversing (Appendix 5-8).

Petitioner moved for rehearing based upon the argument contained in the dissent and moved for rehearing en banc based upon intradistrict conflict with Currens v. State, 363 So.2d 1116 (Fla. 4th DCA 1978) (Appendix 13-17). The Fourth District denied Petitioner's motion for rehearing on October 21, 1992 (Appendix 18-20).

Petitioner noticed his intent to invoke this Court's discretionary jurisdiction to review this case on October 21, 1992. This jurisdiction brief follows.

### SUMMARY OF ARGUMENT

The present case held that directing an accused out of a lawfully parked vehicle in the absence of any criminal activity was a consensual encounter and not a stop requiring a founded suspicion. As the Fourth District noted in its opinion, its decision is in conflict with the Second District Court of Appeal, Brown v. State, 577 So.2d 708 (Fla. 2d DCA 1991) and Jackson v. State, 579 So.2d 871 (Fla. 5th DCA 1991). Since this decision from the Fourth District is in express and direct conflict with the decisions of two other district courts of appeal, this Court has jurisdiction to review the decision in Petitioner's case. Article V, Section 3(b)(3), Florida Constitution.

## ARGUMENT

THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL WHICH EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL AND THE FIFTH DISTRICT COURT OF APPEAL.

Article V, Section 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 the present case, the Fourth District held that in the absence of any founded suspicion or probable cause, a police officer can approach a legally parked vehicle and order. The Fourth District ruled that such circumstances comprise a "consensual encounter" and not a detention (Appendix 1-8). The Fourth District rejected the analysis of the Second District in Brown v. State, 577 So.2d 708 (Fla. 2d DCA 1991) and Jackson v. State, 579 So.2d 871 (Fla. 5th DCA 1991) (Appendix 9-10, 11-12), noting conflict with these cases (Appendix 1-8). Moreover, Judge Anstead, dissenting, cited the reasoning of the Second District in Brown, supra, as well as the more recent case of Gano, supra, and the Fifth District in Jackson, supra, as bases for reversing the suppression denial (Appendix 1-8, 9-10, 11-12).

In Brown v. State, supra, as well as in Gano v. State, supra, the Second District and in Jackson v. State, supra, the Fifth District, held under similar facts that such an intrusion comprises a detention requiring a founded suspicion (Appendix 9-10, 11-12).

This Court has jurisdiction to review the decision in Petitioner's case because the District Court here specifically



acknowledges conflict with two other district courts of appeal.  
Article V, Section 3(b)(3), Florida Constitution; Rule  
9.030(a)(2)(iv).

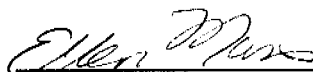
Accordingly, Petitioner requests this Court to accept  
jurisdiction and to order briefs on the merits from both parties.

CONCLUSION

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

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Douglas J. Glead, Assistant Attorney General, Elisha Newton Dimick Building, Room 240, 111 Georgia Avenue, West Palm Beach, Florida 33401 this 22<sup>nd</sup> day of October, 1992.



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Counsel for Petitioner