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IN THE SUPREME COURT OF FLORIDA

CASE NO. 80,696

TEDD J. POPPLE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

The Petitioner was the Appellant in the Fourth District Court of Appeal and the defendant in a criminal prosecution from the Nineteenth Judicial Circuit, in and for Indian River County, Florida. The Respondent, State of Florida, was the Appellee and the prosecution, respectively in the lower courts. In this brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "A" will be used to refer to Petitioner's Appendix, which includes a conformed copy of the appellate court's opinion. Unless otherwise indicated, all emphasis has been supplied by Respondent.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts appearing on pages 2 through 3 of his jurisdictional brief to the extent that it is accurate and nonargumentative.

SUMMARY OF ARGUMENT

Respondent respectfully requests this Court, in its discretion, to decline to accept jurisdiction in this case. Petitioner has failed to demonstrate that the decision of the Fourth District Court of Appeal expressly and directly conflicts with a decision of another district court or of this Court, or that it falls under any of the subdivisions provided in Fla. R. App. P. 9.030(a)(2), or Art. V, Section 3(b)(3), Fla. Const. (1980). Conflict simply does not appear within the four corners of the Fourth District's decision.

ARGUMENT

PETITIONER IMPROPERLY INVOKES THE DISCRETIONARY JURISDICTION OF THIS COURT SINCE THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR OF THIS COURT.

Petitioner seeks review through conflict jurisdiction pursuant to Article V, Section 3(b)(3), Fla. Const. (1980) and Fla. R. App. P. 9.030(a)(2)(A)(iv), which provides that the discretionary jurisdiction of the Supreme Court may be sought to review a decision of a district court of appeal which expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law. Respondent respectfully requests this Honorable Court decline to accept jurisdiction in this case, since Petitioner presents no legitimate basis for the invocation of this Court's discretionary jurisdiction.

Although Petitioner asserts that the Second District's decision in Brown v. State, 577 So.2d 708 (Fla. 2d DCA 1991) and the Fifth District's decision in Jackson v. State, 579 So.2d 871 (Fla. 5th DCA 1991), are in conflict with the Fourth District's opinion sub judice, a close comparison of these cases does not reveal the requisite express and direct conflict. Indeed, unlike Officer Wilmoth here, who observed Petitioner reaching under the seat and "flipping" about in his car (A 2), it is clear that the police officer in Brown did not observe any activity on the part

of the defendant that would cause him to be concerned about his personal safety. In fact, the officer in Brown testified that Brown was doing nothing suspicious. Brown, supra, 577 So.2d at 709. Moreover, the officer in Brown "commanded" Brown to get out of his car, as opposed to Officer Wilmoth's "request" here. (A 2). Brown at 709. Consequently, as the Fourth District itself held, the facts in Brown are distinguishable from those presented at bar and justify the different results reached in these cases. (A 3).

Similarly, in Jackson, supra, the scant facts fail to reveal the basis for the officer's direction to the defendant to exit his vehicle. Further, it is unclear in Jackson whether the officer involved therein had a concern for his personal safety, as did Officer Wilmoth in the instant case.

Thus, there simply exists no express and direct conflict between the decision of the Fourth District below and the decisions in Brown, supra, and Jackson, supra. Moreover, Respondent reminds this Court that it is well established that inherent or "implied" conflict cannot serve as a basis for the discretionary jurisdiction of this Court. Department of Health & Rehabilitative Services v. National Adoption Counseling Service, Inc., 498 So.2d 888, 889 (Fla. 1986).

Consequently, since Petitioner has not shown any express and direct conflict from the face of the District Court's opinion, this Court's jurisdiction has not been established. Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980); Reaves v. State, 485 So.2d 829 (Fla. 1986).

CONCLUSION

WHEREFORE, based upon the foregoing argument and authorities cited herein, Respondent respectfully requests this Honorable Court decline to accept discretionary jurisdiction in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief has been furnished by U.S. Mail to: ELLEN MORRIS, Assistant Public Defender, Counsel for Petitioner, Criminal Justice Bldg., 6th Floor, 421 Third Street, West Palm Beach, Florida 33401, this 10th day of November, 1992.



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