

**FILED**

SID J. WHITE

JAN 7 1993

CLERK, SUPREME COURT

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

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, :  
 :  
 Petitioner, :  
 :  
 v. :  
 :  
 BRUCE A. GAINES, :  
 :  
 Respondent. :

CASE NO. 80,855

\_\_\_\_\_ /

RESPONDENT'S BRIEF ON JURISDICTION

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

JOHN R. DIXON  
ASSISTANT PUBLIC DEFENDER  
FLORIDA BAR NO. 930512  
LEON COUNTY COURTHOUSE  
FOURTH FLOOR NORTH  
301 SOUTH MONROE STREET  
TALLAHASSEE, FLORIDA 32301  
(904) 488-2458

ATTORNEY FOR APPELLANT

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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

CASE NO. 80,855

BRUCE A. GAINES,

Respondent.

\_\_\_\_\_ /

RESPONDENT'S BRIEF ON JURISDICTION

I STATEMENT OF THE CASE AND FACTS

Respondent accepts petitioner's statement of the case and facts.

II SUMMARY OF ARGUMENT

Respondent does not oppose review by this Court.

### III ARGUMENT

#### ISSUE

WHETHER THE DECISION OF THE DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN BONNER V. STATE, 599 SO. 2D 599 (FLA. 2D DCA 1992) ON THE SAME QUESTION OF LAW. (RESTATED)

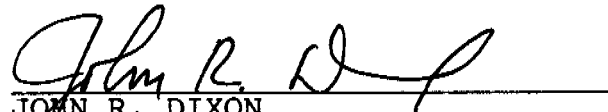
The issue in the present case is currently pending review by this Court in numerous cases, including Anderson v. State, 592 So. 2d 1119 (Fla. 1st DCA 1991), review pending, case no. 79,535 and Hodges v. State, 596 So. 2d 481 (Fla. 1st DCA 1992), review pending, case no. 79,728. Because a decision in the foregoing cases will control this case, respondent does not oppose review by this Court.

IV CONCLUSION

Based on the foregoing, respondent does not oppose the exercise of this Court's discretion to review this case.

Respectfully submitted,

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

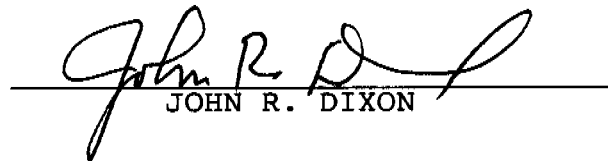


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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been forwarded by hand delivery to James W. Rogers, Assistant Attorney General, Criminal Appeals Division, The Capitol, Tallahassee, Florida, this 7th day of January, 1993.



JOHN R. DIXON