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IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,289

4TH DCA CASE NO. 93-0590

STATE OF FLORIDA,

Petitioner,

v.

DAVID WHITE,

Respondent.

Petitioner's

Respondent's Brief on Jurisdiction

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PRELIMINARY STATEMENT

Petitioner was the appellant in the Fourth District Court of Appeal and the prosecution in the trial court. Respondent was the appellee and the defendant, respectively, in those courts. In this brief, the parties will be referred to as they appear before this Honorable Court.

STATEMENT OF THE CASE AND FACTS

In its decision the Fourth District affirmed on the authority of State v. Schafer, 583 So. 2d 374 (Fla. 4th DCA 1991) appeal dismissed, 598 So. 2d 78 (Fla. 1992) and Albo v. State, 477 So. 2d 1071 (Fla. 3d DCA 1985). The District Court expressly acknowledged conflict with Mayberry v. State, 561 So. 2d 1201 (Fla. 2d DCA 1990) (appendix).

SUMMARY OF THE ARGUMENT

The decision of the Fourth District Court of Appeal in directly and expressly conflicts with a decision of another District Court. This Court also has jurisdiction under Rule 9.030(2)(A)(vi).

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL DIRECTLY AND EXPRESSLY CONFLICTS WITH THE DECISION OF ANOTHER DISTRICT COURT OF APPEAL.

This Court has jurisdiction because the District Court expressly acknowledged conflict in its opinion. See Fla. R. App. P. 9.030(2)(A)(iv) and Cusic v. State, 512 So. 2d 309 (Fla. 2d DCA 1987), approved, 534 So. 2d 1147 (Fla. 1988) (this Court granted conflict jurisdiction where the District Court "acknowledge[d] conflict" with a case from another District Court). Cf. The Florida Star v. B.J.F., 530 So. 2d 286 (Fla. 1988).

This Court also appears to have jurisdiction under Fla. R. App. P. 9.030(2)(A)(vi) (certification of conflict). Although the District Court did not use the term "certify," the "acknowledge conflict" language would appear sufficient. See e.g., State v. Hollinger, 596 So. 2d 521 (Fla. 5th DCA 1992), quashed, 620 So. 2d 1242 (Fla. 1993)(where District Court "acknowlede[d] conflict" and this Court accepted jurisdiction based on certified conflict) and Peoples v. State, 576 So. 2d 16 (Fla. 5th DCA 1991), approved, 612 So. 2d 555 (Fla. 1992) (same).

CONCLUSION

Based on the preceding argument and authorities, this Court should accept jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true copy of this document has been furnished by mail to Stephen Fromang, 1432 21st Street, Suite E, Vero Beach, FL 32960 this 25 day of March 1994.

Of Counsel

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JANUARY TERM 1994

93-1203607

STATE OF FLORIDA, Appellant, v. DAVID ALLEN WHITE, Appellee.	CASE NO. 93-0590. L.T. CASE NO. 92-1195-CF.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

Opinion filed February 9, 1994

Appeal from the Circuit Court for Indian River County; Paul B. Kanarek, Judge.

Robert A. Butterworth, Attorney General, Tallahassee, and James J. Carney, Assistant Attorney General, West Palm Beach, for appellant.

Stephen D. Fromang, Vero Beach, for appellee.

PER CURIAM.

We affirm on the authority of State v. Schafer, 583 So. 2d 374 (Fla. 4th DCA 1991), appeal dismissed, 598 So. 2d 78 (Fla. 1992); State v. Gifford, 558 So. 2d 444 (Fla. 4th DCA 1990); and Albo v. State, 477 So. 2d 1071 (Fla. 3d DCA 1985). We acknowledge conflict with the decision in Mayberry v. State, 561 So. 2d 1201 (Fla. 2d DCA 1990).

DELL, C.J., ANSTEAD and KLEIN, JJ., concur.

this record that personal jurisdiction over the defendant may be obtained by the plaintiff under Section 48.193(1)(g), Florida Statutes (1987), if service of process is thereafter properly obtained under Section 48.194, Florida Statutes (1987). We reach this result because on this record (1) the defendant allegedly "[b]reach[ed] a contract in this state by failing to perform acts required by the contract to be performed in this state," § 48.193(1)(g), Fla.Stat. (1987), namely, failing to pay the plaintiff for the subject computer as required in Miami, Florida, and (2) the defendant had otherwise sufficient minimum due process contacts with Florida. *Venetian Salami Co. v. Parthenais*, 554 So.2d 499 (Fla.1989); *Pellerito Foods, Inc. v. American Conveyors Corp.*, 542 So.2d 426 (Fla. 3d DCA 1989).

Affirmed in part; reversed in part.

Martin EISENSTEIN and Sheldon Wolff, Petitioners,

v.

CITIZENS & SOUTHERN NATIONAL BANK OF FLORIDA, Respondent.

No. 90-0139.

District Court of Appeal of Florida, Fourth District.

April 4, 1990.

As Amended on Grant of Motion for Rehearing or Clarification June 20, 1990.

The Circuit Court, Broward County, Robert Andrews, J., entered order on motion for protective order and motion to stay discovery in aid of execution. Aggrieved party appealed. The Court of Appeal, Downey, J., held that trial court erred by allowing litigant to invoke Fifth Amendment rights regarding documents and questions relating to corporation which was subject of federal racketeering investigation while requiring litigant to answer other questions.

Order quashed and case remanded for assessment of fees.

Witnesses ⇐308

Trial court erred by permitting litigant to invoke Fifth Amendment rights to withhold documents and refuse to answer questions relating to their interest in a corporation which was the subject of a federal investigation into potential racketeering activities, while requiring answers to all other questions; correct approach was to propound questions to witness and certify to trial court questions witness refused to answer for determination whether answer was required. U.S.C.A. Const.Amend. 5.

Nancy M. Lechtner of Lawrence A. France, P.A., North Miami Beach, for petitioners.

James E. Tribble of Blackwell & Walker, P.A., Miami, for respondent.

DOWNEY, Judge.

Martin Eisenstein and Sheldon Wolff have petitioned this court to review and quash an order of the Circuit Court of Broward County entered upon their motion for protective order and motion to stay discovery in aid of execution.

It appears that respondent, Citizens & Southern National Bank of Florida, obtained a judgment against petitioners upon a promissory note. Shortly thereafter petitioners were noticed to appear for deposition and ordered to bring with them various itemized documents. Petitioners filed their motions for protective order and to stay discovery based upon the privilege against self-incrimination afforded by the fifth amendment to the United States Constitution. Petitioners informed the trial court that they were parties in pending federal court litigation involving allegations of fraud and violations of the Racketeer Influenced and Corrupt Organization Act, and displayed to the court a letter

cedure, states that the rule applies to orders on motions which enumerate any of the grounds set forth in rule 1.540, Florida Rules of Civil Procedure. Because a void judgment is a ground for relief from judgment pursuant to rule 1.540(b)(4), Florida Rules of Civil Procedure, we reinstate the appeal.

Lee Emerson MAYBERRY, Appellant,

v.

STATE of Florida, Appellee.

No. 89-01036.

District Court of Appeal of Florida, Second District.

March 28, 1990.

Rehearing Denied June 4, 1990.

Defendant was convicted in the Circuit Court, Pinellas County, Susan F. Schaffer, J., of possession of marijuana, cocaine, and drug paraphernalia, and he appealed. The District Court of Appeal, Lehan, Acting C.J., held that: (1) officer's mistaken belief that defendant was person named in warrant was reasonable under circumstances and did not render arrest invalid, and (2) that warrant turned out to be invalid inasmuch as person named therein was already in jail did not invalidate arrest and search incident thereto.

Affirmed.

1. Automobiles ⇐349(13)

Officer's mistaken belief that defendant was person named in arrest warrant was reasonable under circumstances, and did not render arrest invalid, where person named in warrant was owner of car in which defendant was passenger, defendant and driver of car told officer who stopped car because of broken headlight that defendant was owner of car, and defendant additionally lied to officer about his true identity. U.S.C.A. Const.Amend. 4.

2. Arrest ⇐65, 71.1(7)

That arrest warrant turned out to be invalid inasmuch as person named therein was already in jail did not invalidate arrest of defendant reasonably believed to be person named in warrant and search incident to that arrest, absent showing of excessive and unacceptable delay of police in having failed to purge their records of outstanding warrant. U.S.C.A. Const.Amend. 4.

James Marion Moorman, Public Defender, Bartow and Brad Permar, Asst. Public Defender, Clearwater, for appellant.

Robert A. Butterworth, Atty. Gen., Tallahassee, and Stephen A. Baker, Asst. Atty. Gen., Tampa, for appellee.

LEHAN, Acting Chief Judge.

We affirm defendant's convictions for possession of marijuana, cocaine, and drug paraphernalia. We disagree with his argument that the trial court erred in denying his motion to suppress evidence found during a search after his arrest.

[1] The arrest was on the basis of the arresting officer's belief that defendant was the subject of an outstanding warrant for attempted murder and robbery. The person named in the warrant was the owner of the car in which defendant was a passenger, as was shown by the car's registration. After the arresting officer stopped the car by reason of its broken headlight and looked at that registration, defendant and the driver of the car at first told the officer that defendant was the owner of the car. Then defendant additionally lied to the officer about his true identity. That the officer's belief that defendant was the person named in the warrant turned out to be mistaken does not render the arrest invalid. The mistake was reasonable under the circumstances. *See Neal v. State*, 456 So.2d 897 (Fla. 2d DCA 1984).

[2] Also, that the warrant turned out to have been invalid inasmuch as the person named therein was already in jail does not invalidate the arrest and the search incident thereto. There was no showing of excessive and unacceptable delay of the police in having failed to purge their records of the outstanding warrant. *See Childress v. United States*, 381 A.2d 614, 618 n. 3 (D.C.1977); *Commonwealth v. Riley*, 284 Pa.Super. 280, 425 A.2d 813, 816 (1981). *Compare Albo v. State*, 477 So.2d 1071 (Fla. 3d DCA 1985); *Martin v. State*, 424 So.2d 994 (Fla. 2d DCA 1983).

Affirmed.

THREADGILL and PARKER, JJ., concur.

INTERNATIONAL COMPUTER SOLUTIONS, INC., Appellant,

v.

ST. JAMES CLUB ANTIGUA, Robin Chapman, d/b/a St. James Club Antigua, Appellees.

No. 89-1725.

District Court of Appeal of Florida, Third District.

April 3, 1990.

Rehearing Denied June 22, 1990.

Seller of computers brought action against buyer, a foreign corporation, for money allegedly due and owing. The Circuit Court, Dade County, Margarita Esquiroz, J., dismissed action. Seller appealed. The District Court of Appeal held that service of process could be obtained against foreign corporation on the basis that it allegedly breached contract in state and had otherwise sufficient minimum due process contacts with state.

Affirmed in part; reversed in part.

Corporations ⇐665(1)

Although foreign corporation which was sued for money allegedly owed on computer sales contract did not operate, conduct, engage in, or carry on business in state so as to subject it to substituted service of process through Secretary of State, process could be obtained against foreign corporation on the basis that it allegedly breached contract in state by failing to perform acts required by contract to be performed in state, namely, failing to pay for computer, and on the basis that foreign corporation otherwise had sufficient minimum due process contacts with state. West's F.S.A. §§ 48.181(1), 48.193(1)(g), 48.194; U.S.C.A. Const.Amends. 5, 14.

Militana, Militana & Militana and John Militana, Miami, for appellant.

Ivan S. Benjamin, Hollywood and Paul Gifford, Miami, for appellees.

Before HUBBART and COPE and LEVY, JJ.

PER CURIAM.

This is an appeal by the plaintiff International Computer Solutions, Inc., a Florida corporation, from a final order dismissing its action with prejudice against the defendant St. James Club Antigua, a foreign corporation registered in Antigua. The plaintiff allegedly sold a computer to the defendant and the defendant refused to pay for same; the instant action was brought for monies due and owing based on this sale. We affirm the order dismissing the complaint because we agree with the trial court that the defendant was not operating, conducting, engaging in or carrying on a business in Florida so as to subject it, as here, to substituted service of process through the Secretary of State under Section 48.181(1), Fla.Stat. (1987).

We reverse, however, that portion of the order of dismissal which dismissed the action with prejudice as it appears plain on