IN THE SUPREME COURT OF FLORIDA

PHILLIP CAMPBELL,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. 86,650

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Phillip Campbell, the Appellant in the First District Court of Appeal and the defendant in the trial court, will be referenced in this brief as Petitioner or his proper name.

"PJB" will designate Petitioner's Second Amended Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Although Petitioner has omitted a Statement of the Case and Facts, the pertinent history and facts are set out in the decision of the lower tribunal, attached in slip opinion form [hereinafter referenced as "slip op."] to Petitioner's Second Amended Jurisdictional Brief. It also can be found at 20 Fla. L. Weekly D2132.

Petitioner has interjected citations to the trial-court record (PJB 2, 5, 9). Because jurisdiction must be determined through the use of the "four corners" of the lower appellate court's opinion, these citations are inappropriate. See **Jurisdictional Criteria** section of Argument, infra.

SUMMARY OF ARGUMENT

Petitioner has improperly relied upon the record in the trial court and the reasoning and dissent in the First District Court of Appeal. The appropriate focus upon the operative facts, as contained within the "four corners" of the DCA's decision, reveals no express and direct conflict with this Court or another DCA. Moreover, the DCA here did not **construe** a constitutional provision. Instead, the lower tribunal merely **applied** pre-existing principles in a manner consistent with Jones and other leading cases.

ARGUMENT

I.

IS THERE EXPRESS AND DIRECT CONFLICT BETWEEN THE DECISION BELOW AND STATE V. JONES, 483 So. 2D 433 (FLA. 1986), OR HARTSFIELD V. STATE, 629 So. 2D 1020 (FLA. 4TH DCA 1993)? (Restated)

Jurisdictional Criteria

In Argument I, Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla. Const. The constitution provides:

> The supreme court ... [m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So.2d 888, 889 (Fla. 1986)(rejected "inherent" or "implied" conflict; dismissed petition). Neither the record, nor a concurring opinion, nor a

dissenting opinion can be used to establish jurisdiction. Reaves, supra; Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980)("regardless of whether they are accompanied by a dissenting or concurring opinion"). In addition, it is the "conflict of *decisions*, not conflict of *opinions* or *reasons* that supplies jurisdiction for review by certiorari." Jenkins, 385 So. 2d at 1359.

In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained:

> It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

Accordingly, the determination of conflict jurisdiction distills to whether the First District Court's decision reached a result opposite to Jones or Hartsfield even though it contained

"substantially the same controlling facts," Benefield v. State, 160 So.2d 706 (Fla. 1964).

The decision below is not in "express and direct" conflict with State v. Jones, 483 So. 2d. 433 (Fla. 1986), or Hartsfield v. State, 629 So. 2d 1020 (Fla. 4th DCA 1993).

At the outset, it is important to note that not only has Petitioner improperly relied upon the trial-court record, but also improperly relied upon the dissent (PJB 4-5). A fortiori, the foundation of Petitioner's argument is his improper reliance upon "reasoning" (PJB 3, 5: "conflicts with the reasoning") in the purportedly conflicting opinions.

The **decision** in Jones struck down a roadblock as unconstitutional, whereas the **decision** of the First DCA here upheld the roadblock. Therefore, instead of focusing upon a dissent or a court's reasoning, we must look to the operative facts of Jones and Hartsfield and the operative facts contained within the First DCA's decision to determine if they are distinguishable.

A key fact common to Jones and Hartsfield is the total absence of written guidelines that would have reasonably circumscribed field-officer discretion. Here, "Operational Order 12.1.1(iv)(B)" (slip op. at 3-4) and the "Directed Patrol Worksheet" (slip op.

at 4) provided the written guidelines that were totally absent in Jones and Hartsfield. This key operative fact is distinguishable, rendering those cases not in conflict with the instant case. Indeed, the First DCA expressly followed Jones:

- Citing to Jones, 483 So. 2d at 438, "the courts should view each set of guidelines as a whole in determining the plan's sufficiency" (slip op. at 8);
- Quoting Jones at length, "we do not find a violation of our own supreme court's written guidelines requirement" (slip op. at 10); and,
- "[N]o showing has been made that the trial court abused its discretion in finding the written guidelines sufficient under the circumstances" (slip op. at 11).

Furthermore, the First DCA properly applied (slip op. at 5 et seq.) the criteria enunciated in Brown v. Texas, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979), which this Court also applied in Jones. Here, in addition to the advance written guidelines, the DCA illuminated other criteria-related operative facts, which also distinguish this case from Jones and Hartsfield:

- The roadblock was initiated as a "response to area residents' complaints about speeding and a severe accident with serious injuries that had just occurred the previous

weekend as a result of speeding and possibly faulty equipment" (slip op. at 2); accordingly, "the goals of the roadblock in question were to check for speeding, make a visual inspection of vehicles, and to generally educate the public" (slip op. at 6);

- The purpose of the roadblock was explained to motorists, and the roadblock was well-marked with uniformed officers, "safety vests," and "lighted cones" (slip op. at 4-5);
- "The roadblock method chosen was speedy and effective as demonstrated by the fact that 92 citations were issued in a five-hour period" (slip op. at 6);
- There was no showing whatsoever that the officers singled out Petitioner or any other motorist for any improper reason (See slip op. at 11: "record is devoid of any other indication of discretionary or arbitrary conduct on the part of the officers");
- "The record contains no evidence of complaints about the procedure, other than Campbell's" (Slip op. at 5); and,
- "The determination of whether violations occurred involved objective findings and left little to the discretion of the officers" (slip op. at 6).

II.

DID THE FIRST DCA EXPRESSLY CONSTRUE THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION? (Restated)

Petitioner's other jurisdictional argument is based upon Fla. R. App. P. 9.030(a)(2)(A)(ii) and Article V, § 3(b)(3), Fla. Const. The State responds that the First DCA's decision engaged in no such construction requisite to jurisdiction. Instead, it merely **applied** pre-existing law, that is, it applied Jones' and Brown's criteria, including Jones' requirement of viewing "each set of guidelines as a whole," 483 So. 2d at 438.

Indeed, Petitioner's argument essentially admits that the lower tribunal **applied** the proper balancing tests: "... the First District, in balancing the legitimate government interest involved against the degree of intrusion ..." (PJB 9).

Moreover, Petitioner fails to provide any support whatsoever for his argument (PJB 9) that this case merits this Court's time and attention because of a recurrence of this type of situation. He also fails to show how any such frequency is pertinent to whether the DCA's decision "construed" the State or federal constitution rather than simply applying pre-existing principles. Indeed, the First DCA applied these principles in a manner consistent with Jones and Hartsfield, as discussed supra.

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court decline jurisdiction.

Respectfully submitted,

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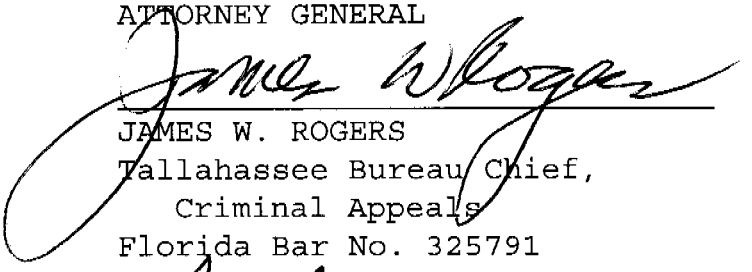

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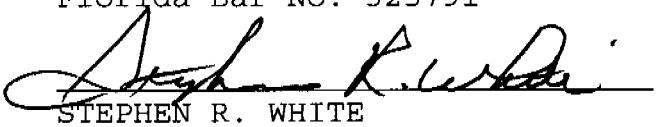

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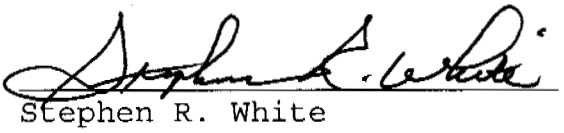
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing JURISDICTIONAL BRIEF OF RESPONDENT has been furnished by U.S. Mail to Mr. Wm. J. Sheppard, Esquire, and Richard W. Smith, Esq., Sheppard & White, P.A., 215 Washington Street, Jacksonville, Florida 32202, this 20th day of November, 1995.



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