

IN THE SUPREME COURT OF FLORIDA

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FILED

SID J. WHITE

NOV 18 1995

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

GREGORY R. LAMOUREUX

Petitioner,

v.

FSC NO. 86,670

STATE OF FLORIDA ,

Respondent.

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT OF APPEAL OF FLORIDA
SECOND DISTRICT

RESPONDENT'S BRIEF ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

PATRICIA E. DAVENPORT
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 0228796
Westwood Center
2002 N. Lois Avenue, Suite 700
Tampa, Florida 33607
(813) 873-4739

COUNSEL FOR RESPONDENT

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SUMMARY OF THE ARGUMENT

The State submits that the court should not entertain jurisdiction in the instant case, because the cases cited by the petitioner are not in direct and express conflict with the decision of the Second District below. Moreover, there is no double jeopardy violation resulting from the opinion rendered by the Second District.

Additionally, this court need not determine jurisdiction in the instant case, since the identical issue is currently pending before this Court in Melbourne v. State, Supreme Court Case No. 86,029.

ARGUMENT

ISSUE I

WHETHER THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR OF THE SUPREME COURT ON THE SAME QUESTION OF LAW INVOKING THE DISCRETIONARY JURISDICTION OF THE FLORIDA SUPREME COURT.

The Petitioner seeks to invoke the discretionary jurisdiction of the court, arguing that the Second District's decision expressly and directly conflicts with another decision of the Second District Court of Appeal and with previous decisions of this Court. The state responds that the court should not entertain jurisdiction in the instant case, because the cases cited by the petitioner are not in direct and express conflict with a decision of this Court, and this Court lacks jurisdiction to resolve conflicts within a district. See Art.V, § 3(b)(3), Fla. Const.

A limitation of review to decisions in "direct conflict" evinces a concern with decisions as precedents as opposed to adjudications of the rights of particular litigants:

A conflict of decisions ... must be on a question of law involved and determined, and such that one decision would overrule the

other if both were rendered by the same court; in other words, the decisions must be based practically on the same state of facts and announce antagonistic conclusions. 21 C.J.S. Courts §462.

Ansin v. Thurston, 101 So. 2d 808, 811 (Fla. 1958). Thus, for there to be direct conflict the factual scenarios in each case must be identical with the respective courts reaching opposing holdings.

Contrary to the assertions of Petitioner, there exists no conflict between the decision of the Second District Court of Appeal in the instant case, and Boutwell v. State, 631 So. 2d 1094 (Fla. 1994), and Michie v. State, 632 So. 2d 1106 (Fla. 2d DCA 1994). Neither of those decisions recanted the distinction between a continuing offense (traffic offenses), and an instant offense (driving under the influence of alcohol where someone is killed or injured). Thus, in the instant case, the district court properly reversed the trial court's dismissal of one count of DUI with serious bodily injury where there were two victims.

Additionally, this Court need not determine jurisdiction in the instant case, since the identical issue is currently pending before this Court in Melbourne v. State, Supreme Court Case No. 86,029.

ISSUE II

WHETHER THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN THIS CASE EXPRESSLY CONSTRUES A PROVISION OF THE STATE OR FEDERAL CONSTITUTION INVOKING THE DISCRETIONARY JURISDICTION OF THE FLORIDA SUPREME COURT.

The opinion rendered by the Second District Court of Appeal does not subject Petitioner to double jeopardy in violation of Article I, Section 9, Florida Constitution. DUI with serious injury is a discrete crime against the person for which separate convictions are appropriate when there are multiple victims, thus, there is no double jeopardy violation.


Accordingly, the State respectfully requests that the court decline to exercise its discretionary jurisdiction in the instant case as the Petitioner has failed to demonstrate direct and express conflict.

CONCLUSION

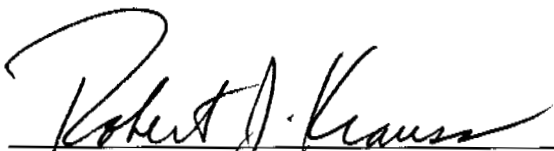
In light of the foregoing facts, arguments, and authorities, this Honorable Court should decline to exercise discretionary jurisdiction because the petitioner has failed to show direct and express conflict.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



PATRICIA E. DAVENPORT
Assistant Attorney General
Florida Bar No. 0228796
Westwood Center, Suite 700
2002 North Lois Avenue
Tampa, Florida 33607
(813) 873-4739



ROBERT J. KRAUSS
Senior Assistant Attorney General
Chief of Criminal Law, Tampa
Florida Bar No. 0238538
Westwood Center, Suite 700
2002 North Lois Avenue
Tampa, Florida 33607
(813) 873-4739

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Karen S. Beavin, P. O. Box 7128, Naples, Florida 33941 on this 14th day of November, 1995.

Patricia E. Barrett

OF COUNSEL FOR RESPONDENT