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CLERK SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, :
 :
 Petitioner, :
 :
 v. :
 :
 DANIEL KEITH MAXWELL, :
 :
 Respondent. :
 :
 _____ :

Case no. 87,290

JURISDICTIONAL BRIEF OF RESPONDENT

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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v. : Case no. 87,290
DANIEL KEITH MAXWELL, :
Respondent. :
_____ :

JURISDICTIONAL BRIEF OF RESPONDENT

I PRELIMINARY STATEMENT

The state appeals an opinion of the First District Court of Appeal which reversed multiple convictions involving possession of a firearm. Maxwell v. State, ___ So.2d ___, 21 Fla. L.Weekly D188 (Fla. 1st DCA Jan. 4, 1996).

II STATEMENT OF THE CASE AND FACTS

Respondent is generally in agreement with the state's statement of the case and facts.

III SUMMARY OF ARGUMENT

Respondent contends no genuine conflict exists with M.P. v. State, infra, because the outcome of M.P. will turn on juvenile statutes which have no counterpart applicable to him as an adult defendant. If M.P.'s discussion of unique statutory elements is part of the holding of the case and not merely dicta, there may be conflict with the instant case, but then, M.P. would also conflict with this court's "core offense" analysis in Sirmons v. State, infra.

IV ARGUMENT

ISSUE PRESENTED

IS THERE DIRECT AND EXPRESS CONFLICT
BETWEEN THE DECISION BELOW AND DECISIONS OF
THIS COURT AND OTHER DISTRICT COURTS?

Respondent, Daniel Keith Maxwell, an adult, was convicted of possession of a short-barreled shotgun, possession of a firearm by a convicted felon and carrying a concealed weapon, all for the single possession of a single gun. He argued on appeal to the First District that the triple convictions violated double jeopardy. The district court agreed, citing its own prior decision A.J.H. v. State, 652 So.2d 1279 (Fla. 1st DCA 1995), and this court's decision in State v. Stearns, 645 So.2d 417, 418 (Fla. 1994), and vacated two of the convictions. Maxwell v. State, *supra*.

The state seeks review of the decision on the ground the convictions contain separate statutory elements. The state alleges conflict with the decision in M.P. v. State, in which the Third District certified conflict with A.J.H. and M.P.C. v. State, 659 So.2d 1293 (Fla. 5th DCA 1995). M.P. v. State, 662 So.2d 1359 (Fla. 3d DCA 1995), decision on jurisdiction postponed; merit briefing ordered, no. 86,968 (Fla. 1996). Even if M.P. and A.J.H. conflict with each other, that conflict does not necessarily extend to respondent Maxwell's adult convictions.

M.P. was adjudicated delinquent for carrying a concealed weapon and possession of a firearm by a minor. 662 So.2d at

1359. A.J.H. and M.P.C. were both adjudicated delinquent of the same two offenses and in addition, of possession of a firearm by a delinquent. M.P.C., 659 So.2d at 1293; A.J.H., 652 So.2d at 1380. Maxwell, by comparison, is an adult, who was not convicted of any offenses relating to minors.

There are two bases for the decision in M.P. First and foremost is the language of the possession of a firearm by a minor statute, to the effect that "[t]he provisions of this section are supplemental to all other provisions of law relating to the possession, use, or exhibition of a firearm" (emphasis added in M.P.). 662 So.2d at 1360, quoting § 790.22(7), Fla.Stat. (Supp. 1994). This statutory language applies only to minors, and thus does not apply to Maxwell's adult convictions. The holding in Maxwell's case is not in conflict with M.P. on this point. Nor, contrary to the state's claim has this court granted review on the same issue.

M.P. also permits dual convictions because the charges contain unique statutory elements. It is possible to view M.P.'s statutory elements discussion as dicta. Undersigned counsel cannot discern whether this discussion was intended to be dicta, or a separate basis for the decision. Certainly, the district court's decision on statutory language is more compelling than its excursion into the murky waters of double jeopardy.

If the discussion of unique statutory elements is in fact part of the holding of the case, then it is possible the deci-

sion conflicts with the instant case. Respondent would point out, however, that it would also conflict with this court's decision in Sirmons v. State, 634 So.2d 153 (Fla. 1994), in which this court employed a "core offense" analysis to find that dual convictions of grand theft auto and robbery of the same auto could not stand.

This court found the core offense in Sirmons to be theft, with two aggravating factors - 1) force used in the robbery, and 2) the property was a motor vehicle, and automobiles are enumerated as items whose theft constitutes grand theft. Similarly, the three offenses here all share the core offense of possession of a firearm, with the addition of various aggravating factors. It does not change the basic fact, however, that Maxwell possessed only a single firearm.

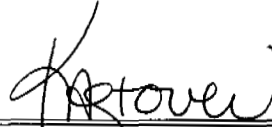
Be the conflict with Sirmons as it may, respondent urges this court to deny review in this case because no genuine conflict exists with M.P.. The outcome of M.P. will turn on juvenile statutes which have no counterpart applicable to him as an adult defendant.

V CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, appellant requests that this Court decline to review this case, because no significant conflict with other cases exists.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

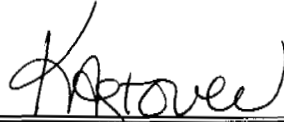


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Vincent Altieri, Assistant Attorney General, by delivery to The Capitol, Plaza Level, Tallahassee, Florida, and a copy has been mailed to Mr. Daniel K. Maxwell, inmate no. 562431, Holmes Correctional Institution, P.O. Box 190, Bonifay, Florida 32425, this 4 day of March, 1996.



KATHLEEN STOVER