

IN THE SUPREME COURT OF FLORIDA

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**FILED**

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AUG 12 1996

CLERK OF SUPREME COURT

Tallahassee, Florida

STATE OF FLORIDA, :  
 :  
 Petitioner, :  
 :  
 v. :  
 :  
 EUGENE EVANS, :  
 :  
 Respondent. :

CASE NO. 88,451

**JURISDICTIONAL BRIEF OF RESPONDENT**

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

JAMIE SPIVEY #0850901  
ASSISTANT PUBLIC DEFENDER  
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ATTORNEY FOR RESPONDENT

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TABLE OF CITATIONS

<u>CASE</u>	<u>PAGE(S)</u>
<u>Evans v. State,</u> 21 Fla. L. Weekly D1444 (Fla. 1st DCA June 18, 1996)	3
<u>Ree v. State,</u> 656 So. 2d 1329 (Fla. 1990)	3
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Petitioner, :

v. :

CASE NO.

**EUGENE EVANS,** :

Respondent. :

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JURISDICTIONAL BRIEF OF RESPONDENT

PRELIMINARY STATEMENT

Respondent was the appellant, below, and will be referenced as "Respondent" or "Mr. Evans" in the following brief. The State of Florida was the appellee, below, and will be referenced as "State" or "petitioner. The opinion of the First District Court of Appeals is attached as appendix "A."

STATEMENT OF THE CASE AND FACTS

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

## JURISDICTIONAL ARGUMENT

Respondent concedes this Court "may" accept discretionary jurisdiction based upon the apparent conflict between the first and second district courts of appeal as represented by their respective opinions set forth in Evans v. State, 21 Fla. L. Weekly D1444 (Fla. 1st DCA June 18, 1996) and San Martin v. State, 591 So. 2d 301 (Fla. 2d DCA 1991), rev. denied, 598 So. 2d 78 (Fla. 1992). Nonetheless, this Court is not required to accept jurisdiction and would suggest that the issue involved is so fact-specific that it will appear only rarely in these courts. Indeed, Petitioner can point to only one other case, 4-years old, to support her claim of a conflict amongst the various district courts. Not surprisingly, the First District Court of Appeals determined it did not amount to an issue of great public importance requiring the immediate attention of this Court and, so, did not certify the question.

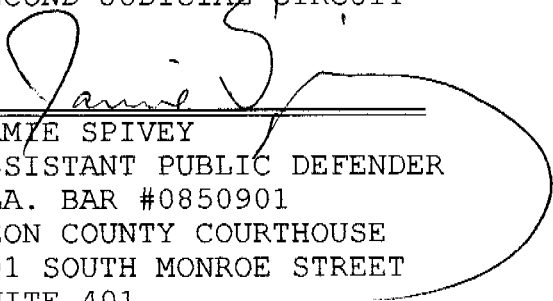
Should this Court decide to accept jurisdiction, Respondent will be arguing for affirmance in the brief on the merits, on the ground that the trial court's decision was in accordance with the "bright-line" rule regarding the necessity of contemporaneous filings established by Ree v. State, 656 So. 2d 1329 (Fla. 1990).

CONCLUSION

Respondent urges this Court not to exercise its permissible discretionary jurisdiction in this case because the esoteric nature of the issue does not merit this Court's time and attention.

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 Charmaine Millsaps, Assistant Attorney General, by delivery to The Capitol, Criminal Appeals Division, Plaza Level, Tallahassee, Florida, 32301, and a copy has been mailed to appellant, on this 12 day of August, 1996.

  
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JAMIE SPIVEY