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IN THE SUPREME COURT OF FLORIDA

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CASE NO. *91,279*

DCA CASE NO. 96-3114

STATE OF FLORIDA,

Petitioner,

v.

REGINALD WELLS,

Respondent.

JURISDICTIONAL BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Reginald Wells, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Respondent or proper name.

STATEMENT OF THE CASE AND FACTS

The district court's opinion is attached as Appendix A. Respondent was convicted of two counts of battery on a law enforcement officer, two counts of resisting arrest with violence, one count of reckless driving, and one count of driving with a suspended license. Wells v. State, case no. 96-3114 (Fla. 1st DCA August 19, 1997) at 1-2. The district court held that only one conviction for resisting an officer with violence is permitted in connection with a single criminal episode and reversed one of Respondent's convictions for resisting arrest with violence. Wells at 2.

SUMMARY OF ARGUMENT

The district court held that Respondent could only be convicted of one count of resisting an officer with violence in connection with a single criminal episode and reversed one of Respondent's convictions of resisting an officer with violence. In Wallace v. State, 689 So. 2d 1159 (Fla. 4th DCA 1997), rev. pending, case no. 90,287, the court held that a defendant can be convicted for resisting arrest with violence for each officer that he resists and did not limit the number of convictions to one in a single episode. These holdings are in direct conflict. This Court should accept jurisdiction to resolve the conflict between the two district courts of appeal.

ARGUMENT

ISSUE

WHETHER THE DISTRICT COURT'S DECISION CONFLICTS WITH THE FOURTH DISTRICT'S OPINION IN WALLACE V. STATE, 689 So. 2d 1159 (FLA. 4TH DCA 1997), REV. PENDING, CASE NO. 90,287.

The district court's decision in this case directly conflicts with the Fourth District's opinion in Wallace v. State, 689 So. 2d 1159 (Fla. 4th DCA 1997), rev. pending, case no. 90,287. This Court should exercise discretionary jurisdiction to review the decision in this case and resolve the conflict with Wallace.

Pursuant to article V, section 3(b)(3), Florida Constitution, and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), this Court has jurisdiction to review a decision 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 district court's holding in this case that only one conviction of resisting arrest with violence is permitted in connection with a single criminal episode or incident directly conflicts with the Wallace holding that multiple convictions are permitted. Accordingly, this Court has jurisdiction to hear this appeal.

Respondent was convicted of two counts of battery on a law enforcement officer, two counts of resisting an officer with violence, one count of reckless driving, and one count of driving with a suspended license. Wells at 1-2. The district court held that Respondent could only be convicted of one count of resisting an officer with violence in connection with a single criminal episode and reversed one of Respondent's convictions of resisting

an officer with violence. Wells at 2. In reaching this conclusion, the district court relied on its decision in Pierce v. State, 681 So. 2d 873 (Fla. 1st DCA 1996). Pierce held that a defendant can only be convicted of one count of resisting an officer with violence in connection with a single criminal episode. Wells at 2.

The district court's opinion is in direct conflict with Wallace. In Wallace, the court affirmed the defendant's convictions of two counts of resisting an officer with violence stemming from an altercation with his sister and two police officers. Wallace, 689 So. 2d at 1160. The court rejected Wallace's argument that Pierce controlled and required reversal of one of the convictions. While Pierce held that because section 843.01, Florida Statutes refers to "any" officer, only one conviction is permitted in connection with a single episode, Pierce, 681 So. 2d at 874, Wallace said that "any" modifies the class of persons who may be classified as an officer under the statute and does not prevent prosecution for each crime. Wallace, 689 So. 2d at 1161. The court said the "crime of resisting an officer with violence is like theft, in that the statutory unit of prosecution is violence done to any single officer" and held that the statute "undeniably demonstrates that the intended prosecutorial unit is any individual officer who is resisted." Id. at 1661. The court noted,

Indeed to hold otherwise simply because the two separate acts of violence occurred during a spree of violent resistance of peace officers is to give violent persons no incentive to refrain from battering

additional officers after they have committed an act of violence on the first officer. Id. at 1161-62.

Wallace said the Legislature intended that a defendant should be convicted for each crime committed during a single episode. Id. at 1162. Wallace certified conflict with the First District's contrary holding in Pierce. Id. at 1163. Review of Wallace is pending before this Court.

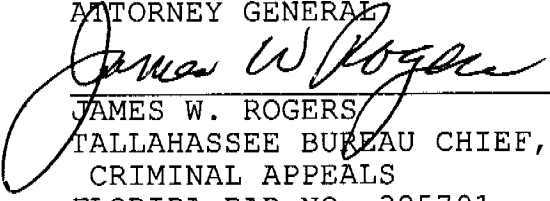
The district court held in this case that Respondent can only be convicted of one count of resisting an officer with violence in connection with a single episode. Wells at 2. This holding is in direct conflict with the Fourth District's holding in Wallace, which says a defendant can be convicted of resisting an officer with violence for each officer that he or she resisted. This Court should exercise its discretionary jurisdiction to resolve the conflict on this point of law.

CONCLUSION


Based on the foregoing reason, the State respectfully requests this Honorable Court exercise jurisdiction to review the decision of the district court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing JURISDICTIONAL BRIEF OF PETITIONER has been furnished by U.S. Mail to David P. Gauldin, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 26TH day of August, 1997.



L. Michael Billmeier
Attorney for the State of
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[C:\LMB\WELLSBJ.WPD --- 8/25/97, 5:30 pm]