

087

IN THE SUPREME COURT OF FLORIDA

**FILED**  
SID J. WHITE

SEP 15 1997

STATE OF FLORIDA,  
Petitioner,

: 91,279

CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

v.

: CASE NO. 96-3114

REGINALD WELLS,

:

Respondent.

:

\_\_\_\_\_

JURISDICTIONAL ANSWER BRIEF OF RESPONDENT

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

DAVID P. GAULDIN  
ASSISTANT PUBLIC DEFENDER  
FLORIDA BAR NO. 261580  
LEON COUNTY COURTHOUSE  
SUITE 401  
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ATTORNEY FOR RESPONDENT

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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. 96-3114

REGINALD WELLS,

Respondent.

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JURISDICTIONAL ANSWER BRIEF OF RESPONDENT

PRELIMINARY STATEMENT

References to the state's brief shall be letters "SB" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Florida First District Court of Appeal's rendition of the facts in its opinion. (Appendix)

SUMMARY OF THE ARGUMENT

The Florida First District Court of Appeal's opinion in this case appears to conflict on its face with Wallace v. State, 689 So.2d 1159 (Fla. 4th DCA 1997), review pending, Case number 90,287. However, jurisdiction is discretionary and this Court is not required to accept jurisdiction.

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),  
REVIEW PENDING, CASE NUMBER 90,287.

At first blush, the District Court of Appeal's opinion in this case appears to conflict directly and expressly with the Florida Fourth District Court of Appeal's opinion in Wallace v. State, 689 So.2d 1159 (Fla. 4th DCA 1997), review pending, case number 90,287. At second blush, the conflict does not appear to have evaporated.

However, this Court's jurisdiction is discretionary, and this Court may decline to entertain jurisdiction.

CONCLUSION

Based on the foregoing reasons and authorities, respondent respectfully requests this Court to decline to exercise jurisdiction to review the decision of the district court.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been forwarded by delivery to the Office of the Attorney General, The Capitol, Plaza Level, Tallahassee, Florida, this \_\_\_\_\_ day of September, 1997.

Respectfully submitted,

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT



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DAVID P. GAULDIN  
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COUNSEL FOR RESPONDENT

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

REGINALD WELLS,

Respondent,

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CASE NO. 96-3114

A P P E N D I X

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA  
NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

REGINALD WELLS,  
Appellant,

v.

STATE OF FLORIDA,  
Appellee.

CASE NO. 96-3114

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Opinion filed August 19, 1997.

An appeal from the Circuit Court for Duval County.  
Hugh A. Carithers, Jr., Judge.

Nancy A. Daniels, Public Defender; David P. Gauldin, Assistant  
Public Defender, Tallahassee, for Appellant.

Robert A. Butterworth, Attorney General; Giselle Lylen Rivera,  
Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Reginald Wells (Wells) 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

AUG 19 1997

with a suspended license. The trial judge imposed concurrent county jail sentences for each conviction. In Pierce v. State, 681 So. 2d 873 (Fla. 1st DCA 1996), this court held that only one conviction for resisting an officer with violence is permitted in connection with a single criminal episode or incident. Accordingly, we reverse and remand with instructions that one of Wells's convictions for resisting arrest with violence be vacated. We affirm the judgments and sentences for all other offenses.

AFFIRMED in part and REVERSED in part.

MINER, MICKLE and LAWRENCE, JJ., CONCUR.