IN THE SUPREME COURT OF FLORIDA

RICKEY PAUL MURRAY,

Petitioner,

versus

CASE NO. 92,143

STATE OF FLORIDA,

Respondent.

APPEAL FROM THE CIRCUIT COURT
IN AND FOR MARION COUNTY
AND THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON, PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

BRYNN NEWTON
ASSISTANT PUBLIC DEFENDER
Florida Bar Number 175150
112-A Orange Avenue
Daytona Beach, Florida 32114-4310
904-252-3367

ATTORNEY FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS

Petitioner was charged by informations filed in the Circuit Court of Marion County, Florida, with "felony driving while license suspended or revoked." (R 1, 44) On February 14, 1997, he entered a plea of nolo contendere, reserving his right to appeal the trial court's denial of his motion to dismiss; adjudication of guilt was withheld and he was ordered to spend concurrent terms of one year in the county jail, pay fines of $500.00 per count, and serve concurrent terms of one year on probation. (R 20-21, 25, 44, 65-66, 67, 93, 26, 98-101, 105-107, 110-112)

Notices of appeal were timely filed on March 10, 1997, and the Office of the Public Defender was appointed to represent Petitioner on appeal. (R 35-36, 74-75, 42-43, 81-82) The trial court's orders were affirmed, per curiam, on December 5, 1997. Murray v. State, 22 Fla. L. Weekly D2722 (Fla. 5th DCA December 5, 1997). (APPENDIX A).

SUMMARY OF ARGUMENT

Florida Appellate Rule 9.030(a)(2)(A)(i) and Article V Section 3(b)(3) provide that the Supreme Court may in its discretion review any decision of a District Court that expressly declares valid a state statute. Because the Fifth District Court of Appeal in this case held that Section 322.34(1), the "felony DUI" statute, is valid, this Honorable Court has jurisdiction to accept this case for review. The decision which the District Court cites in its per curiam decision as authority therefor is pending review in Supreme Court Case Number 91,611.

ARGUMENT

THE DISTRICT COURT OF APPEAL'S DECISION CITES AS CONTROLLING AUTHORITY ITS DECISION IN RAULERSON v. STATE, 22 Fla. L. Weekly D2267 (Fla. 5th DCA September 26, 1997), WHICH EXPRESSLY DECLARES A STATUTE VALID AND WHICH IS PENDING REVIEW BY THIS HONORABLE COURT.

Petitioner filed motions to dismiss the informations charging him with "felony driving while license suspended," contending that by the language of the 1995 statute, he would not be guilty of a felony if the trial court exercised its discretion to withhold adjudication, and that it was an unconstitutional delegation of the Legislature's power, to the trial courts, to determine whether violation of Section 322.34(1) is to be punished as a felony or a misdemeanor. (R 20-21, 65-66) The Circuit Court denied the motions. (R 25, 67) On December 5, 1997, The Fifth District Court of Appeal affirmed, per curiam, the trial court's ruling, citing Raulerson v. State, 22 Fla. L. Weekly D2267 (Fla. 5th DCA September 26, 1997), as authority. (APPENDIX B). Murray v. State, 22 Fla. L. Weekly D2722 (Fla. 5th DCA December 5, 1997).

In Raulerson, the District Court rejected the argument, that Section 322.34(1) is unconstitutional because the delegation of legislative power to the trial court (to determine whether a violation of the statute is a felony or a conviction) violates Article II, Section 3 Article of the Florida Constitution, and found the "felony DUI" statute to be valid. Florida Appellate Rule 9.030(a)(2)(A)(i) and Article V Section 3(b)(3) provide that the Supreme Court may in its discretion review any decision of a District Court that expressly declares valid a state statute. This Honorable Court should accept jurisdiction of this cause and decide whether Section 322.34(1) is constitutional.

Raulerson v. State is currently pending acceptance for review by this Honorable Court in Case Number 91,611. Because the decision in this case cites a decision, Raulerson, which is pending review by the Florida Supreme Court, this Honorable Court has jurisdiction of this appeal and should grant review in this cause. See Jollie v. State, 405 So. 2d 418 (Fla. 1981), wherein this Honorable Court held that a District Court of Appeal per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by the Supreme Court constitutes prima facie conflict and allows the Supreme Court to exercise its jurisdiction.

CONCLUSION

For the reasons expressed herein, Petitioner respectfully requests that this Honorable Court exercise its discretionary jurisdiction and grant review of the Fifth District Court of Appeal's decision in this cause.

Respectfully submitted,

JAMES B. GIBSON, PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

BRYNN NEWTON
ASSISTANT PUBLIC DEFENDER
Florida Bar Number 175150
112-A Orange Avenue
Daytona Beach, Florida 32114-4310
904-252-3367

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, by delivery to his basket at the Fifth District Court of Appeal; and by mail to the Petitioner, Mr. Rickey Paul Murray, c/o Ms. Ruth Murray, 1811 Third Avenue West, Palmetto, Florida 34221, this 12th day of January, 1998.

ATTORNEY

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FIFTH DISTRICT JULY TERM 1997

RICKEY PAUL MURRAY,

Appellant,

NOT FINAL UNTIL THE TIME EXPIRES TO FILE REHEARING MOTION, AND, IF FILED, DISPOSED OF.

v. Case No. 97-707

STATE OF FLORIDA,

Appellee.

_____/

Opinion Filed December 5, 1997

Appeal from the Circuit Court
for Marion County,
Carven D. Angel, Judge.

James B. Gibson, Public Defender, and Brynn Newton,
Assistant Public Defender, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee,
and Mary G. Jolley, Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

AFFIRMED. *See Raulerson v. State*, 22 Fla. L. Weekly D2267 (Fla. 5th DCA Sep. 26, 1997).

DAUKSCH, PETERSON and THOMPSON, JJ., concur.

APPENDIX A

sulting in a miscarriage of justice, and we find none here, this court may not be used for a second appeal. *See Haines City Community Dev. v. Heggs*, 658 So. 2d 523, 527 (Fla. 1995). The circuit court, sitting in its appellate capacity, proceeded according to the essential requirements of law. Accordingly, we deny SCBCC's petition for writ of certiorari as to its procedural due process claim.

We find, however, that the circuit court departed from the essential requirements of the law when it ordered SCBCC to grant the exception. The circuit court sitting in its appellate capacity could quash the order under review, but it could not direct SCBCC to take a specific action. *See ABG Real Estate Dev. Co. of Florida, Inc. v. St. Johns County*, 608 So.2d 59 (Fla. 5th DCA 1992) (citing *City of Miramar v. Amoco Oil Co.*, 524 So. 2d 506 (Fla. 4th DCA 1988); *Gulf Oil Realty Co. v. Windhover Ass'n, Inc.*, 403 So. 2d 476 (Fla. 5th DCA 1981)), *dismissed*, 613 So. 2d 8 (Fla. 1993). Therefore, we grant the petition for writ of certiorari in part and quash that portion of the circuit court's opinion which ordered SCBCC to grant the special exception.

CERTIORARI GRANTED in part and DENIED in part; REMANDED. (GOSHORN and THOMPSON, JJ., concur. SHARP, W., J., dissents, with opinion.)

[1]This court has jurisdiction pursuant to Fla. R. App. P. 9.030(b)(2)(B).

(SHARP, W., J., dissenting.) One basis for certiorari review of a circuit court's appellate review of a zoning authority's zoning determination is that the circuit court departed from the essential requirements of law. Here, the circuit court reversed the decision of the Seminole County Board of County Commissioners, which denied Eden Park's application for a special exception to an existent zoning ordinance. To do that, assuming the ordinance was valid and constitutional, as this one apparently was, the circuit court would have to find there was no substantial competent evidence to support the zoning authority's decision. However, as Judge Benson points out in his dissenting opinion at the circuit court level, there was competent, substantial evidence to support the zoning authority's denial of the special exemption. If that is true, then in my view there is a basis for certiorari review by this court.

It is basic appellate law that a fact finder's resolution of disputed facts and inferences should not be overturned by a reviewing body, unless there is no competent, substantial evidence to support the decision under review. *Skaggs-Albertson's v. ABC Liquors, Inc.*, 363 So. 2d 1082 (Fla. 1978). We often point this out in administrative law cases, such as unemployment compensation cases,[1] when we perceive that the Commission has "redetermined conflicting evidence" in overturning a hearing officer's decision. Redetermination of disputed facts at the appellate level is, in my view, a departure from the essential requirements of law.

In *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982), the Florida Supreme Court did not truly address this issue. The decision actually concerned the proper method or mode in which a district court of appeal should handle the review of a circuit court's appellate review of a zoning authority's decision: was it by direct appeal, or by certiorari? The Court held that certiorari review was appropriate. It summarized its holding as follows:

> Where a party is entitled as a matter of right to seek review in the circuit court from administrative action, the circuit court must determine whether procedural due process is accorded, whether the essential requirements of the law have been observed, and *whether the administrative findings and judgment are supported by competent substantial evidence*. The district court, upon review of the circuit court's judgment, then determines whether the circuit court afforded procedural due process and *applied the correct law*. (emphasis supplied)

Id. at 626.

In my view, part of the district court's job should be to ensure that the "correct law" was applied. That should include a review to see that the circuit court did not redetermine disputed factual evidence, or overturn a zoning decision where the record contains substantial competent evidence to support the decision being reversed. *Vaillant* does not mandate a contrary result. Not to do so makes unreviewable cases in which this basic principle of appellate law is overlooked and even ignored.

Education Development Center, Inc. v. City of West Palm Beach Zoning Board of Appeals, 541 So. 2d 106 (Fla. 1989), relied on *Vaillant* in rejecting that concept. It put the district courts of appeal out of the business of reviewing substantial evidence issues by characterizing the problem as a district court simply disagreeing with a circuit court's evaluation of the evidence. As pointed out above, *Vaillant* does not require that result. Further, neither the circuit court sitting in its review capacity or the district court should be "evaluating the evidence". The simple question at both levels should be: Was there substantial competent evidence to support the zoning authority's decision? If there was, it is an essential departure from established appellate law to reverse.

[1]*See, e.g., Johnson v. Unemployment Appeals Commission*, 680 So. 2d 1073 (Fla. 5th DCA 1996); *Kanski v. Unemployment Appeals Commission*, 664 So. 2d 1158 (Fla. 5th DCA 1995).

* * *

Criminal law—Driving while license suspended—No merit to defendant's claim that statute making third or subsequent conviction for driving with suspended license a felony is unconstitutional, because trial judge has discretion to withhold adjudication of guilt, so that whether defendant has requisite prior convictions depends on whether judge exercised that discretion—Violation of statute constitutes a conviction when sentencing court decides to withhold adjudication of guilt instead of entering a judgment against defendant—Legislature intended term "conviction," as used in statute, to mean a determination of defendant's guilt by way of plea or verdict, without requirement that there be an adjudication

JAMES RAULERSON, Appellant, v. STATE OF FLORIDA, Appellee. 5th District. Case No. 97-710. Opinion filed September 26, 1997. Appeal from the Circuit Court for Marion County, Carven D. Angel, Judge. Counsel: James B. Gibson, Public Defender, and Kenneth Witts, Assistant Public Defender, Daytona Beach, for Appellant. Robert A. Butterworth, Attorney General, Tallahassee, and Mary G. Jolley, Assistant Attorney General, Daytona Beach, for Appellee.

(ANTOON, J.) James Raulerson (defendant) appeals his judgment and sentence for felony driving while license suspended, claiming that section 322.34(1) of the Florida Statutes (1995) unconstitutionally permits the trial court to determine whether the offense is a misdemeanor or a felony. We affirm.

The defendant was charged with the offense of driving while his license was suspended in violation of section 322.34 of the Florida Statutes (1995). The state prosecuted the offense as a felony, relying upon the fact that the defendant had three prior convictions for the same offense. The defendant filed a motion to dismiss the charge, asserting that section 322.34(1) was unconstitutional. The trial court denied the motion, and the defendant thereafter entered a plea of *nolo contendere* after specifically reserving his right to appeal the denial of his dismissal motion. The trial court then adjudicated the defendant guilty of the felony offense of driving while license suspended and imposed sentence.

Section 322.34(1) of the Florida Statutes (1995) provides that a driver, upon a third or subsequent conviction for driving with a suspended license, is guilty of committing a third-degree felony:

> 322.34 Driving while license suspended, revoked, canceled, or disqualified.—
>
> (1) Any person whose driver's license or driving privilege has

been canceled, suspended, or revoked as provided by law, except persons defined in s. 322.264, and who drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked, upon:

(a) A first conviction is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A second conviction is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A third or subsequent conviction is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The defendant argues that whether an accused has been "convicted" under the statute depends upon whether or not the trial court exercised its discretion to withhold an adjudication of guilt. In this regard, the defendant maintains that if the trial court withholds a defendant's adjudication of guilt following either a guilty verdict or plea on the charge of violating section 322.34(1), then that charge would not constitute a prior "conviction" for purposes of enhancement under the statute. He further asserts that since the trial court is vested with discretion pertaining to the decision whether to withhold an adjudication of guilt, the statute must be struck down as unconstitutional because the delegation of such legislative power to the trial court violates Article 2, section 3 of the Florida Constitution. We disagree.

In determining whether a statute is constitutional we must resolve all doubts in favor of the statute's constitutionality. *State v. Stadler,* 630 So. 2d 1072 (Fla. 1994). In doing so, we must give the statute a fair construction that is consistent with the constitution and legislative intent. *Id.* at 1076. Applying these rules of construction to the instant case, the defendant's argument fails.

The dispositive issue here is whether a defendant's violation of section 322.34(1) constitutes a conviction when the sentencing court decides to withhold an adjudication of guilt instead of entering a judgment against the defendant. If the answer is yes, then the defendant's argument fails because all prior violations of the statute would count in determining whether the violation is a felony.

By embracing the concept of withholding adjudication, Florida courts have created some confusion because there is uncertainty as to the meaning and ramifications of such a disposition. However, our supreme court has made it clear that one may be "convicted" without being adjudicated guilty:

> [T]he term "conviction" means a determination of guilt by verdict of the jury or by plea of guilty, and does not require adjudication by the court. It is important to distinguish a "judgment of conviction" which is defective unless it contains an adjudication of guilt.

State v. Gazda, 257 So. 2d 242, 243-244 (Fla. 1971).

The above definition is consistent with rule 3.701(d)(2) of the Florida Rules of Criminal Procedure, which provides:

> "Conviction" means a determination of guilt resulting from plea or trial, regardless of whether adjudication was withheld or whether imposition of sentence was suspended.

In *Smith v. Bartlett,* 570 So. 2d 360 (Fla. 5th DCA 1990), *rev. denied,* 581 So. 2d 1310 (Fla. 1991), Judge Harris aptly noted that, after *Gazda*, the term "conviction" was similarly defined and applied in other contexts. *See Jones v. State,* 502 So. 2d 1375 (Fla. 4th DCA 1987) (adjudication withheld is a conviction for double jeopardy purposes); *Johnson v. State,* 449 So. 2d 921 (Fla. 1st DCA), *rev. denied,* 458 So. 2d 274 (Fla. 1984) (an adjudication withheld constitutes valid impeachment evidence).

A common sense reading of the instant statute indicates that the legislature intended the term "conviction" to mean a determination of a defendant's guilt by way of plea or verdict. There appears to be no requirement that there be an adjudication. The obvious legislative intent of section 322.34 is to increase the penalty for repeat violations of the statute. The legislative goal is accomplished by application of the *Gazda* definition of conviction. Accordingly, we conclude that the statute is constitutional.

AFFIRMED. (GRIFFIN, C.J., concurs. HARRIS, J., concurs and concurs specially, with opinion.)

(HARRIS, J., concurring and concurring specially.) I concur in the opinion of Judge Antoon. I write to more directly address the contention of the appellant. This seems appropriate since this has become a "hot issue" of the day.

Raulerson relies on *Wooten v. State,* 332 So. 2d 15 (Fla. 1976), another case involving a criminal offense which provides for progressively more severe sentences for subsequent like offenses. *Wooten* requires that formal adjudications are essential in order to authorize the imposition of the progressive sentences. The *Wooten* court held:

> The requirement that offenders who have been proven guilty be so adjudged is part and parcel of the legislative scheme to discourage drunken driving by authorizing progressively harsher sentences for multiple offenders. In order for a repeat offender to be subject to enhanced punishment for subsequent offenses under Fla. Stat. §316.028(4) (1974 Supp.), there must have been at least one previous conviction under Fla. Stat. §316.028(3) (1974 Supp.). Section 316.028 does not authorize stiffer punishment in the absence of a prior adjudication of guilt; previous entry of a judgment of conviction is the necessary precondition.

Id. at 17.

Although the requirement for a formal adjudication was contained in the DWI statute then under review (and is not a requirement of the statute involved in our case), the supreme court indicated in *Wooten* that classifying drunken driving offenders differently by not permitting withholding of adjudication was justified in order to ensure equal protection of the law. The court held:

> In light of the legislative history, the requirement of mandatory adjudication manifests, if anything, a legislative intent to *ensure* equal protection of the laws. If Fla. Stat. §316.028 (1974 Supp.) stood alone, the multiple offender who succeeded in avoiding formal adjudication, in three previous prosecutions, could not be punished as severely as the drunken driver whose single previous offense resulted in conviction. For this reason, the legislature might have concluded that failure to require adjudication would have permitted unjust disparities in the punishment authorized for subsequent offenders. When by court rule the Court also adopted the mandatory adjudication requirement for drunken driving offenses, the Court aligned itself with the legislature and approved the view that classifying drunken driving offenders in this manner served a rational state purpose. We are not persuaded otherwise today.

Id.

Although the supreme court ruled in *Wooten* that because the DWI statute provided for progressively more severe sentences for repeat offenders and thus justified the mandatory adjudication requirement in order to ensure equal protection of the laws, it did not specifically hold that mandatory adjudication should be required in all cases in which a progressive sentencing scheme is employed. But because the suspension of licenses often results from convictions for drunken driving, the policy reason mentioned in *Wooten* seems every bit as relevant in driving with license suspended cases. Should not, therefore, the court also require, even though the statute is silent, mandatory adjudications in driving with license suspended cases in order to ensure equal protection of the laws? This issue is not before us because it is not the basis of Raulerson's appeal. Instead, Raulerson urges that because the trial court has discretion to withhold adjudication in this case, thus permitting the trial judge to determine whether a misdemeanor or felony has been committed, the legislature has violated the separation of powers doctrine by permitting the court to "legislate" what is and what is not a felony. The statute before us provides that a third or subsequent "conviction" for driving with license suspended will constitute a felony of the third de-

gree. Raulerson urges that, consistent with *Wooten,* this "conviction" must be a formal adjudication of guilt and that the decision to adjudicate rests solely with the trial judge.

Raulerson's position on appeal, therefore, depends entirely on whether there must be an adjudication of guilt for this third offense of driving with license suspended in order to enhance the offense from a misdemeanor to a felony. Even though consistency with *Wooten* might require a formal adjudication for the qualifying offenses (the first two offenses), would it necessarily follow that there must also be an adjudication for the sentence which is based on those qualifying offenses? I think not. In the case of the third offense, the defendant is not being tried for the misdemeanor of driving with license suspended. He is now being tried for a felony which consists of two elements: (1) driving with license suspended and (2) having twice been convicted of the same offense (it is these convictions that might require the formal adjudications).[1] The lesser included offense to the felony charge (merely driving with license suspended), whether the defendant pleads to or is found guilty by the fact finder of felony driving with license suspended, will never be before the court for sentencing. There is no equal protection problem created by not requiring formal adjudication of the third offense because everyone who is held accountable for the charged felony, whether adjudicated or not, is sentenced as a felon. Formal adjudication for the third offense is, in my view, also irrelevant in determining whether the offense is a felony or misdemeanor. I believe it was the clear intent of the legislature that a felony is committed if the defendant thrice violates the driving with license suspended statute. Therefore, the mere sentencing for the felony, even if adjudication of guilt of the felony is withheld, should be ample "conviction" of the included third offense of driving with license suspended to fulfill the requirements of section 322.34(1)(c). This is an appropriate case, as indicated by the majority opinion, in which to apply the supreme court's distinction between a conviction and an adjudication of guilt.

[1]It is not argued that there were not formal adjudications of the qualifying offenses in our case.

* * *

Contracts—Jurisdiction—Non-residents—Forum non conveniens—Action arising out of defendant's breach of agreement to indemnify lessor of vehicle for damages in excess of liability limits resulting from operation of leased vehicle—Tortious act in state—Allegations that claim for indemnification arose from automobile accident caused by defendant's negligent operation of vehicle in state sufficient to support long-arm jurisdiction—Minimum contacts—Where defendant purposefully entered into rental agreement which enabled him to rent car and travel within state and agreed to indemnify lessor if his use of the vehicle resulted in bodily injury or property damage, defendant could reasonably anticipate being haled into Florida court after his involvement in automobile accident—Trial court properly exercised personal jurisdiction over defendant—No abuse of discretion in denying motion to dismiss on basis of forum non conveniens

CRISTIANO ATHANASSIADIS, Appellant, v. NATIONAL CAR RENTAL SYSTEM, INC., Appellee. 5th District. Case No. 96-2238. Opinion filed September 26, 1997. Non-Final Appeal from the Circuit Court for Orange County, R. James Stroker, Judge. Counsel: Richard G. Rumrell, Lindsey C. Brock, III, and Charles T. Moore of Rumrell, Costabel, & Turk, Jacksonville; Mitchell E. Widom, and Sherril M. Colombo, of Dunn, Lodish & Widom, P.A., Miami, for Appellant. Wendy D. Jensen and Duncan B. Dowling, III, of Roger, Dowling, Fleming & Coleman, P.A., Orlando, for Appellee.

(THOMPSON, J.) Cristiano Athanassiadis appeals a nonfinal order denying his motion to dismiss for lack of personal jurisdiction and forum non conveniens. We have jurisdiction.[1]

While vacationing in Florida in August 1990, Athanassiadis, a resident of Italy, was involved in an automobile accident. The other driver suffered physical injuries in the collision. At the time, Athanassiadis was driving an automobile he rented from National Car Rental Systems, Inc. ("NCR"). The rental agreement provided that Athanassiadis would indemnify NCR "against all loss, liability and expense in excess of the limits of liability, as indicated in this Agreement, as a result of bodily injury, death or property damage caused by, or arising out of the use or operation of the Vehicle." The injured driver filed suit against NCR, and, in July 1992 NCR settled the claim for $80,000. Prior to settling the claim, NCR notified Athanassiadis of the claim and the possibility that it would exceed the liability coverage provided by the rental agreement.

On 31 October 1995, NCR filed a complaint against Athanassiadis alleging breach of contract for failing to indemnify the company. The complaint states: "This Court has jurisdiction over Defendant due to Defendant having committed a tortious act within the State of Florida...." The complaint and summons were served on Athanassiadis in Italy. Athanassiadis moved to dismiss the complaint for lack of personal jurisdiction and, in the alternative, forum non conveniens. He filed a supporting affidavit stating that he has no ties to or economic interests in Florida and that the events alleged in the complaint occurred during his first and only visit to the state. The affidavit further states that defending the suit in Florida would be "extremely burdensome financially. . . ." The trial court denied the motion, finding that the complaint sufficiently pled jurisdiction under Florida's long-arm statute and that Athanassiadis has sufficient minimum contacts with Florida to justify personal jurisdiction. The court also dismissed without prejudice the challenge based on forum non conveniens. We affirm.

In determining whether it can exercise personal jurisdiction over a nonresident defendant, a trial court must determine (1) whether the complaint contains sufficient jurisdictional facts to satisfy section 48.193, Florida Statutes, the long-arm statute, and (2) whether the defendant has sufficient minimum contacts with the forum state to satisfy due process. *Doe v. Thompson,* 620 So.2d 1004 (Fla. 1993); *Quality Christmas Trees Co., Inc. v. Florico Foliage, Inc.*, 689 So. 2d 1222 (Fla. 5th DCA 1997). Section 48.193 provides, in pertinent part:

> (1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:
>
> . . .
>
> (b) Committing a tortious act within this state.

§ 48.193(1)(b), Fla. Stat. (1995). NCR's complaint alleges that Athanassiadis was involved in an automobile collision in Florida while driving one of its rental cars, and that his negligence caused the other driver's physical injuries. These allegations satisfy subsection (1)(b). Athanassiadis argues that strictly read, section 48.193 does not permit long-arm jurisdiction in this instance because NCR's action arises from an alleged breach of contract and not a tort. *See Pleuss-Staufer Industries, Inc. v. Rollason Engineering and Mfg., Inc.*, 635 So. 2d 1070, 1072 (Fla. 5th DCA 1994) ("Long-arm statutes are to be strictly construed."); *Am Sampling, Inc. v. White Laboratories, Inc.*, 564 So. 2d 590, 592 (Fla. 5th DCA 1990) ("In order to guarantee compliance with due process requirements, the statutory jurisdictional provision at issue must be strictly construed."). However, the statute permits long-arm jurisdiction in "*any* cause of action arising from" a tort committed in Florida. (Emphasis added.) Under the facts of this case, there would be no claim for indemnification, but for Athanassiadis' alleged negligence and the resulting physical injuries. Therefore, strictly reading the statutory language, NCR's indemnification action does arise from a tort committed in Florida.

Although long-arm jurisdiction is proper under section 48.193, a nonresident defendant must also have sufficient minimum contacts with the state to satisfy the constitutional require-

OFFICE OF
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT OF FLORIDA
APPELLATE DIVISION
112 Orange Avenue
Daytona Beach, Florida 32114
Telephone: (904) 252-3367
SUNCOM 380-3758 FAX (904) 254-3943

JAMES R. WULCHAK
Chief, Appellate Division
CHRISTOPHER S. QUARLES
Chief, Capital Appeals
MARLEAH K. HILBRANT
Administrative Assistant

January 12, 1998

The Honorable Sid J. White
Clerk of the Supreme Court
500 South Duval Street
Tallahassee, Florida 32399-1927

Re: Rickey Paul Murray v. State, Case Number 92,143

Dear Mr. White:

Enclosed are the original and five (5) copies of the Petitioner's brief on jurisdiction in the above-styled cause.

Sincerely,

Brynn Newton
Assistant Public Defender

Enclosures.