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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STANLEY SHADLER,

Petitioner,

v.

Case No. 93,784

STATE OF FLORIDA,

Respondent.

RESPONDENT'S JURISDICTIONAL BRIEF

On Review from the District Court of Appeal
of the State of Florida
Fifth District

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SUMMARY OF ARGUMENT

This court should not exercise its discretionary jurisdiction in this case. There is no express and direct conflict contained in the Fifth District Court's opinion. There is nothing more than a factual difference between this case and the other factually distinguishable case cited by Petitioner. There is not conflict among the districts, and therefore, this Court should deny review.

ARGUMENT

THIS COURT SHOULD NOT EXERCISE
DISCRETIONARY JURISDICTION IN THIS
CASE BECAUSE NO GROUNDS EXIST FOR
SUCH JURISDICTION.

This Court's jurisdiction is defined by Article V of the Florida Constitution (1991). Article V, §3(b) expressly sets out jurisdiction, describing every situation in which this Court has or may take jurisdiction. Art. V, §3(b), Fla. Const. (1991). That jurisdiction is also set out in Fla.R.App.P. 9.030(a).

While Petitioner has attempted to invoke this Court's jurisdiction based on "express and direct conflict", this case fails to qualify on that ground. In 1980, Article V was amended to limit the Florida Supreme Court's discretionary jurisdiction in cases involving conflict. Rule 9.030 was likewise revised to incorporate the constitutional amendment. The Committee Notes to Rule 9.030, in discussing the 1980 amendment, make it clear that the amendment was intended to reduce the "burgeoning caseload" that the Court handles.

The Committee Note, referring to conflict cases, states that "[t]hese cases comprised the overwhelming bulk of the court's caseload and gave rise to an intricate body of case law interpreting the requirements for discretionary conflict review." For this reason, Article V and Rule 9.030 were amended to require a showing of an "express" as well as a "direct" conflict in order to invoke jurisdiction.

In the instant case, Petitioner does not even allege that there is "express" conflict. Nor does he claim that there is "direct" conflict. He merely states that two courts, the Fifth District and the First District Courts of Appeal, "have entered conflicting rulings regarding the interpretation of this Court's ruling in the case of *State v. White*, 660 So.2d 664 (Fla. 1995)." Without alleging or attempting to show "express and direct" conflict, Petitioner fails to invoke this Court's discretionary jurisdiction as delineated by the statute and the rule.

Furthermore, the written opinion of the Fifth District Court of Appeal filed July 31, 1998 shows no express and direct conflict with any other court. (See attached opinion). Clearly, nowhere in the opinion does the District Court express that there is conflict between its decision and any other court. Nor does the opinion cite to any case which is in direct conflict with either the DCA's ruling or the issue presented. To the contrary, the very case which Petitioner cites as conflicting was cited by the Fifth District in its opinion as support for the statement: "The answer to the question of whether the exclusionary rule should be invoked to bar evidence seized as a result of an illegal arrest, apparently turns on whether the erroneous computer information results from errors committed by court employees or non-law enforcement personnel, or whether the information stems from police or law enforcement employees." The court cites to *Bruno v. State*, 704

So.2d 134 (Fla. 1st DCA 1997), among other cases to support and illustrate that statement.

Petitioner points to *Bruno* as a case in conflict with the instant case. However, *Bruno* is factually distinguishable in a significant way. The First District, in *Bruno*, made specific mention that erroneous information was provided by **law enforcement personnel**. The court pointed out that "the police information as to [the defendant's] charges was incorrect." *Bruno* at 135. The court further stated that "[b]ecause **the police** information failed to support a legal arrest", the evidence had to be suppressed. (emphasis added) *Id.*

In contrast, the Fifth District, in the instant decision, specifically held that the erroneous information was **not** provided by law enforcement personnel. The court determined that the computer record keepers working for the Division of Driver's Licenses were not law enforcement personnel. Therefore, there was no conflict with *Bruno*, where the information came from police officers.

When determining whether to exercise discretionary jurisdiction, this court must look to the four corners of the opinions to find that conflict. *Reaves v. State*, 485 So.2d 829 (Fla. 1986). This court long ago stated that "[c]onflict between decisions must be express and direct, i.e., it **must appear within the four corners of the majority decision**. Neither a dissenting

opinion nor the record itself can be used to establish jurisdiction." (emphasis added) *Id.* at 830.

When examining the four corners of both the instant decision and the *Bruno* decision, there is no conflict. There is simply a factual difference. The First District, in *Bruno*, identified the erroneous action as police action, while the Fifth District identified the instant action as non-law enforcement action. Nowhere on the face of the opinions is there anything to indicate that these characterizations are inaccurate. On the face of the *Bruno* opinion, it appears that the District Court's decision hinged on the **police officers'** erroneous reading of the teletype information. There is no indication that the information was erroneously put into the computer or that anyone other than the officers interpreting the teletype committed any error. Therefore, the four corners of the *Bruno* opinion contains no facts to create conflict with the instant case.

The instant case opinion and the *Bruno* case opinion illustrate that there is a factual distinction between these two cases which was significant enough to produce different outcomes. That does not amount to conflict -- either direct or express.

This court, long ago, very clearly delineated the limitation on its jurisdiction which was narrowed by the 1980 constitutional amendment. In *Jenkins v. State*, 385 So.2d 1356 (Fla. 1980), this Court stated

The pertinent language of section 3(b)(3), as amended April 1, 1980, leaves no room for doubt. This Court may only review a decision of a district court of appeal that **expressly** and directly conflicts with a decision of another district court of appeal or the Supreme Court on the same question of law. The dictionary definitions of the term "express" include: "to represent in words"; "to give expression to." "Expressly" is defined; "in an express manner." *Webster's Third New International Dictionary*, (1961 ed. unabr.).

(emphasis in original) *Id.* at 1359 This court further added that "[i]t is conflict of **decisions**, not conflict of **opinions** or **reasons** that supplies jurisdiction for review by certiorari." (emphasis in original) *Id.*

It is evident on the face of the published opinion that there is no "express" conflict. Similarly, there is no "direct" conflict created by the court's application of this court's ruling in *State v. White*. Both the constitution and Rule 9.030 require that the "express and direct" conflict be obvious. Since neither is present here, this court should decline to take jurisdiction.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent respectfully asks this honorable court to deny jurisdiction in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Jurisdictional Brief of Respondent has been furnished by U.S. mail to **Kevin R. Monahan**, attorney for Petitioner, at P.O. Box 2682, Palatka, FL 32178, this 7th day of October, 1998.



Rebecca Roark Wall
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