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IN THE SUPREME COURT OF FLORIDA

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CLERK, SUPREME COURT
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CASE NO. 96,012

KEVIN COYNE,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

ORIGINAL

PETITIONER'S BRIEF ON DISCRETIONARY JURISDICTION

On review from the Circuit Court
of the Fifteenth Judicial Circuit,
In and For Palm Beach County, Florida
[Criminal Division].

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PRELIMINARY STATEMENT

Petitioner was the defendant and Respondent the prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, In and For Palm Beach County, Florida. In this brief the parties will be referred to as they appear before this Court.

The symbol "R" will denote the Record on Appeal, "T" the transcript.

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, and modeled after Rule 28-2(d), Rules of the United States Court of Appeals for the Eleventh Circuit, counsel petitioner hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

STATEMENT OF THE CASE AND FACTS

In Point 1 of the Initial Brief, appellant raised the issue that the court should have granted a jury trial as requested on the existence of the three prior DUI's, as discussed in the Fourth District's decision in State v. Harbaugh, 711 So. 2d 77 (Fla. 4th DCA 1998) (certifying question), *review granted*, 718 So. 2d 934 (Fla. 1998). Appendix 1. The Fourth District affirmed *per curiam*, with a cite to *Harbaugh*. Coyne v. State, 4th DCA No. 98-3245. Appendix 2. Motion for rehearing or certification was denied June 11, 1999. Appendix 3. Notice to invoke discretionary jurisdiction was timely filed. Appendix 4.

SUMMARY OF THE ARGUMENT

This Court has jurisdiction under *Jollie*, as this case raises the same issue presently pending before this Court on a certified question, and the Fourth District cited to that decision in denying relief.

ARGUMENT

THIS COURT HAS JURISDICTION UNDER *JOLLIE*
BECAUSE THE DECISION BELOW PRESENTS AN ISSUE
ALREADY CERTIFIED TO AND PRESENTLY PENDING IN
THIS COURT

This Court has jurisdiction of this case under *Jollie v. State*, 405 So. 2d 418 (Fla. 1981), because the Fourth District cited as controlling authority its own decision which is presently pending review before this Court, *State v. Harbaugh*, 711 So. 2d 77 (Fla. 4th DCA 1998) (certifying question), *review granted*, 718 So. 2d 934 (Fla. 1998). Appendix 1. *Coyne v. State*, 4th DCA No. 98-3245. Appendix 2. In *Harbaugh*, the Fourth District certified the following question:

Where a defendant requests that the jury determine the existence of prior DUI convictions in a felony DUI trial, should the bifurcated procedure of *State v. Rodriguez*, 575 So. 2d 1262 (Fla. 1991), be amended in light of *United States v. Gaudin*, 515 So. 2d 506, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995)?

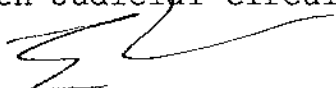
Harbough, 711 So. 2d at 83. This Court has granted review of the question. *Harbaugh*, 718 So. 2d 934. This case presents the identical issue. This Court has jurisdiction. *Jollie*; *Walker v. State*, 682 So. 2d 555 (Fla. 1996), *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987). Petitioner requests this Court accept jurisdiction.

CONCLUSION

Based upon the foregoing argument and the authorities cited therein, petitioner respectfully requests this Court accept discretionary review over the instant case.

Respectfully Submitted,

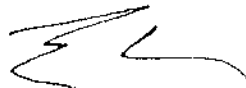
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Gentry Denise Benjamin, Assistant Attorney General, 1655 Palm Beach Lakes Boulevard, Suite 300, West Palm Beach, Florida 33401-2299 this 20th day of June, 1999.



STEVEN H. MALONE
Counsel for Petitioner

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A P P E N D I X