

FILED
DEBBIE CAUSSEAU

JUL 22 1999

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
By _____

CASE NO. 96, 012

KEVIN COYNE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

On petition for review from the
District Court of Appeal, Fourth District

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PRELIMINARY STATEMENT

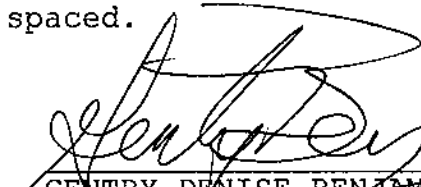
Respondent, the State of Florida, was the prosecuting authority in the Criminal Division of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, and the Appellee in the Fourth District Court of Appeal. Petitioner, Kevin Coyne, was the defendant and the Appellant below. In this brief, the parties will be referred to as they appear before the Honorable Court, although Respondent may also be referred to as "the State."

The following symbols will be used:

"App." = Respondent's Appendix

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Administrative Order of this Court dated July 13, 1998, the undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not proportionately spaced.


GENTRY DENISE BENJAMIN
Assistant Attorney General

STATEMENT OF THE CASE AND FACTS

Although not entirely apparent from the face of the Fourth District's opinion in this cause, the State accepts Petitioner's Statement of the Case and Facts as set forth in his brief on jurisdiction for purposes of this Court's decision on whether to accept or decline jurisdiction in this case.

SUMMARY OF THE ARGUMENT

The State acknowledges that this Court may, in its **discretion**, take jurisdiction based upon the fact that this Court granted review in Harbaugh v. State, 711 So. 2d 77 (Fla. 4th DCA), review granted, 718 So. 2d 1234 (Fla. 1998), upon which the decision in this case is based.

ARGUMENT

**THIS COURT MAY EXERCISE ITS DISCRETIONARY
JURISDICTION TO REVIEW THE INSTANT CASE**

The Fourth District Court of Appeal affirmed Petitioner's conviction in reliance upon its decision in Harbaugh v. State, 711 So. 2d 77 (Fla. 4th DCA 1998); this Court granted review State v. Harbaugh, 718 So. 2d 1234 (Fla. 1998). See App. The State acknowledges that pursuant to the decision in Jollie, 405 So. 2d 418 (Fla. 1981), this Court may exercise its **discretionary** jurisdiction to review the instant case.

CONCLUSION

WHEREFORE, based on the foregoing argument and the authorities cited therein, this Court should grant such relief as it deems appropriate.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

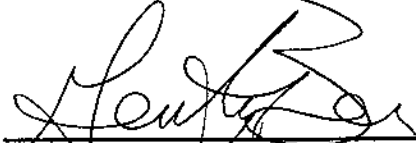


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail or courier to: Steven H. Malone, Assistant Public Defender, Criminal Justice Building, 421 3d Street/6th Floor, West Palm Beach, Florida 33401, on July 20, 1999.



GENTRY DENISE BENJAMIN

IN THE SUPREME COURT OF FLORIDA

CASE NO. 96, 012

KEVIN COYNE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S APPENDIX

TO RESPONSE TO PETITIONER'S JURISDICTIONAL BRIEF

1. "APP." - Opinion of the Fourth District Court of Appeal in Coyne v. State, 732 So. 2d 455 (Fla. 4th DCA 1999).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing "Appendix" has been furnished by U.S. Mail or courier to: Steven H. Malone, Assistant Public Defender, Criminal Justice Building, 421 3d Street/6th Floor, West Palm Beach, Florida 33401, on July 20, 1999.



GENTRY DENISE BENJAMIN

APP.

Kevin COYNE, Appellant,
v.
STATE of Florida, Appellee.

No. 98-3245.

District Court of Appeal of Florida,
Fourth District.

May 12, 1999.

Rehearing Denied June 11, 1999.

Appeal from the Circuit Court for the Fifteenth
Judicial Circuit, Palm Beach County; Mary E.
Lupo, Judge; L.T. Case No. 98-1826 CFA02TD.

Richard L. Jorandby, Public Defender, and Steven

H. Malone, Assistant Public Defender, West Palm
Beach, for appellant.

Robert A. Butterworth, Attorney General,
Tallahassee, and Gentry Denise Benjamin, Assistant
Attorney General, West Palm Beach, for appellee.

PER CURIAM.

AFFIRMED. See Harbaugh v. State, 711 So.2d 77
(Fla. 4th DCA 1998), review granted 718 So.2d
1234 (Fla.1998).

WARNER, STEVENSON and TAYLOR, JJ.,
concur.

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