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IN THE SUPREME COURT OF FLORIDA

JEFFREY WILLIAMS,

APPELLANT,

V.

STATE OF FLORIDA,

APPELLEE.

Case No. SC16-0451

ON DISCRETIONARY REVIEW

FROM THE FIRST DISTRICT COURT OF APPEAL

APPELLEE'S ANSWER BRIEF ON THE MERITS

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TABLE OF CONTENTS

Page#

TABLE OF CONTENTS ii

TABLE OF CITATIONS iii

PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF ARGUMENT 7

ARGUMENT 7

ISSUE I: Whether the First District was correct in holding that competent, substantial evidence did not support the trial court's determination regarding defendant's standing to challenge the search of mail. (Restated) 7

JURISDICTIONAL CRITERIA 7

STANDARD OF REVIEW 11

ARGUMENT ON THE MERITS 12

ISSUE II: Whether the First District created a new test for establishing standing. (Restated) ..... 32.

JURISDICTIONAL CRITERIA 32

STANDARD OF REVIEW 32

ARGUMENT ON THE MERITS 33

CONCLUSION 38

CERTIFICATE OF SERVICE 39

CERTIFICATE OF COMPLIANCE 39

TABLE OF CITATIONS

Cases

De Groot v. Sheffield,
95 So. 2d 912 (Fla. 1957)..... 14
Duval Util. Co. v. Florida Pub. Serv. Comm'n,
380 So. 2d 1028 (Fla. 1980)..... 14
Fortune v. Gulf Coast Tree Care, Inc.,
148 So. 3d 827 (Fla. 1st DCA 2014)..... 33
Illinois v. Rodriquez,
497 U.S. 177 (1990)..... .....29, 30
Inchaustegui v. State,
392 So. 2d 319, (Fla. 4th DCA 1980)..... 16
Jardines v. State,
73 So. 3d 34 (Fla. 2011)..... .....7, 8, 9
Katz v. United States,
389 U.S. 347 (1967 13
Kelly v. State,
77 So. 3d 818 (Fla. 4th DCA 2012)..... 28
Mixon v. State,
54 So. 2d 190 (Fla. 1951)..... 16
Oliver v. United States,
466 U.S. 170 (1984)..... .....34, 36, 37
Patrick v. State,
104 So. 3d 1046 (Fla. 2012)..... .....7, 8, 9
Rakas v. Illinois,
439 U.S. 128 (1978)..... .....12, 13, 20

Rawlings v. Kentucky,
448 U.S. 98 (1980)..... .....13, 20
Simms v. State,
51 So. 3d 1264 (Fla. 2d DCA 2011)..... 11
State v. Hill,
675 A. 2d 866 (Conn. 1996)..... 25
State v. Kalphat,
939 A. 2d 1165 (2008)..... .....23, 24, 25
State v. Rome,
500 So. 2d 255 (Fla. 1st DCA 1986)..... 13
State v. Singleton,
595 So. 2d 44 (Fla. 1992)..... 13
State v. Williams,
184 So. 3d 1205 (Fla. 1st DCA 2016)..... 2-38
State v. Young,
974 So. 2d 601 (Fla. 1st DCA 2008)..... 28
United States v. Colon-Solis,
508 F. Supp. 2d 186 (D. P. R. 2007)..... .....18, 19
United States v. Givens,
733 F. 2d 339 (4th Cir. 1984)..... .....19, 20, 21
United States v. Goldsmith,
432 F. Supp. 2d 161 (D. Mass. 2006)..... 19
United States v. Gonzalez,
609 F. 3d 13 (1st Cir. 2010)..... 29-31
United States v. McKennon,
814 F. 2d 1539 (11th Cir. 1987)..... .....17, 18

United States v. Pierce,
959 F. 2d 1297 (5th Cir. 1992)..... 19
United States v. Pollard,
215 F. 3d 643 (6th Cir. 2000)..... 26
United States v. Rohrig,
98 F. 3d 1506 (6th Cir. 1996)..... 26
United States v. Salvucci,
448 U.S. 83 (1980)..... .....12, 25, 26
United States v. Villareal,
963 F. 2d 770 (5th Cir. 1992)..... .....19, 21-23, 37
United States. v. Smith,
39 F. 3d 1143 (11th Cir. 1994)..... .....16, 17
Watson v. State,
979 So. 2d 1148 (Fla. 2008)..... 11
Wyche v. State,
987 So. 2d 23 (Fla. 2008)..... 11

Statutes

Article I, § 12 Fla. Const..... 33
Article V, § 3(b)(3), Fla. Const..... 32

Rules

Fla. R. App. P. 9.210 (a) (2)..... 39
Fla. R. App. P. 9.030(a)(2)(A)(iv)..... 32

PRELIMINARY STATEMENT

Appellant, Jeffrey Williams, was the defendant in the trial court and the Appellant on direct appeal; this Brief will refer to Appellant as such, Defendant, or by proper name. Appellee, the State of Florida, was the appellee on direct appeal and the prosecution in the trial court; this Brief will refer to Appellee as such, or the State.

The Record on Appeal consists of three volumes. Volumes I-III will be referred to by a roman numeral indicating the volume number followed by an arabic numeral indicating the page number cited. Appellant's Initial Brief on the Merits will be referred to as "IB", followed by the page number cited. Citations to Appellant's Initial Brief on Jurisdiction will be referred to as "Juris. IB."

STATEMENT OF THE CASE AND FACTS

The State submits the following relevant facts in addition to those contained in Appellant's Initial Brief:

The Record below contains two identical transcripts of the December 1, 2014, hearing on Defendant Jeffery Williams' Motion to Suppress. The transcript appears at R.II 319-380, and again at R.III 464-525. This Brief will refer to the latter transcript, in the same manner as Appellant's Initial Brief.

Defendant Williams' attorney called only one witness at the suppression hearing: Investigator Daryl Morris of the Tallahassee Police Department. R.VII 470. Investigator Morris is part of a special drug interdiction unit that monitors packages sent through government and private mail services for illegal drugs. R.III 491. Investigator Morris testified that two other United States Postal Service investigators (Investigators Tab and Shaut), observed a suspicious package at the postal facility. R.III 471. The USPS Investigators believed the package contained contraband because it bore a fictitious name for both sender and receiver; had come overnight from California on overnight mail; had a handwritten air bill; was paid for in cash; and was heavily taped along the sides.

Morris believed the package was heavily taped around the edges to prevent airflow from inside the package. R.III. 480. Investigator Morris testified (later in the hearing) that persons who send drugs through mailed packages often employ methods of reducing the "scent signature" in an attempt to avoid detection by drug-sniffing canines. R.III 493. Morris testified that those who ship drugs through the mail routinely ship their packages overnight to reduce "cook time": the quicker the package is delivered, the less time for the scent of the drugs within the box to emanate outside. Investigator Morris also testified that if his investigation delays the delivery of an overnight package, there is an increased likelihood that the

receiver of the package will suspect police interdiction, and decline to take delivery. R.III 499-500.

Investigator Tab determined that both the sender and the receiver of the package were fictitious parties. R.III 477, 494. The package was addressed to a "Key Phillips" (R.III 481) at Apartment 422, 1600 Old Bainbridge Road in Tallahassee . 471.); however the front office of the apartment complex stated that no one by the name of Key Phillips lived at this address. R.III 479. Investigator Morris testified that Investigator Tab determined that the name of the sender listed on the package ("T. Lopez of 150 Evans Street, Ukiah, California") appeared to be fictitious as well. R.III 479. Inv. Tab disguised himself as a mailman and delivered the package to 1600 Old Bainbridge Road. R.III 495.

Cynthia Richardson did live at Apartment 422, 1600 Old Bainbridge Road, and it was she who answered the door when Investigator Tab delivered the package. Richardson accepted the package by signing the name "Key Phillips" on a receipt, and then took possession of the package. R.III 496. Investigator Morris made contact with Richardson after Tab delivered the package. R.III 471, 495. Morris felt that Richardson would not have known to sign as "Key Phillips" on the delivery confirmation if she had not expected this delivery. R.III 483. At this point, Morris did not know whether Richardson was the only person involved with the delivery of the drugs. R.III 496. Morris testified that when he met with Richardson,

Richardson admitted to Morris that she used an alias when accepting the package. R.III 496.

Investigator Morris testified that he met with Richardson inside her home. R.III 482. Defense counsel asked Investigator Morris if Richardson had told him "it's not my package, I don't know what's in it, but it's for 'Jeff'"; Morris answered "Yes, sir." R. III 482. When asked if Richardson told him that she had permission to open the package, Investigator Morris responded that "[s]he told me she was the custodian for it. She was receiving it and keeping it....She said she was receiving the package for Jeff." R.III 483. Morris did not ask if Richardson had permission from "Jeff" to open the package. R.III 505. Morris testified that he asked Richardson if he could open the package, and Richardson consented. R.III 497 . Investigator Morris found 2.12 pounds of "high grade" marijuana inside the package. R.III 480.

After Investigator Morris opened the package and discovered cannabis, he asked Richardson if he could see her phone. Richardson consented, and Morris found text messages between Richardson and "Jeff." R.III 482. Morris testified that Defendant Williams showed up at the front door, presumably in response to a text message from Richardson's phone. Investigator Morris testified that when Defendant Williams was en route to Richardson's apartment home at 1600 Old Bainbridge Road, he called Richardson. Richardson answered Williams' call;

however, Williams immediately hung up and began knocking at Richardson's door. Two other officers (Roberts and Gereg) answered. R.III 501.

The trial court clarified with Investigator Morris that he did not believe that he had the legal right to open the package without consent; Morris was relying on Richardson's consent to justify his search of the package. R.III 502-03. Morris was unaware of the nature of Richardson and Defendant Williams' relationship. R.III 505.

For the purposes of establishing Defendant Williams' standing to proceed in asserting a Fourth Amendment interest in the package, the court found that Morris' testimony was "sufficient to tie Jeffrey [Williams] with "Jeff." R.III 488. The trial court later stated (at the suppression hearing) that this case was unique in that the police did not seek a warrant to open the package. R.III 519. The court believed that "based on all of the information here, any judge in this courthouse would have signed the warrant to open the box." The court was also concerned that police did not inquire as to whether Richardson had permission from "Jeff" to open the box. R.III 520.

In its Order, the trial court held that although Cynthia Richardson did sign for "Keith Phillips", law enforcement knew she was not "Keith Phillips". R.III 462. It is unclear as to whether the trial court's use of "Keith" instead of "Key" was a

scrivener's error or a mishearing of the testimony. The trial court held that "no evidence was presented to show that she had either expressed authority or apparent authority to either open the package or give law enforcement the authority to open the package." Based on this and the finding that the officer accepted Richardson's consent to have the packaged open "without question", the trial court granted Defendant Williams' motion to suppress. R.III 463.

SUMMARY OF ARGUMENT

Issue I: Whether the First District was correct in holding that competent, substantial evidence did not support the trial court's determination regarding defendant's standing to challenge the search of mail: At the suppression hearing, Appellant Williams provided no evidence that he was the fictitious addressee listed on the package, nor did he establish that he had a possessory interest in the package. On the contrary, the testimony was that Richardson admitted that *she* used an alias. Williams failed to meet his burden of establishing standing because he failed to demonstrate that he had ownership or a possessory interest in the package. Richardson, who lived at the address where the package was sent held herself out as the addressee and took possession of the package; Investigator Morris reasonably relied on Richardson's consent to open the package.

Issue II: Whether the First District created a new test for establishing standing: The First District correctly applied established case law in finding that Williams did not demonstrate his standing to challenge the search of the package. Whether or not a defendant has an objectively reasonable expectation of privacy in a place or thing is a multifaceted question, which requires analyses of multiple factors and is determined by the totality of the circumstances. The First District acknowledged the scenarios in which the sender or recipient of mail could establish standing in a package mailed under a pseudonym, and then determined that Williams had failed to show that he had a connection to the package, the delivery address, or the pseudonyms under which it was sent or delivered.

ARGUMENT

Issue I: Whether the First District was correct in holding that competent, substantial evidence did not support the trial court's determination regarding defendant's standing to challenge the search of mail.

Jurisdictional Criteria

Appellant claimed in his Jurisdictional Initial Brief that the decision in *State v. Williams*, 184 So. 3d 1205 (Fla. 1st DCA 2016) expressly and directly conflicts with *Jardines v. State*, 73 So. 3d 34 (Fla. 2011) and *Patrick v. State*, 104

So. 3d 1046 (Fla. 2012). Appellant claims that the First District in *Williams* did not adhere to the standard of review set forth in *Jardines* and *Patrick* which requires an appellate court defer to the trial judge's factual findings if supported by competent substantial evidence. Juris. IB 6-7. *See Jardines*, 73 So. 3d at 54 ("[T]he reviewing court must defer to the trial court's factual findings if supported by competent, substantial evidence.") *See also Patrick*, 104 So. 3d at 1059-60 ("We defer to a trial court's findings of fact as long as they are supported by competent, substantial evidence.") .

The *Williams* decision addresses whether a person who allows a codefendant to receive mail at the codefendant's address, using the codefendant's alias, has an expectation of privacy that would prevent the codefendant from consenting to a police search. The majority opinion in *Williams v. State* found that the facts in the record did not support the trial court's finding that "law enforcement obviously knew that Richardson was not "Key Phillips." *Williams*, 184 So. 3d at 1208. This distinguishes the *Williams* decision from *Jardines*, where this Court held that a district court could not reverse a lower court's suppression of evidence where the lower court's findings were supported by competent, substantial evidence. *Jardines*, 73 So. 3d at 55. In *Jardines*, the trial court suppressed drug evidence discovered pursuant to a warrant, finding that where the police used a drug detector dog to sniff around a person's home, and no independent or lawfully

obtained evidence supported the warrant, suppression was required. In *Jardines*, the police conducted an unlawful search of the home with the dog, and that unlawful search was the sole basis for the warrant. *Jardines*, at 54-55. The trial court's decision in *Jardines* consisted of a correct application of the law based on undisputed facts that the district court should not have jettisoned in favor of its own factual findings.

In *Patrick v. State*, 104 So. 3d 1046, (Fla. 2012), the trial court denied a defendant's motion to suppress where the defendant claimed that he was unlawfully seized by police. The record demonstrated that a deputy sheriff approached the defendant at a gas station and asked the defendant for his name and date of birth; the defendant told the deputy this information and then tried to recite his identification number by memory, which the deputy noticed did not match the other information the defendant gave. The defendant then asked to leave, which the deputy permitted. The deputy then discovered that the defendant had a warrant, and the deputy apprehended him. *Patrick* at 1060. This Court upheld that decision, finding that the initial encounter between the defendant and the deputy was consensual and not illegal, and the second (separate) arrest on the warrant was legal. *Id*. Again, this is a case where clear facts demonstrate that the trial court's decision on the law was correct.

In *Williams*, however, there was a severe deficiency of facts before the trial court, and the trial court's order contains assumptions of fact not supported by the record (e.g. that the police "knew" Richardson was not Key [or "Keith] Phillips). Defendant Williams simply could not elicit sufficient testimony from Inv. Morris to establish that the package was for him, and that Richardson had no authority to open the parcel. It is understandable why the defense counsel would not want Defendant Williams to testify that the package was his, and it is likely that Richardson was a codefendant and also reluctant to testify. Likewise, the sender of the package used an alias to conceal his or her identity, thereby lessening their chances of becoming a defendant or a witness. To establish standing, someone needed to testify that the package belonged to Williams and that Richardson did not have any authority to open the package; otherwise, Williams did not have the expectation of privacy he claims. The facts before the trial court fall far short of meeting this burden. It is undisputed that someone (presumably Williams or Richardson) had ordered the marijuana and directed the package sent to Richardson's home under a false name, and that Richardson was permitted (by whomever ordered the marijuana) to take possession of the package. No witness ever testified that Richardson was not allowed to open the package, nor was there any testimony that Williams was the owner of the package other than Richardson saying the package was "for Jeff."

There is no evidence in the record that the alias "Key Phillips" had a stronger tie to Defendant Williams than Richardson; to the contrary, the *Williams* court pointed out that "it was Richardson, not Williams, who used "Key Phillips as an alias." *Williams* at 1211. Unlike the trial court rulings in *Jardines* and *Patrick*, the trial court's finding of standing in *Williams* has no support in the facts elicited at the suppression hearing. The *Williams* decision follows—rather than conflicts with—the standard of review set out in *Jardines* and *Patrick*. No conflict exists between these decisions, and the State respectfully requests that this Court decline jurisdiction.

Standard of Review

In a motion to suppress, factual findings made by the trial court are presumed correct if supported by competent, substantial evidence. The trial court's legal determinations are reviewed de novo. *Simms v. State*, 51 So. 3d 1264, 1265 (Fla. 2d DCA 2011); *Wyche v. State*, 987 So. 2d 23, 25-6 (Fla. 2008). *See also Watson v. State*, 979 So. 2d 1148, 1150 (Fla. 2008)("In reviewing the denial of the motion to suppress, we note that mixed questions of law and fact that ultimately determine constitutional rights are examined using a two-part approach. We defer to the trial court on questions of historical fact, reviewing the evidence and all

reasonable inferences in a light most favorable to affirming the trial court's ruling. We review *de novo* the constitutional issue(s)" (citations omitted)).

Merits

The First District's decision in *Williams* turned entirely on Appellant Williams' standing, and his failure to demonstrate he had a personal privacy interest in the package. More specifically, the *Williams* Court found that Williams failed to show that the package was either 1) addressed to him under his real name; 2) addressed to him under an alias, or 3) that he had some privacy interest in Richardson's apartment. *Williams*, at 1211-12. While the trial court and the dissent argue that Richardson did not have apparent authority to open the package, the majority in *Williams* did not address this issue because it found that the facts before the trial court were insufficient to establish Williams' standing.

The Supreme Court of the United States has held that a defendant seeking to suppress evidence must demonstrate both a subjective expectation of privacy, and an expectation of privacy that is objectively reasonable and "legitimate". *Rakas v. Illinois*, 439 U.S. 128, 143 n. 12 (1978). The United States Supreme Court has also held that a defendant charged with drug possession has no "automatic" standing to challenge a police search; the defendant must demonstrate that their personal Fourth Amendment right has been violated. *See United States v.*

Salvucci, 448 U.S. 83 (1980). This Court has held that in order for a defendant to establish standing to challenge a search, he must demonstrate ownership or a possessory interest in the place that was searched. *State v. Singleton*, 595 So. 2d 44, 45 (Fla. 1992) ("The law is clear that for a defendant to have standing to challenge a search, he or she must show a proprietary or possessory interest in the area of search or that there are other factors which create an expectation of privacy which society is willing to recognize as reasonable".) The burden to establish standing is on the defendant, who must prove he has a legitimate expectation of privacy in the area that is searched. *Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980). "[F]or an expectation [of privacy] to deserve the protection of the Fourth Amendment, it must 'be one that society is prepared to recognize as 'reasonable.'" *Rakas v. Illinois*, 439 U.S. 128, 151 (1978) (citing *Katz v. United States*, 389 U.S. 347, 361 (1967)). An appellate court may address the defendant's lack of standing to assert a Fourth Amendment interest in a searched place or thing, regardless if the parties below raised the issue of standing with the trial court. *See State v. Rome*, 500 So. 2d 255 (Fla. 1st DCA 1986).

Factual Deficiencies in the Trial Court's Order

The suppression hearing transcript demonstrates that William's interest in the package is unclear at best: when asked if Williams every said he owned the

package or took possession of the package, Morris replied "No." R.III 484. Williams never established the he was "Key Phillips." The only facts before the *Williams* trial court that might even suggest that Defendant Williams had *any* interest in the "Key Phillips" package was Richardson's hearsay statement (introduced through Morris) that the package was "Jeff's", and the fact that Jeffrey Williams arrived at Richardson's residence shortly after the package was delivered (apparently in response to communication from Richardson). Richardson's single hearsay statement that the package was for "Jeff" is not competent, substantial evidence that would support a trial court's finding that Defendant Jeff Williams had standing. "Competent substantial evidence is 'such evidence as will establish a substantial basis of fact from which the fact at issue can reasonably be inferred (or) . . . such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.'" *Duval Util. Co. v. Florida Pub. Serv. Comm'n*, 380 So. 2d 1028, 1031 (Fla. 1980) (quoting *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

The trial court made an unfounded assumption that "[L]aw enforcement obviously knew that Ms. Richardson was not Keith [sic] Phillips." R.III 462. The trial court also seemed to believe that Richardson clearly indicated to Morris that the package belonged to "Jeff" *before* the package was opened (R.III 462); the record is less than clear about the timing of Richardson's statement to Morris. In

its order granting Williams' motion to suppress, the trial court focuses on the apparent authority of Richardson to consent to Morris' request to open the package:

> "Officer Tabb [sic] never asked Ms. Richardson if she had the authority to open the package. No evidence was presented to show that [Richardson] had either expressed authority or apparent authority to either open the package or give law enforcement the authority to open the package. The officers accepted her consent without question." R.III 463.

The trial court had no evidence that Williams directed Richardson *not* to open the package. It also appears just as likely Richardson mentioned "Jeff" after the marijuana was discovered:

> **Defense counsel**: And she told you it's not my package, I don't know what's in it, but it's for Jeff?
> **Investigator Morris**: Yes, sir.
> **Defense counsel**: Okay, and you did not ask her who's Jeff, how can I get in contact with him?
> **Investigator Morris**: I may have asked her but she may have been a little apprehensive at that point to give me the name until we opened it and there was dope in it... At that point, after we opened it and saw that it was illegal narcotics, I asked could I look at her phone and she let me look at her phone and I could see the text messages between her and a guy named Jeff. (R.III 482).

The Question of Williams' Standing

The trial court correctly determined that Defendant Williams' failed to establish standing in Richardson's home. In *Inchaustegui v. State*, 392 So. 2d 319, (Fla. 4th DCA 1980), the defendant moved to suppress marijuana he was charged with delivering. The defendant called one witness: a deputy sheriff who observed the defendant and codefendant move marijuana from a vehicle to the inside of a house. The Fourth District held that while the homeowner had standing to challenge the search and seizure of the marijuana, Inchaustegui's prior possession of the marijuana and presence in the house when it was seized was insufficient to establish standing: "[S]ome demonstration of standing beyond mere presence on the premises is required under both the U.S. and Florida constitutions." *Id*, at 320-1 (citing *Mixon v. State*, 54 So. 2d 190, 192 (Fla. 1951).

The majority opinion in *Williams v. State*, 184 So. 3d 1205 (Fla. 1st DCA 2016) also correctly applied *United States. v. Smith*, 39 F. 3d 1143 (11th Cir. 1994), where police intercepted an envelope addressed to Raquel Kirkconnell, which "bore a crossed out address to Smith [the defendant]. " Smith had previously asked a postal employee about mail that was going to another person's address. Police officers approached Kirkconnell and told her they believed she was receiving drugs in the mail. Kirkconnel replied that the letter belonged to Smith, but also consented to the police opening the letter, where they discovered LSD. *Id*, at 1144.

Citing *United States v. McKennon*, 814 F. 2d 1539, 1544 (11th Cir. 1987), the *Smith* court noted that the mere placement of something in a closed container does not necessarily equate to a legitimate and subjective expectation of privacy. *Smith*, at 1145. The *Smith* court found that Smith's "equivocal testimony", where Smith did not establish a clear ownership interest in the letter, was insufficient to establish his legitimate expectation of privacy, in light of "the fact that [Smith] was neither the sender nor the addressee of the letter..." *Id*.

In *McKennon*, the defendant testified that he packed a luggage bag with cocaine, gave it to his codefendant (Lee) and told her "not to let anybody go in the bag except for me." *McKennon*, 814 F. 2d at 1542. Afterwards, Lee was arrested for giving a false name to police at the airport. A search of Lee's bag revealed the cocaine she was transporting for McKennon. *Id*, at 1541. The 11th Circuit found that McKennon's actions—divesting himself from Lee and the bag with cocaine—were at odds with his claim of a "reasonable" privacy interest in that luggage: "Although this argument admittedly articulates a plausible privacy interest, it fails to satisfy the legitimacy criterion necessary to maintain a constitutionally protected expectation of privacy when subjected to societal scrutiny. *McKennon*, at 1543-44. (Citations omitted). Appellant Williams did not even elicit testimony that he instructed Richardson not to open the package; if we are to believe that the package was in fact his, then he entrusted the package to Richardson by mailing it

to her and letting her sign for it. Furthermore, the *McKennon* decision suggests that a person who entrusts a container of drugs to the custody of a co-conspirator does not have a legitimate expectation of privacy that society is willing to recognize.

The majority opinion in *Williams* also noted the parallels in *United States v. Colon-Solis*, 508 F. Supp. 2d 186 (D. P. R. 2007) where a defendant stuffed pillows full of cash, and mailed them from Puerto Rico to Madera's address in New Jersey. Madera told Colon she should hold the package for him until he arrived from Puerto Rico. Colon shipped the packaged with both the sender and the address listed as Madera; only the return address was a Puerto Rico address, while the address listed for delivery was Madera's true residence. Federal agents discovered the cash (over $96,000.00) after opening the package during a routine verification of the information on the custom's declaration form. *Colon-Solis*, at 189. The facts in *Colon-Solis* demonstrated a much stronger link between the package of money and the defendant: The defendant told police it was his package, and the defendant also told Madera to "hold" the package for him. Colon also testified himself in support of his motion to suppress.

Colon-Solis' claimed that he had a privacy interest in the package because *he* was the true sender and intended recipient of the package, despite Madera being listed as both sender and addressee. Colon cited to a line of cases recognizing an

expectation of privacy even when mail is sent under an alias. *Id*, at 191-192 (citing *United States v. Goldsmith*, 432 F. Supp. 2d 161, 170 (D. Mass. 2006); *United States v. Villareal*, 963 F. 2d 770, 774 (5th Cir. 1992)). The *Colon-Solis* court rejected this argument: "Even if Colon was the intended recipient of the box, this does not confer a legitimate expectation of privacy because it was addressed to and intended to be received by another individual." *Colon-Solis*, at 192 (citing *United States v. Givens*, 733 F. 2d 339, 341-42 (4th Cir. 1984); *United States v. Pierce*, 959 F. 2d 1297, 1303 (5th Cir. 1992)). The *Colon-Solis* court reasoned that as the address, Madera could have opened the box upon receipt if she so wished. *Colon-Solis*, at 193.

The *Colon-Solis* court was guided by the United States Fourth Circuit decision in *United States v. Givens*, 733 F. 2d 339 (4th Cir. 1984), where the defendant's (Debbie and Gary Givens) had ordered cocaine which was sent to them inside an airfreight package, further concealed within a video cassette. The package was addressed to "Midwest Corporation, Union Building, Charleston, West Virginia; Att: Debbie Starkes", and the sender was listed as "Midwest Corporation" in Miami. Debbie Starks (without an "e") was a real person and acted as the Givens' intermediary for the cocaine shipment. The package was intercepted, and police sought permission from the president of Midwest Corporation to open

the package; the president, Silverstein went to the airport and opened the package for the police. *Givens*, at 340.

The *Givens* court noted that the defendants could not establish that the packages were sent by or addressed to them, or their alter ego (under a fictitious name): the packages were sent to real entities with apparent authority to open the packages. To circumvent this fact, the *Givens* defendants argued that they were nonetheless the "intended recipients" of the package and the "significant precautions taken to preserve the secrecy of the package's contents." *Id*, at 341. The *Givens* court rejected this argument: "As to the former argument, defendants cite no direct authority for the proposition that when A sends a package to B, the contents of which are ultimately intended for C, that C is entitled to claim a privacy interest in the contents of the package. Nor do we think this argument is tenable on its merits. Even assuming that defendants had some possessory interest in the cocaine, for which they had apparently not yet paid, that interest did not broaden to encompass the mailing envelope and cassette. This situation is analogous to claims that one has a legitimate expectation of privacy in the trunk of another's car...or purse." *Givens*, at 342, (citing *Rakas*, at 439 U.S. at 148-49); *Rawlings*, 448 at 104-6)).

The only real difference between the facts in *Givens* and the facts in *State v. Williams* are that the drugs in *Williams* were not addressed to a real entity. However, the same reasoning in *Givens* can be applied to the facts in *Williams*: Williams' case (according to Appellant) was an "A sends package to B, intended for C" scenario just like *Givens*, with Richardson acting as an intermediary recipient as Starks did in *Givens.* Morris also testified that Richardson signed for "Key Phillips" and admitted to using an alias after the package was opened. R.III 496). While Appellant Williams does not address the *Givens* decision, he by implication argues that by simply using a fictitious name for the sender and the recipient, he has demonstrated a greater expectation of privacy than the defendant's in *Givens.* The fact that Richardson may have told Investigator Morris that the package was "Jeff's" does not make *Givens* any less applicable: in *Givens*, the authorities would have known that Silverstein was not "Debbie Starkes". Nevertheless, the *Givens* court plainly stated that an "intended recipient" has "no legitimate expectation of privacy in the contents of a package addressed to another" and therefore "the extent of precautions taken to conceal the illicit drugs becomes irrelevant." *Givens*, 733 F. 2d at 342.

While the *Givens* court rejected the proposition that the defendants had an expectation of privacy in mailed drugs that were *intended* for the defendants, but mailed between two separate parties, the decision in *United States v. Villareal*, 963

F. 2d 770, 774 (5th Cir. 1992) found that defendants who had sealed drums shipped to them using an alias did have an expectation of privacy in the drums. In *Villareal*, the defendants had the drums filled with marijuana and shipped to "Roland Martin" in Brownsville; the drums were to be delivered to a terminal (operated by the SMT company) and picked up by the recipient. Police intercepted the drums and, after a drug dog alerted to the drums, opened them without a warrant. The defendants had another person (Sylvia) make arrangements to pick up the drums at SMT, as Sylvia could speak English. Defendant Villarreal told Sylvia that the drums belonged to Roland Martin. The defendants then had two of their employees (from their recycling company) pick up the drums from SMT and bring the drums to the defendants. The defendants then took possession of the drums in their pickup, and were arrested shortly thereafter. *Villarreal*, at 772-3.

The trial court in *Villarreal* suppressed the evidence, and the Fifth Circuit affirmed, holding that although the consignee of the drums was a fictitious person, the defendants still had an expectation of privacy in the drums, and there was no justification for the warrantless search of the drums. *Id*, at 776-7. The most obvious difference between the facts in *Villarreal* and *Williams* is that in *Villareal*, no one other than the defendant's held themselves out as "Roland Martin"; this contrasts sharply with Richardson not only signing her name as "Key Phillips", but also admitting to Morris she used an alias. R.III 496. Another distinction between

Villareal and *Williams* is that the defendants in *Villareal* actually took possession of their sealed drums, thereby demonstrating their possessory interest in the drums, and implying that they alone had authority to open the drums. Appellant Williams did not demonstrate such a strong link to the package mailed to Richardson: Williams never took possession of the package, and Richardson held herself out as the addressee to whom the package was sent.

In the Connecticut Supreme Court case of *State v. Kalphat*, 939 A. 2d 1165 (2008), the defendant used a shipping company call ABF to have packages of marijuana mailed to him under the alias "M. Patterson." An ABF employee noticed the package was heavily taped, and another ABF supervisor cut a hole in the outer box, which revealed a hard inner box. Police arrived and a drug-sniffing dog alerted on the box. The police arrived and opened the box without a warrant, finding marijuana inside. *Kalphat* at 1167-8. The police contacted Kalphat, who arrived, retrieved the box, and was arrested. *Id*, at 1168.

At the suppression hearing, Kalphat actually testified to establish his standing, claiming that he had picked up packages at the ABF facility approximately 35 times before; however, Kalphat did not testify that he was "M. Patterson", or that he had used aliases before to mail packages. Kalphat did not testify as to whether Mr. Patterson existed. On cross examination, Kalphat said he

was not "M. Patterson" and that he had not signed for the boxes under that name. On redirect Kalphat said that at other times when he retrieved packages from ABF, he had presented identification and signed using his real name. *Id*, at 1168-9.

The trial court in *Kalphat* concluded from the above facts that Kalphat lacked standing, and the Supreme Court of Connecticut affirmed, reasoning that while the decision in *United States v. Villarreal*, 963 F. 2d 770, 774 (5th Cir. 1992) recognizes a person's expectation and right of privacy in enclosed mail even when using an alias, in this case Kalphat never established a link with "M. Patterson." *Kalphat*, 285 Conn. 367, 377, 939 A. 2d 1165, 1171-3 (2008). The Connecticut Supreme Court noted that no authority supported the proposition that a person has a reasonable expectation of privacy in mail sent to another actual person, and found that in order for a defendant to claim he has a reasonable expectation of privacy in a piece of mail shipped under an alias, he must demonstrate that the alias is his: "Accordingly, even if this court were to agree with the defendant, and with the courts in *Villarreal* and *Pitts*, that a person has a legitimate expectation of privacy in items that are shipped to that person by mail or private freight carrier under an alias, that would not help the defendant here. In order for this court to consider this principle, the burden was on the defendant to establish the factual predicate for his claim that 'M. Patterson' was his alias. He failed to do so." *Id*, at

1173 (citing *State v. Hill*, 675 A. 2d 866 (Conn. 1996) (abrogated on other grounds, *State v. Burroughs*, 955 A. 2d 43 (Conn. 2008).

Like the defendant in *Kalphat*, Appellant Williams failed to establish any link between the alias "Key Phillips" and himself. The trial court had no basis to establish that "Key Phillips" was associated with Jeff Williams: Williams did not testify at all, and Richardson is the one who signed for "Key Phillips."

The *Williams* Dissent on Standing

The dissent in *Williams* largely focuses on the legitimacy of Morris' search of the package based on Richardson's apparent authority to consent; this question is moot if Williams did not meet his burden of demonstrating a privacy interest in the package. The dissent only briefly addresses whether Williams had standing to challenge the search. The dissent relies on the validity of the trial court's finding that Defendant's evidence was sufficient to show the package belonged to Appellant Williams, implying that this fact supports the inference that only Williams could give consent to open the package. *Williams*, at 1212-13.

The dissent cites to *United States v. Salvucci*, 448 U.S. 83 (1980) for the proposition that "Whether 'the owner of the good ha[s] a legitimate expectation of privacy in the area searched' is 'a factual finding.'" *Williams*, at 1217 (citing *Salvucci*, 448 U.S. at 92). If this were true, the First District would have to defer to

the trial court's finding that Williams had established standing to assert a Fourth Amendment right in the package, and could only consider whether that right had been violated. However, the dissent's reliance on *Salvucci* is misplaced: the *Salvucci* Court stated that "We simply decline to use possession of a seized good as a substitute for a factual finding that the owner of the good had a legitimate expectation of privacy in the area searched." *Salvucci*, 448 U.S. at 92 . The *Salvucci* Court held that even though the defendants were charged with possession of stolen mail, they could not, by virtue of that possession, *automatically* assert a Fourth Amendment privacy interest in the stolen mail. Essentially, the *Salvucci* Court held that actual possession did not necessarily equate to standing to assert a claim of unlawful search and seizure. *Id*, at 92-94.

The dissent's characterization of *Salvucci* is in direct conflict with language from the Sixth Circuit's opinion in *United States v. Pollard*, 215 F. 3d 643 (6th Cir. 2000): "Similarly, the trial judge's findings of fact regarding the defendants' standing to challenge alleged Fourth Amendment violations are examined for clear error, while the **legal determination** of standing is reviewed *de novo.*" *Pollard*, at 646 (emphasis supplied) (citing *United States v. Rohrig*, 98 F. 3d 1506, 1511 (6th Cir. 1996)).

Richardson's Apparent Authority

The trial court was incorrect in finding that "No evidence was presented to show that [Richardson] had either expressed authority or apparent authority to open the package or give law enforcement the authority to open the package: the package was addressed to Richardson's home, Richardson accepted the package, and Richardson held herself out as the addressee "Key Phillips" by signing for the package and admitting to using an alias. If Richardson did not mention "Jeff" until after she had consented to the package being opened, then the trial court's determination that Richardson had no apparent authority to consent to Morris' search of the package (R.III 463) is clearly erroneous: Richardson would have been the only logical party from whom Morris could gain consent. However, even if Richardson mentioned "Jeff" before the package was opened, the trial court's ruling that Richardson lacked apparent authority was incorrect because Richardson exercised significant control over the package, to the point that it would appear to Morris that the package was either for her or that she shared ownership with another recipient.

The dissent in *Williams* implies that Inv. Morris knew that Richardson was a third party to the drug transaction, and that Morris was wrong to believe that Richardson had apparent authority to open the package: "[T]he state has the duty

to prove through specific facts that the third party has the authority over the particular object to be searched." *Williams*, at 1214 (quoting *Kelly v. State,* 77 So. 3d 818, 825 (Fla. 4th DCA 2012)). The dissent cites to *State v. Young*, 974 So. 2d 601 (Fla. 1st DCA 2008), where the defendant (a Methodist pastor) established through his own testimony that he had standing to challenge the search of his work computer: Young testified that he had a personal link to that computer and that no one was allowed into his office without his permission, and that the church administrator/secretary was not allowed to log on to the pastor's computer when he was away. *Young*, at 606-07. In *Young*, the police relied on the apparent authority of the district superintendant of the Methodist Church, who allowed police to search Young's office computer. *Young*, at 606-08. The testimony elicited in *Young* demonstrated that Young had a superior connection and control over the computer, casting doubt on the district superintendant's ability to consent to a police search of that computer.

Unlike the defendant in *Young* (who secured his computer with a password and by locking the door to his office), Appellant Williams took few, if any steps to prevent others from accessing his package: Williams had the package mailed to a fictitious person at Richardson's address, and apparently consented to Richardson taking possession of the package and representing to USPS personnel that she had authority to take delivery. Furthermore, Richardson apparently had the authority to

hold herself out as Key Phillips, accept delivery of the package, and keep the package in her home. At the suppression hearing, Appellant Williams never established any link to the package other than Richardson's hearsay remark that the package was for "Jeff"; it is debatable whether this remark tied Defendant Williams to the package at all, but, in light of Richardson's actions, it certainly did not demonstrate that Jeff had a control or right of possession that was superior to Richardson.

If officers have an objectively reasonable belief that the person consenting to the search of a place or thing has the authority to consent to the search, then the search is valid even if the person, in fact, lacks this authority. *Illinois v. Rodriquez*, 497 U.S. 177, 185-89 (1990). The *Williams* dissent argues that the State did not meet its burden to prove that it was objectively reasonable for Morris to believe Richardson had the authority to consent to a search. *Williams*, at 1214-15.

In *United States v. Gonzalez*, 609 F. 3d 13 (1st Cir. 2010) , the defendant, Gonzalez, had a package containing a kilogram of cocaine and 24 pounds of marijuana delivered via DHL shipping company to 80 Hawkins Street, Second Floor, Providence, Rhode Island. The 80 Hawkins address was a largely vacant apartment used primarily for received drugs. The DHL package was addressed to "Anna Ohoven". A police detective disguised as a DHL delivery person attempted

to deliver the package to Gonzalez; Gonzalez attempted to take receipt of the package, but said that "Anna Ohoven" was his cousin. The "DHL" detective replied that Anna Ohoven would have to be present to sign for the package. Gonzalez called his codefendant, LaFrance, who later showed up at noon and signed for the package as "Anna Ohoben", a misspelling of "Ohoven". When signing for the package, LaFrance listed her address as the 80 Hawkins apartment. The detective then revealed himself as law enforcement and arrested LaFrance. LaFrance gave the detective permission to search the apartment at 80 Hawkins, where other evidence was recovered. *Gonzalez*, at 15-18.

The district court found that LaFrance had apparent authority to consent to a search of the apartment, and the First Circuit affirmed. The *Gonzalez* court pointed out that the "touchstone" of the inquiry set out in *Illinois v. Rodriquez* was whether the officers' acceptance of a person's apparent authority was "reasonable under the circumstances." *Gonzalez*, at 18. The *Gonzalez* court noted that LaFrance advised the detective that she lived at 80 Hawkins, but the court also found persuasive the fact that LaFrance had held herself out as "Ana Ohoven" of 80 Hawkins. The First Circuit rejected Gonzalez's argument that the police could not reasonably rely on LaFrance's consent because 1. LaFrance misspelled "Ohoven"; 2. LaFrance could not produce identification verifying her identity as Ana Ohoven; and 3. the apartment was obviously vacant—it was apparent no one lived there.

The *Gonzalez* court found that while these facts may have suggested LaFrance was lying, they also supported the inference that 80 Hawkins was being used as a drug drop. *Id*, at 18-19. The *Gonzalez* court found that LaFrance apparently had sufficient authority to consent to a search of the apartment, and rejected the defendant's arguments, particularly the argument that because the apartment was nearly vacant, the officer could not rely on LaFrance's representation that she lived there. *Id*, at 19. The *Gonzales* court stated that "If these facts signaled that LaFrance was lying, they supported the inference that the apartment was not lived in at all but was being used as a drug drop to which she at least had joint access." *Id*, at 19.

Like the defendant in *Gonzalez*, Appellant Williams attempted to use the tools designed to elude detection (aliases and alternate addresses) to his benefit by arguing that Morris should have known that Richardson was not "Key Phillips" and that even though the package was addressed to her home, it was not apparent that Richardson had authority to open it. Under the court's rationale in *Gonzalez*, Morris could have reasonably relied on Richardson's consent, even if Morris believed "Key Phillips" was an alias used to avoid detection. The recipient in *Gonzalez*, LaFrance, told police that the apartment was hers, even thought that was not true. Richardson essentially represented to Morris that the package was hers by signing "Key Phillips" and accepting the package. Under the *Gonzalez* holding, the

inference would be that Richardson at least had joint access to the package, and therefore authority to consent to the search.

Issue II: Whether the First District created a new test for establishing standing.

Jurisdictional Criteria

As to Appellant William's second issue on appeal, he does not allege or establish that the "three prong test" discussed in Issue II of his Initial Brief creates a conflict between district court of appeal decisions. The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986). If this Court finds that Appellant has not established conflict jurisdiction as to Appellant's first issue, then Williams has also failed to establish this Court's jurisdiction to review his claim in Issue II under Fla. R. App. P. 9.030(a)(2)(A)(iv) and Article V, § 3(b)(3), Fla. Const.

Standard of Review

Appellant argues in his second issue that "the First District Erred when it announced a new three prong test for establishing Fourth Amendment Standing." IB. 2. Appellant further argues that the *Williams* decision "established a three prong test to determine standing for the mail...", and claims that this "three prong test" effectively "eviscerates the expectation of privacy someone has in first class mail." IB. 8. Appellant presumably argues that the *Williams* decision incorrectly interpreted or applied the Fourth Amendment of the United States Constitution and Article I, Section 12 of the Florida Constitution, and therefore the standard of review is de novo. *See Fortune v. Gulf Coast Tree Care, Inc.*, 148 So. 3d 827, 828 (Fla. 1st DCA 2014) ("To the extent resolution of an issue requires statutory interpretation review is de novo.").

Merits

Appellant does not elaborate in his argument on Issue II (IB 14-18) as to what "three prong test" was crafted by the *Williams* majority decision. Instead, Appellant's argument on Issue II again focuses on the fact that courts have held that merely using an alias or pseudonym does not erase a person's expectation of privacy in the mail. However, the United States Supreme Court has been clear that the question of whether a person has a legitimate expectation of privacy is

multifaceted: "No single factor determines whether an individual legitimately may claim under the Fourth Amendment that a place should be free of government intrusion not authorized by warrant." *Oliver v. United States*, 466 U.S. 170, 177 (1984).

While the First District did not apply any "three prong test" to the facts in *Williams*, it did examine different scenarios in which a person could establish their reasonable expectation of privacy in mail sent through a pseudonym. First, the *Williams* court pointed out that Williams was not listed on the package, and had the package sent to Richardson, thereby losing control over the package. The First District pointed out that Williams further ceded control by not demonstrating that he instructed Richardson to tender the package to him unopened. *Id*, at 1210. Second, the *Williams* court held that while a person using an alias can establish standing if they can show they are the sender or addressee, Williams had failed to do this. *Williams*, at 1210-11. The evidence at the suppression hearing supported one inference: that Richardson, not Williams, was the addressee going by the name of "Key Phillips." Third, the First DCA eliminated the notion that Williams would have an expectation of privacy in Richardson's home. *Id*, at 1211.

The facts presented during Appellant's suppression hearing demonstrate that Williams case is not merely an instance of a citizen using a pseudonym to

receive mail: it is a case where Williams took steps to distance himself from mailed contraband, and by doing so allowed another person to hold herself out as the rightful recipient of his mail and take possession of his mail. What Williams *failed* to do is present competent, substantial evidence that "Key Phillips" was his pseudonym.

The First District's decision in *Williams* cites *United States v. Goldsmith*, 432 F. Supp. 2d (D. Mass. 2006), where two codefendants, Gilles and Goldsmith, had marijuana shipped to them in a crate using Old Dominion shipping company. Goldsmith's part was to arrange the shipment of the marijuana, but Gilles bought and paid for the drug shipment. Goldsmith arranged the shipping, but Gilles owned the actual drugs. *Goldsmith*, at 162-4. The shipment was (purportedly) sent from "Underwater Equipment Sales" at 317 Catalina Court in Loma, California, and was addressed to "DVP Diving & Video" of 33 Silva Lane in Dracut, Massachusetts; both the sender and recipient were wholly fictitious business entities. *Goldsmith*, at 163-65. Goldsmith signed the bill of lading as "K. Cleary", but showed Old Dominion employees his real driver's license when arranging the delivery. *Id*, at 163. After shipping the crate of drugs, Goldsmith gave the bill of lading for the crate to Gilles. Goldsmith was to get a portion of the marijuana in the crate for arranging the shipping. *Id*, at 163.

Old Dominion employees found the crate suspicious, and contacted DEA agents. The DEA agents seized the crate in at old Dominion's hub in Tennessee and had the crate re-routed to North Carolina for purposes of obtaining a search warrant under the faulty reasoning that whoever owned the crate "constructively possessed" the drugs in whatever state the crate was located. *Id*, 165-67. Eventually the lead DEA agent on the case had the crate delivered to Boston, where Gilles claimed it under the false name of Robert Burgess. Gilles was eventually arrested while in possession of the crate. *Id*, at 167.

Goldsmith argued that, because he sent the crate, the DEA violated his Fourth Amendment rights by seizing the crate in Tennessee without a warrant, and that his rights were further violated when a DEA agent made false and misleading representations to a North Carolina judge in order to obtain a search warrant. *Id*, 167-168. The District Court of Massachusetts acknowledged that Goldsmith's arguments were probably correct, but found that Goldsmith had failed to demonstrate that he had control over the shipment when it was subjected to the DEA search. *Id*, at 171. The *Goldsmith* court reasoned that because Goldsmith had used a pseudonym to send the crate, and had given the bill of lading to Gilles, Goldsmith had failed to establish an "objectively reasonable" expectation of privacy in the crate while it was in transit. While Gilles admitted in his affidavit that DVP Diving and Video was "an alias for me and my co-conspirators", the

Goldsmith court found that Goldsmith did not establish that he had an interest in DVP. *Id*, at 171-72.

The *Goldsmith* court distinguished its facts from those in *Villarreal* by pointing out that the two defendants in *Villarreal* jointly possessed the marijuana at the time it was seized. *Id*, at 172-73) . The same cannot be said for the defendant in *Goldsmith*, nor Appellant Williams. The *Goldsmith* court pointed out that without the bill of lading, Goldsmith could not have recovered the crate, which was shipped under a non-negotiable instrument to DVP Diving and Video. *Id*, at 173. The *Goldsmith* court further held that Goldsmith's status as Gilles' co-conspirator did not convey upon Goldsmith a reasonable expectation of privacy in the contents of the crate: " Defendants are liable for the foreseeable conduct of their coconspirators in furtherance of their conspiracy." *Id*, at 173 (citations omitted).

Appellant Williams did not produce any evidence of how he was involved with the package sent to Richardson under the name of "Key Phillips". Like the defendant in *Goldsmith*, Williams at best demonstrated that he was probably Richardson's co-conspirator, but failed to show that he ever had control over the package at any point before or during Morris' search. Appellant's colorful arguments presume an innocent person using a pseudonym to avoid embarrassment; while society may be willing to accept such activity, the Fourth

Amendment does not protect those who completely divest themselves of control over their mail in order to evade drug interdiction.

CONCLUSION

The question addressed by the First District in *Williams* is whether the testimony elicited from Investigator Morris was sufficient to demonstrate Williams' personal privacy interest in the package. Because Williams presented no evidence that he was "Key Phillips", "T. Lopez" or even the "Jeff" mentioned by Richardson, Appellant failed to establish that the package was his or that he had a reasonable expectation of privacy in the package when it was opened. Williams also failed to demonstrate that Richardson had no authority over the package, even though she represented that she was the intended recipient. Furthermore, Williams presented no evidence that he had a privacy interest in Richardson's apartment. The trial court therefore had no factual basis to determine that Williams had standing to assert his Fourth Amendment right against search and seizure of mail addressed specifically to him.

The State of Florida requests that this Honorable Court deny jurisdiction as no conflict exists between *Jardines, Patrick,* and *Williams*. In the alternative, the State requests that this Honorable Court deny the relief sought in Appellant's Initial Brief, and uphold the First District's decision in *State v. Williams*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy this Answer Brief has been furnished by electronic mail to the following: Kevin Alvarez, Esq. at KevinAlvarez@Gmail.com , on **March 3, 2017.**

CERTIFICATE OF COMPLIANCE

I certify that this document was computer generated using Times New Roman 14 point font, in accordance with Fla. R. App. P. 9.210 (a) (2).

Respectfully submitted and
certified,

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