

IN THE SUPREME COURT OF FLORIDA

ROGER D. CHURCHILL, JR.,

Petitioner,

v.

Case No.: SC16-20

Fifth DCA Case No.: 5D14-1081

STATE OF FLORIDA,

Respondent.

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ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

PAMELA JO BONDI  
ATTORNEY GENERAL

WESLEY HEIDT  
ASSISTANT ATTORNEY GENERAL  
Fla. Bar No. 773026  
444 Seabreeze Boulevard  
Fifth Floor  
Daytona Beach, FL 32118  
(386) 238-4990  
(386) 238-4997 (FAX)  
crimappdab@myfloridalegal.com

COUNSEL FOR RESPONDENT

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STATEMENT OF CASE AND FACTS

All relevant facts were set out in the Fifth District Court's opinion in Churchhill v. State, 169 So. 3d 1260 (Fla. 5th DCA 2015). The district court wrote the following:

PER CURIAM.

Roger Dennis Churchill, Jr. appeals his judgment and sentence for one count of manufacture of methamphetamine, one count of conspiracy to manufacture methamphetamine, and one count of possession of a listed chemical, entered after he pled no contest to the charges while reserving his right to appeal the trial court's ruling on his pre-trial motion in limine.<sup>1</sup> We decline to address the issue. Because the trial court's order was not dispositive,<sup>2</sup> it cannot be challenged on direct appeal. See Fla. R. App. P. 9.140(b)(2)(A)(i); Garcia-Roque v. State, 120 So. 3d 618 (Fla. 5th DCA 2013) (affirming defendant's convictions and sentences without addressing lower court's ruling on the motion in limine because such ruling was not dispositive). "An issue is legally dispositive only if, regardless of whether the appellate court affirms or reverses the lower court's decision, there will be no trial of the case." Levine v. State, 788 So. 2d 379, 380 (Fla. 4th DCA 2001) (internal quotation marks omitted) (citing Zambuto v. State, 731 So. 2d 46 (Fla. 4th DCA 1999)). Accordingly, we dismiss the appeal. See Garcia-Roque, 120 So. 2d at 619.

DISMISSED.

EVANDER, BERGER and WALLIS, JJ., concur.

FN 1: The specific issue presented on appeal is whether the presumptive field test conducted by law enforcement met the standard set forth in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed .2d 469 (1993). See § 90.702, Fla. Stat. (2014); Perez v. Bell South Telecomm., Inc., 138 So. 3d 492, 497-98 (Fla. 3d DCA 2014). Churchill argues it did not. He does not contest the trial court's ruling concerning the identification of the methamphetamine based on the law enforcement officer's training and experience.

FN 2: Even though the State stipulated below that the trial court's ruling was dispositive, this Court is not bound to accept the State's stipulation. See Ashley v. State, 611 So. 2d 617, 618 (Fla. 2d DCA 1993) (finding that the attorneys and the trial court erred in their assumptions that the ruling on the motion in limine was dispositive, because the defendant could be brought to trial regardless of whether the appellate court affirmed or reversed the trial court's ruling). Here, the stipulation was based on the exclusion of all of the deputy's testimony, including his identification of the methamphetamine based on his training and experience. Churchill waived any argument as to this additional testimony by not raising it in his initial brief. See, e.g., Hoskins v. State, 75 So. 3d 250, 257 (Fla. 2011) (citing Hall v. State, 823 So. 2d 757, 763 (Fla. 2002)) (stating argument not raised in initial brief barred); J.A.B. Enters. v. Gibbons, 596 So. 2d 1247, 1250 (Fla. 4th DCA 1992) ("[A]n issue not raised in an initial brief is deemed abandoned and may not be raised for the first time in a reply brief.") (citing Snyder v. Volkswagen of Am., Inc., 574 So. 2d 1161 (Fla. 4th DCA 1991)).

SUMMARY OF ARGUMENT

This Court should not accept jurisdiction in this case because the decision below does not expressly and directly conflict with a decision from this Court or any district court of appeal.

## ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL DOES NOT CONFLICT WITH A DECISION OF THIS COURT OR ANY OTHER DISTRICT COURT OF APPEAL.

This Court should not accept jurisdiction in this case because the decision below does not expressly and directly conflict with a decision from this Court or any district court of appeal.

In Jenkins v. State, 385 So. 2d 1356, 1357 (Fla. 1980), this Court quoted from its earlier decision in Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958):

We have heretofore pointed out that under the constitutional plan the powers of this Court to review decisions of the district courts of appeal are limited and strictly prescribed..It was never intended that the district courts of appeal should be intermediate courts..To fail to recognize that these are courts primarily of final appellate jurisdiction and to allow such courts to become intermediate courts of appeal would result in a condition far more detrimental to the general welfare and the speedy and efficient administration of justice than that which the system was designed to remedy.

While this Court has jurisdiction under article V, section (3) (b) (3) of the Florida Constitution where a decision of a district court "expressly and directly conflicts" with a decision of this Court or another district court, this Court has also repeatedly held that such conflict must be express and direct, that is, "it must appear within the four corners of the majority

decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986).

Petitioner submits that the Fifth District's opinion is in conflict with Finney v. State, 420 So. 2d 639 (Fla. 3d DCA 1982). However, Finney is not cited in the instant opinion. There is no conflict, and Petitioner has failed to present sufficient argument as to why the instant case should be reviewed by this Court. The issue in the instant case was whether the trial court erred in the ruling on the pre-trial motion in limine. The contested issue involved whether the field test performed by law enforcement met Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). However, the opinion also noted that the defense never challenged the identification of the methamphetamine by law enforcement based on the officer's training and experience. The Fifth District simply held that it was dismissing the appeal given that the issue was not dispositive. Such a holding does not show conflict.

Based on the foregoing argument and authorities, the State respectfully requests that this Court decline to accept jurisdiction in this case.

Respectfully submitted,

PAMELA JO BONDI  
ATTORNEY GENERAL

/s/Wesley Heidt  
WESLEY HEIDT  
ASSISTANT ATTORNEY GENERAL

Fla. Bar No. 773026  
444 Seabreeze Boulevard  
Fifth Floor  
Daytona Beach, FL 32118  
(386) 238-4990  
(386) 238-4997 (FAX)

COUNSEL FOR RESPONDENT

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 Roger D. Churchill, Jr, DC# 168634, Avon Park Correctional Institution, 8100 Highway 64 East Avon Park, FL 33825 this 25th day of January 2016.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

/s/ Wesley Heidt  
WESLEY HEIDT  
COUNSEL FOR RESPONDENT