

IN THE SUPREME COURT
OF FLORIDA

STATE OF FLORIDA,)

Petitioner,)

vs.)

GEOVANI JOHNSON,)

Respondent.)
_____)

CASE NO: SC19-96
(CASE NO: 4D15-4452;
15-4519;15-4539)

RESPONDENT’S BRIEF ON JURISDICTION

On Discretionary Review from the Fourth
District Court of Appeal, State of Florida

Antony P. Ryan
Regional Counsel
Office of Criminal Conflict and Civil
Regional Counsel, Fourth District

Richard G. Bartmon
Fla. Bar No: 337791
Assistant Regional Counsel
401 S. Dixie Highway, Second Floor
West Palm Beach, FL 33401
PH: (561) 837-5156
FX: (561) 837-5423
Email: RC4Appellatefilings@rc-4.com
rbartmon@rc-4.com

Counsel for Respondent Geovani Johnson

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PRELIMINARY STATEMENT

Petitioner State of Florida was the Appellee before the Fourth District Court of Appeal while Respondent was the Appellant. “PA” will refer to the Appendix attached to the State’s Brief. “PJB” will refer to the State’s Brief on jurisdiction. The District Court’s decision is also reported at *Johnson v. State*, 2018 Fla. App. LEXIS 18433 (Fla. 4th DCA, Dec. 19, 2018).

STATEMENT OF THE CASE AND FACTS

The very lengthy opinion of the Fourth District contains the relevant facts and is set out in the State’s Appendix. PA, 1-16. In its opinion on clarification, the Fourth District discussed at length this Court’s plurality opinion in *Spencer v. State*, 238 S. 3rd 708 (Fla. 2018) (“Spencer II”) concerning when a peremptory challenge under this Court’s rulings in *Melbourne v. State*, 679 S. 2nd 759 (Fla. 1996) and *Hayes v. State*, 94 S. 3rd 452 (Fla. 2012) was sufficiently preserved by an objecting party. PA, 3-6. Applying *Spencer*, *Melbourne* and *Hayes*, *supra*, the Fourth District majority determined that proper preservation of such a challenge “does not require anything more than what we have previously articulated” in *Melbourne* and *Joiner v. State*, 618 S. 2nd 174, 176 (Fla. 1993). PA, 3-4, *quoting in part Spencer II*, 238 S. 3rd *supra* at 711. The majority further observed that under *Hayes*, a trial judge had an obligation to comply with the *Melbourne* steps and that this responsibility

applied “*independently of trial counsel’s duty.*” PA, 4, quoting *Spencer II*, 238 S. 3rd at 716 (emphasis supplied in original).

Applying these principles firmly established in *Melbourne* and *Hayes* and reiterated by the *Spencer II* plurality, the Fourth District majority held that “the Melbourne procedure is indeed a 3-step process and the intent of our supreme court, in adopting the procedure, was to require that all steps be followed.” PA, 5. The Fourth District concluded that the Record did not indicate that the trial judge properly evaluated defense counsel’s challenges under Step 3 of *Melbourne* and this Court’s precedent required reversal under such circumstances. PA, 6; 10, 11, citing in part *Spencer II*, 238 S. 3rd at 715, quoting *Hayes*, 94 S. 3rd at 461, 463.

The Fourth District panel certified conflict with *Brown v. State*, 204 S. 3rd 546 (Fla. 5th DCA 2016); *Ivy v. State*, 196 S. 3rd 394 (Fla. 2nd DCA 2016) and *Hanna v. State*, 194 S. 3rd 424 (Fla. 3rd DCA 2016) “..because those cases continue to adhere to the analysis of the Second District in *Spencer I*” [196 S. 3rd 400 (Fla. 2nd DCA 2016)].

SUMMARY OF THE ARGUMENT

This Court should decline jurisdiction. Although the Fourth District certified conflict in this case, this Court has already addressed the relevant issues in its ruling in *Spencer v. State*, 238 S. 3rd 708 (Fla. 2018), relying on *Melbourne* and its progeny. It would be pointless and a waste of judicial resources for this Court to accept

jurisdiction to re-litigate the same issues. This is especially true when the Fourth District majority appropriately applied that ruling to find that Petitioner's *Melbourne* challenge was sufficiently preserved and that the trial judge failed to adequately comply with required *Melbourne* procedures.

ARGUMENT

I. THIS COURT SHOULD DECLINE JURISDICTION BECAUSE IT ADDRESSED THE RELEVANT ISSUES RAISED BY THIS CASE IN *SPENCER V. STATE*, 238 S. 3rd 708 (Fla. 2018) AND OTHER PRIOR RULINGS BY THIS COURT AND FOURTH DISTRICT'S MAJORITY APPROPRIATELY APPLIED GOVERNING STANDARDS ESTABLISHED BY THAT PRECEDENT TO THE FACTS HERE

This Court **can** accept jurisdiction where a District Court's opinion "expressly and directly conflicts" with a decision by another District Court on the same issue of law. Art. V, §3 (b) (3), *Fla. Constitution* (2012); Rule 9.030 (a) (2) (A) (iv), *Fla. R. App. P.* Respondent cannot and does not dispute that the Fourth District certified conflict between its ruling here and specific rulings by the Second, Third and Fifth Districts. *supra*, p. 2; PA, 11. However, this Court already addressed these same issues **less than a year ago** in *Spencer II v. State*, 238 S. 3rd 708 (Fla. 2018) and heavily relied on its rulings in *Melbourne v. State*, 679 S. 2nd 759 (Fla. 1996) and *Hayes v. State*, 94 S. 3rd 452 (Fla. 2012) to do so. *supra* at 1, 2. There is no need to accept jurisdiction to rehash and re-address principles and rules that this Court has enunciated, reiterated and ratified.

Since this Court decided *Melbourne* twenty-three years ago, it has held that each aspect of the *Melbourne* procedure, including Step 3, has independent meaning and significance and requires compliance. *Spencer II*, 238 S. 3rd at 714; *Truehill v. State*, 211 S. 3rd 930, 942, 943 (Fla. 2017); *Hayes*, 94 S. 3rd at 461; *Melbourne*, 679 S. 2nd at 763-765. As the Fourth District majority expressly observed, this Court's plurality restated in *Spencer II* that proper preservation of a peremptory challenge does not command anything more beyond the *Melbourne* requirements. *Supra*, p. 1; PA, 3-4; *Spencer II* at 714. The *Spencer* plurality further reiterated that a trial judge must independently assess all relevant circumstances in deciding under Step 3 of *Melbourne* whether a proponent's race-neutral explanation of a peremptory strike was genuine. *Spencer II* at 714, 715; *Hayes* at 461, 462, 463. The Fourth District majority properly applied these long-standing principles to the facts here to find that Respondent adequately preserved his *Melbourne* challenges and that the trial judge failed to meet its independent Step 3 responsibilities. PA, 3-4; 6, 10, 11.

The decision in this case was detailed and analyzed in conformity with long-standing precedent by this Court. Contrary to the State's interpretation, PBJ at 10, the Fourth District majority added nothing to the *Melbourne* procedure and requirements that did not already exist. There is no genuine justification for accepting jurisdiction under circumstances where the Fourth District ruling adhered to well-settled case law.

The sole justification for certification of conflict here was that those rulings cited stuck to the analysis in *Spencer v. State*, 196 S. 3rd 400 (Fla. 2nd DCA 2016) (“Spencer I”). PA, 11. Each of these rulings **predated** this Court’s *Spencer II* ruling, relying on the premise in *Spencer I* that the defense had to make independent objections beyond what *Melbourne* requires. PJB at 9, 10. This Court’s plurality **expressly rejected** that ruling, deciding that a defendant *need not* separately object to the State’s race-neutral explanation for a peremptory challenge to preserve a *Melbourne* claim. *Spencer II* at 712, 713, 716, 718. The majority in *Johnson* followed this plurality view in *Spencer II* and did nothing incorrect by finding that viewpoint persuasive. PA, 3-6; *see e. g.*, *S. B. v. State*, 255 S. 3rd 497, 499-500 (Fla. 3rd DCA 2018) (Third District panel applied and followed three-judge plurality in *Warmington v. State*, 149 S. 3rd 648 (Fla. 2014) to reverse a conviction based on improper burden-shifting by the State).

While conflict was certified, the circumstances do not create a genuine basis to accept jurisdiction. Furthermore, Judge Kuntz’s differing interpretation in dissent in this case cannot form the basis for certiorari review, nor can any concurring opinions from *Spencer II*. PJB, 4-7; *Reaves v. State*, 485 S. 2nd 829; 830; 830, n. 3 (Fla. 1986) (conflict jurisdiction “must appear within the four corners of the majority decision”); *Jenkins v. State*, 385 S. 2nd 1355, 1359 (Fla. 1980).

This Court should thus deny discretionary review.

CONCLUSION

Based on these circumstances, this Court should decline jurisdiction and should not accept this case on the merits.

Respectfully submitted,

Antony P. Ryan, Regional Counsel
Office of Criminal Conflict and Civil
Regional Counsel, Fourth District
401 S. Dixie Highway, Second Floor
West Palm Beach, FL 33401
PH: (561) 837-5156
FX: (561) 837-5423
Email: RC4AppellateFilings@rc-4.com;
Rbartmon@rc-4.com

/s/ Richard G. Bartmon
Richard G. Bartmon, Fla. Bar No: 337791
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I **CERTIFY** that a correct copy of this **Respondent's Brief on Jurisdiction** has been electronically filed with this Court and emailed this 26th day of February, 2019 to **Kimberly Acuna**, Assistant Attorney General, Florida Attorney General's Office [**crimwpbapp@myfloridalegal.com**], 900 North Flagler Drive, 9th Floor, West Palm Beach, FL.

/s/ Richard G. Bartmon
Richard G. Bartmon

Assistant Regional Counsel

CERTIFICATE OF COMPLIANCE

I CERTIFY that this Brief on Jurisdiction complies with the font requirements of Rule 9.210 (a) (2), *Fla. R. App. P.*

/s/ Richard G. Bartmon
Richard G. Bartmon
Assistant Regional Counsel