

IN THE SUPREME COURT OF FLORIDA

CANDIE LYNN WALKER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC21-1327  
DCA NO. 1D20-0608

ON DISCRETIONARY REVIEW  
OF THE FIRST DISTRICT COURT OF APPEAL

AMENDED JURISDICTIONAL RESPONSE OF APPELLEE

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## PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner Walker, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

"PJB" will designate Petitioner's Amended Jurisdictional Brief. That symbol is followed by the appropriate page number. A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

## STATEMENT OF ISSUES

Whether the decision in Walker v. State, 46 Fla. L. Weekly D1823 (Fla. 1st DCA Aug. 12, 2021) expressly and directly conflicts conflict with of Williams v. State, 314 So. 3d 775 (Fla. 1st DCA 2021) on the same question of law?

## STATEMENT OF THE CASE AND FACTS

The pertinent history and facts are set out in the decision of the lower tribunal in Walker v. State, and restated here.

From the age of six, Fine lived with her father. But when she turned sixteen, she moved in with her mother, Candie Walker. Walker, unlike Fine's father, allowed Fine to drive without a license, date anyone she wanted to date, and skip school.

After Fine began living with her mother, Walker confided in Fine that she wanted J.C. dead because J.C. was dating Walker's ex-husband. Walker persuaded Fine to kill J.C. In preparation for the murder attempt, Walker gave Fine a disguise to wear during the attack on J.C. Fine then obtained a machete to use as the murder weapon.

Soon after, Fine went to J.C.'s home. As she approached the front door, Fine tried to cover her face and hair to conceal her identity, but she decided not to wear the mask she brought with her. When J.C. came out to her front porch to smoke a cigarette, Fine attacked her with a machete. J.C. screamed for help. J.C.'s twelve-year-old daughter, J.S., ran outside and tried to protect her mother. Fine attacked J.S. with the machete, too. Fine then fled the scene on foot. J.C. suffered several lacerations to the right side of her body, including her kneecap, arm, and face. J.S. suffered an acute laceration that almost severed her thumb from her left hand.

After the victims called the police and reported Fine as the attacker, the police detained Fine and transported her to the police station for interrogation. During questioning, Fine confessed to the murder attempt. She admitted that she attacked J.C. and J.S. with a machete. She told the police that Walker threatened to ground her if she did not kill J.C. Fine told investigators that her boyfriend drove her to J.C.'s house. After the attack, Fine fled the scene on foot. And then she and her boyfriend abandoned the vehicle used to drive to J.C.'s house. Fine then called her grandmother and asked her to pick her up.

Based on Fine's confession, investigators searched the grandmother's car. They found a long machete, a hoodie, gloves,

and a mask—all covered in blood. Fine continued to assist the police with the investigation and her cooperation led to the arrest of several co-defendants. She also agreed to testify at her mother's trial. Fine's testimony was instrumental in obtaining convictions against her mother.

Walker v. State, 46 Fla. L. Weekly D1823 (Fla. 1st DCA Aug. 12, 2021) (citing Fine v. State, 312 So.3d 1057 (Fla. 1st DCA 2021)).

The First District rejected the affirmative relief requested by Petitioner. The Court found that even though Petitioner was not present at the time of the incident and did not actively support the crime's commission as it occurred, she provided *counsel* for the offense. The evidence also demonstrated that she *procured* the commission of the offense. Walker v. State, 46 Fla. L. Weekly D1823 (Fla. 1st DCA Aug. 12, 2021). The Court held that the evidence supported the giving of the principal instruction.

## SUMMARY OF ARGUMENT

The operative facts, as contained within the "four comers" of the First District Court of Appeal (First DCA) decision reveals no express and direct conflict with any District Court of appeal or the Supreme Court on the same question of law. There is also no jurisdiction based on a construction of a provision of the Due Process Clause, because the First DCA did not expressly construe any constitutional provisions in the decision. Nor is there jurisdiction based on a question of great public importance, because the First DCA did not certify a question in this case. The First District applied well-settled law to the facts of this case. Because Petitioner has not established a constitutional basis for this Court to exercise its jurisdiction, jurisdiction should be declined.

## ARGUMENT

### **WHETHER PETITIONER HAS SHOWN AN APPROPRIATE BASIS FOR THIS COURT TO EXERCISE ITS DISCRETIONARY JURISDICTION? (RESTATED)**

#### **1. Standard of Review**

The applicable standard of review for claims of direct and express conflict is *de novo* subject to the following criteria.

#### **2. Jurisdictional Criteria**

Petitioner cites Article V, § 3(b)(3) of the Florida Constitution as the grounds for this Court's jurisdiction. (PJB. 4). Article V, § 3(b)(3), Fla. Const. provides: "The supreme court may review any decision of a District Court of Appeal that... expressly construes a provision of the State or Federal Constitution ... or that expressly and directly conflicts with a decision of **another** District Court of appeal or of the supreme court on the same question of law." (emphasis added). Article V, § 3(b)(4) of the Florida Constitution also allows jurisdiction when a District Court of appeal "passes upon a question certified by it to be of great public importance".

In the case at bar, petitioner cites conflict between two cases of the First District. There is no jurisdictional basis for intradistrict conflict. The proper remedy is to request a rehearing en banc. This procedure was

addressed by the First DCA in Jones v. State:

Rule 9.331(c) of the Florida Rules of Appellate Procedure authorizes a district court of appeal to hear a case en banc on its own motion. Subdivision (a) of the rule provides in material part that the court may consider an appeal en banc when “necessary to maintain uniformity in the court's decisions.” The district courts are free to adopt their own standards for determining whether en banc consideration is required to maintain uniformity of decisions. An intradistrict conflict may justify en banc review even if it does not meet the more exacting definition of “express and direct conflict” in the context of the supreme court's discretionary jurisdiction.

Jones v. State, 790 So. 2d 1194, 1196 (Fla. 1st DCA 2001) (citing Chase Federal Savings & Loan Ass'n v. Schreiber, 479 So.2d 90 (Fla.1985)).

Even if still considered for review, the First District's opinion was based on settled law applied to the facts of this case. There is no conflict with any other case. Nor is there a certified question of great public importance, or any express interpretation of the U.S. Constitution that would warrant this Court accepting jurisdiction. Because there is no basis for jurisdiction, this Court must dismiss this case.

#### The First DCA's decision in Walker

In Walker v. State, 46 Fla. L. Weekly D1823 (Fla. 1st DCA Aug. 12, 2021), the First District rejected Petitioner's claim that the principal jury instruction should not have been given because her actions did not meet the

legal requirements to be a principal to the underlying offense. The First District held that the definitions of “counsel” and “procure” at the time section 777.011, Fla. Stat. was adopted in 1957 do not meaningfully differ from today. The First District reviewed the case against Petitioner and ruled that the evidence presented at trial showed that, though Petitioner was not present at the time of the incident and did not actively support the crime's commission as it occurred, she provided counsel for the offense. The evidence also demonstrated that she procured the commission of the offense. In ruling against Petitioner, the First DCA did not certify conflict with any other district, nor did they certify a question of great public importance.

#### The First DCA's decision in Williams

In the relevant portion of Williams v. State, 314 So. 3d 775 (Fla. 1st DCA 2021), the First District traced the history of the criminal activity that the Florida “principal” statute criminalized from the English common law to the current section 777.011, Fla. Stat. The First District concluded that the legislative intent was to capture the historical first-degree principal; the historical second-degree principal; and the third historical accessory before the fact under a singular first-degree principal rubric, such that regardless of the category, the charging and punishment paradigm is the same. Williams,

314 So. 3d at 785. The First District rejected Williams' argument that physical presence was required. The First District stated that "[w]ords alone could constitute criminal conduct within the terms of the statute. Words can be used to encourage, incite, procure, and even assist." Id. at 786. The Court also held that the evidence in Williams' case was not enough to support the principal instruction as there was no evidence that she commanded or impelled the shooter to commit the murder or assisted or encouraged the shooter as the crime unfolded. Id. at 787.

#### Why Walker Does Not Conflict with Williams

The First District's opinion in Walker does not expressly and directly conflict with the First District's decision in Williams as cited by Petitioner. For this Court to accept jurisdiction, 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). Accord, Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986) (rejected "inherent" or "implied" conflict; dismissed petition).

In the instant case, Petitioner's argument is based around the facts as applied to the law in Petitioner's case. Petitioner argues that her involvement

in the victim's shooting was even less than the defendant's in Williams. (PJB. 9-10). Petitioner bases her conclusions entirely around her own self-serving testimony at trial and does not take into consideration the testimony of other witnesses. (PJB. 7-8). Petitioner fails to satisfy the requirements of jurisdiction.

To satisfy the constitutional requirements for jurisdiction, the First District's decision must expressly conflict with the decision of another District Court of appeal on the same issue of law. As stated above, the proper remedy for intradistrict conflict is a rehearing en blanc. Even if the case is still considered for jurisdiction, the First District's decisions in Walker and Williams do not conflict with each other on an issue of the law. Walker stands for the same proposition as Williams. The common law understanding of principals helps inform the courts' understanding of section 777.011, but it does not define it. In fact, the Walker decision cites to Williams when addressing this point. Petitioner's argument is based on her interpretation of how the evidence was applied in the two cases, not that the cases differed on the same issue of law. Because there is no conflict in the four corners of the opinion that expressly contracts a decision in another district, this Court must dismiss for lack of jurisdiction.

### No Certified Question of Great Public Importance

The First DCA did not certify a question of great public importance in this case. Article V, § 3(b)(4) of the Florida Constitution grants jurisdiction on an issue of great public importance only when the lower court "passes upon a question certified by it to be of great public importance." Because no question was certified, there is no jurisdiction on this basis.

### CONCLUSION

Because Petitioner has not established a basis for this Court to exercise its discretionary jurisdiction, the State respectfully requests that this Honorable Court dismiss this case for lack of jurisdiction.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically via the Florida Courts E-Filing Portal on October 25, 2021 and was serviced the same day via the E-Filing Portal on counsel for petitioner Philip J. Massa, Esq., philip@philipmassa.com.

Respectfully submitted, served and certified,

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CERTIFICATE OF COMPLIANCE

I hereby certify that based on the “word count” feature in Microsoft Word the foregoing contains 1978 words, pursuant to Florida Rule of Appellate Procedure 9.045(e).

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