IN THE

SUPREME COURT OF FLORIDA

WILLIE PERRY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO.
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
_____	)	

PETITIONER'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the defendant in the Circuit Court of the Seventeenth Judicial Circuit, In and For Broward County, and the appellant in the Fourth District Court of Appeal. Respondent was the prosecution and appellee in the lower courts. In this brief the parties will be referred to as they appear before the Court.

STATEMENT OF THE CASE AND FACTS

A jury found petitioner guilty of resisting an officer with violence. *Perry v. State,* 846 So. 2d 584, 586 (Fla. 4th DCA 2003).[1] Before the district court petitioner argued that the trial court should have granted his motion for a judgment of acquittal because "the state failed to prove that the deputies were in the 'lawful execution of any legal duty' in that it presented no proof that the strip search was performed in compliance with section 901.211(5), *Florida Statutes* (1997)." *Id.* at 587.[2] Respondent countered that even if the strip search was not lawfully performed, section 776.051(1), *Florida Statutes* (1997)[3], prohibits one subject to an officer's unlawful

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[1] The facts set-out in the district court opinion reflect that petitioner, after being arrested for possessing cocaine, was transported to the Broward County jail where he was subjected to a strip search. Petitioner refused to follow directions for an anal cavity search, yelling and vehemently protesting any inspection of his anal area. When the intake deputies attempted to handcuff him, petitioner fell to the ground, kicking his feet in the direction of the deputies and throwing his hands up. During the melee, petitioner struck one deputy in the face with a closed fist and kicked another in the legs. 846 So. 2d at 586.

[2] The elements of resisting on officer with violence are: (1)knowingly resisting, obstructing, or opposing a law enforcement officer, (2) in the lawful execution of any legal duty, (3) by offering to do violence to his person. *State v. Henriquez,* 485 So. 2d 414 (Fla. 1986); § 843.01, *Fla. Stat.* (1997).

[3] Section 776.051(1) reads:

> A person is not justified in the use of

performance of a legal duty from resisting the officer with violence. *Id.* Although petitioner agreed that a person may not use force to resist an unlawful arrest, he argued that the prohibition found in section 776.051(1) is limited to arrests and does not apply when an officer unlawfully engages in some other duty, such as a detention. *Id.*[4] The district court recognized that petitioner was charged with resisting detention at the county jail, not with resisting an arrest, but rejected his argument stating:

> We disagree with appellant's argument that the rule prohibiting the use of force against a known police officer is limited to an arrest situation. Rather, courts have extended it to apply to illegal stops, searches, and detentions.

Id.

In so holding, the district court relied upon its previous decision in *Harris v. State,* 801 So. 2d 321 (Fla. 4th DCA 2001) *rev. granted,* 826 So. 2d 992 (Fla. 2002) and recognized the

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> force to resist an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer.

[4] Relying upon section 776.051(1), a number of courts have determined that when a defendant violently resists an arrest, the state need not prove the lawfulness of the arrest. Petitioner's argument is not that he has a right to resist an unlawful detention with violence, but that when a detention, rather than an arrest, is the legal duty resisted, the state must prove it was executed in a lawful manner.

conflicting authority of *Taylor v. State,* 740 So. 2d 89 (Fla. 1st DCA 1999). *Id.* at 587-588.[5]

Asserting a conflict in decisions, petitioner filed a timely notice of intent to invoke the discretionary jurisdiction of this Court. This jurisdictional brief follows.

[5] Based upon its holding, the district court did not decide whether the strip search was lawfully conducted. 846 So. 2d at 589 n.2.

SUMMARY OF THE ARGUMENT

POINT ON APPEAL

In *Perry v. State,* 846 So. 2d 584 (Fla. 4th DCA 2003) the Fourth District Court of Appeal, relying upon its previous holding in *Harris v. State,* 801 So. 2d 321 (Fla. 4th DCA 2001) *rev. granted,* 826 So. 2d 992 (Fla. 2002), held that section 776.051(1), *Florida Statutes* (1997), which prohibits the use of force to resist an arrest, even one that is unlawful, applies to detentions, making it unnecessary for the state to prove the lawfulness of a detention in a prosecution for resisting the detaining officer with violence. The First District Court of Appeal, in *Taylor v. State,* 740 So. 2d 89 (Fla. 1st DCA 1999), held that section 776.051(1) is limited to arrests, making it necessary for the state to prove the lawfulness of the duty, other than an arrest, that a defendant is charged with violently resisting. *Perry* is in express and direct conflict with *Taylor* on the same question of law and, as a result, this Court can exercise its discretionary jurisdiction to review the decision in *Perry.* Because the conflict will result in similarly situated defendant's being treated differently, based upon the geographical location in which their alleged crimes are committed, this Court should exercise its discretionary jurisdiction and bring uniformity to the law.

ARGUMENT

POINT ON APPEAL

THIS COURT HAS JURISDICTION TO REVIEW *PERRY v. STATE*, 846 So. 2d 584 (Fla. 4th DCA 2003), WHERE THE DECISION RENDERED IS IN EXPRESS AND DIRECT CONFLICT WITH THAT OF ANOTHER DISTRICT COURT OF APPEAL ON THE SAME QUESTION OF LAW.

Article V, § 3(b)(3) of the *Florida Constitution* vests this Court with jurisdiction to hear appeals in criminal cases as follows:

> (3) May review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or the supreme court on the same question of law.

accord Fla. R. App. P. 9.030(a)(2)(A)(iv).

In *Nielson v. City of Sarasota*, 117 So. 2d 731 (Fla. 1960), this Court discussed "conflict jurisdiction" stating:

> the principal situation justifying the invocation of our jurisdiction to review decisions of Courts of Appeal because of alleged conflict are, (1) the announcement of a rule of law which conflicts with a rule previously announced by this Court, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same controlling facts as a case disposed of by this Court.

Id. at 734; *accord Mancini v. State*, 312 So. 2d 732, 733 (Fla. 1975). "The constitutional standard is whether the decision of the District Court on its face collides with a prior decision of this Court, or another District Court, on the same point of law

so as to create an inconsistency or conflict among precedents." *Kincaid v. World Insurance Co.*, 157 So. 2d 517, 518 (Fla. 1963).

In *Taylor v. State,* 740 So. 2d 89 (Fla. 1st DCA 1999), where the defendant was convicted of battery on a law enforcement officer and resisting an officer with violence, the district court reversed both convictions because the evidence failed to establish that the officer-victim was engaged in a lawful duty when the alleged offenses occurred. The evidence introduced during Taylor's trial established that a deputy sheriff, investigating a noise complaint, entered Taylor's house, without invitation or probable cause to arrest him, and engaged in a physical struggle with Taylor resulting in the battery and resisting charges. *Id.* at 90. Taylor moved for a judgment of acquittal arguing that the deputy was not engaged in a lawful duty; the state countered that the illegality of the entry into Taylor's home did not justify his use of force against the deputy. *Id.* Although recognizing section 776.051(1), *Florida Statutes*, which makes it unlawful to resist an arrest even if the arrest is unlawful, the First District determined that it did not apply in the case before it, "because the statute is limited by its terms to a situation in which the defendant has used force to 'resist an arrest.'" *Id.* at 91. Noting that Taylor was not accused of resisting an arrest, the court stated, "[i]f the defendant is charged under section 843.01 with the

crime of resisting or opposing an officer in the performance of some other duty, the state must prove that the duty was lawful." *Id.*

In *Perry v. State,* 846 So. 2d 584 (Fla. 4th DCA 2003) the Fourth District Court of Appeal disagreed with the rule announced by the First District in *Taylor,* holding that section 776.051(1) applies not only to arrests, but also to stops, searches, and detentions. *Id.* at 587-588. The rule announced in *Perry* is in express and direct conflict with *Taylor* on the same question of law. In reaching its decision, the Fourth District relied upon its previous holding in *Harris v. State,* 801 So. 2d 321 (Fla. 4th DCA 2001) *rev. granted,* 826 So. 2d 992 (Fla. 2002) for the proposition that section 776.051(1) is not limited to arrests, but applies to stops, searches, and detentions. This Court accepted jurisdiction in *Harris* based upon conflict with *Taylor.* Conflict jurisdiction exists not only because *Perry* is in express and direct conflict with *Taylor*, but also because *Perry* relied upon *Harris,* a case pending before this Court. *See Jollie v. State,* 405 So. 2d 418 (Fla. 1981). Conflict jurisdiction having been established, this Court can exercise its discretionary jurisdiction to review the district court's opinion.

Based upon the conflict between the Fourth and First

Districts, similarly situated defendant's are being treated differently based upon the geographical location in which their alleged offenses are committed. Accordingly, this Court should exercise its discretionary jurisdiction to review *Perry* and bring uniformity to the law.

CONCLUSION

Because express and direct conflict has been shown, this Court should grant the petition for discretionary review and order briefing on the merits or, in the alternative, stay the proceedings pending a decision in *Harris.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Ms. Claudine M. LaFrance, Assistant Attorney General, 1515 North Flagler Drive, Ninth Floor, West Palm Beach, Florida 33401 this ____ day of July, 2003.

Attorney for petitioner

CERTIFICATE OF FONT SIZE

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, petitioner hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

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Attorney for petitioner