

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC03-

STATE OF FLORIDA,

Petitioner,

vs.

ARTHUR FLORIDA,

Respondent.

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Respondent, Arthur Florida, was convicted on counts of armed burglary, robbery with a firearm, armed sexual battery, armed kidnaping, attempted sexual battery, aggravated battery of a law enforcement officer, attempted second degree murder with a firearm, attempted aggravated battery of a law enforcement officer, attempted aggravated battery, resisting an officer with violence, shooting within a dwelling, and armed burglary with a dangerous weapon. Respondent took a direct appeal to the Fourth District Court of Appeal which appeal was per curiam affirmed without opinion in Florida v. State, 701 So. 2d 881 (Fla. 4th DCA 1997).

The present case arises from the summary denial of a motion filed pursuant to Fla. R. Crim. P. 3.850 and the direct appeal to the Fourth District Court of Appeal. Florida v. State, 28 Fla. L. Weekly 1611(Fla. 4th DCA July 9, 2003) In the opinion the Fourth District stated the relevant facts as follows.

In ground three, appellant alleged that his convictions for aggravated battery of a law enforcement officer in count six and attempted second degree murder with a firearm in count seven violated double jeopardy as the crimes involved the same victim and same act. See Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932), codified in § 775.021(4), Fla. Stat. (1995); Johnson v. State, 744 So.2d 1221, 1221 (Fla. 4th DCA 1999); Gresham v. State, 725 So.2d 419, 420 (Fla. 4th DCA 1999). We have held that where a defendant kills a single victim with a series of murderous blows, it is

a violation of due process to convict on both aggravated battery and second degree murder. See Campbell-Eley v. State, 718 So.2d 327, 329 (Fla. 4th DCA 1998).

In this case, the record before us indicates that appellant was convicted of both aggravated battery of a law enforcement officer and attempted second degree murder for shooting at the officer. We acknowledge that our decision in this case expressly conflicts with Schirmer v. State, 837 So.2d 587, 589 (Fla. 5th DCA 2003), in which the fifth district concluded that double jeopardy did not bar dual convictions for aggravated battery with a deadly weapon and attempted second degree murder where both criminal charges related to the same act--the stabbing of the victim with a knife.

SUMMARY OF THE ARGUMENT

This Court should accept jurisdiction to review the instant case because the opinion of the Fourth District Court of Appeal expressly acknowledges conflict with Schirmer v. State, 837 So. 2d 587 (Fla. 5th DCA 2003).

ARGUMENT

**THE DECISION OF THE FOURTH DISTRICT COURT OF
APPEAL IN THE INSTANT CASE IS IN CONFLICT
WITH SCHIRMER V. STATE, 837 So. 2d 587
(Fla. 5th DCA 2003)**

Petitioner contends that the Fourth District's decision in Florida v. State, 28 Fla. L. Weekly D1611 (Fla. 4th DCA July 9, 2003) is in conflict with Schirmer v. State, 837 So. 2d 587 (Fla. 5th DCA 2003). Indeed, the Fourth District stated the following in the opinion: "We acknowledge that our decision in this case expressly conflicts with Schirmer v. State, 837 So. 2d 587, 589 (Fla. 5th DCA 2003), in which the fifth district concluded that double jeopardy did not bar dual convictions for aggravated battery with a deadly weapon and attempted second degree murder where both criminal charges related to the same act--the stabbing of the victim with a knife."

In order for two decisions to be in express and direct conflict for the purpose of invoking this Court's discretionary jurisdiction under Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), the decisions should speak to the same point of law, in factual contexts of sufficient similarity to permit

the inference that the result in each case would have been different had the deciding court employed the reasoning of the other court as mandatory authority. See generally Jenkins v. State, 385 So. 2d 1356, 1359 (Fla. 1980); Mancini v. State, 312 So. 2d 732 (Fla. 1975). The conflict must be of such magnitude that if both decisions were rendered by the same court, the later decision would have the effect of overruling the earlier decision. Kyle v. Kyle, 139 So. 2d 885, 887 (Fla. 1962).

The Fourth District clearly pointed out on the face of the opinion why it's opinion is in direct conflict with the decision of the Fifth District in Schirmer v. State, 837 So. 2d 587 (Fla. 5th DCA 2003). In Florida the Fourth District Court of Appeal held that double jeopardy prohibited convictions for aggravated battery of a law enforcement officer and attempted second degree murder with a firearm where "the crimes involved the same victim and the same act." The Fourth District then pointed out that in Schirmer, the Fifth District reached the opposite conclusion. The Fourth District stated: "the fifth district concluded that double jeopardy did not bar dual convictions for aggravated battery with a deadly weapon and attempted second degree murder where both criminal charges related to the same act--the stabbing of the victim with a knife." The Fourth District clearly stated and explained that

the decisions are in express conflict with one another. Under Florida convictions for aggravated battery and attempted second degree murder are prohibited for a single act of shooting at a police officer. In contrast, under Schrimer, one can be convicted of aggravated battery and attempted second degree murder for "stabbing the victim with a knife, one time."

The decision of the Fourth District Court of Appeal is in conflict with Schirmer v. State, 837 So. 2d 587, 589 (Fla. 5th DCA 2003). This court should accept jurisdiction.

CONCLUSION

Wherefore, based on the foregoing arguments and the authorities cited therein, The State of Florida respectfully requests this Court accept jurisdiction in this case.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Petitioner's Brief of Jurisdiction" has been furnished by mail to: Arthur Florida, DC no. 096639, Everglades Correctional Inst., Box 94900, Miami, FL. 33194-9000, this _____day of August, 2003.

OF COUNSEL

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New type.

Don M. Rogers

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PETITIONER'S APPENDIX

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