

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

Case No. SC

Fifth DCA Case No. 5D01-3560

RAMON ALVEREZ, ET AL.,

Respondent.

-----/

ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

**JURISDICTIONAL BRIEF OF PETITIONER**

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## STATEMENT OF THE CASE AND FACTS

This case concerns what is required to support a circuit judge's determination of probable cause to believe that an individual is a sexually violent predator. In the instant case, the Fifth District Court of Appeal noted "[t]he dissonance between the views of these two courts," the Second District Court of Appeal and the Fourth District Court of Appeal, in regard to constitutionally adequate support for a probable cause determination. *Alvarez v. State*, 2003 WL 327500 1 (Fla. 5<sup>th</sup> DCA Feb. 14, 2003). "[T]he Fourth District rejected the [S]econd District's suggestion that the state attorney could attest to the facts in order to satisfy due process." *Id.* The Fifth District preferred "the Fourth District's approach, that the evaluation of at least one of the health care professionals, on whose report the court's 'probable cause' decision-making will be based, should be either in affidavit form or verified." *Id.* at 2.

In *Alvarez*, several cases were involved. The District Court concluded that "[i]n all of the cases before us, the petitions and the reports of the multi-disciplinary teams have been amended to add an oath, . . . and the amendments appear . . . adequate to cure the formal defects." *Id.* Therefore, the court denied the petitions. *Id.*

Petitioner, the State of Florida, filed a Notice to Invoke Discretionary Jurisdiction of this Honorable Court in the Fifth District Court of Appeal on April 24, 2003 based upon direct and express conflict with another district court of appeal. Pursuant to Florida Rule of Appellate Procedure 9.120(d), the State's brief on jurisdiction follows.

SUMMARY OF ARGUMENT

This Court should accept jurisdiction of this case because there is an express and direct conflict with another district court of appeal on the same question of law.

ARGUMENT

THIS COURT SHOULD ACCEPT JURISDICTION IN THIS CASE BECAUSE THE FIFTH DISTRICT COURT OF APPEAL INCORRECTLY HELD THAT A RYCE ACT COMMITMENT PETITION MUST BE SUPPORTED BY AN AFFIDAVIT OR VERIFICATION FROM A MENTAL HEALTH PROFESSIONAL WHO HAS EVALUATED THE NAMED RESPONDENT, AND THAT HOLDING DIRECTLY AND EXPRESSLY CONFLICTS WITH A PRIOR HOLDING OF THE SECOND DISTRICT COURT OF APPEAL.

The decision of the Fifth District Court of Appeal in the instant case, *Alvarez v. State*, 2003 WL 327500 1 (Fla. 5<sup>th</sup> DCA Feb. 14, 2003), expressly and directly conflicts with the decision of the Second District Court of Appeal in *Melvin v. State*, 804 So. 2d 460 (Fla. 2d DCA 2001), on the same question of law. The State respectfully contends that the Fifth District Court of Appeal's decision in this case is wrong. Thus, the State asks this Honorable Court to exercise its discretionary jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), and after briefing on the merits of the issue, to approve the decision reached in *Melvin* and quash the decision in *Alvarez*.

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. 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). The State contends that the express and direct conflict between the holding in *Melvin* and that in *Alvarez* is apparent on the four corners of the decisions.

In *Melvin*, the district court concluded that the probable cause "determination must be founded on sworn proof." 804 So. 2d at 463. That proof must be "in the form of a verified petition or affidavit." *Id.* Thus, the State Attorney could attest to the facts in a verified petition. *See id.*; *Kephart v. Kearney*, 826 So. 2d 517, 519 (Fla. 4<sup>th</sup> DCA 2002)[rejecting *Melvin* to the extent it "would permit the ex parte probable cause determination to be made on the basis of a verified petition . . ."]. *See also Alvarez*, 2003 WL 327500 at 1["Fourth District rejected the [S]econd District's suggestion that the state attorney could attest to the facts . . ."].

Moreover, in *Kephart*, the Fourth District certified conflict with *Melvin* because *Melvin* permitted a verified petition by a State Attorney to meet the requirement that the ex parte probable cause determination be supported by sworn facts. 826 So. 2d at 518. In *Alvarez*, the Fifth District recognized "[t]he dissonance" between the *Melvin* decision and that in *Kephart*. 2003 WL 327500 at 1. The *Alvarez* court rejected the *Melvin*



approach and elected to follow "the Fourth District's approach, that the evaluation of at least one of the health care professionals . . . be either in affidavit form or verified." *Id.* at 2. Thus, just as the *Kephart* decision was in conflict with *Melvin*, so too is the *Alvarez* decision which followed *Kephart* on the point of dissonance in conflict with *Melvin*.

The State points out that the Fourth District's *Kephart* decision is pending in this Court pursuant to the *Kephart* court's certification of a conflict with *Melvin*. See *Regier v. Kephart*, No. SC02-2280. Here, as in *Kephart*, the State contends that the requirement of an oath is well satisfied by a verified petition, signed by an assistant state attorney prosecuting the civil commitment petition. There are compelling reasons for not requiring that the oath be that of one of the mental health professionals who evaluated the individual. See No. SC02-2280, Initial Brief at 14-28. Moreover, it has long been the law that probable cause determinations may be based on hearsay with no requirement of personal knowledge. See, e.g., *State v. Wolff*, 310 So. 2d 729, 733 (Fla. 1975)[probable cause for search warrant may be established by reliable hearsay]; *State v. Peterson*, 739 So. 2d 561, 564-65 (Fla. 1999), *cert. denied*, 531 U.S. 831 (2000)[personal knowledge of affiant not required in

affidavit supporting search warrant].

Due to the importance of the instant issue, this Honorable Court should exercise its discretionary jurisdiction and resolve the direct conflict between the decision below and the holding in *Melvin* that a verified petition signed under oath by the prosecutor is sufficient to satisfy due process requirements in civil commitment proceedings under the *Ryce* Act.

CONCLUSION

Based on the foregoing argument and authority, the State respectfully requests that this Court accept jurisdiction herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the above and foregoing brief on jurisdiction has been furnished to John M. Selden, Assistant Public Defender, Attorney for Respondent, 112 Orange Ave.,

Daytona Beach, FL 32114, via the Appellate Public Defender's basket at the Fifth District Court of Appeal, on this \_\_\_\_\_ day of April, 2003.

CERTIFICATE OF COMPLIANCE

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

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APPENDIX

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