

IN THE SUPREME COURT OF FLORIDA

NORRIS RIGGS, :

Petitioner, :

vs.

STATE OF FLORIDA, : Case No.

Respondent. :

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
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TENTH JUDICIAL CIRCUIT

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STATEMENT REGARDING TYPE

Petitioner's Brief on Jurisdiction is prepared in Courier New 12 point type.

STATEMENT OF THE FACTS AND OF THE CASE

In the early morning hours of January 2, 2003, Deputy Timothy Strickland of the Polk County Sheriff's office was called to assist another deputy because a 4 year old girl had been seen walking around Heartland Circle, in Mulberry at 3:00 in the morning. He met one of his supervisors at the apartment complex in question. They decided to check the complex to find from which apartment the little girl had come (R 24). He went to the building in which apartment 1424 was located, on the second of three floors. He found the door to that apartment to be "shut, but not latched" (R 25). When he first came to the door of Appellee's apartment, although the door was slightly ajar by 1 or 2 centimeters, he could not see anything in the apartment (R 31). He banged on the door a number of times and yelled "Polk County Sheriff's Office". Neighbors came out of their apartments, but they received no response from the apartment at which they were banging (R 25). He and another deputy entered the apartment for the stated reason they were concerned about the safety of the child's caregiver, although they did not know at that point the

child had come from that apartment (R 26). The deputies knew the child in question was safe in the custody of the Sheriff's office when they entered the apartment (R 31). The child was found a couple of hundred feet from the apartment entered (R 30). Although Deputy Strickland said the door to Appellee's apartment was slightly ajar, he did not say that was the only apartment in the complex with a door slightly ajar (R 32 and 26). Neither did Deputy Costine, who was with Deputy Strickland, state Appellee's apartment was the only one in the complex with a door ajar (R 34). Deputy Strickland continued yelling while in the apartment, until they found the occupant. He saw light coming from behind a closed door in the apartment, and walked toward it (R 26). In so doing, he found the marijuana plants and equipment that is the subject of the charge (R 27). He also found Petitioner, and a "young lady". The young woman was the care giver of the child that had been found outside (R 28).

The trial court granted a motion to suppress (R 16-19; R 43; R 48). The state appealed (R 44). The Second District Court of Appeal reversed, finding the deputies entered Petitioner's apartment out of legitimate concern for the well being of the occupants. In so doing, the

Court acknowledged an express conflict with the First District in Eason v. State, 546 So. 2nd 57 (Fla. 1st DCA 1989), and accepted the reasoning of the dissent in that opinion. This petition followed.

ISSUE

Does the Second District's Opinion in State v. Norris, Case No. 2D03-2961 (Fla. 2nd DCA December 29, 2004) expressly conflict with a decision of another district?

SUMMARY OF ARGUMENT

The Second district's opinion expressly conflicts with a decision of the First District, in a case involving virtually identical facts.

ARGUMENT

Fla.R.A.P. 9.030(a)(2)A(iv) provides for the discretionary review by this Court of any decision of a district court that expressly and directly conflicts with a decision of another district court. Nielsen v. City of Sarasota, 117 So. 2nd 731 (Fla. 1960) held that if a decision announced a rule of law, which conflicts with a previously announced rule of law, or applies a rule of law to essentially similar facts and reaches a different result from a previous decision, then the decisions are in

conflict. Clearly, under that standard, the case for which review is sought is in express and direct conflict with that of the First District in Eason v. State, 546 So. 2d 57 (Fla. 1st DCA 1989). The facts in Eason are more than "essentially" the same as those in the instant case, they are barely distinguishable. The conflict was acknowledged by the Second District.

CONCLUSION

This Court should accept review of the decision of the Second District to resolve the conflict with the opinion of the First District in Eason v. State, 546 So. 2d 57 (Fla. 1st DCA 1989).

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the Office of the Attorney General at 3507 East Frontage Rd. Ste. 200 Tampa, Fl. 33607 on this the _____ day of January, 2005 by regular U.S. Mail.

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CC: Petitioner

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APPENDIX