

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC 07-1700

(4th DCA 4D06-2039)

DAVID D. DEREN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

BILL McCOLLUM

Attorney General
Tallahassee, Florida

CELIA TERENCE

Assistant Attorney General
Bureau Chief, West Palm Beach
Florida Bar No. 656879

LAURA FISHER ZIBURA

Assistant Attorney General
Florida Bar No. 0337020
1515 North Flagler Drive
9th Floor
West Palm Beach, Florida 33401
Telephone: (561) 837-5000
Fax: (561) 837-5099

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT iii

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 3

**THE DECISION OF THE FOURTH DISTRICT COURT
DOES NOT EXPRESSLY AND DIRECTLY CONFLICT
WITH A DECISION OF A DISTRICT COURT OR THE
SUPREME COURT**

CONCLUSION 6

CERTIFICATE OF SERVICE 7

CERTIFICATE OF TYPE SIZE AND STYLE 7

TABLE OF AUTHORITIES

Federal Cases

Brady v. Maryland v. State,
373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 215 (1963)..... 6

State Cases

Deren v. State,
962 So. 2d 385 (Fla. 4th DCA 2007) 3-6

Floyd v. State,
902 So. 2d 775 (Fla. 2005) 3

Freeman v. State,
761 So. 2d 1055 (Fla. 2000) 4

Rogers v. State,
782 So. 2d 373 (Fla. 2001) 3

Young v. State,
739 So. 2d 553 (Fla. 2001) 3

OTHER AUTHORITIES

Florida Rule of Appellate Procedure 9.030(a)(2)(iv) 3

PRELIMINARY STATEMENT

Petitioner was the Defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida. Petitioner was the Appellant and Respondent was the Appellee in the Fourth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

In this brief, the symbol "A" will be used to denote the appendix attached hereto.

All emphasis in this brief is supplied by Respondent unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The only relevant facts to a determination of this Court's discretionary jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution are those set forth in the appellate opinion sought to be reviewed:

Deren v. State, 962 So. 2d 385 (Fla. 4th DCA 2007).

(See Petitioner's Appendix)

SUMMARY OF THE ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF THE SUPREME COURT.

Appellant seeks this Court's review under Florida Rule of Appellate Procedure, Rule 9.030(a)(2)(iv) which provides that discretionary jurisdiction of the supreme court may be sought to review, arguing that the opinion of Fourth District Court of Appeals expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law. The State maintains that the cases cited by Appellant are factually distinguishable and do not create a direct or express conflict with the Fourth District's Opinion in this case.

ARGUMENT

**THE DECISION OF THE FOURTH DISTRICT COURT DOES
NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A
DECISION OF ANY DISTRICT COURT OR THE SUPREME
COURT.**

Appellant seeks this Court's review under Florida Rule of Appellate Procedure, Rule 9.030(a)(2)(iv) which provides that discretionary jurisdiction of the supreme court may be sought to review arguing the opinion expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law. The State argues that the Fourth's District's decision in this case does not expressly and directly conflict with a decision from any district court of appeal or of the Supreme Court on the same question of law. Therefore, discretionary jurisdiction should be denied.

Appellant claims that the Fourth District's opinion conflicts with Floyd v. State, 902 So. 2d 775 (Fla. 2005), Rogers v. State, 782 So. 2d 373 (Fla. 2001); and Young v. State, 739 So. 2d 553 (Fla. 2001). Appellant argues that these decisions hold that the suppression of evidence in violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct.1194, 10 L.Ed.215 (1963), requires the Court to undertake an analysis of the nature and the weight of the undisclosed evidence. These cases are factually distinguishable from the case at bar, in that

Floyd, Rogers, and Young, the alleged Brady material was exculpatory witness statements taken by the state attorney, which defendant would not be able to obtain with any reasonable diligence.

In the case at bar, the alleged Brady material was a letter from the victim's worker's compensation carrier, compiling the amount of benefits paid to date and inquiring about restitution. Daren v. State, 962 So. 2d 385 (Fla. 2007). The Fourth District found that because Appellant was provided with the victim's medical records, he had equal access to this information and could have obtained the victim's medical bills with the exercise of reasonable diligence. Daren at 387. The Fourth District relied on this Court's opinion in Freeman v. State, 761 So. 2d 1055,1062 (Fla. 2000), which held that there is no Brady violation when the information is equally accessible to the defense or when the defense could have obtained the information through the exercise of reasonable diligence. The Fourth District found:

We find that while the State erred in failing to provide the letter to defense counsel, this failure did not result in a Brady violation requiring reversal. First, although Deren did not know the total of Fitzpatrick's insurance payments, defense counsel admitted at trial that he was aware there was a worker's compensation claim. While defense counsel cross-examined Fitzpatrick about the claim, he did not question Fitzpatrick about the amount of money he received or the value of his benefits.

Second, Deren possessed all of Fitzpatrick's medical records. These records, though they do not contain billing information, give an accurate portrayal of what treatments Fitzpatrick received. Deren's counsel admitted he did not depose any doctors on the amount of the treatments' costs or pursue the matter any further. We find Deren should reasonably have known that, as Fitzpatrick received his injuries while at work, he mostly likely received worker's compensation.

Daren at 387.

Based on the foregoing arguments, the State maintains that Appellant has failed to show that any conflict exists with another district court of this Honorable Court. Therefore his Motion for Discretionary Jurisdiction should be denied.

CONCLUSION

WHEREFORE, based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests this Court DENY Petitioner's request for discretionary review over the instant cause.

Respectfully submitted,

BILL MCCOLLUM
Attorney General
Tallahassee, Florida

CELIA TERENCE
Assistant Attorney General
Bureau Chief, West Palm Beach
Florida Bar No. 656879

LAURA FISHER ZIBURA
Assistant Attorney General
Florida Bar No. 0337020
1515 North Flagler Drive
9th Floor
West Palm Beach, FL 33401
(561) 837-5000
Fax (561) 837-5099

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Law Offices of Paul Morris, P.A., 9130 South Dadeland Boulevard, Suite #1528, Miami, Florida 331546 and Robert Watson, Watson and Steele, 3601 SE Ocean Boulevard, Suite #004, Stuart, Florida 34996 on this 12 day of October, 2007.

Of Counsel

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with Florida Rule of Appellate Procedure 9.210, counsel for the State of Florida, hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not proportionately spaced.

LAURA FISHER ZIBURA
Assistant Attorney General
Florida Bar No. 0337020

