

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-2256

**ELI ENRIQUE VALDES,**

Petitioner,

-vs-

**STATE OF FLORIDA,**

Respondent.

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**BRIEF OF PETITIONER ON JURISDICTION**

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ON PETITION FOR DISCRETIONARY REVIEW  
FROM THE DISTRICT COURT OF APPEAL  
OF FLORIDA, THIRD DISTRICT

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**INTRODUCTION**

This is a petition for discretionary review of the decision of the Third District Court of Appeal in *Valdes v. State*, 32 Fla. L. Weekly D2693 (Fla. 3d DCA Nov. 14, 2007), on the grounds of express and direct conflict of decisions. In this brief of petitioner on jurisdiction, all references are to the appendix attached to this brief, paginated separately and identified as "A," followed by the page number(s).

## STATEMENT OF THE CASE AND FACTS

Eli Enrique Valdes was convicted of three counts of attempted second degree murder, one count of discharging a firearm from a vehicle in violation of section 790.15(2), Florida Statutes (2003), and one count of shooting into an occupied vehicle in violation of section 790.19, Florida Statutes (2003) (A. 2). He was sentenced to serve thirty years in state prison (A. 14).

On appeal, Mr. Valdes maintained that his dual convictions for shooting from a vehicle and shooting into a vehicle arising from the same incident violate double jeopardy (A. 4). Valdes relied on the case of *Lopez-Vazquez v. State*, 931 So. 2d 231 (Fla. 5<sup>th</sup> DCA 2006), where the Fifth District Court of Appeal addressed this same issue (A. 9). The Fifth District held that these offenses both address the same primary evil, the endangerment of the safety of those who may be struck by the discharge of a firearm, and share the same core offense of battery (A. 9). The court thus concluded that convictions under both sections 790.15(2) and 790.19, Florida Statutes (2005), resulting from one criminal episode violate double jeopardy principles. (A. 9).

The Third District Court of Appeal rejected the *Lopez-Vazquez* holding, and certified direct conflict with the decision of the Fifth District (A. 9, 15). The Third District reasoned as follows:

A thorough examination of sections 790.15 and 790.19 reveals completely different core offenses intending to punish different evils. The core offense of section 790.15 is the discharge of a firearm in public. The statute . . .

**increases the penalty** if the offender discharges the firearm while in a vehicle within 1000 feet of another person. The core offense cannot be a battery, as the Fifth District suggests in *Lopez Vazquez*, as there is no requirement that the discharge of the firearm result in an injury or that someone be struck by the projectile . . . The core offense, therefore, is the discharge of the firearm into the public domain, not battery, and the primary evil is the potential for someone in the public domain to be injured or killed without any malice or intent to inflict bodily harm. In contrast, the core offense of section 790.19 is the shooting or throwing of any deadly missile into or at a building or vehicle with malice . . . What the Legislature is attempting to protect in enacting section 790.19 is the safety and peace of mind of people in this state within their homes, vehicles, and other buildings. The evil that section 790.19 punishes is not thoughtless or otherwise innocent conduct, but malicious acts which destroy our sense of safety within structures and vehicles.

(A. 11-13). Thus, the Third District concluded that dual convictions for shooting from a vehicle under section 790.15, and shooting into a vehicle under 790.19 do not violate double jeopardy because the former “punishes the discharge of a firearm in public,” while the latter protects persons in their homes or vehicles and punishes “the intent to injure or cause fear.” (A. 14).

Notice of invocation of this Court's discretionary jurisdiction was filed on December 3, 2007.

## SUMMARY OF ARGUMENT

The Third District Court of Appeal correctly certified its decision in this case to be in direct conflict with the Fifth District's decision in *Lopez-Vazquez v. State*, 931 So. 2d 231 (Fla. 5<sup>th</sup> DCA 2006). The *Lopez-Vazquez* court held that dual convictions for shooting from a vehicle in violation of section 790.15(2), Florida Statutes (2005), and shooting into an occupied vehicle under section 790.19, Florida Statutes (2005), arising from the same incident violate double jeopardy. The Third District expressly disagreed and held that convictions for these same statutory offenses do not violate double jeopardy (A. 9, 14). It is respectfully submitted that this Court should exercise its discretionary jurisdiction to resolve this conflict between the district courts of appeal.

## ARGUMENT

**THE DECISION OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, IN THE PRESENT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FIFTH DISTRICT IN *Lopez-Vazquez v. State*, 931 So.2d 231 (Fla. 5<sup>th</sup> DCA 2006).**

The Third District Court of Appeal correctly certified its decision in this case to be in direct conflict with *Lopez-Vazquez v. State*, 931 So. 2d 231 (Fla. 5<sup>th</sup> DCA 2006).

The *Lopez-Vazquez* court addressed the same issue raised by Mr. Valdes in this case, and held that dual convictions for shooting from a vehicle in violation of section 790.15(2), Florida Statutes (2005), and shooting into an occupied vehicle under section 790.19, Florida Statutes (2005), arising from the same incident violate double jeopardy. The Third District expressly disagreed and ruled that convictions for these same offenses do not violate double jeopardy (A. 9, 14).

Section 775.021(4), Florida Statutes (2006), provides that convictions for offenses committed in the same criminal episode violate double jeopardy under three circumstances: 1) where the offenses have the same elements, 2) where one or more of the offenses are lesser included crimes subsumed by a greater offense, or 3) where the offenses are degree variants of the same offense. Offenses are considered degree variants of the same core offense where both crimes address the same “primary evil” (A. 8). *See also State v. Paul*, 934 So. 2d 1167, 1175 (Fla. 2006); *Lopez-Vazquez*, 931 So. 2d at 234.

In *Lopez-Vazquez*, the Fifth District Court of Appeals reasoned that the offenses of shooting from a vehicle and shooting into an occupied vehicle are intended to remedy the same primary evil of “endangerment of the safety of those who may be struck by the discharge of a firearm,” and are thus degree variants of the same core offense of battery. *Id.* at 235. The Fifth District concluded that convictions for both these offenses arising from the same episode violate double jeopardy principals.

The Third District rejected the Fifth District’s analysis and certified direct conflict with *Lopez-Vazquez* (A. 9-10, 15). Contrary to the Fifth District, the Third District found that sections 790.15 and 790.19 have different core offenses and intend to punish different evils (A. 11). The Third District specifically disagreed with the Fifth District’s finding that the core offense of section 790.15 is battery, on the ground that this section does not require that discharge of the firearm result in any injury (A. 11). Rather, the Third District held that the core offense of the latter crime is the discharge of the firearm into the public domain, and the primary evil is “the potential for someone in the public domain to be injured or killed without any malice or intent to inflict bodily harm” (A. 12). The Third District then found that the primary evil of section 790.19, shooting or throwing of a deadly missile into a building or vehicle, is not thoughtless or otherwise innocent conduct, but “malicious acts which destroy our sense of safety within structures and vehicles” (A. 12-13). The Third District thus

concluded that convictions for both shooting from a vehicle under section 790.15, and shooting into a vehicle under 790.19 do not violate double jeopardy (A. 14).

As the Third District correctly noted, its decision in this case directly conflicts with the decision of the Fifth District in *Lopez-Vazquez*. Violations of sections 790.15(2) and 790.19 are both second degree felonies, each punishable by up to fifteen (15) years in prison. *See* § 775.082(3)(c), Fla. Stat. (2007). It would be manifestly unjust for defendants in one part of this state to be subject to dual convictions and consecutive sentences for violations of these sections in the same criminal episode, while the very same conduct in other areas of the state does not carry the same potential consequence. It is therefore respectfully submitted that this Court should exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal in this case based on express and direct conflict with the Fifth District.

## CONCLUSION

Based on the foregoing facts, authorities and arguments, petitioner respectfully requests this Court to exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by hand to JILL K. TRAINA, Assistant Attorney General, Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite 650, Miami, Florida 33131, this \_\_\_\_ day of December, 2007.

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MARIA E. LAUREDO  
Assistant Public Defender

**CERTIFICATE OF FONT**

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times New Roman.

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MARIA E. LAUREDO  
Assistant Public Defender