

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. \_\_\_\_\_

(FIFTH DCA CASE NO. 5D07-601)

LUIS ALFREDO LUCIANO,

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

The relevant facts of this case were set forth in the opinion Luciano v. State, 33 Fla. L. Weekly D1555 (Fla. 5th DCA June 13, 2008), as follows:

Appellant raises three points on appeal, only two of which merit discussion. Appellant challenges his convictions for shooting from a vehicle and shooting into an occupied vehicle on double jeopardy grounds. The State concedes that our panel decision in Lopez-Vazquez v. State, 931 So. 2d 231 (Fla. 5th DCA 2006), compels reversal, although the State urges that we recede from this precedent. The State also concedes Appellant's second point -- the lack of evidentiary support for the award of investigative costs.

Accordingly, we remand this cause with instructions that the trial court vacate one of the shooting convictions and the award of investigative costs. Upon remand, the trial court may re-impose such costs upon appropriate motion and proof.

We certify conflict with Valdes v. State, 970 So. 2d 414 (Fla. 3d DCA 2007), rev. granted, 975 So. 2d 430 (Fla. 2008).

AFFIRMED IN PART AND REMANDED; CONFLICT CERTIFIED.

(footnotes were omitted).

On July 11, 2008, the State timely filed its notice to invoke this Court's discretionary jurisdiction.

SUMMARY OF ARGUMENT

The Fifth District Court of Appeal opinion in this case expressly certified conflict with another district court of appeal. Therefore, this Court has jurisdiction of the present case.

ARGUMENT

THIS COURT SHOULD ACCEPT JURISDICTION OF  
THIS CASE BASED UPON THE EXPRESS CERTIFIED  
CONFLICT WITH ANOTHER DISTRICT COURT OF  
APPEAL.

This Court has jurisdiction to review the decision of a district court when that decision "expressly and directly conflicts" with a decision of either this Court or of another district court. Art. V, § 3(b)(3), Fla. Const; see also Florida Rule of Appellate Procedure 9.030(2)(iv). This Court has repeatedly held that 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).

As shown in the attached copy of the Fifth District Court of Appeal's decision, conflict was expressly recognized by the appellate court:

We certify conflict with Valdes v. State, 970 So. 2d 414 (Fla. 3d DCA 2007), rev. granted, 975 So. 2d 430 (Fla. 2008).

AFFIRMED IN PART AND REMANDED; CONFLICT  
CERTIFIED.

Based upon this express conflict, the State asks this Court to accept jurisdiction in this case.

CONCLUSION

Based on the arguments and authorities presented above, the State respectfully prays this Honorable Court accept jurisdiction in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Petitioner's Brief on Jurisdiction has been furnished by delivery via the basket of the Office of the Public Defender at the Fifth District Court of Appeal to the Office of the Public Defender, counsel for Respondent, 444 Seabreeze Blvd., Suite 210, Daytona Beach, FL 32118, this \_\_\_\_\_ day of July 2008.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

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