

IN THE SUPREME COURT OF FLORIDA

JUAN PANTOJA,

Petitioner,

Case No. SC08-1879

v.

STATE OF FLORIDA,

Respondent.

JURISDICTIONAL BRIEF OF RESPONDENT

BILL McCOLLUM
ATTORNEY GENERAL

TRISHA MEGGS PATE
TALLAHASSEE BUREAU CHIEF
CRIMINAL APPEALS
FLORIDA BAR NO. 0045489

GISELLE DENISE LYLEN
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0508012

OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300
(850) 922-6674 (FAX)

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS.....	i
TABLE OF CITATIONS.....	ii
PRELIMINARY STATEMENT.....	1
STATEMENT OF THE CASE AND FACTS.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	3
ISSUE I	3
WHETHER THE FIRST DISTRICT’S OPINION IN PANTOJA V. STATE, 33 Fla. Law Weekly D2114 (Fla. 1 st DCA September 4, 2008), IS IN EXPRESS AND DIRECT CONFLICT WITH THE SECOND DISTRICT’S DECISION IN JAGGERS V. STATE, 536 So. 2d 321 (Fla. 2D DCA 1988)? (Restated).....	3
CONCLUSION.....	6
SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE.....	6
CERTIFICATE OF COMPLIANCE.....	7

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
<u>Ansin v. Thurston,</u> 101 So. 2d 808, 810 (Fla. 1958)	4
<u>Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc.,</u> 498 So.2d 888 (Fla. 1986)	3
<u>Jaggers v. State,</u> 536 So.2d 321 (Fla. 2d DCA 1988)	2-5
<u>Jenkins v. State,</u> 385 So.2d 1356, 1359 (Fla. 1980)	3,4
<u>Pantoja v. State,</u> 33 Fla. Law Weekly D2114 (Fla. 1 st DCA September 4, 2008)	1,3
<u>Reaves v. State,</u> 485 So.2d 829, 830 (Fla. 1986).	3
<u>Stallworth v. Moore,</u> 827 So.2d 974 (Fla. 2002).	4
 <u>FLORIDA STATUTES</u>	
F.S. 985.037.	5
 <u>OTHER</u>	
Fla. R. App. P. 9.210	7
Fla. R. App. P. 9.030(a)(2)(A)(iv)	3
Article V, § 3(b)(3), Fla. Const.	3

PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Juan Pantoja, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The pertinent history and facts are set out in the decision of the lower tribunal, attached in published form as Pantoja. v. State, 33 Fla. Law Weekly D2114 (Fla. 1st DCA September 4, 2008). The Respondent agrees with the Petitioner's procedural history of the case.

SUMMARY OF ARGUMENT

Petitioner asserts that the lower court has certified direct conflict of decision between its opinion entered below and that of the Second District Court of Appeal in Jaggers v. State, 536 So.2d 321 (Fla. 2d DCA 1988). The "four corners" of the DCAs' decisions, reveal that no express and direct conflict with each other on the same point of law exists. Therefore, this Court should decline to exercise jurisdiction.

ARGUMENT

ISSUE I

WHETHER THE FIRST DISTRICT'S OPINION IN PANTOJA V. STATE, 33 Fla. Law Weekly D2114 (Fla. 1st DCA September 4, 2008), IS IN EXPRESS AND DIRECT CONFLICT WITH THE SECOND DISTRICT'S DECISION IN JAGGERS V. STATE, 536 So. 2d 321 (Fla. 2d DCA 1988)? (Restated)

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla. Const. The constitution provides: The supreme court ... [m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So.2d 888, 889 (Fla. 1986)(rejected "inherent" or "implied" conflict; dismissed petition). Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction. Reaves, supra; Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980)("regardless of whether they are accompanied by a

dissenting or concurring opinion"). Thus, conflict cannot be based upon "unelaborated per curiam denials of relief," Stallworth v. Moore, 827 So.2d 974 (Fla. 2002). In addition, it is the "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari." Jenkins, 385 So. 2d at 1359.

In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained: It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

Accordingly, the determination of conflict jurisdiction distills to whether the District Court's decision in this case reached a result opposite to that in Jaggers. In that case, a child witness, other than the victim, who testified as a

Williams Rule witness, had made a prior charge of sexual abuse against her father, leading to a criminal investigation. The witness later recanted the allegation against her father, admitting the falsity of her charge. At trial, the State conceded that the child witness had made a false prior report of abuse. The Jaggers Court found that this evidence should have been admitted based upon a strict statutory analysis of the Florida Evidence Code. In contrast, in this case, Petitioner sought to admit testimony that the child had accused her uncle, T.D., of touching her inappropriately and impeach her with her grandmother and aunt's testimony that the child later recanted. The child, however, testified under oath that she did not recant. T.D.'s mother and sister alleged that she recanted to them, but both of these individuals had a very strong personal interest in the outcome as to T.D. and therefore had an equally strong motive to falsify a recantation. Additionally, the child's statement to the counselor while denying abuse by T.D. was countered by her demeanor while making the statement. Finally, the decision of the court below was driven by a due process and confrontation based analysis.

Therefore, express and direct conflict does not exist, and this Court should decline to exercise its jurisdiction.

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court decline to accept jurisdiction.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Kathleen Stover, Esquire, Assistant Public Defender, Counsel for Petitioner, Leon County Courthouse, Suite 401; 301 South Monroe Street; Tallahassee, Florida 32301, by MAIL on ____ day of October, 2008.

Respectfully submitted and served,

BILL McCOLLUM
ATTORNEY GENERAL

TRISHA MEGGS PATE
Tallahassee Bureau Chief,
Criminal Appeals
Florida Bar No. 0045489

GISELLE DENISE LYLEN
Assistant Attorney General
Florida Bar No. 0508012

Attorneys for State of Florida
Office of the Attorney General
Pl-01, the Capitol
Tallahassee, Fl 32399-1050
(850) 414-3300
(850) 922-6674 (Fax)

[AGO# L08-1-7656]

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

Giselle Denise Lyles
Attorney for State of Florida

IN THE SUPREME COURT OF FLORIDA

JUAN PANTOJA,

Petitioner,

Case No. SC08-1879

v.

STATE OF FLORIDA,

Respondent.

APPENDIX

Pantoja v. State, 33 Fla. Law Weekly D2114 (Fla. 1st DCA
September 4, 2008)