

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC08-2394

LOWER COURT CASE NO.: 2D07-4891

STATE OF FLORIDA,

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,

Appellant/Petitioner,

Vs.

GEORGE F. McLAUGHLIN,

Appellee/Respondent.

RESPONDENT'S JURISDICTIONAL BRIEF

ON REVIEW FROM THE DISTRICT COURT OF APPEAL,

SECOND DISTRICT, STATE OF FLORIDA

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STATEMENT OF THE CASE AND FACTS

In this brief, the Petitioner, State of Florida, Department of Highway Safety and Motor Vehicles, will be referred to as the (Petitioner). The Respondent, George F. McLaughlin, will be referred to as the (Respondent).

The Respondent was not arrested for refusal to submit to a breath test as stated in the statement of the case in facts by the Petitioner, however, he was arrested on an allegation of driving under the influence of an alcoholic beverage to the extent that his normal faculties were impaired. The Respondent did request a formal administrative review of his license. The remainder of the facts of the alleged facts set forth in the Statement of the case and facts of the Petitioner are accepted by the Respondent for purposes of this jurisdictional brief.

The Respondent now seeks review in this Court for which the Petitioner has previously filed a brief, as it would relate to the jurisdiction of this Court. The Respondent has done so in the filing of a Notice of Cross Petition for Discretionary Review.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review this case since there is an express conflict with this case and a decision of two other District Courts of Appeal on the same question of law. Fla.R.App.P.9.030 (a)(2)(A)(iv).

SUMMARY OF THE ARGUMENT

The Respondent, requests this Court to accept jurisdiction to review this conflict as the issue at bar will directly impact several administrative DUI driver license suspensions hearings in the State of Florida as well have a direct impact on the Respondent.

ARGUMENT

THE SUPREME COURT SHOULD ACCEPT JURISDICTION TO REVIEW MCLAUGHLIN V. DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES AS THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN MCLAUGHLIN IS DIRECTLY IN CONFLICT WITH TWO OTHER DISTRICT COURTS OF APPEAL ON THE SAME QUESTION OF LAW.

The Respondent accepts the argument set forth by the Petitioner for purposes of the jurisdictional brief only and

requests this Court to take jurisdiction of this matter for purposes of resolving the conflict between the Second District Court of Appeal and the Fifth District Court of Appeal and First District Court of Appeal. The

specific allegations as it would relate to the factual scenario of this particular case will be set forth should this Court accept jurisdiction of this case. The Respondent is requesting the Florida

Supreme Court to hear the matter, as it is a matter of great public importance in addition to being a direct conflict between District Courts of Appeal. In conclusion, for the reasons set forth in the Response, the Respondent respectfully requests this Court to grant the Respondent's request to accept jurisdiction in this matter.

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CERTIFICATE OF SERVICE AND FONT SIZE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Response to Jurisdictional Brief has been mailed by United States Mail to Heather Rose Cramer, Department of Highway Safety and Motor Vehicles, Post Office Box 540609, Lake Worth, Florida 33454, this ____ day of January, 2009. I **HEREBY CERTIFY** that the font size used in this Response to Jurisdictional Brief is Courier New 12 point.

Tony C. Dodds, Esquire

