

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

MICHELLE BOWERS,

Respondent.

Case No. SC09-1971

DCA No. 2D08-3251

JURISDICTIONAL BRIEF OF PETITIONER

BILL McCOLLUM
ATTORNEY GENERAL

ROBERT J. KRAUSS
Chief-Assistant Attorney General
Bureau Chief, Tampa Criminal Appeals
Florida Bar No. 0238538

SARA MACKS
Assistant Attorney General
Florida Bar No. 0019122
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607-7013
(813)287-7900
Fax (813)281-5500

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CITATIONS.....	ii
STATEMENT OF THE CASE AND FACTS.....	1
SUMMARY OF THE ARGUMENT.....	2
ARGUMENT.....	3
 WHETHER THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN <u>BOWERS V. STATE</u>, 2D08- 3251 (FLA. 2D DCA OCT. 16, 2009) DIRECTLY CONFLICTS WITH <u>FERRER V. STATE</u>, 785 SO. 2D 709 (FLA. 4TH DCA 2001). 	
CONCLUSION.....	6
CERTIFICATE OF SERVICE.....	6
CERTIFICATE OF FONT COMPLIANCE.....	6

TABLE OF CITATIONS

PAGE NO.

Cases

Bowers v. State,
2D08-3251 (Fla. 2d DCA Oct. 16, 2009) i,3

Ferrer v. State,
785 So. 2d 709 (Fla. 4th DCA 2001) passim

P.N.R. v. Beacon Prop. Mgmt.,
842 So. 2d 773 (Fla. 2003) 3

Constitutions

Art. V, § 3(b)(4), Fla. Const..... 3

STATEMENT OF THE CASE AND FACTS

Two officers participated in the DUI investigation of Respondent. Officer Suskovich initiated the stop, and Officer Tracy performed the subsequent DUI procedures. Officer Tracy had knowledge of the stop of Respondent's vehicle based on information provided to him from Officer Suskovich. Officer Tracy is the only officer who testified at the suppression hearing. Respondent raised a hearsay objection to Officer Tracy's testimony regarding the stop. The State argued that the fellow officer rule allowed such testimony. The trial court allowed Officer Tracy to testify. The trial court granted the motion to suppress.

The State appealed to the circuit court. The circuit court reversed, finding that the fellow officer rule allowed Officer Tracy's testimony regarding Officer Suskovich's statements to be considered as substantive evidence. Respondent filed a petition for writ of certiorari to the Second District Court of Appeal. The Second District granted the writ, finding, Ferrer v. State, 785 So. 2d 709 (Fla. 4th DCA 2001), the case directly on point, was wrongly decided. The Second District certified conflict with the Fourth District in Ferrer.

SUMMARY OF THE ARGUMENT

This Court has jurisdiction in the instant case because the Second District Court of Appeal certified that its decision was in direct conflict with a decision of the Fourth District Court of Appeal.

The Second District Court's opinion is in direct conflict with Ferrer v. State, 785 So. 2d 709 (Fla. 4th DCA 2001), which allows an officer to testify to the events of a stop when the officer was not present but communication occurred to facilitate performance of a legal duty.

ARGUMENT

WHETHER THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN BOWERS V. STATE, 2D08-3251 (FLA. 2D DCA OCT. 16, 2009) DIRECTLY CONFLICTS WITH FERRER V. STATE, 785 SO. 2D 709 (FLA. 4TH DCA 2001).

The Florida Constitution, article V, section 3(b)(4), authorizes this Court to review a decision of a district court of appeal that is certified to be in direct conflict with a decision of another district court of appeal. This Court has a constitutional responsibility to resolve conflicts and ensure consistent application of the law. P.N.R. v. Beacon Prop. Mgmt., 842 So. 2d 773, 777 (Fla. 2003).

The Second District certified conflict with Ferrer, a Fourth District case. Both Respondent's case and Ferrer have the same factual situation. During a DUI investigation, one officer stops the vehicle. After the stop, another officer arrives to assist in the DUI investigation. The officers communicate about what occurred at the stop during the course of their investigation. Only the subsequently arriving officer testifies at the suppression hearing. The issue at the suppression hearing is the validity of the stop.

In Respondent's case, the Second District determined that the fellow officer rule does not allow one officer to testify for another at a suppression hearing. The Second District reasoned that the fellow officer rule worked to build probable

cause between officers working together but could not be a rule of evidence applied in a suppression hearing.

In Ferrer, the Fourth District held that the fellow officer rule allowed an officer to develop probable cause through the knowledge of other officers; the requirement was a chain of communication while the officers were working together. 785 So. 2d at 711. The Fourth District stated that one officer could testify about a stop without firsthand knowledge. Id. To reach its conclusion, the Fourth District analyzed case law finding 1) hearsay is allowed at suppression hearings and 2) the right of confrontation does not apply. Id. at 711-12.

The Second District specifically stated that the Fourth District, in Ferrer, misapplied the fellow officer rule. This places the Fourth District and the Second District in direct conflict. This case has vast implications. Testimony regarding communication between police officers regularly occurs in the trial court during suppression motions. The Second District has decided that it believes suppression hearing should be more akin to trials with stricter rules of evidence. The Second District would not allow a fellow officer to testify regarding another officer's communications because such testimony is hearsay. The Fourth District views suppression hearings as probable cause hearings where evidence may be presented. This means a more relaxed form of evidentiary rules apply. For example, hearsay

evidence is admissible and, in turn, evidence pursuant to fellow officer rule. This Court needs to clarify these issues.

CONCLUSION

Petitioner respectfully requests that this Court accept jurisdiction in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. mail to Christopher Cosden, Esq., The Wilbur Smith law Firm, Post Office Drawer 8, Fort Myers, Florida 33902, this ___ day of October, 2009.

CERTIFICATE OF FONT 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).

Respectfully submitted,

BILL McCOLLUM
ATTORNEY GENERAL

ROBERT J. KRAUSS
Chief-Assistant Attorney General
Bureau Chief-Tampa Crim. Appeals
Florida Bar No. 0238538

SARA MACKS
Assistant Attorney General
Florida Bar No. 19122
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813)287-7900
Facsimile: (813)281-5500
COUNSEL FOR PETITIONER