IN THE SUPREME COURT OF FLORIDA

CASE NO. SC10-

Lower Case No.: 4D08-3055

STATE OF FLORIDA,

Petitioner,

v.

ANTHONY L. HANKERSON,

Respondent.

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PETITIONER'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Respondent was the defendant/Appellant and Petitioner was the prosecution/Appellee in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida and the Fourth District Court of Appeal.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or of this Court on the same question of law. Fla. R. App. P. 9.030(a)(2)(A)(iv).

STATEMENT OF THE CASE AND FACTS

Respondent was convicted of possession of cocaine with intent to sell. Hankerson v. State, 32 So. 3d 175, 176 (Fla. 4th DCA 2010). The Fourth District Court of Appeal found that the trial court erred in failing to grant Respondent's motion to suppress evidence. Id.

The Fourth District Court of Appeal described the facts as follows:

> Two officers, Lucas and Schmidt, were involved in the search and seizure of defendant. Lucas heard that a certain address was a problem area in the community. Residents at homeowners meetings, along with reports from confidential informants, gave Lucas to believe that people might be

selling drugs at this residence. He conducted surveillance from an unmarked vehicle.

Defendant arrived at the address late one afternoon and walked up to 3 or 4 people on the front porch. Defendant's contact with them was very brief. According to Lucas, defendant opened his hand and looked up and down the street. Lucas could not see what was in his hand. Each one of the porch people took something from his hand and handed him money. Defendant pocketed what he received from them and drove away.

Lucas radioed other officers. Schmidt pulled defendant over. He saw defendant reach in the direction of the auto's center console and toward the floor. Acting on the radio call from Lucas that a narcotics transaction had just taken place, and suspecting possession also of a weapon, he directed defendant to exit the auto. He asked defendant if he had any weapons on him, and defendant said he did not, raising his shirt to show his torso. Schmidt proceeded to perform a search of defendant's person. As he carried out the search he asked if defendant had anything in his shoes. Defendant responded in the negative. Before he could order defendant to remove his shoes, defendant began doing so. A bag of what appeared to be cocaine lay inside one shoe. Schmidt proceeded to complete the arrest. Defendant was incarcerated, tried and convicted.

Both officers testified as to their experience over many years investigating narcotics transactions. Both told of similar patterns for such transactions. Lucas cited the brevity of the event, the lack of eye contact between the persons involved, the manner of looking up and down the street, and the exchange of paper

> currency for some object, as all being "consistent with hundreds of transactions I've witnessed."
>
> The only argument made by the state at the suppression hearing to justify the seizure and search of defendant was that police had probable cause of a narcotics violation when they stopped his auto and seized him. Conspicuously, the state made no attempt to argue in the trial court-as it now does on appeal-that defendant consented to the search. We thus proceed to analyze the propriety of the seizure and search solely on the basis of probable cause without consent.

Id. at 176-77.

SUMMARY OF THE ARGUMENT

The instant decision conflicts with two decisions of other district courts of appeals that found probable cause when a trained narcotics officer observed multiple hand-to-hand transactions. The instant decision also conflicts with a decision of this Court that stated that an appellate court must affirm a correct decision of a trial court regardless of the arguments presented to the trial court.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH DADE COUNTY SCHOOL BOARD V. RADIO STATION WQBA, 731 SO. 2D 638 (FLA. 1999); D.A.H. V. STATE, 24 SO. 2D 195 (FLA. 2D DCA 1998); AND KNOX V. STATE, 689 SO. 2D 1224 (FLA. 5TH DCA 1997).

The Fourth District Court of Appeal concluded that the result in this case was controlled by Coney v. State, 820 So. 2d 1012 (Fla. 2d DCA 2002). However, a significant factor in the Coney decision was the fact that the officers observed a single transaction. See id. at 1014 ("several factors are significant to our decision . . . they did not see Coney involved in more than one transaction"). The Fourth District Court of Appeal failed to follow two other decisions that involved multiple transactions observed by an experienced officer.

In D.A.H. v. State, 718 So. 2d 195, 195 (Fla. 2d DCA 1998), an officer with approximately 300 narcotics arrests observed the defendant make "several hand-to-hand transactions." The officer saw the exchange of money for small packages between D.A.H. and people in vehicles. Id. The officer's "training, experience, and knowledge of the area told him he was watching drug transactions in progress." Id. The Second District Court of Appeal concluded that the officer's observations gave rise to probable cause for the stop and search of D.A.H. Id.

In Knox v. State, 689 So. 2d 1224, 1225 (Fla. 5th DCA 1997), an officer with several dozen narcotics arrests observed multiple hand-to-hand transactions. The officer conducted surveillance on the area because the police received numerous complaints of narcotics dealing. Id. The officer observed "Knox approach vehicles that would pull up, lean into the vehicle and pass something to the occupants of the vehicle." Id. When the vehicles pulled off, Knox had cash in his hand. Id. The items exchanged for money were concealed and too small to be seen by the officer. Id. The Fifth District Court of Appeal found that the officer's observations "established sufficient probable cause for an experienced narcotics officer to believe that Knox was engaged in criminal conduct that justified a search for illegal drugs." Id.

Since the experienced narcotics officer in the instant case observed multiple hand-to-hand transactions that were consistent with the sale of narcotics, the instant case directly conflicts with D.A.H. and Knox. See Riggs v. State, 918 So. 2d 274, 278 (Fla. 2005) ("we have jurisdiction because of the Second District's 'application of a rule of law to produce a different result in a case which involves substantially the same facts as a prior case'").

Furthermore, a separate basis for jurisdiction exists

because the Fourth District Court of Appeal refused to consider an argument presented by the State because the same argument was not presented to the trial court. See Hankerson, 32 So. 3d at 177 ("Conspicuously, the state made no attempt to argue in the trial court-as it does now on appeal-that defendant consented to the search. We thus proceed to analyze the propriety of the seizure and search solely on the basis of probable cause without consent.").

In Dade County School Board v. Radio Station WQBA, 731 So. 2d 638, 645 (Fla. 1999), this Court explained that appellate courts are required to affirm the decision of a trial court, if the decision is legally correct, without regard to the arguments presented to the trial court:

> If an appellate court, in considering whether to uphold or overturn a lower court's judgment, is not limited to consideration of the reasons given by the trial court but rather must affirm the judgment if it is legally correct regardless of those reasons, it follows that an appellee, in arguing for the affirmance of a judgment, is not limited to legal arguments expressly asserted as grounds for the judgment in the court below. It stands to reason that the appellee can present any argument supported by the record even if not expressly asserted in the lower court.

(citations omitted). Since the Fourth District Court of Appeal rejected the State's argument on the basis that it was not

presented to the trial court, the decision conflicts with Dade County School Board v. Radio Station WQBA. See Aguilera v. Inservices, Inc., 905 So. 2d 84, 86 (Fla. 2005) (accepting jurisdiction based on conflict created by misapplication of decisional law); Knowles v. State, 848 So. 2d 1055, 1056 (Fla. 2003) (same); Robertson v. State, 829 So. 2d 901, 904 (Fla. 2002) (stating that misapplication of decisional law creates conflict jurisdiction); Acensio v. State, 497 So. 2d 640, 641 (Fla. 1986) (accepting jurisdiction based on conflict created by misapplication of decisional law).

When the decision of a district court conflicts with a decision of this Court or of another district court of appeal, this Court's jurisdiction is discretionary. Art. V, § 3(b)(3), Fla. Const. This Court should exercise its discretion to hear this case for at least three reasons. See Harry Lee Anstead, Gerald Kogan, Thomas D. Hall, & Robert Craig Waters, The Operation and Jurisdiction of the Supreme Court of Florida, 29 Nova L. Rev. 431, 485 (2005) ("jurisdictional briefs in discretionary cases should always demonstrate that the case is significant enough to be heard").

First, the case was wrongly decided. Respondent walked up to three or four people on a front porch and had "very brief" contact with them. Hankerson, 32 So. 3d at 176. Respondent

"opened his hand and looked up and down the street." Id. Each person on the porch took something from Respondent's hand and handed money to Respondent. Id. Respondent pocketed what he received and drove away. Id. The experienced narcotics officer noted the "brevity of the event, the lack of eye contact between the persons involved, the manner of looking up and down the street, and the exchange of paper currency for some object" as consistent with narcotics transactions. Id. Under these circumstances, the officer certainly had reasonable grounds to believe that Respondent committed a felony. See Hayward v. State, 24 So. 3d 17, 37 (Fla. 2009) ("The question of probable cause is viewed from the perspective of a police officer with specialized training and takes into account the 'factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'").

Second, the failure to apply the "tipsy coachman" rule establishes an erroneous precedent applicable in numerous other cases. Importantly, the Fourth District Court of Appeal did not indicate that the record was insufficient to support the argument; the Fourth District Court of Appeal rejected the argument because it was not presented to the trial court.

Third, the Fourth District Court of Appeal failed to properly view the circumstances through the eyes of a trained

narcotics officer. "[A] police officer may draw inferences based on his own experience in deciding whether probable cause exists," Ornelas v. United States, 517 U.S. 690, 700 (1996), including inferences "that might well elude an untrained person," United States v. Cortez, 449 U.S. 411, 418 (1981). The Fourth District Court of Appeal failed to appreciate the significance of the multiple hand-to-hand transactions in light of the officer's experience. This failure to properly view the circumstances warrants review by this Court.

CONCLUSION

Based on the foregoing argument, Respondent requests that this Honorable Court accept jurisdiction in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was sent by courier to Gary Lee Caldwell, Assistant Public Defender, Counsel for Respondent, at 421 3rd Street, 6th Floor, West Palm Beach, FL 33401 on May 28, 2010.

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CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared in Courier New font, 12 point, and double spaced.

_____
MARK J. HAMEL
Counsel for Petitioner

APPENDIX

Hankerson v. State, 32 So. 3d 175 (Fla. 4th DCA 2010).