

IN THE SUPREME COURT OF FLORIDA

KEITH JACKSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. SC10-1405

DISTRICT CASE NO. 4D10-2100

CIRCUIT CASE NO. 09-012988CF10A

PETITIONER'S JURISDICTIONAL BRIEF

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PRELIMINARY STATEMENT

The Petitioner, Keith Jackson, the Petitioner in the District Court of Appeal (DCA) and the Defendant in the trial court, will be referenced herein as "Petitioner." The Respondent, the State of Florida, the Respondent in the DCA, the prosecution in the trial court, shall be referenced as the "government" or "Respondent."

STATEMENT OF THE CASE AND FACTS

The Petitioner is charged by information with one count of Aggravated Battery with a Deadly Weapon, a felony of the second degree, in violation of Florida Statute § 784.045 (2009). The charges flow from a physical altercation taking place within the home of the Petitioner, where he contends he was attacked by the individual Respondent claims as the victim. The Petitioner asserts he acted in self-defense and sought to avail himself of an entitlement to statutory immunity from prosecution under the "stand your ground" statutory framework at the trial court level.

Petitioner submitted a Motion to Dismiss and Request for an Adversarial Evidentiary Hearing, asserting that he was immune from prosecution, pursuant to § 776.032, Florida Statutes (2009). The Respondent filed its traverse and demurrer. The trial court denied the Petitioner's motion to dismiss, without an evidentiary hearing, asserting that it was bound by *Dennis v. State*, 17 So. 3d 305 (Fla. 4th DCA 2009), review granted, 29 So. 3d 290 (Fla.

2009), (SC09-941), holding that motions asserting immunity based upon "stand your ground" must be denied if there are any material facts in dispute.

The Petitioner then timely filed a Petitioned for a Writ of Certiorari in the Fourth District Court of Appeal, contending certiorari jurisdiction was proper, and still is as the inappropriate exercise of jurisdiction by a trial court over a defendant entitled to statutory immunity is an injury for which there is no adequate remedy on appeal. See *Seminole Tribe of Florida v. McCor*, 903 So. 2d 353, 357-58 (Fla. 2d DCA 2005) (finding certiorari jurisdiction proper to resolve a litigant's assertion of sovereign immunity). The DCA rendered a denial of the petition, citing *Velasquez v. State*, 9 So. 3d 22 (Fla. 4th DCA 2009); *Dennis v. State*, 17 So. 3d 305 (Fla. 4th DCA 2009), *rev. granted*, 29 So. 3d 290 (Fla. July 16, 2009) (SC09-941).

SUMMARY OF THE ARGUMENT

The decision below directly conflicts with multiple cases from other District Courts of Appeal on the same questions of law.

The procedure used below, as mandated by *Velasquez v. State*, 9 So. 3d 22 (Fla. 4th DCA 2009), required the trial court to deny the Petitioner's motion to dismiss without conducting an evidentiary hearing. The effect of the government's assertion of a material fact in dispute had the effect of foreclosing any

meaningful analysis on Petitioner's entitlement to immunity under Florida's "Stand Your Ground" Law.

In *Dennis v. State*, 17 So. 3d 305 (Fla. 4th DCA 2009), *rev. granted*, 29 So. 3d 290 (Fla. July 16, 2009) (SC09-941), the trial court improperly denied the motion to dismiss, asserting immunity under "Stand Your Ground", based on the presence of disputed factual issues. As this Court has accepted jurisdiction in *Dennis*, it has jurisdiction to review this case under *State v. Lofton*, 534 So. 2d 1148, 1149 (Fla. 1988). "[A] per curiam decision without opinion of a district court of appeal which cites as controlling authority a decision that is pending review in this Court constitutes prima facie express conflict for purposes of jurisdiction." *Id.* (citing *Jollie v. State*, 405 So. 2d 418 (Fla. 1981)). See *Taylor v. State*, 601 So. 2d 540 (Fla. 1992).

ARGUMENT:

I. WHETHER THE DISTRICT COURT OF APPEAL'S DECISION IN *JACKSON V. STATE*, RELYING UPON *DENNIS V. STATE*, EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FIRST DCA'S OPINION IN *PETERSON V. STATE* ON THE SAME QUESTIONS OF LAW

Petitioner contends this Honorable Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), which parallels Article V, section 3(b)(3), of the Florida Constitution. 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.

While in this cause, the DCA issued a per curiam decision without written opinion, it did cite as authority a case pending before this Court, as well as another case that forms the foundation for the case on review.

In *Jollie v. State*, 405 So. 2d 418 (Fla. 1981), we held that a per curiam decision without opinion of a district court of appeal which cites as controlling authority a decision that is pending review in this Court constitutes prima facie express conflict for purposes of jurisdiction.

State v. Lofton, 534 So. 2d 1148, 1149 (Fla. 1988). The case this Court has already accepted review, *Dennis v. State*, 17 So. 3d 305 (Fla. 4th DCA 2009), rev. granted, 29 So. 3d 290 (Fla. July 16, 2009) (SC09-941), specifically relies upon *Velasquez v.*

State, 9 So. 3d 22 (Fla. 4th DCA 2009), as prior binding precedent within the Fourth District's domain.

The petition filed below requested the District Court of Appeal to issue a writ of certiorari having the effect of mandating the trial court to hold an evidentiary hearing on Petitioner's motion to dismiss, in cadence with the procedures delineated in *Peterson v. State*, 983 So. 2d 27, 29 (Fla. 1st DCA 2008). Further, the Petitioner sought the issuance of a stay of all proceedings until this Court rendered a decision in *Dennis v. State*, SC09-941.

This Honorable Court has additionally accepted jurisdiction to resolve the same issue presented herein in *Hair v. State*, 17 So. 3d 804 (Fla. 1st DCA 2009) (SC09-1961), and *Govoni v. State*, 17 So. 3d 809 (Fla. 4th DCA 2009) (SC09-2023). Both *Govoni* and *Hair* have been stayed pending the disposition of *Dennis*. The Petitioner requests the same treatment, as the issues posed in *Hair*, *Govoni*, and *Dennis* are identical to those at bar.

The court in *Peterson* held:

when immunity under this law is properly raised by a defendant, the trial court must decide the matter by confronting and weighing only factual disputes. The court may not deny a motion simply because factual disputes exist. . . [A] defendant may raise the question of statutory immunity pretrial and, when such a claim is raised, the trial court must determine whether the defendant has shown by a preponderance of the evidence that the immunity attaches.

Peterson v. State, 983 So. 2d 27, 29 (Fla. 1st DCA 2008). See *Hair v. State*, 17 So. 3d 804, 805 (Fla. 1st DCA 2009) (Relying on *Peterson*, holding "[t]he 'Stand Your Ground' statutory immunity claim is resolved by the circuit court after a pretrial evidentiary hearing. The defendant bears the burden to prove entitlement to the immunity by a preponderance of the evidence."). The court in *Velasquez v. State*, 9 So. 3d 22 (Fla. 4th DCA 2009), reviewed the procedure adopted in *Peterson* and rejected it. "We recognize the efficacy of the procedure outlined in *Peterson*, but disagree that it is within our province to create a process sanctioned neither by statute nor existing rule." *Id.* at 24.

When rule 3.190(c)(4) is used as the vehicle to raise the issue of immunity under section 776.032(2), that rule provides the procedural framework by which the court makes its determination. That rule mandates the denial of a motion to dismiss when as here, the facts are in dispute.

Peterson at 24 (emphasis added). In *Dennis*, the Fourth District Court of Appeal affirmed the trial court's denial of a motion to dismiss, "on his claim of statutory immunity brought under section 776.032, Florida Statutes, because there were disputed issues of material fact." *Dennis* at 306. The court held "[a]s we recognized in *Velasquez v. State*, 9 So.3d 22 (Fla. 4th DCA 2009), a motion to dismiss based on statutory immunity is properly denied when there are disputed issues of material fact." *Id.*

Petitioner seeks only to preserve his right to avail himself of his statutory right to immunity from prosecution. In furtherance of this effort, Petitioner requests that this Honorable Court accept jurisdiction in this case, as well as the issuance of an order having the effect of staying the proceedings before this Honorable Court, as well as those in the Circuit Court until this Honorable Court has issued an opinion in *Dennis*. As mentioned, this Honorable Court has accepted jurisdiction to resolve the same issues involving the same conflict and question in *Hair v. State*, 17 So. 3d 804 (Fla. 1st DCA 2009) (SC09-1961), and *Govoni v. State*, 17 So. 3d 809 (Fla. 4th DCA 2009) (SC09-2023). Both *Govoni* and *Hair* have been stayed pending the disposition of *Dennis*, and Petitioner seeks the same ruling until the conflict is resolved.

CONCLUSION:

Wherefore, the Petitioner seeks review of the denial of his petition for writ of certiorari, itself reviewing the denial of his motion to dismiss and request for an evidentiary hearing. As this Court is presently resolving the conflict between the holding in *Dennis* and the contrary holding in *Peterson*, the Petitioner seeks a stay of all proceedings in this matter pending the Court's decision in *Dennis*.

CERTIFICATE OF SERVICE:

I HEREBY CERTIFY that a true and correct copy of this Petition was furnished via U.S. Mail to the Office of the Attorney General, Ninth Floor, 1515 North Flagler Drive, West Palm Beach, Florida 33401-3432, as well as the chambers of the Honorable Judge Jeffrey R. Levenson, Rm. 6850, this 22nd day of July, 2010.

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CERTIFICATE OF FONT COMPLIANCE:

The undersigned hereby certifies that this petition utilizes Courier New 12-point font, thereby comporting with Florida Rule of Appellate Procedure 9.100(1).

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