IN THE SUPREME COURT OF FLORIDA

CASE NO. SC11-1617

RAFAEL MATARRANZ,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

* *

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRD DISTRICT COURT OF APPEAL

* *

RESPONDENT'S BRIEF ON JURISDICTION

PAMELA JO BONDI
Attorney General
Tallahassee, Florida

RICHARD L. POLIN
Bureau Chief, Criminal Appeals

DOUGLAS J. GLAID
Florida Bar No. 0249475
Senior Assistant Attorney General
Department of Legal Affairs
444 Brickell Avenue, Ste. 650
Miami, Florida 33131
Tel. (305) 377-5441

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF CITATIONS

INTRODUCTION

The Respondent, the State of Florida, was the appellee in the Third District Court of Appeal and the prosecution in the trial court of the Eleventh Judicial Circuit, in and for Miami-Dade County. The Petitioner was the appellant and the defendant, respectively in the lower courts. In this brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "A" refers to the Appendix attached to this jurisdictional brief, which solely includes a conformed copy of the district court's opinion. Unless otherwise indicated, all emphasis has been supplied by Respondent.

STATEMENT OF THE CASE AND FACTS

Respondent cannot accept Petitioner's statement of the case and facts appearing on pages 1-4 of his jurisdictional brief due to its argumentative nature. Therefore, Respondent sets forth the following statement of the case and facts pertinent to the jurisdictional issue before this Court:

Following a jury trial, Petitioner was found guilty of first-degree murder and burglary of Lidia Giangrande. (A. 2). On appeal, Petitioner claimed, *inter alia*, that the trial court reversibly erred in denying his challenge for cause against prospective juror Ceballos, who had been a victim of burglaries and indicated during *voir dire* questioning that she held a grudge against those who violated the law. *Id.*

The Third District affirmed Petitioner's convictions and sentence, holding that the trial court did not commit manifest error in determining that prospective juror Ceballos was competent to serve as a juror. The district court further concluded that the "**totality** of prospective juror Ceballos' responses demonstrated her ability to be fair and impartial and decide the case based solely on the evidence presented at trial." Matarranz v. State, 36 Fla. L. Weekly D1667 (Fla. 3d DCA Aug. 3, 2011); (A. 10). Specifically, the district court

noted that juror Ceballos “consistently indicated” that (1) she would not hold it against Matarranz if he did not testify or if the defense did not put on witnesses; (2) she understood that it was the State’s burden to prove Matarranz guilty beyond a reasonable doubt; (3) Matarranz did not have any burden of proof; and (4) she would hold the State to its burden of proof based on the evidence presented. Moreover, Ms. Ceballos stated that “anything that happened to me in the past has nothing to do with this case.” (A. 11).

Petitioner thereafter filed his notice to invoke the discretionary jurisdiction of this Court.

SUMMARY OF THE ARGUMENT

Petitioner has failed to demonstrate that the decision of the Third District Court of Appeal expressly and directly conflicts with decisions of this Court or of the Fourth District Court of Appeal on the same question of law, or that it falls under any of the subdivisions provided in Fla. R. App. P. 9.030(a)(2), or Art. V, Section 3(b)(3), Fla. Const. (1980), for review by this Court. Express and direct conflict of decisions simply does not appear within the four corners of the Third District's decision.

ARGUMENT

THIS COURT SHOULD DECLINE DISCRETIONARY JURISDICTION IN THIS CAUSE SINCE THE DECISION BELOW DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH DECISIONS OF THIS COURT OR OF THE FOURTH DISTRICT COURT OF APPEAL ON THE SAME QUESTION OF LAW.

Petitioner seeks review through conflict jurisdiction pursuant to Article V, Section 3(b)(3), Fla. Const. (1980) and Fla. R. App. P. 9.030(a)(2)(A)(iv), which provides that the discretionary jurisdiction of the Supreme Court may be sought to review a decision of a district court of appeal which **expressly and directly conflicts** with a decision of another district court of appeal or of the Supreme Court on the same question of law. Specifically, Petitioner alleges conflict with this Court's decisions in Singer v. State, 109 So. 2d 7, 18-24 (Fla. 1959), Overton v. State, 801 So. 2d 877 (Fla. 2001), and Hamilton v. State, 547 So. 2d 630 (Fla. 1989), as well as the district court decisions in Huber v. State, 669 So. 2d 1079 (Fla. 4th DCA 1996) and Lowe v. State, 718 So. 2d 920 (Fla. 4th DCA 1998), concerning whether prospective jurors should have been stricken for cause.

The Third District's opinion *sub judice* does not expressly and directly create any conflict with a decision of this Court or of the Fourth District on the same question of law. Indeed,

Petitioner's claim that the instant decision conflicts with other decisions is specious, as all of these cases are readily factually distinguishable from the instant case. Unlike the facts here, in Singer v. State, 109 So. 2d 7, 18-24 (Fla. 1959), the challenged prospective jurors had formed an opinion of the defendant's guilt or innocence based on their reading of newspaper articles about the case. One of the jurors, Mr. Davis, a close friend of the deceased victim's husband, stated that he followed the case closely by reading the newspaper and that he had a "fixed opinion" about the defendant's case that would require evidence to remove. Additionally, in stark contrast to juror Ceballos here, who consistently indicated she understood the presumption of innocence and Petitioner's right to remain silent (A. 11), the juror in Hamilton v. State, 547 So. 2d 630 (Fla. 1989), indicated that she had extreme difficulty with the presumption of innocence and a defendant's right to remain silent. *Id*. at 632. Similarly, in Overton v. State, 801 So. 2d 877 (Fla. 2001), juror Russell stated his adherence to the notion that he had "always believed" that defendants should testify at trial. Thus, unlike the jurors in the foregoing cases cited by Petitioner, the **totality** of Ms. Ceballos' *voir dire* statements did not raise a reasonable doubt

whether she could render a verdict solely on the evidence presented and the court's instructions on the law. Indeed, it is clear from the record that any such reasonable doubt was erased when Ms. Ceballos stated, in response to questioning by *defense counsel*, that, after further reflection, she believed that **"anything that happened to me in the past has nothing to do with this case."**[1] (A. 11).

Nor does the opinion of the Third District conflict with the decisions of the Fourth District in Huber v. State, 669 So. 2d 1079 (Fla. 4th DCA 1996) or Lowe v. State, 718 So. 2d 920 (Fla. 4th DCA 1998). In both these cases, based on *voir dire* statements made by the jurors, there existed a very serious question whether the jurors could apply the presumption of innocence. In Huber, prospective juror Kethman initially stated in no uncertain terms that he could not presume defendant to be innocent and gave a reason for that view. *Id.* at 1081. And, in Lowe, the juror in question revealed an undeniable misunderstanding of the presumption of innocence in that the juror stated several times that the defense would have to refute the charges and professed confidence that the State would

[1] Thus, in contrast to the Overton case, where there was a "tortured attempt at rehabilitation" of juror Russell, many of

present a sufficient case of guilt. *Id.* at 921. By contrast, juror Ceballos "**consistently** indicated" that (1) she would not hold it against Matarranz if he did not testify or if the defense did not put on witnesses; (2) she understood that it was the State's burden to prove Matarranz guilty beyond a reasonable doubt; (3) Matarranz did not have any burden of proof; and (4) she would hold the State to its burden of proof based on the evidence presented. (A. 11).

Consequently, since the facts involved in the instant case are clearly not "substantially the same controlling facts" as those involved in the cases relied on by Petitioner for conflict, this Court's discretionary jurisdiction cannot be invoked on a conflict basis. See Wilson v. Southern Bell Telephone and Telegraph Co., 327 So. 2d 220, 221 (Fla. 1976) (where there was no direct conflict between decision of district court of appeal and any other appellate decision since same principles were applied to reach different results on different facts, the supreme court lacked jurisdiction to proceed on certiorari basis); Nielson v. City of Sarasota, 117 So. 2d 731, 734-35 (Fla. 1960) (stating that the principal situations justifying the invocation of discretionary jurisdiction because

---

juror Ceballos' comments were made in response to questioning by

of alleged conflicts are (1) the announcement of a rule of law which conflicts with a rule previously announced by the court, or (2) the application of a rule of law to produce a different result in a case which involves *substantially the same controlling facts* as a prior case), accord Mancini v. State, 312 So. 2d 732, 733 (Fla. 1975). Indeed, it is indisputable that the facts involved in those cases are completely distinct and different from those involved in the instant case.

In sum, since Petitioner has not shown any **express and direct conflict** of decisions within the four corners of the district court's opinion, this Court's jurisdiction has not been established. Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986); Jenkins v. State, 385 So. 2d 1356, 1359 (Fla. 1980); see also Department of Health & Rehabilitative Services v. National Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986) (inherent or implied conflict cannot serve as a basis for Court's discretionary jurisdiction).

---

defense counsel. (A. 5-7).

CONCLUSION

Wherefore, based upon the foregoing argument and authorities cited herein, Respondent respectfully requests that this Honorable Court DECLINE to accept discretionary jurisdiction of this cause.

Respectfully submitted,

PAMELA JO BONDI
Attorney General

_____
RICHARD L. POLIN
Bureau Chief, Criminal Appeals

_____
DOUGLAS J. GLAID
Florida Bar No. 0249475
Senior Assistant Attorney General
Department of Legal Affairs
444 Brickell Avenue, Ste. 650
Miami, Florida 33131
(305) 377-5441
Facsimile (350) 377-5665

CERTIFICATE OF SERVICE AND FONT COMPLIANCE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on Jurisdiction was furnished by U.S. Mail to Robert Kalter, Asst. Public Defender, Counsel for Petitioner, 1320 NW 14th Street, Miami, FL 33125, on this ____ day of September, 2011, and that the 12 point Courier New font used in this brief complies with the requirements of Fla. R. App. P. 9.210(a)(2).

_____
DOUGLAS J. GLAID
Senior Assistant Attorney General

APPENDIX