

IN THE SUPREME COURT OF FLORIDA

AARON DANIELS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

SC Case No. SC11-

DCA Case No. 2D09-4951

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

The State accepts the Statement of Case and Statement of Facts presented by Appellant for purposes of this appeal, with the following additions, corrections and/or clarifications, or as otherwise argued herein.

In Daniels v. State, 2D09-4951 (Fla. 2d Oct. 5, 2011), the Second District explained that, in 2008, the manslaughter instruction was amended. It was this amended instruction, not the instruction used in Montgomery, that was used in Petitioner's trial. The Second District did not believe that the manslaughter instruction had the same error as Montgomery because of the amendments made in 2008. The court analyzed the 2008 instruction and determined that it did not require juries to find a defendant intended to kill. The Second District acknowledged that its decision was in direct conflict with decisions from the First District. The First District had found that the 2008 instruction was erroneous in the same way the Montgomery instruction was erroneous.

SUMMARY OF THE ARGUMENT

The State agrees that the Second District's opinion in Daniels v. State, 2D09-4951 (Fla. 2d Oct. 5, 2011) does directly conflict with Riesel v. State, 48 So. 3d 885 (Fla. 1st DCA 2010).

Yet the State urges this Court not to exercise its discretion to accept this case. In issues of jury instructions, without objections from trial counsel, appellate courts must apply fundamental error analysis to determine if the case should be reversed. Cases may sometimes conflict because of the facts and surrounding circumstances. Each of those cases should not be accepted by this Court. Therefore, the State respectfully asks this Court to deny the petition.

ARGUMENT

WHETHER THIS COURT SHOULD EXERCISE ITS
DISCRETION AND REVIEW THE SECOND DISTRICT'S
DECISION IN DANIELS V. STATE, 2D09-4951
(FLA. 2D DCA OCT. 5, 2011). (restated by
Appellee)

Petitioner claims that the Second District's decision in Daniels v. State, 2D09-4951 (Fla. 2d Oct. 5, 2011) directly conflict with Riesel v. State, 48 So. 3d 885 (Fla. 1st DCA 2010). The State agrees. But the State respectfully disagrees that this Court should utilize its discretionary power and grant jurisdiction in this case. The State submits that this Court should decline to review Petitioner's case because the decision rendered by the Second District Court of Appeal was a proper analysis of fundamental error - the proper review for an unobjected to claim of error in jury instruction. Therefore, the State urges this Court not to exercise its discretionary jurisdiction in Petitioner's case. Accordingly, this Court should deny review.

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. The State agrees with Petitioner (and the Second District) that there is direct conflict on the face of the record with Riesel v. State, 48 So. 3d 885 (Fla. 1st DCA 2010).

The State does not agree with Petitioner that this Court must utilize its discretionary power. Petitioner has the right to request this Court use its discretion to find conflict by filing a jurisdictional brief, yet this Court has the discretion to determine whether there is direct conflict. Florida Star v. B.J.F., 530 So. 2d 286, 288-89 (Fla. 1988). So even if there is direct conflict between the First and Second District, this Court still can refuse to exercise its discretion. This Court should not exercise its discretion because the Second District's opinion was correct. The Second District analyzed the jury instruction and found that it was different than the instruction in Montgomery. The Second District properly performed a fundamental error analysis and determined that any alleged error in the jury instruction did not rise to the level of fundamental error that required reversal. The State submits that this Court should not exercise its discretionary review.

CONCLUSION

Respondent respectfully requests that this Court decline to accept jurisdiction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. mail to Bruce Taylor, Assistant Public Defender, P.O. Box 9000–Drawer PD, Bartow, Florida 33831-9000, this ___ day of November, 2011.

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,

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