

IN THE SUPREME COURT OF FLORIDA

CARLOS A. ALEJANDRO ULLOA,
ET AL.,

Petitioners,

CASE NO. SC11-2291

DCA NO. 5D10-4079

vs.

CMI INC.,

Respondent.

PETITIONERS' BRIEF ON JURISDICTION

On Petition for Discretionary Review
From the District of Appeal of
Florida, Fifth District

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STATEMENT OF CASE AND FACTS

The Petitioners, Dustin Leonard, Carlos A. Alejandro Leonard Ulloa, and Eric Shane Jackson, served subpoenas duces tecum on CMI, Inc. ("CMI"). The Petitioners served the subpoenas duces tecum, on CMI's registered agent in the State of Florida. The subpoenas duces tecum did not require witness testimony, but only sought the production of the source code being used in the current Intoxilyzer 8000 instruments. (Appendix A at 1-2).

CMI filed a Motion to Quash those subpoenas. The county court entered a written order denying CMI's motion. (Appendix A at 2).

CMI subsequently filed a petition for writ of certiorari in the circuit court, arguing that the county court departed from the essential requirements of the law by denying the motion to quash the subpoenas duces tecum. CMI argued that the Petitioners should not have been permitted to serve the subpoenas on its registered agent in Florida, but should have been required to serve them in Kentucky, in accordance with the Uniform Law to Secure the Attendance of Witnesses from Within or Without the State in Criminal Proceedings (the Uniform Law). (Appendix A at 2).

In regards to the three Petitioners in this case, the circuit court denied CMI's petition. The circuit court concluded that the Uniform Law did not apply because the subpoenas served on CMI only required the production of documents, not the testimony of witnesses. (Appendix A at 2). The circuit court relied solely on the district court's decision in *CMI, Inc. v. Landrum*, 64 So.3d 693 (Fla. 2d DCA 2010), 54 So.3d 973 (Fla. Jan. 26, 2011), to deny CMI's petition.

CMI filed a petition for second-tier certiorari review in the Fifth DCA, raising the same arguments it had raised in the circuit court. The Fifth DCA granted CMI's petition but certified conflict with the decision of the Second DCA in *Landrum, supra*, and with the Third DCA in *General Motors Corp. v. State*, 357 So.2d 1045 (Fla. 3d DCA 1987). (Appendix A at 2, 7).

The Fifth DCA noted that, in *General Motors*, the Third DCA had explicitly held that the Uniform Law was inapplicable "[i]f a subpoena duces tecum requires only the production of documents and is directed to a foreign corporation that is authorized and doing business in Florida." The Fifth DCA also noted that, in *Landrum*, the Second DCA had denied CMI's petition for second-tier certiorari review in a similar case where the circuit court

had concluded that it was bound to follow *General Motors*. The Second DCA held that the circuit court in *Landrum* had properly followed the principles set forth in *General Motors* in finding the Uniform Law in applicable. (Appendix A at 3-4).

The Fifth DCA also acknowledged the narrow remedy of second-tier certiorari review and noted that it "generally will not review a circuit court decision that followed precedent from another district court of appeal." The Fifth DCA concluded, however, that this is one of the rare cases where it finds that second-tier certiorari review is applicable. The Fifth DCA concluded that its decision to grant CMI's petition was the only way to establish a direct conflict for this Court to resolve. (Appendix A at 4-5).

SUMMARY OF ARGUMENT

The Fifth DCA has certified conflict with decisions of the Second DCA and the Third DCA. Additionally, the opinion issued by the Fifth DCA directly and expressly conflicts with the decisions of the Second DCA and the Third DCA. On these two separate bases, this Court should accept jurisdiction and review the decision of the district court in this case.

ARGUMENT

This Court has discretionary jurisdiction to review a district court decision where the decision is certified to be in direct conflict with decisions of other district courts of appeal. Article V, Section 3(b)(4), FLA. CONST.; Fla. R. App. P. 9.030(a)(2)(A)(vi). This Court also has discretionary jurisdiction to review a district court decision where that decision expressly and directly conflicts with a decision of this Court or another district court of appeal on the same issue of law. Article V, Section 3(b)(3), FLA. CONST.; Fla. R. App. P. 9.030(a)(2)(A)(iv). Once this Court accepts jurisdiction of a case in order to resolve a conflict, it has the authority to address all the issues properly raised in the lower court. *Russell v. State*, 982 So.2d 642, 645 (Fla. 2008); *Savoie v. State*, 422 So.2d 308, 310 (Fla. 1982).

THE DISTRICT COURT'S DECISION IN THIS CASE HAS BEEN CERTIFIED TO BE IN DIRECT CONFLICT WITH DECISIONS OF TWO OTHER DISTRICT COURTS OF APPEAL AND EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF TWO OTHER DISTRICT COURTS OF APPEAL ON WHETHER THE UNIFORM LAW APPLIES TO A PARTY PERSON SEEKING THE PRODUCTION OF DOCUMENTS FROM AN OUT-OF-STATE CORPORATION AUTHORIZED TO, REGISTERED TO, AND ACTUALLY DOING BUSINESS IN THE STATE OF FLORIDA.

The Fifth DCA has certified conflict with the decisions of the district courts in *General Motors Corp. v. State*, 357 So.2d

1045 (Fla. 3d DCA 1987), and *CMI, Inc. v. Landrum*, 64 So.3d 693 (Fla. 2d DCA 2010), *rev. denied*, 54 So.3d 973 (Fla. Jan. 26, 2011). That fact alone provides this Court with jurisdiction to review the district court's decision in this case. In light of the importance of this issue, and based on the strong conflict among the district courts, this Court should exercise its discretion to accept jurisdiction.

Additionally, the Fifth DCA's decision in this case expressly and directly conflicts with the decisions in *General Motors* and *Landrum*. In its opinion, the Fifth DCA stated the following:

The circuit court in the underlying case followed *Landrum*, which was directly on point and involved the same petitioner, CMI.

(Appendix A at 4).

Additionally, the Fifth DCA stated the following:

We hold that CMI is entitled to relief because *Landrum* violates the clearly established statutory procedures of the Uniform Law.

(Appendix A at 5).

In both *Landrum* and *General Motors*, the district courts explicitly held that the Uniform Law is inapplicable where the subpoena duces tecum at issue only requires the production of

documents. *Landrum*, 64 So.3d at 695; *General Motors*, 357 So.2d at 1047.

In light of these statements, and because the district court in this case reached the exact opposite conclusion as the district courts in *Landrum* and *General Motors* based on indistinguishable facts, the decisions are in direct and express conflict.

CONCLUSION

For the aforementioned reasons, this Court should accept jurisdiction, address the merits of the instant case, and resolve the conflict described above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by mail delivery to Edward G. Guedes, 2525 Ponce de Leon Boulevard, Suite 700, Coral Gables, Florida 33134, on this 19th day of December, 2011.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief is submitted in Courier New 12-point font and thereby complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

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APPENDIX

- A. Opinion of Fifth District Court of Appeal Granting CMI's
Petition for Writ of Certiorari