

IN THE SUPREME COURT OF FLORIDA

JOSEPH ELI BEARDEN,

Petitioner,

v.

Case No. SC12-1314

STATE OF FLORIDA,

Respondent.

ON PETITION FOR REVIEW FROM  
THE SECOND DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

**JURISDICTIONAL BRIEF OF RESPONDENT**

**PAMELA JO BONDI**  
**ATTORNEY GENERAL**

**ROBERT J. KRAUSS**  
**Chief-Assistant Attorney General**  
**Bureau Chief, Tampa Criminal Appeals**  
Florida Bar No. 238538

**SUSAN D. DUNLEVY**  
**Assistant Attorney General**  
Florida Bar No. 229032  
Concourse Center 4  
3507 E. Frontage Road, Suite 200  
Tampa, Florida 33607-7013  
(813)287-7900  
Fax (813)281-5500  
CrimAppTpa@myfloridalegal.com  
Susan.Dunlevy@myfloridalegal.com

COUNSEL FOR RESPONDENT

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### **STATEMENT OF THE CASE AND FACTS**

The opinion of the Second District Court of Appeal, *Bearden v. State*, 62 So. 3d 656 (Fla. 2d DCA 2011), a copy of which is appended hereto, outlines the relevant facts at this stage of the proceedings.

### **SUMMARY OF THE ARGUMENT**

Petitioner seeks discretionary review in this case based on his wholly conclusory assertion that the decision in the instant case conflicts with *Dewolfe v. State*, 62 So. 3d 1142 (Fla. 1st DCA 2011). Petitioner does not explain the basis of his claim of conflict, and, in fact, a careful reading of both cases reveals that both opinions apply the same legal principal and reach opposite results only because their facts are diametrically different with respect to the legal issue at hand. Petitioner has therefore failed to establish that conflict exists between the instant decision and a decision of this Court or another district court on the issue he is complaining about, and this Court should, accordingly, deny review in this case.

## ARGUMENT

PETITIONER HAS FAILED TO ESTABLISH THAT CONFLICT EXISTS BETWEEN THE INSTANT DECISION AND A DECISION OF THIS COURT OR ANOTHER DISTRICT COURT ON THE ISSUE OF WHETHER THE TRIAL COURT CORRECTLY REFUSED TO ADMIT CERTAIN HEARSAY TESTIMONY THAT SOMEONE OTHER THAN PETITIONER HAD BEEN IN THE CAR WITH THE KILLER WHEN THE VICTIM WAS STABBED TO DEATH.

The parameters of this Court's discretionary jurisdiction are set forth in Article V, Section 3 of the Florida Constitution and Rule 9.030(a)(2), Florida Rules of Appellate Procedure. Petitioner asserts that the decision below expressly and directly conflicts with a decision of another district court of appeal and that this Court therefore has discretionary jurisdiction in the instant case pursuant to Rule 9.030(a)(2)(A)(iv). Respondent disagrees.

Petitioner claims express and direct conflict between the decision in the instant case and *Dewolfe v. State*, 62 So. 3d 1142 (Fla. 1st DCA 2011), which was decided nearly six weeks after the decision in the instant case. However, Petitioner does not explain the nature of the conflict that he claims exists between the two opinions.

Because the *Dewolfe* opinion had not been issued when the opinion below was released, the opinion below could not and did not mention any conflict with *Dewolfe*. *Dewolfe* does reference in a parenthetical, 62 So. 3d at 1146, the statement in the opinion below, 62 So. 3d at 664, that "an evaluation of the credibility of the witness the defense proposes to use to place the alleged state-

ments on the record is unavoidable.” However, the citation to the opinion below uses the “but see” signal; the *Dewolfe* panel does not express disagreement with or disapproval of the holding in the opinion below; and *Dewolfe* does not discuss the instant case beyond this passing reference to the opinion followed by the parenthetical quotation that omits the limiting language that precedes it.

At trial in the instant case, the defense sought to call Angela Tyler, a friend of Petitioner’s, to testify that Ray Allen, whom Petitioner sought to implicate in the murder of the victim, had admitted to her a few days after the murder that it was he, not Petitioner, who was in the car with William Brown when Brown stabbed the victim to death. In deciding whether to allow the presentation of this testimony, the trial court relied on *Chambers v. Mississippi*, 410 U.S. 284, 300-301, 93 S. Ct. 1038, 1048, 35 L. Ed. 2d 297 (1973), which discussed the circumstances that “provided considerable assurance” of the reliability of the hearsay statements involved in that case. The trial court considered what it referred to as the four factors that *Chambers* indicated were significant in determining whether this type of hearsay statement is sufficiently reliable to be admissible in evidence, and it concluded that the proffered testimony was not a statement against Allen’s penal interest and was not corroborated. The Second District disagreed with the trial court’s finding on the penal interest issue, but it agreed with the trial court that the proffered

testimony was not corroborated by any evidence in the case except Petitioner's pretrial statement but rather was in direct conflict with all of the remaining evidence in the case. The Second District's holding was:

In *Chambers*, the reliability of the alleged third party's out-of-court statements was bolstered by several factors. First, the statements were made to more than one witness. Second, the third party was seen with a gun shortly after the shooting. Third, there was evidence that the third party had previously owned a gun and then bought another one shortly after the crime occurred. 410 U.S. at 300, 93 S. Ct. 1038. In this case, there is nothing other than [Petitioner]'s self-serving statements to the detectives before his arrest. In his pretrial statement, [Petitioner] admitted committing several felonies, but he carefully avoided admitting any direct involvement in Skipper's murder. And the crimes to which [Petitioner] admitted were crimes that he was unable to deny because of the number of witnesses who knew that he had participated in cleaning Skipper's car and attempting to dispose of it. Under the circumstances, we cannot say that the trial court abused its discretion in concluding that Tyler's testimony about Ray Allen's purported statements failed to meet the test of reliability outlined in *Chambers*. It follows that the trial court did not err in excluding her testimony at [Petitioner]'s trial.

62 So. 3d 664 (footnote omitted).

The Second District's discussion of the credibility of the proffered witness was included to indicate that, even if her credibility were to be considered to offset the lack of corroboration of her testimony, it fell short and contributed nothing positive to

establishing the reliability of her testimony.

*Dewolfe* applied the same corroboration test as did the opinion below and reached the opposite result based on its facts, which, unlike the situation sub judice, included at least three other items of evidence that were consistent with the hearsay testimony in issue there.

Thus, the decision below does not conflict with *Dewolfe* or any other decision of this Court or another district court of appeal.

Because the decision below does not expressly and directly conflict with a decision of this Court or another district court of appeal, there is no basis for this Court to exercise its discretionary jurisdiction in Petitioner's case. Accordingly, this Court should deny review.

**CONCLUSION**

Respondent respectfully requests that this Court deny review in the instant case.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Joseph Eli Bearden, Gulf Correctional Institution Annex, 699 Ike Steele Rd., Wewahitchka FL 32465-2433, this 8th day of October, 2012.

**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,

PAMELA JO BONDI  
ATTORNEY GENERAL

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ROBERT J. KRAUSS  
Chief-Assistant Attorney General  
Bureau Chief, Tampa Criminal Appeals  
Florida Bar No. 238538

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SUSAN D. DUNLEVY  
Assistant Attorney General  
Florida Bar No. 229032  
Concourse Center 4  
3507 E. Frontage Road, Suite 200  
Tampa, Florida 33607-7013  
(813)287-7900  
Fax (813)281-5500  
CrimAppTpa@myfloridalegal.com  
Susan.Dunlevy@myfloridalegal.com

COUNSEL FOR RESPONDENT