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IN THE SUPREME COURT OF FLORIDA

CASE NO.
LT. NO. 3D12–2097

MIGUEL RODRIGUEZ,

Petitioner,

-vs.-

THE STATE OF FLORIDA,

Respondent.

BRIEF OF PETITIONER ON JURISDICTION

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

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

STATEMENT OF THE CASE AND FACTS

Several bail bondsmen were attempting to locate a client who listed the address of Mr. Rodriguez's home on his bond application. (A. 2).[1] When the bondsmen arrived at the listed address and knocked on the door, Mr. Rodriguez answered. (A. 2). He told the bondsmen that he did not know their client and that he was alone. (A. 2). The bondsmen asked Mr. Rodriguez for permission to search his home to be sure that their client was not there, and Mr. Rodriguez consented. (A. 2).

The bondsmen noticed the smell of marijuana as they walked through the home. (A. 2). Eventually, they came upon a locked bedroom door that they asked Mr. Rodriguez to open so that they could confirm their client was not hiding in the room. (A. 3). Mr. Rodriguez unlocked the door and told the bondsmen that he was growing marijuana in the room. (A. 3). One of the bondsmen then called the police to report what he had observed. (A. 3).

A uniformed officer arrived at the home approximately thirty minutes later. (A. 3). According to the officer, Mr. Rodriguez invited him inside the home. (A.

[1] This is a petition for discretionary review of the decision of the Third District Court of Appeal in *Rodriguez v. State*, 39 Fla. L. Weekly D34 (Fla. 3d DCA Dec. 26, 2013), on the grounds of express and direct conflict of decisions. In this brief of petitioner on jurisdiction, all references are to the appendix attached to this brief, which is the Third District opinion, paginated separately and identified as "A" followed by the page number(s). All emphasis is supplied unless indicated otherwise.

3). The officer saw the grow room, called the narcotics squad, and placed Mr. Rodriguez in handcuffs in the back of his squad car while they waited for the narcotics unit to arrive. (A. 3).

Upon their arrival, the narcotics officers obtained Mr. Rodriguez's written consent to search his home. (A. 3). Mr. Rodriguez explained that he consented only because the officers were armed and were wearing black masks. (A. 3). None of the officers attempted to get a warrant prior to obtaining Mr. Rodriguez's consent and searching his home, and the lead narcotics officer admitted that they only would have sought a warrant if Mr. Rodriguez had not consented. (A. 4). Once inside Mr. Rodriguez's home, the narcotics officers discovered six-foot marijuana plants, lights, and thirty-six pounds of marijuana. (A. 3).

The trial court found that Mr. Rodriguez's consent was coerced, but nonetheless denied Mr. Rodriguez's motion to suppress on the ground that the evidence was admissible under the inevitable discovery doctrine. (A. 4). The Third District Court of Appeal affirmed, holding that the doctrine was applicable because the officers had probable cause to obtain a warrant and substantial investigative measures were already underway before the search of Mr. Rodriguez's home. (A. 2, 8). While the court recognized that two other Florida courts require that officers be in the process of obtaining a warrant at the time of an unconstitutional search for the inevitable discovery doctrine to apply, the court

found that this requirement is not an indispensable element of the doctrine. (A. 6–7). Notice invoking this Court's discretionary jurisdiction was timely filed.

SUMMARY OF ARGUMENT

In *King v. State*, 79 So. 3d 236 (Fla. 1st DCA 2012) and *Rowell v. State*, 83 So. 3d 990 (Fla. 4th DCA 2012), the First and Fourth District Courts of Appeal held that evidence was inadmissible under the inevitable discovery doctrine because officers made no attempts to obtain a warrant prior to conducting unconstitutional searches, even though they had probable cause to support the issuance of a warrant. In *McDonnell v. State*, 981 So. 2d 585 (Fla. 1st DCA 2008) and *Conner v. State*, 701 So. 2d 441 (Fla. 4th DCA 1997), the courts held that evidence was admissible under the inevitable discovery doctrine because officers were in the process of obtaining warrants prior to conducting unconstitutional searches. In this case, the Third District Court of Appeal held that evidence found in Mr. Rodriguez's home was admissible under the inevitable discovery doctrine because officers had probable cause to obtain a warrant, despite the fact that they were not in the process of doing so at the time of the unconstitutional search. This Court's exercise of its discretionary jurisdiction is necessary to resolve this express and direct conflict of decisions.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN THE PRESENT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THE FIRST DISTRICT COURT OF APPEAL IN *King v. State*, 79 So. 3d 236 (Fla. 1st DCA 2012) AND *McDonnell v. State*, 981 So. 2d 585 (Fla. 1st DCA 2008), AND THE DECISIONS OF THE FOURTH DISTRICT COURT OF APPEAL IN *Rowell v. State*, 83 So. 3d 990 (Fla. 4th DCA 2012) AND *Conner v. State*, 701 So. 2d 441 (Fla. 4th DCA 1997).

In this case, the Third District Court of Appeal held that the evidence found during the warrantless search of Mr. Rodriguez's home was admissible under the inevitable discovery doctrine because officers had probable cause to obtain a warrant and substantial investigative measures were already underway at the time of the unconstitutional search, notwithstanding the fact that the officers made no attempt whatsoever to obtain a warrant prior to the unconstitutional search. Several decisions from the First and Fourth District Courts of Appeal, however, have held that evidence found during a warrantless search of a home is only admissible under the inevitable discovery doctrine where officers not only have probable cause to obtain a warrant, but also take some steps to actually obtain the warrant prior to the occurrence of the illegal conduct. This Court's exercise of its discretionary jurisdiction is necessary to resolve this express and direct conflict between the decision of the Third District Court of Appeal in this case and the decisions of the First and Fourth District Courts of Appeal.

In *King v. State*, 79 So. 3d 236 (Fla. 1st DCA 2012), an officer was dispatched to the defendant's home in response to a domestic disturbance call. When the officer arrived, only the defendant's wife was home. The officer, who knew the defendant was a convicted felon, asked the wife if her husband had any guns in the home. The wife answered affirmatively and led the officer to the bedroom she shared with her husband. She told the officer that the gun was in a safe on the floor of the closet and that she did not have a key. The officer took the safe to his squad car, pried it open with a screwdriver, and found a gun inside. The First District Court of Appeal concluded that the trial court erred in ruling that the gun was admissible under the inevitable discovery doctrine even though the officer had probable cause because "**the officer testified that he did not attempt to get a warrant, and the State presented no evidence suggesting that he did**." *King*, 79 So. 3d at 237–38.

In *Rowell v. State*, 83 So. 3d 990 (Fla. 4th DCA 2012), officers were dispatched to an apartment complex in response to a "shots fired" call. Upon the officers' arrival to the scene, the victim told them that the defendant shot at him from the second floor. The officers located a shell casing on the first floor of the complex, detained the defendant, and set up a perimeter around the entire apartment complex. The officers then conducted a protective sweep of the defendant's apartment and found a gun on the kitchen counter. At the suppression

hearing, one of the officers testified that the police had sufficient grounds and ample time to obtain a warrant to search the defendant's apartment, **but no warrant was ever sought**. The Fourth District Court of Appeal held that the inevitable discovery doctrine did not apply even though the police may have had probable cause to obtain a warrant because "**the prosecution made absolutely no showing that efforts to obtain a warrant were actively being pursued prior to the occurrence of the illegal conduct**," and "operation of the 'inevitable discovery' rule under the circumstances of this case would effectively nullify the requirement of a search warrant under the Fourth Amendment." *Rowell*, 83 So. 3d at 995–96.

In *McDonnell v. State*, 981 So. 2d 585 (Fla. 1st DCA 2008), officers arrived at the defendant's house and told him they were investigating the theft of an ATM. The defendant denied any involvement in the crime, at which point the officers asked the defendant for consent to search his home. When the defendant refused, one of the officers **left to obtain a warrant** while other officers stayed behind. While waiting for the officer to return with the warrant, another officer requested and received the defendant's consent to search his home, and efforts to obtain the warrant were halted. Despite finding that the defendant's consent to the search of his home was not voluntary, the First District Court of Appeal nonetheless held that the evidence was admissible under the inevitable discovery doctrine because

there was probable cause to support the issuance of a warrant **and because an officer was in the process of obtaining a warrant when the defendant consented to the search**. *McDonnell*, 981 So. 2d at 591–93.

Finally, in *Conner v. State*, 701 So. 2d 441 (Fla. 4th DCA 1997), officers responded to the defendant's home after arresting a man who claimed the defendant had sold him marijuana. The defendant was already in custody on unrelated charges, but the defendant's wife was home when the officers arrived. The wife consented to the officers' entry into the home, but not to any search of the home. The officers secured the home in anticipation for the preparation of a search warrant, **and a lieutenant ordered an officer to get a description of the home to begin the process of obtaining a warrant**. While waiting for the warrant, the wife spoke to the defendant on the phone, after which she signed a form consenting to a search of a safe. The Fourth District Court of Appeal held that the contents of the safe were admissible under the inevitable discovery doctrine because the officers had sufficient probable cause to obtain a warrant and "**were in the process of obtaining a warrant to open and search the safe."** The court explained that "[t]he state carried its burden of establishing by a preponderance of the evidence that the contents of the safe would have inevitably been discovered in the course of a legitimate investigation, had the warrant process not been aborted by the constitutionally deficient consent . . . ." *Conner*, 701 So. 2d at 443.

In this case, as in *King* and *Rowell*, the officers had probable cause to obtain a warrant prior to searching Mr. Rodriguez's home without a warrant and without valid consent. As in *King* and *Rowell*, the officers in this case did not attempt to obtain a warrant prior to the unconstitutional search. But here, the Third District Court of Appeal held that the evidence found in Mr. Rodriguez's home was admissible under the inevitable discovery doctrine, notwithstanding the fact that no efforts to obtain a warrant were made. This holding cannot be reconciled with the holdings of in *King* and *Rowell*, nor can it be reconciled with the holdings of *McDonnell* and *Conner*, where the First and Fourth District Courts of Appeal held that evidence was admissible under the inevitable discovery doctrine because officers had probable cause **and** took some steps to obtain a warrant prior to the unconstitutional searches.

Further, the Third District's decision in this case conflicts with the United States Supreme Court's interpretation of the inevitable discovery doctrine set forth in *Nix v. Williams*, 4657 U.S. 431 (1984).[2] In *Nix*, the United States Supreme

[2] While the Third District's opinion in this case notes that some federal circuit courts have "declined to require proof of active efforts to obtain a warrant before [an] illegal search," other circuit courts have held that efforts to obtain a warrant must be underway prior to the occurrence of unconstitutional conduct for evidence to be admissible under the inevitable discovery doctrine. *See, e.g.*, *United States v. Pelletier*, 700 F.3d 1109, 1116–18 (7th Cir. 2012) (concluding that evidence discovered on defendant's computer was properly admitted under inevitable discovery doctrine because officers had probable cause to obtain warrant and during interview of defendant, one officer "**called both state and federal law**

Court held that evidence pertaining to the discovery and condition of a victim's body was properly admitted under the inevitable discovery doctrine **because a legal search for the victim was already under way at the time of the unconstitutional police conduct**, and the body was ultimately found in the area where the search was being conducted. *Nix*, 467 U.S. at 466–50. Although *Nix* did not involve evidence obtained pursuant to the warrantless search of a home, it nonetheless establishes that the inevitable discovery doctrine only applies when the State can prove that lawful efforts to obtain the evidence were already under way at the time of the unconstitutional conduct.

Given that the decision of the Third District Court of Appeal in this case expressly and directly conflicts with the decisions of the First and Fourth District Courts of Appeal in *King*, *Rowell*, *McDonnell*, and *Conner*, and is inconsistent with the United States Supreme Court's interpretation of the inevitable discovery doctrine set forth in *Nix*, this Court's exercise of its discretionary jurisdiction is necessary to resolve this conflict of decisions.

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enforcement authorities to start pursuing a search warrant," in case officers were unable to obtain defendant's consent); *United States v. Quinney*, 583 F.3d 891, 893–95 (6th Cir. 2009) (concluding that trial court erred in admitting evidence seized from defendant's home during warrantless search under the inevitable discovery doctrine **where officers had ample probable cause to obtain a warrant but failed to do so**); *United States v. Lamas*, 930 F.2d 1099, 1101–04 (5th Cir. 1991) (concluding that evidence was admissible under inevitable discovery doctrine where, before officers obtained invalid consent pursuant to which evidence was found, **one officer had departed to get a warrant for which there was probable cause**).

CONCLUSION

Petitioner respectfully requests this Court to exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND CERTIFICATE OF FONT

I HEREBY CERTIFY that a true and correct copy of the foregoing was emailed to the Office of the Attorney General, Criminal Division, at CrimAppMIA@MyFloridaLegal.com this 23rd day of January, 2014, and that the type used in this brief is 14 point proportionately spaced Times New Roman. Undersigned counsel hereby designates, pursuant to Rule 2.516, the following email addresses for the purpose of service of all documents required to be served pursuant to Rule 2.516 in this proceeding: AppellateDefender@pdmiami.com (primary email address); SAH@pdmiami.com (secondary email address).

/s/ Shannon Healy
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