

In the Supreme Court of Florida

CASE NO. SC14-1629
LT CASE NO. 3D12-1338
LT. CASE NO. 08-43845

RODOLFO VALLADARES,

Petitioner,

v.

BANK OF AMERICA CORPORATION,
a Delaware corporation,

Respondent.

RESPONDENT'S JURISDICTIONAL BRIEF

On Review from the District Court of Appeal, Third District State of Florida

J. RANDOLPH LIEBLER

Florida Bar No. 507954

TRICIA J. DUTHIERS

Florida Bar No. 664731

tjd@lgplaw.com

JOSHUA R. LEVINE

Florida Bar No. 091807

jrlevine@lplaw.com

LIEBLER, GONZALEZ & PORTUONDO

Attorneys for Petitioner

Courthouse Tower - 25th Floor

44 West Flagler Street

Miami, FL 33130

(305) 379-0400

Primary: service@lgplaw.com

TABLE OF CONTENTS

TABLE OF CITATIONS iii

STATEMENT OF CASE AND FACTS 1

SUMMARY OF ARGUMENT 2

JURISDICTIONAL STATEMENT 3

ARGUMENT 3

 THE DISTRICT COURT’S DECISION DOES NOT
 CONFLICT WITH *POKORNY* OR *HARRIS* 3

CONCLUSION 10

CERTIFICATE OF SERVICE 11

CERTIFICATE OF COMPLIANCE 11

TABLE OF CITATIONS

<i>Cases</i>	<i>Page</i>
<i>Acensio v. State</i> , 497 So. 2d 640 (Fla. 1986)	4
<i>Aravena v. Miami-Dade County</i> , 928 So. 2d 1163 (Fla. 2006)	4, 6, 8
<i>Bank of Am. Corp. v. Valladares</i> , 141 So. 3d 714 (Fla. 3d DCA 2014).....	3
<i>Basulto v. Hialeah Auto.</i> , 141 So. 3d 1145 (Fla. 2014)	4
<i>Crossley v. State</i> , 596 So. 2d 447 (Fla. 1992)	4, 6, 8
<i>Delano v. Dade County</i> , 287 So. 2d 288 (Fla. 1973)	9
<i>Dep't of Revenue v. Johnston</i> , 442 So. 2d 950 (Fla. 1983)	6
<i>Ford Motor Co. v. Kikis</i> , 401 So. 2d 1341 (Fla. 1981)	6
<i>Harris v. Lewis State Bank</i> , 482 So. 2d 1378 (Fla. 1st DCA 1986).....	2, 3, 4, 5, 6, 7, 8, 10
<i>Mancini v. State</i> , 312 So. 2d 732 (Fla. 1975)	3
<i>Pokorny v. First Fed. Sav. & Loan Ass'n of Largo</i> , 382 So. 2d 678 (Fla. 1980)	1, 2, 3, 4, 5, 8, 10

Reaves v. State,
485 So. 2d 829 (Fla. 1986)10

State v. Stacey,
482 So. 2d 1350 (Fla. 1985)4

Other Authorities

Fla. R. App. P. 9.030(a)(2)(A)(iv)3
Florida Constitution, Article V, §3(b)(3).....3

STATEMENT OF CASE AND FACTS

Rodolfo Valladares (“Valladares”) sued Bank of America Corporation (“Bank”) for personal injuries he sustained at the hands of the police responding to a call after “[a] teller at the branch mistook Valladares for a bank robber.” App. 2.

Valladares sued for battery, false imprisonment, and negligence, and sought punitive damages for the battery and false imprisonment claims. *Id.* The jury found the Bank to be liable for negligence, but not liable for battery or false imprisonment. Nevertheless, the verdict included an award of \$700,000.00 in punitives. App. 2–3. The Bank appealed the final judgment, raising five issues on appeal. App. 3–4. The district court reversed on the first issue. App. 4. Relying on this Court’s decision in *Pokorny v. First Fed. Sav. & Loan Ass’n of Largo*, 382 So. 2d 678 (Fla. 1980), the district court found that the Bank could not be liable to for its report of a suspected crime to the police, unless the report was made with malice. App. 8–9. In its decision, the district court explained the public policy reason behind the qualified immunity granted to individuals who report suspected crimes to the authorities, as well as other specific grants of immunity by the legislature, for reports made to the authorities. App. 4–7.

In the decision, the third district recognized one decision that “cuts against the trend of recognizing a qualified privilege for reporting a crime,” *Harris v.*

Lewis State Bank, 482 So. 2d 1378 (Fla. 1st DCA 1986). App. 7. The court concluded its analysis of *Harris* by stating, “[t]o the extent *Harris* holds that a person can be liable for a negligent, but good faith, mistake in summoning the police We respectfully disagree with it.” App. 7–8. However, the decision did not certify conflict. *Id.* Valladares now seeks review in this Court based on an alleged express and direct conflict between *Pokorny* and *Harris*.

SUMMARY OF ARGUMENT

This Court does not have jurisdiction to review this case because the district court’s decision does not conflict with *Pokorny* or *Harris*. The district court’s decision is consistent with *Pokorny* and its principles that a person cannot be held liable in tort for reporting a suspected crime to the police, that turns out to be wrong, if the person who makes the report does not act with malice. The district court’s decision is distinguishable from *Harris*, because the facts alleged in *Harris* show enough malice for the complaint to have survived a motion to dismiss. Finally, the fact that the jury awarded punitive damages is insufficient to show malice by the person who made the report to the police, thus, there is no express and direct conflict with *Pokorny*. Thus, this Court should decline jurisdiction.

JURISDICTIONAL STATEMENT

This is a petition for discretionary review of the decision of the Third District Court of Appeal in *Bank of Am. Corp. v. Valladares*, 141 So. 3d 714 (Fla. 3d DCA 2014). Petitioner seeks to invoke this Court’s discretionary jurisdiction pursuant to Article V, §3(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), providing for review of decisions that “expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law.”

ARGUMENT

THE DISTRICT COURT’S DECISION DOES NOT CONFLICT WITH *POKORNY* OR *HARRIS*

This Court does not have jurisdiction to review the third district’s decision, as there is no express and direct conflict with this Court’s decision in *Pokorny*, or the decision of the first district in *Harris*. Thus, this Court should decline to accept jurisdiction.

This Court’s “jurisdiction to review decisions of courts of appeal because of alleged conflicts is invoked by (1) the announcement of a rule of law which conflicts with a rule previously announced by this court or another district, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same facts as a prior case.”

Mancini v. State, 312 So. 2d 732, 733 (Fla. 1975). One of the primary tests for

whether there is express and direct conflict between two decision, is whether they are irreconcilable. *Aravena v. Miami-Dade County*, 928 So. 2d 1163, 1166 (Fla. 2006) (citing *Crossley v. State*, 596 So. 2d 447, 449 (Fla. 1992) (“concluding that because the court below “reached the opposite result on controlling facts which, if not virtually identical, more strongly dictated” the result reached by the alleged conflict case, a conflict of decisions existed that warranted accepting jurisdiction.”). Alternatively, conflicts can be created based on what is called “misapplication conflict.” *Basulto v. Hialeah Auto.*, 141 So. 3d 1145, 1151 (Fla. 2014), reh'g denied (June 19, 2014) (citing *Acensio v. State*, 497 So. 2d 640, 641 (Fla. 1986); *State v. Stacey*, 482 So. 2d 1350, 1351 (Fla. 1985)).

The decision in this case does not rise to the level of express and direct conflict because the controlling facts do not create an irreconcilable conflict with either *Pokorny* or *Harris*. Additionally, the district court did not misapply this Court’s decision in *Pokorny*.

A. The District Court’s Decision Does Not Conflict with *Pokorny*

Valladares argues that the decision in this case conflicts with *Pokorny* because *Pokorny* permits a claim of simple negligence when there are allegations of recklessness. Pet. Br. at 7. There is no conflict with *Pokorny* because it holds that a person who reports a suspected crime to law enforcement can only be liable

when the report is made with actual malice. The *Pokorny* court held,

under Florida law a private citizen may not be held liable in tort where he neither actually detained another nor instigated the other's arrest by law enforcement officers. If the private citizen makes an honest, good faith mistake in reporting an incident, the mere fact that his communication to an officer may have caused the victim's arrest does not make him liable when he did not in fact request any detention.

382 So. 2d at 682. The *Pokorny* court further stated,

Florida courts have *never recognized a separate tort for “negligently” swearing out a warrant for arrest*. Such cases may be brought *only in the form of civil suits for malicious prosecution*. A plaintiff contending that he had been improperly arrested as the result of negligence in swearing out a warrant *must bear the burden of establishing malice and want of probable cause. Mere negligence alone is insufficient*.

Id. at 683 (emphasis added) (internal citations omitted). Because the jury found that the Bank was not liable for the two intentional torts – battery and false imprisonment – it necessarily rejected Valladares’s contention that the Bank teller acted intentionally or with malice. Therefore, the third district’s decision in this case does not conflict with *Pokorny*. Thus, this Court lacks jurisdiction.

B. The District Court’s Decision Does Not Conflict with *Harris*

The district court stated, “[t]o the extent *Harris* holds that a person can be liable for a negligent, but good faith, mistake in summoning the police, it conflicts with the authority summarized above which governs analogous situations. We respectfully disagree with it.” App. 7–8. Valladares argues that this statement

creates express and direct conflict with *Harris*. Pet. Br. at 7–8. However, the district court did not certify conflict with *Harris*. While it is not necessary for a district court to certify conflict for this Court to have conflict jurisdiction, *Ford Motor Co. v. Kikis*, 401 So. 2d 1341, 1342 (Fla. 1981), there is no conflict here because *Harris* is easily distinguishable. *Dep't of Revenue v. Johnston*, 442 So. 2d 950, 950 (Fla. 1983) (holding that Court does not have jurisdiction when conflict case is distinguishable on its facts); *accord Aravena*, 928 So. 2d at 1166; *Crossley*, 596 So. 2d at 449.

The plaintiff in *Harris* received an account statement from the defendant bank in her name and in the name of a John Lewis. 482 So. 2d at 1382 n.8. The plaintiff did not have an account at the bank, nor did she recognize the name John Lewis. However, when she presented the statement to the teller and “stated that she was not familiar with the name “John Lewis”, [sic] the teller advised her that “someone must have put some money in the bank for you” and advised that she could withdraw funds from the account.” *Id.* The bank then assisted the plaintiff in obtaining an identification card to simplify subsequent withdrawals, and allowed the plaintiff to make subsequent withdrawals. *Id.* When the true owner of the account discovered that money had been withdrawn from his account without proper authorization, the bank did not reveal to him what had transpired between

bank employees and plaintiff, but instead led him to believe that someone with criminal intent had forged the authorized signature of his daughter, who had the same name as the plaintiff. *Id.* Despite the bank's *actual knowledge* of the true state of facts, when the plaintiff came back to make another withdrawal, a bank employee detained her, turned her over to the sheriff's department, and concealed the bank's role in the plaintiff's withdrawals from the account during the prosecution. *Id.*

The *Harris* court distinguished *Pokorny* on the basis that: (1) the bank's employees, and not law enforcement, detained the *Harris* plaintiff; (2) the bank assisted the plaintiff with making withdrawals; (3) the bank had actual knowledge of the innocent mistake, but misled the account owner to believe that a criminal act had occurred; and (4) the bank concealed its knowledge during the subsequent prosecution. 482 So. 2d at 1383–84. Here, however, “[a] teller at the branch *mistook* Valladares for a bank robber.” App. at 2 (emphasis added). Additionally, the defendant bank in *Harris* did more than report a suspected crime to the authorities; the bank told the account holder that the plaintiff had forged his daughter's signature to make withdrawals, despite the fact that the bank knew that to be false. *Harris*, 482 So. 2d at 1382 n.8. Because of the factual differences between *Harris* and this case, the cases can be reconciled, and thus, there is no

conflict jurisdiction. *Aravena*, 928 So. 2d at 1166; *Crossley*, 596 So. 2d at 449.

Next, although the district court seems to have acknowledged a disagreement with *Harris*, it did not certify a conflict. The district court's disagreement with *Harris* is not a disagreement with its holding. *Harris* did not hold that "a person can be liable for a negligent, but good faith, mistake in summoning the police." App. 8. Rather *Harris* distinguished *Pokorny* based on the facts; i.e., because the defendant bank in *Harris* helped the plaintiff withdraw funds from the account and had actual knowledge of her innocence, but nevertheless told the accountholder that a crime had occurred, detained the plaintiff themselves, and concealed its knowledge about the plaintiff's innocence from law enforcement. 482 So. 2d at 1382 n.8. As a result, the first district found that the complaint should survive a motion to dismiss because it was "at least arguable" that the bank's actions fell outside the scope of the "innocent misunderstanding portrayed in *Pokorny*." *Id.* at 1384. *Harris* did not hold that a person can be liable for a negligent, but good faith mistake in reporting a potential crime to the police. Thus, there is no conflict between this case and *Harris*, and this Court does not have jurisdiction.

C. The Jury's Award of Punitive Damages Does Not Create a Conflict with *Pokorny*

Finally, Valladares argues that the fact that the jury awarded punitive damages creates a conflict, because the award of punitive damages “necessarily signified its finding that the Bank’s employees *did* act maliciously.” Pet. Br. at 9 (emphasis in original). Valladares argues that the district court’s decision was an improper elevation of form over substance. Pet. Br. at 8–10. However, the cases cited by Valladares do not support this argument. Most notably in *Delano v. Dade County*, 287 So. 2d 288, 289 (Fla. 1973), this Court declined to accept jurisdiction because the Florida Constitution did not expressly provide jurisdiction to review decisions passing on the validity of county ordinances. *Id.* at 289. The dissent, cited by Valladares, argued that the Court was improperly elevating form over substance. *Id.* at 290. The majority opinion actually reflects that this Court strictly construes the constitution in deciding whether to exercise its jurisdiction. *Id.* at 289.

Furthermore, the fact that the jury awarded punitive damages does not in itself show that the Bank’s employee did not make an innocent mistake in reporting a suspected crime to the police. The decision of the district court does not indicate the basis for the punitive damages. As long as the Bank teller made an honest mistake in reporting the suspected crime to the police, there can be no tort

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished via Email on September 22, 2014, to all parties on the Service List below.

/s/ Tricia J. Duthiers

TRICIA J. DUTHIERS
Florida Bar No. 664731
tjd@lgplaw.com

Service List:

Counsel for Appellee:

Mark G. DiCowden, Esq.
Mark G. DiCowden, P.A.
2785 N.E. 183rd Street, Suite 600
Aventura, Florida 33160
Primary: mgd@dicowdenlaw.com

Co-Counsel for Appellee:

Joel S. Perwin, Esq.
Joel S. Perwin, P.A.
Alfred I. Dupont Bldg., Suite 1422
169 E. Flagler Street,
Miami, FL 33131
Primary: jperwin@perwinlaw.com

CERTIFICATE OF TYPE SIZE & STYLE

Appellee hereby certifies that the type size and style of the Respondent's Brief on Jurisdiction is Times New Roman 14pt.

/s/ Tricia J. Duthiers

TRICIA J. DUTHIERS
Florida Bar No. 664731
tjd@lgplaw.com