IN THE SUPREME COURT OF FLORIDA

JONATHAN KNIGHT,

Petitioner,

v.

CASE NO. SC13-564
5th DCA NO. 5D11-2875

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

The facts of this case were set forth in detail in the opinion below as follows:

> In the early morning hours of November 21, 2010, Knight was driving a yellow 2010 Camaro owned by a friend, who was riding in the front passenger seat of the vehicle, when Orange County Deputy Sheriff Donald Murphy pulled alongside the Camaro, activated his emergency lights, and signaled Knight to pull over. Knight complied, and stopped in an adjacent 7-Eleven convenience store parking lot. Deputy Murphy ordered Knight out of the car, explaining that he had stopped Knight because of excessively loud music emanating from the car, and walked him to the front of his patrol car.
>
> Serendipitously, a K-9 officer pulled into the 7-Eleven parking lot within minutes of the stop, while Murphy was issuing a noise violation citation to Knight. After Murphy released Knight, Knight walked into the 7-Eleven to buy a drink. At approximately the same time, the K-9 officer made an "impromptu" decision to run his dog, Endo, around the Camaro. Endo alerted to the passenger side door, and Murphy re-detained Knight when he walked out of the 7-Eleven. Murphy then searched the vehicle, locating a small bag of suspected cannabis in a "small carry-on style rolling-type suitcase" which contained a luggage tag identifying Knight as the owner of the suitcase. The suitcase had been sitting on the backseat of the car. Murphy seized the substance, which ultimately tested positive as cannabis and weighed 24.4 grams. Deputy Murphy did not locate any drug paraphernalia typically associated with marijuana usage in the vehicle. After completing the vehicle search, Murphy arrested Knight for possession of cannabis. In a search incident to the arrest, Murphy discovered $2,400 cash in Knight's pockets.
>
> The State charged Knight with both possession of cannabis with intent to sell or deliver and possession of more than 20 grams of cannabis. At trial, the State presented the testimony summarized above, and rested. Knight moved for a judgment of acquittal, which the trial court denied.

Knight called as his first witness Chaka Miller, the friend who had been in the front passenger seat at the time of the stop which led to Knight's arrest. Miller testified that he, Knight and another friend (Chad Harris) were visiting Orlando for the weekend to attend the "Florida Classic" football game on the date of Knight's arrest. He testified that the cannabis found in the car did not belong to him, but that he had not seen Knight with marijuana—or heard him discuss marijuana—at all during the trip. He testified that the group usually paid cash for their hotel rooms when they traveled. Finally, although he did not contradict the State's evidence that the suitcase belonged to Knight, he did testify that Chad Harris was left in the backseat of the car next to the suitcase after Deputy Murphy removed Knight from the vehicle to issue the citation—implying that Harris could have placed the cannabis in the suitcase at that time.

Knight then took the stand in his own defense, also testifying that the cannabis was not his. He claimed that the money on his person was for his weekend trip expenses, and did not come from selling drugs. He flatly denied selling drugs ("I don't sell drugs."), and further elaborated that he had that much cash to spend for the weekend because he had received settlements from two separate personal injury cases, one involving a motorcycle accident and another involving a fight. . . . Finally, he reiterated that Chad Harris was seated in the back of the car next to the suitcase, and was left there between the time he was removed from the car and the search several minutes later. Knight also did not contradict the State's evidence that the suitcase belonged to him, and seemed to acknowledge it as his—instead focusing on the fact that Harris had an opportunity to place the marijuana in the suitcase and denying that he had put any marijuana in his luggage. On cross-examination the State immediately sought to have Knight reiterate what it obviously viewed as Knight's admission that the suitcase was his, but Knight then denied owning the suitcase and also denied that his name was on the luggage tag—directly contradicting Deputy Murphy's testimony.

At the close of the evidence, Knight renewed his motion for judgment of acquittal, which was denied. After deliberations, the jury returned a verdict of not

> guilty on the charge of possession with intent to sell or deliver and a verdict of guilty on the charge of possession of more than 20 grams of cannabis
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> * * *
>
> [T]he two inferences that could logically be drawn from the circumstantial evidence are that: (1) Knight knew that the marijuana was in his suitcase (and is guilty); or, (2) Knight did not know that the marijuana was in his suitcase because Chad Harris placed it there without his knowledge after Deputy Murphy removed Knight from the car (Knight's hypothesis of innocence). This is admittedly a close case. However, **we believe that a reasonable fact-finder could reject Knight's hypothesis of innocence as unreasonable** based upon: (1) the very short window of opportunity Harris would have had to move the marijuana from another hiding place to the suitcase (the K-9 deputy arrived within minutes of the stop); (2) the fact that an inference could reasonably be drawn from Chakra Miller's testimony that Harris did not place the marijuana in Knight's suitcase (Miller was in a position to detect any attempt by Harris to hide 24.4 grams of marijuana in Knight's suitcase, but did not testify to any facts indicating that Harris actually did so); and (3) the jury's unique ability to assess Knight's demeanor on the witness stand during the whole of his testimony.

Knight v. State, 107 So. 3d 449, 451-453, 468 (Fla. 5th DCA 2013) (footnotes omitted) (emphasis added). The Defendant's conviction was affirmed. Id. at 469.

SUMMARY OF ARGUMENT

This Court should not exercise jurisdiction over this case, where the lower court's opinion affirming the denial of the Defendant's motion for judgment of acquittal is based on the specific facts before it, and where the court's lengthy discussion of the appropriate standard of review to be applied is essentially dicta. While the lower court urged this Court to revisit the question of the standard of review in circumstantial evidence cases, it did not choose to certify this issue as a question of great public importance. As a practical matter, this Court should allow the other district courts to consider the policy questions raised by the lower court's opinion and address this issue when, and if, the other districts choose to disagree in a case where the standard of review actually matters to the outcome.

ARGUMENT

THIS COURT SHOULD NOT EXERCISE JURISDICTION OVER THIS CASE, WHERE THE DISTRICT COURT'S DECISION CORRECTLY APPLIES BLACK LETTER LAW TO A UNIQUE FACTUAL SITUATION AND DOES NOT ACTUALLY CONFLICT WITH ANY OTHER DECISION.

The lower court's opinion is an interesting and well-reasoned critique of the appropriate standard of review in circumstantial evidence cases. The opinion should be applauded as an intellectual exercise, and at some point in the future its reasoning may well be adopted by this Court for the very policy reasons explained in detail therein.

However, the Florida Constitution does not allow this Court to exercise jurisdiction because a case raises interesting jurisprudential questions or because the lower court urges this Court to revisit earlier cases. Instead, this Court's jurisdiction is limited in relevant part to those cases where there is an actual certified conflict between cases or where the district court of appeal certifies a specific question as one of great public importance. Neither standard is met here, and accordingly jurisdiction should be denied.

This Court "may" exercise jurisdiction under article V, section (3)(b)(4) of the Florida Constitution where a decision of a district court "passes upon a question . . . that is certified by it to be in direct conflict with a decision of another district court of appeal." The Defendant relies on this

provision here, and a superficial examination of the opinion below supports this reliance, as the lower court expressly certified conflict with five opinions from other districts. Knight, 107 So. 3d at 451.

As this Court has recognized, jurisdiction may be exercised based solely on a district court's certification of conflict, "but we also have the discretion to determine that we should not exercise our jurisdiction" in such cases - especially where there is no actual conflict in the caselaw. State v. Frierson, 926 So. 2d 1139, 1142 (Fla.), cert. denied, 549 U.S. 1082 (2006). Such is the case here.

While the lower court initially stated that its opinion conflicted with various cases from other districts, it then went on to persuasively distinguish those cases. Specifically, while disagreeing with other district courts that had concluded that a JOA should have been granted in drug cases with similar facts - where the defendant claimed that a third party could have placed the contraband in his container without his knowledge - the court went on to note that the evidence on this matter in the instant case was much more compelling than in the supposedly conflicting cases. That is, in the instant case the Defendant "had a credible argument for why the jury should have accepted his hypothesis of innocence as reasonable," unlike the other cases were "there does not appear to have been any identifiable motive

for others with access to the container to have placed any contraband in it." Knight, 107 So. 3d at 455 n.7.

This distinguishing language well illustrates the intrinsically fact-bound analysis of this opinion - and frankly the vast majority of opinions that address the sufficiency of the evidence in a "close case" such as this. In light of the unique and specific factual nature of this case, then, this Court should not exercise its jurisdiction here.

Admittedly, the lower court repeatedly urged this Court to grant review of this case so that this Court can revisit the appropriate standard of appellate review in circumstantial evidence cases. The lower court's discussion of this legal issue is both well-reasoned and well-researched. It is also dicta.

As the lower court expressly stated, it would affirm the Defendant's conviction under the long-standing (and arguably incorrect) standard of review, just as it would affirm the Defendant's conviction under its proposed (and arguably more correct) change to that standard. Id. at 468. Indeed, the court specifically recognized that the acceptance or rejection of its proposed change to the standard of review would make no real difference here: "even if another appellate court disagrees with the ultimate conclusion we reach in affirming the conviction in this case, it is important to emphasize that that disagreement would have nothing to do with the broader issue of whether the

"special standard" should be rejected as confusing, unnecessary, and incorrect." Id. at 468-69.

Accordingly, the Respondent submits that the state of the law would be better served if this Court allows the other district courts to consider the policy questions raised by the lower court's opinion here and addresses this issue when, and if, the other districts choose to disagree in a case where the standard of review actually matters to the outcome. While one other district court judge has, in dissenting opinions, expressed agreement with this well-reasoned opinion, no majority opinion from another district court has yet to address it. See State v. Sims, 2013 WL 1194940, *4 (Fla. 1st DCA March 25, 2013) (Thomas, J., dissenting); Martin v. State, 107 So. 3d 561, 562 (Fla. 1st DCA 2013) (Thomas, J., dissenting).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Jurisdictional Brief has been furnished to Robert E. Wildridge, counsel for Petitioner, by email to young.kathy@pd7.org and wildredge.robert@pd7.org, this 17th day of April, 2013.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

/s/Kristen L. Davenport
Kristen L. Davenport
Assistant Attorney General

Barbara Harley-Price

From: Kristen Davenport [Kristen.Davenport@myfloridalegal.com]
Sent: Friday, June 28, 2013 11:58 AM
To: e-file
Subject: Jurisdictional Brief -- Knight v. State, SC13-564
Attachments: jb-knight.wpd

I spoke to Alecia yesterday, and she has asked me to email this jurisdictional brief, as the e-portal will not take it. Barbara Price is aware of this problem as well. I have provided this brief in word perfect format.

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