IN THE SUPREME COURT OF FLORIDA

LAWRENCE PATTERSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC15-228

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the appellant in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Lawrence Patterson, the appellee in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The pertinent history and facts for jurisdictional purposes are only those contained within the lower court's decision, and consequently are set out in such decision, attached in the State's Appendix. The extra-decisional facts and arguments included in Petitioner's statement should be disregarded, including those relating to rehearing.

SUMMARY OF ARGUMENT

No express and direct conflict exists between the First District's decision and *Lancaster v. State*, 457 So.2d 506 (Fla. 4th DCA 1984). *Lancaster* and the instant case involve different facts, specifically preserved evidence which allowed a defense expert to refute the State's experts, and that the initial investigation was not conducted with an eye towards arrest and prosecution. Given that different facts drove the analyses, in cannot be said that the cases are in express and direct conflict.

Moreover, the First District did not expressly construe the due process provisions of the state and federal constitutions in the instant case. Such construction requires an overt statement that eliminates some existing doubt as to due process. No such statement appears in the decision, for the First District merely applied what had already been said about the meaning of due process to the facts of the instant case. Consequently, no express construction is present in the instant case and jurisdiction does not exist.

ARGUMENT

ISSUE I: WHETHER THIS COURT HAS EXPRESS AND DIRECT CONFLICT JURISDICTION TO REVIEW THE FIRST DISTRICT'S DECISION IN *PATTERSON V. STATE* (RESTATED)?

1. Jurisdictional Criteria

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla. Const. The constitution provides:

> The supreme court ... [m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986). *Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc.*, 498 So. 2d 888, 889 (Fla. 1986) (rejected "inherent" or "implied" conflict; dismissed petition). A district court must address the legal principles it relies upon to reach its decision. *See Ford Motor Co. v. Kikis*, 401 So.2d 1341, 1342 (Fla. 1981). Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction. *Reaves*, 485 So. 2d at 830; *Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980)("regardless of whether they are accompanied by a dissenting or concurring opinion"). Thus, conflict cannot be based upon "unelaborated per curiam denials of relief," *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002).

In *Ansin v. Thurston*, 101 So. 2d 808, 810 (Fla. 1958), this Court

explained:

> It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

Accordingly, the determination of conflict jurisdiction distills to whether the District Court's decision reached a result opposite *Lancaster v. State*, 457 So.2d 506 (Fla. 4th DCA 1984).

2. The decision below is not in "express and direct" conflict with *Lancaster v. State*, 457 So.2d 506 (Fla. 4th DCA 1984).

Petitioner claims that the decision in the instant case expressly and directly conflicts with the decision in *Lancaster v. State*, 457 So.2d 506 (Fla. 4th DCA 1984). Petitioner is mistaken because the facts in *Lancaster* are so different from the instant case as to make it wholly distinguishable, and so no express and direct conflict can exist.

In the instant case, Petitioner was convicted, based on setting two fires that destroyed his house and truck, of two counts of first-degree arson, second-degree arson, arson resulting in bodily injury to a firefighter, two counts of insurance fraud, burning a dwelling with intent to defraud, and burning a vehicle with intent to defraud. (Slip op. at 1-2). Both the State Fire Marshal and the insurance company investigated the fire without an eye towards a possible arrest, and once their investigations were complete and Petitioner was paid the proceeds under his

policy, the insurance company took the truck and destroyed it. (Slip op. 2). The investigators preserved approximately 300 photographs of the truck and garage area. (Slip op. 5). Five months later, Respondent was arrested and charged. (Slip op. 2). During trial, both the State's and Respondent's experts centered their testimony on the photographs preserved from the scene of the truck arson. (Slip op. 7). Respondent's expert was able to use the photographs, as well as their inspection of the garage in which the truck was burned, to refute the testimony of the State's experts by concluding that the fire was merely electrical, and not arson. (Slip op. 7-8).

In *Lancaster*, 457 So.2d 506, the determinative facts are wholly different. That case involved a defendant who was convicted of arson based on burning a truck of which they had custody, but did not own. *Id.* at 506. Law enforcement discovered the burning truck and shortly thereafter began to doubt the defendant's innocent explanation for the fire. *Id.* Law enforcement summoned fire investigators, who examined the truck and concluded the fire was not accidental. *Id.* Meanwhile, the truck's owner requested that he be allowed to salvage the truck. *Id.* After law enforcement completed their investigation, the truck was released for that purpose to the owner. *Id.* A warrant was issued for the defendant's arrest the next day. *Id.* Because there was no evidence for a defense expert to examine, the defendant was unable to refute the testimony of the State's experts that the fire was no accidental. *Id.* at 507. The court concluded that, based on these facts, a due process violation occurred and the remedy

was a retrial with a prohibition on the State's experts testifying. *Id.*

The First District explicitly distinguished *Lancaster* based on Respondent's expert actually being able to refute the testimony of the State's experts based on evidence of the truck which the State did preserve, whereas the defendant in Lancaster was completely deprived of this opportunity.[1] (Slip op. 7-8). As the First District noted, it was this distinction upon which the decision in *Lancaster* turned. (Slip op. 7). Additionally, the initial investigation in the instant case was not conducted with criminal prosecution in mind, unlike in *Lancaster*, and so the duty to preserve evidence for a potential prosecution could not have been apparent at the time the truck was disposed of. (Slip op. 7).

It is worth noting that Petitioner sole attempt at finding fault with the key distinction between *Lancaster* and the instant case, that of whether a defense expert could refute the testimony of the State expert, relies entirely on facts outside the four corners of the First District's opinion. As such, reference by either party to such facts is wholly improper. Petitioner's argument, then, should be disregarded in its entirety as having no basis in the instant decision.

Given the lack of parity in the relevant facts, *Lancaster* and the instant case are not irreconcilable, and so cannot be in express and direct

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[1] *Lancaster* was also decided prior to *Arizona v. Youngblood*, 488 U.S. 51 (1988), in which the United States Supreme Court considered the appropriate test to apply when due process violations involving the loss of evidence are alleged, a test different than that elucidated in *Lancaster*. *Lancaster* is thus no longer a dispositive case under current law.

conflict. Indeed, the First District merely applied the same law elucidated in *Lancaster* to different facts. Without an express and direct conflict, this Court does not have jurisdiction to hear the instant case.

ISSUE II: WHETHER THE FIRST DISTRICT EXPRESSLY CONSTRUED THE DUE PROCESS PROVISIONS OF THE STATE AND FEDERAL CONSTITUTIONS?

The watershed inquiry in this case is whether the First District Court of Appeal expressly construed the state or federal constitution. It did not. The Florida Constitution gives this court discretion to review a decision of a district court that "**expressly construes** a provision of the state or federal constitution." Art. V, § 3(b)(3), FLA. CONST. (bold and underline added). In order to support this Court's jurisdiction, the lower court must have "explain[ed], define[d] or overtly expresse[d] a view which eliminates some existing doubt as to a constitutional provision . . . ." *Rojas v. State*, 288 So. 2d 234, 235 (Fla. 1974). Merely applying a constitutional provision or precedent is insufficient. "Applying is not synonymous with Construing; the former is NOT a basis of our jurisdiction, while the Express construction for a constitutional provision is." *Rojas*, 288 So. 2d at 235 (caps in original).

Here, the First District did not expressly construe a state or federal constitutional provision. Instead, the First District merely applied what the due process clause has already been said to mean to a particular set of facts. Nowhere in the instant decision does an overt statement that

eliminates some existing doubt as to due process appear. Moreover, Petitioner makes no attempt to explain exactly how the First District's decision amounts to an express construction, but instead merely asserts that such construction occurred.

This case is not of the same character as other cases where this Court has taken jurisdiction based on an express construction of the state or federal constitution. *See, e.g., Powell v. Markham*, 847 So. 2d 1105 (Fla. 4th DCA 2003), *reversed sub. nom. Zingale v. Powell*, 885 So. 2d 277 (Fla. 2004); *Fla. Dept. of Ag. v. Haire*, 836 So. 2d 1040 (Fla. 4th DCA 2003), *approved*, 870 So. 2d 774 (Fla. 2004); *Doe v. Milacki*, 771 So. 2d 545 (Fla. 3d DCA 2000), *approved*, 814 So. 2d 347 (Fla. 2002). This Court does not have jurisdiction.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court determine that it does not have jurisdiction.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by electronic mail on March 31, 2015: Micahel Ufferman, Esq., at ufferman@uffermanlaw.com.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12 point font.

Respectfully submitted and certified,
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