

IN THE SUPREME COURT OF FLORIDA

JERRY LAYNE ROGERS,  
Petitioner,

vs.

STATE OF FLORIDA,  
Respondent.

Case Nos. SC06-1611, SC06-1612,  
SC06-1613

Appellate Case Nos. 5D06-979,  
5D06-980, 5D06-981

Trial Court Nos. 82-CF-1939, 82-  
CF-1963, 82-CF-1988

**PETITIONER'S JURISDICTIONAL BRIEF**

**On Review from the District Court of Appeal, Fifth District  
State of Florida**

Jerrel E. Phillips, Esq.  
Fla. Bar. No. 0878219  
P.O. Box 14463  
Tallahassee, FL 32317-4463  
(850) 877-8660

Timothy C. Hester  
John H. Fuson  
Ashley K. Lunkenheimer  
COVINGTON & BURLING LLP  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004-2401  
(202) 662-6000

*Attorneys for the Petitioner*

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Petitioner Jerry Layne Rogers seeks review of a district court Order affirming decisions in three separate but related cases.<sup>1</sup> This Court's review is necessary to correct an anomalous and unjust result in these cases, which stands in direct conflict with an earlier decision by this Court.

In the early 1980s, Rogers was convicted of four different crimes. One of those convictions resulted in a death sentence that was appealed on collateral review to this Court.<sup>2</sup> On hearing the last of those collateral appeals, this Court reversed Rogers's capital conviction because of the State's failure to turn over exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). *See Rogers v. State*, 782 So.2d 373, 385 (Fla. 2001).

The same *Brady* violation this Court found in the capital case also infected Rogers's convictions in the other three related cases. However, because those cases did not involve a death sentence, Rogers was previously barred from appealing those cases to this Court. Instead, those cases were appealed to the Fifth District Court of Appeal.

Unlike this Court, the Fifth DCA rejected Rogers's claims of a *Brady* violation on virtually identical facts. That decision preceded this

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<sup>1</sup> The three cases were not consolidated by either the trial court or the Fifth DCA, however, the Fifth DCA did issue a consolidated opinion. 932 So.2d 620, 621 (Fla. 5th DCA 2006).

<sup>2</sup> *See Rogers v. State*, 630 So.2d 513 (Fla. 1993), *Rogers v. State*, 782 So.2d 373 (Fla. 2001).

Court's 2001 decision in *Rogers*, and thus while Rogers was subsequently granted a new trial in the capital case, he has never been able to secure a new trial in the three non-capital cases that present the identical *Brady* violation that this Court found in the capital case. He continues to serve out the harsh sentences imposed for those convictions,<sup>3</sup> which are flawed by the same *Brady* violation that this Court found in ordering a new trial in *Rogers*.

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

1. Between December 1982 and November 1983, Rogers was convicted of four different armed robberies. Three of the robberies were committed at different grocery stores in Orlando (the "Orlando robberies"); the fourth was committed at a Winn-Dixie grocery store in St. Augustine and resulted in the murder of the store's manager (the "Winn-Dixie robbery").

2. In all four cases, the critical evidence underpinning Rogers's convictions was the testimony of one individual -- Thomas McDermid. McDermid had confessed to committing 35 robberies between Orlando and Jacksonville (the "Interstate 4 robberies"), including the four robberies for which Rogers was convicted, and he accused Rogers of being his accomplice. *See* 782 So.2d at 381. In exchange for his testimony against Rogers, however, McDermid was never prosecuted for his admitted role in the

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<sup>3</sup> Rogers was sentenced to 100 years, life and two twenty-year terms to be served consecutive to other sentences for the three Orlando robberies.

Winn-Dixie murder and received a generous sentence, serving only eight years in prison. *See Id.* at 374 and n.1 (noting that McDermid had “entered into a favorable plea bargain with the State” and had “long since been released from custody”).

3. Unknown to Rogers at the time of his trials in Orlando and St. Augustine, however, was that “the State had in its possession . . . extensive documents related to the police investigation of the Interstate 4 robberies.” 932 So.2d at 622 (quoting the trial court’s orders). In particular, it had evidence linking another suspect, George Cope, to McDermid and implicating Cope in both the Orlando robberies and the Winn-Dixie robbery. This Court found that the withheld Cope evidence “could have been used to directly impeach McDermid’s testimony at trial.” 782 So.2d at 383. In particular, it could have been used to show that

Cope, not Rogers, was McDermid’s frequent accomplice in other robberies where McDermid claimed Rogers participated. This would have been extremely helpful to Rogers since the State’s case for conviction was substantially predicated upon the testimony of McDermid, a codefendant and the State’s chief witness, who entered into a plea agreement with the State to save his life. In addition, the State’s case was based upon the fact that McDermid and Rogers had committed other robberies together, hence the implication that they did the Winn-Dixie robbery together. However, a review of the police reports reveals that many of the descriptions of the robbers in the Winn-Dixie and other cases given by witnesses match Cope rather than Rogers, and they provide a name that Rogers could have

attached to the alternate suspect he was trying to show as involved in this crime.

782 So.2d at 383-4 (emphases added).

4. Rogers filed a series of 3.850 motions and state habeas petitions in the three Orlando cases and the Winn-Dixie case challenging his convictions based on, among other things, the State's unlawful withholding of the Cope evidence in violation of *Brady*. The courts denied all these motions.

5. Rogers appealed the decisions in the three Orlando cases to the Fifth DCA, which affirmed the denial of Rogers's last 3.850 motion in 1999. Because it resulted in a death sentence, however, Rogers appealed the ruling in the Winn-Dixie case directly to this Court. On February 15, 2001, 16 months after the last 3.850 motion raising the *Brady* claim in the Orlando cases was denied, this Court reached the opposite result in the Winn-Dixie case, ruling that the State violated *Brady* by withholding the Cope evidence. 782 So.2d at 385. Accordingly, this Court ordered a new trial in the Winn-Dixie case. *Id.* No new trial has ever been ordered in the three Orlando cases.

### **SUMMARY OF THE ARGUMENT**

The Fifth DCA and the trial court have refused to heed this Court's decision finding the withheld Cope evidence to be "bedrock" *Brady* materials. Consequently, related cases presenting identical facts and the identical *Brady* violation and involving the same defendant have met with

different results. To correct that anomalous and unjust result, and to effectuate its earlier 2001 ruling in the *Rogers* case, this Court should exercise its discretion and accept jurisdiction to hear the merits of Rogers's appeal.

### **JURISDICTIONAL STATEMENT**

This Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the Supreme Court or another district court of appeal. *See* Art. V, § 3(b)(3) Fla. Const. (1980); Fla. R. App. P. 9.030(a)(2)(A)(iv).

### **ARGUMENT**

1. The Fifth DCA's rulings in the Orlando cases are plainly inconsistent with this Court's ruling on the very same evidence and the very same *Brady* issue presented in the Winn-Dixie case. Further, they are inconsistent with due process protections set forth in the Fourteenth Amendment to the U.S. Constitution and described by the U.S. Supreme Court in *Brady*. Because the Orlando cases did not involve a capital conviction, however, Rogers could not appeal those cases directly to this Court along with the Winn-Dixie case and thus they proceeded separately. *See* Fla. R. App. P. 9.030(a) & (b) (limiting the Supreme Court's jurisdiction in criminal cases to "final orders of courts imposing sentences of death" and allocating all other criminal matters to the district courts of appeal). Further, because this Court's

decision in the Winn-Dixie case did not issue until 16 months after the last Fifth DCA decision, Rogers could not appeal the Fifth DCA's earlier decisions as contrary to this Court's decision in the Winn-Dixie case because the timing for such an appeal had passed. *See* Fla. R. App. P. 9.120(a) (requiring notice of an appeal seeking this Court's discretionary review within 30 days). The result is an unjust anomaly. While this Court found a serious *Brady* violation in the Winn-Dixie case, the lower courts rejected that very same *Brady* claim when considering the very same evidence in the Orlando cases.

2. Rogers's only option to cure this anomaly was to return to the trial court. Armed with this Court's 2001 decision finding the *Brady* violation, Rogers filed new 3.850 motions in the three Orlando cases. Rogers argued that this Court's finding of a *Brady* violation constituted a newly discovered fact that demonstrated that Rogers's earlier 3.850 motions challenging the Orlando convictions based on the same *Brady* claims were improperly decided. But the trial court and the Fifth DCA rejected that argument, finding that this Court's decision did not constitute newly discovered facts sufficient to render Rogers's petitions as timely. 932 So.2d at 622-23. Alternatively, the Fifth DCA found the petitions were successive to Rogers's earlier 3.850 motions in the Orlando cases that raised the *Brady*

claims. *Id.* For both these reasons, the courts held that Rogers’s petitions were procedurally barred. *Id.*

3. Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) permits this Court to exercise its discretion to review any decision by a district court that “expressly and directly conflict[s] with a decision of another district court of appeal or of the supreme court on the same question of law.” *See also State v. Barnum*, 921 So.2d 513, 523 n.9 (Fla. 2005) (discretionary jurisdiction may be invoked where “decisions of district courts expressly and directly conflict[ ] . . . with the supreme court on the same question of law”); *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So.2d 195, 198 (Fla. 2003) (accepting discretionary jurisdiction to resolve an alleged conflict in a district court opinion with prevailing Supreme Court precedent); *State v. Wagner*, 863 So.2d 1224, 1225 (Fla. 2004) (finding an express and direct conflict between district court opinions and therefore accepting discretionary jurisdiction even in the absence of any mention of the conflict by the district courts).

4. In its most recent opinion, the Fifth DCA expressly acknowledged the conflict between its decisions (in 1999 and 2006) denying Rogers relief in the Orlando cases and this Court’s decision in the Winn-Dixie case. Regarding the 1999 decision, it noted that although considering “the same exculpatory materials that the Supreme Court would later conclude were

'bedrock' *Brady* materials in the Winn-Dixie case," the Fifth DCA affirmed the trial court's order denying Rogers's motion for relief. 932 So.2d at 622 (emphasis added). Confronted again in 2006 with that "same exculpatory evidence," and coupled now with this Court's intervening finding that by withholding that evidence the State violated *Brady, id.*, the Fifth DCA again refused to grant Rogers any relief.

5. The outcomes in the Winn-Dixie case, in which this Court ordered a new trial, and the Orlando cases, in which the Fifth DCA denied new trials, cannot be reconciled. Rogers's convictions in all four cases turned on the testimony of McDermid. The same *Brady* violation that this Court found in the Winn-Dixie case also applies to the three Orlando cases. Just as this Court held previously that "the individual as well as the cumulative effect of the suppression of the [Cope] materials . . . undermines confidence in the outcome of the [Winn-Dixie] trial," 782 So.2d at 385, so too -- for the identical reasons -- there can be no confidence in the three Orlando verdicts at issue on this appeal. Once again, "[t]he materials that the State withheld from Rogers are bedrock *Brady* materials of the sort upon which many courts have relied in ordering new trials." *Id.*

6. The discrepancy that now exists between the *Brady* rulings in these various cases is patently unjust. Therefore, this Court should exercise



