

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

FSC Case No.

DCA Case No. 2D05-1780

V.

MELVIN STACY JENKINS

Respondent.

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JURISDICTIONAL BRIEF OF PETITIONER

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

ROBERT J. KRAUSS
Chief-Assistant Attorney General
Bureau Chief, Tampa Criminal Appeals
Florida Bar No. 0238538

TIMOTHY A. FREELAND
Assistant Attorney General
Florida Bar No. 0539181
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607-7013
(813)287-7900
Fax (813)281-5500

COUNSEL FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS

On October 11, 2006, the Second District Court of Appeal entered its decision in Melvin Stacy Jenkins v. State, 31 Fla. L. Weekly D2320 (Fla. 2d DCA October 11, 2006), reversing the defendant's conviction for manslaughter. The basis for the Second District's ruling was that "Mr. Jenkins established his claim of self defense, and the State failed to present legally sufficient evidence to overcome that defense."

This case arose out of an argument which took place outside the defendant's trailer home. The defendant was charged with manslaughter with a weapon for the stabbing death of the victim, Bryan Cerezo. At trial, the State established that the victim, Cerezo, came to the defendant's trailer park residence; the defendant emerged from his home, carrying a hammer in his hand and a knife in his belt. The victim refused to leave the defendant's property, and instead invited the defendant to throw down the hammer and "fight like a man." After defendant threw down the hammer, the victim then attacked the defendant and struck the defendant in the face with his fist. There was conflicting testimony presented at trial with regard to whether the victim knew that the defendant was armed with a knife before the victim began to fight with the defendant. After the victim struck the

defendant in the face, the defendant responded by stabbing the victim in the side of the chest. The wound was six inches deep, and the victim bled to death. The defendant testified that he stabbed the victim in self defense. Defense counsel made a motion for judgment of acquittal at the close of the State's case wherein he asserted that the State failed to rebut the defendant's claim of self defense. The trial court, concluding that the matter was a jury question, denied this motion. Defense counsel renewed the Motion for JOA at the close of the defense case, which was again denied. The jury found the defendant guilty of the lesser offense of manslaughter.

In denying the defendant's motion for judgment of acquittal, the trial court concluded that the State had presented sufficient evidence to establish a conflict with regard to whether the defendant acted in self defense when he stabbed his victim to death.

SUMMARY OF THE ARGUMENT

This Court has jurisdiction in the instant case because the Second District Court of Appeal's decision expressly and directly conflicts with decisions of this Court, as well as with decisions from at least one other district. The Second District's opinion is in direct and express conflict with this Court's holding in State v. Henderson, 521 So. 2d 1113 (Fla. 1988). It is also in direct and express conflict with the Fourth District's holding in Wilson v. State, 707 So. 2d 1200 (Fla. 4th DCA 1998).

ARGUMENT

ISSUE

THIS COURT HAS JURISDICTION TO REVIEW THE INSTANT CASE BECAUSE THE SECOND DISTRICT COURT OF APPEAL'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS FROM THIS COURT.

Under the Florida Constitution, article V, section 3(b)(3), this Court has the authority to review a decision of a district court of appeal that expressly and directly conflicts with a decision of this Court or another district court of appeal.

This Court has identified two basic forms of decisional conflict which properly justify the exercise of jurisdiction under section 3(b)(3) of the Florida Constitution. Either (1) where an announced rule of law conflicts with other appellate expressions of law, or (2) where a rule of law is applied to produce a different result in a case which involves "substantially the same controlling facts as a prior case. . . ." Nielsen v. City of Sarasota, 117 So. 2d 731, 734 (Fla. 1960). Furthermore, it is not necessary that a district court explicitly identify conflicting district court decisions in its opinion in order to create an express conflict under section 3(b)(3). Ford Motor Co. v. Kikis, 401 So. 2d 1341 (Fla. 1981).

The Second District opinion is in conflict with this Court's holding in State v. Henderson, 521 So. 2d 1113 (Fla. 1988). The Second District opinion in Jenkins reversed the defendant's manslaughter conviction, concluding that the State failed to rebut the defendant's claim that he was justified in acting in self-defense in response to the victim's attack against him.

In reaching this conclusion, the Second District relied primarily upon the testimony of one of the two eyewitnesses to the stabbing as well as the defendant's trial testimony. In so doing, the Second District's decision impermissibly gave more weight to the testimony of defendant's testimony and one eyewitness, while discounting that of the remaining witnesses.

In its decision, the Second District specifically concluded that the State failed to establish competent, substantial evidence sufficient to rebut the defendant's prima facie case of self defense. It is the State's position that this Honorable Court should take jurisdiction of this case because the Second District's ruling is in direct and express conflict with the decisions of other districts as well as decisions from this Court, all of which forbid the reviewing court from re-weighing trial testimony. By finding that the trial court erroneously denied the defendant's motion for

judgment of acquittal, the Second District improperly concluded that no factual dispute existed with regard to the viability of the defendant's claim of self defense.

Specifically, the Second District adopted the testimony of Lazaro Sanchez, who affirmatively testified that the defendant showed a knife to the victim, after which the victim attacked him; during this attack, the defendant stabbed and killed the victim. However, a second eye-witness, Thomas Alsop, Senior, who was standing closer to the two combatants than was Mr. Sanchez, testified that he never saw the defendant with a knife until after the stabbing. The Second District ignored the impact of Alsop's testimony; this directly conflicting evidence established a sufficient conflict in the testimony to support the trial court's decision to deny the defendant's motion for judgment of acquittal.

In Henderson v. State, 521 So. 2d 1113 (Fla. 1988), this Court held that it was error for the reviewing court to reject negative testimony, as such testimony when interpreted in a light most favorable to the State, works to establish evidentiary conflict sufficient to support denial of a motion for JOA.

Similarly, in Wilson v. State, 707 So. 2d 1200 (Fla. 4th

DCA 1998), the Fourth DCA concluded that conflicting testimony on the subject of the viability of a claim of self defense was sufficient to create a jury question and therefore support a denial of a defense motion for judgment of acquittal.

Petitioner submits that the Second District Court of Appeal's decision expressly and directly conflicts with this Court's holding in Henderson v. State and the Fourth District's decision in Wilson v. State. Given this express and direct conflict, the State respectfully requests that this Court exercise its discretionary jurisdiction and accept the instant case for review.

CONCLUSION

In conclusion, the State respectfully requests that this Honorable Court accept jurisdiction in the instant cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to J.L. "Ray" LeGrand, Esquire, Assistant Public Defender, P.O. Box 9000-Drawer PD, Bartow, Florida 33831-9000, this 14th day December, 2006.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

ROBERT J. KRAUSS
Chief-Assistant Attorney General
Bureau Chief, Tampa Criminal Appeals
Florida Bar No. 0238538

TIMOTHY A. FREELAND
Assistant Attorney General
Florida Bar No. 0539181
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607-7013
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