

IN THE SUPREME COURT OF FLORIDA

CASE NO.

**GEORGE BAPTISTE,**

Petitioner,

-vs.-

**STATE OF FLORIDA,**

Respondent.

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**BRIEF OF PETITIONER ON JURISDICTION**

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ON PETITION FOR DISCRETIONARY REVIEW  
FROM THE DISTRICT COURT OF APPEAL  
OF FLORIDA, THIRD DISTRICT

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**INTRODUCTION**

This is a petition for discretionary review of the decision of the Third District Court of Appeal in *Baptiste v. State*, 32 Fla. L. Weekly D1650 (Fla. 3d DCA July 5, 2007), on the grounds of express and direct conflict of decisions. In this brief of petitioner on jurisdiction, all references are to the appendix attached to this brief, paginated separately and identified as “A,” followed by the page number(s).

## STATEMENT OF THE CASE AND FACTS

George Baptiste was charged with possession of a firearm by a convicted felon. (A.2). Police stopped Mr. Baptiste at gunpoint as he walked down a street after they received an anonymous call that a man matching his description was waving a gun in the vicinity. (A.2). At the time officers stopped Mr. Baptiste, he did not have a weapon in plain view nor was he otherwise violating the law. (A.2). Officers observed nothing to corroborate the claim of the anonymous caller. (A.2). After officers had stopped Mr. Baptiste, a man approached the officers and told them that he was the anonymous caller and that the man they had stopped was the man waving the gun. (A.2). Police searched Mr. Baptiste and discovered a handgun. (A.2).

At trial Mr. Baptiste moved to suppress the gun on the basis that the stop was illegal because police lacked reasonable suspicion. (A.2). The trial court denied the motion and Mr. Baptiste was convicted. (A.2). Mr. Baptiste appealed the trial court's denial of his motion to suppress the gun. (A.2). Relying on *Florida v. J.L.*, 529 U.S. 266 (2000), Mr. Baptiste contended that the anonymous tip was insufficient to provide reasonable suspicion for the stop. (A.2). The Third District Court of Appeal rejected this argument, finding that *J.L.* was distinguishable because the anonymous tipster in *J.L.* alleged that a man was

carrying a concealed firearm and the anonymous caller in this case alleged that a firearm was being openly displayed. (A.2-3)

Notice invoking this Court's discretionary jurisdiction was filed on July 26, 2007.

## SUMMARY OF ARGUMENT

In *Rivera v. State*, 771 So. 2d 1246 (Fla. 2d DCA 2000), the Second District Court of Appeal held that an anonymous tip alleging that a gun was being openly displayed and fired was insufficient to establish reasonable suspicion for a stop without further indicia of reliability. The Second District held that the Supreme Court's holding in *Florida v. J.L.*, 529 U.S. 266 (2000), requiring that an anonymous tip be accompanied by specific indicia of reliability, is not limited to tips involving concealed firearms.

In the present case, the Third District Court of Appeal held that an anonymous tip alleging that a gun was being waved was sufficient to establish reasonable suspicion for a stop without any further indicia of reliability. The Third District distinguished *J.L.* from this case because the anonymous caller in this case alleged that a firearm was being openly displayed.

Petitioner respectfully requests this Court to exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal based on this express and direct conflict of decisions.

## ARGUMENT

**THE DECISION OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, IN THE PRESENT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN *Rivera v. State*, 771 So. 2d 1246 (Fla. 2d DCA 2000).**

In *Rivera v. State*, 771 So. 2d 1246 (Fla. 2d DCA 2000), the Second District Court of Appeal held that an anonymous tip alleging that a gun is being openly displayed and fired is insufficient to establish reasonable suspicion for a stop without further indicia of reliability. In *Rivera*, an anonymous motorist called police and reported that two cars were exchanging gunfire on a specific road. *Id.* at 1247. Officers dispatched to that location stopped a car matching the description and license tag number as it drove down the street. *Id.* The district court found that the anonymous tip was not sufficient to establish reasonable suspicion to stop the car because police observed nothing to corroborate the claim of the anonymous caller that two cars were exchanging gunfire or any other suspicious behavior. *Id.* at 1248.

In *Rivera*, the State argued that there should be an exception to the anonymous tip rule because “the danger alleged in the tip was so great that it justified the stop even without a showing of reliability.” *Id.* The Second District rejected this argument noting that such an exception was expressly rejected in *J.L.*:

The Supreme Court reasoned that, “Such an exception would enable a person seeking to harass another to set in motion an intrusive, embarrassing police search of the targeted person simply by placing an anonymous call falsely reporting the target’s unlawful carriage of a gun.” Although the present case involves the alleged unlawful use of a gun, the same reasoning would apply.

*Rivera*, 771 So. 2d at 1248 (quoting *Florida v. J.L.*, 529 U.S. 266, 272 (2000)).

Thus, the Second District held that *J.L.*’s requirement that an anonymous tip be accompanied by specific indicia of reliability is not limited to tips involving concealed firearms. *Id.*

In complete contrast, the Third District Court of Appeal held in the present case that an anonymous tip alleging that a gun was being waved was sufficient to establish reasonable suspicion for a stop without any further indicia of reliability. (A.2-3). In this case, an anonymous caller alleged that a man was waving a gun in the vicinity. (A.2). Police stopped Mr. Baptiste at gunpoint as he walked down a street because he matched the description given by the anonymous caller. (A.2). Police did not see Mr. Baptiste wave a gun and observed nothing to corroborate the claim of the anonymous caller. (A.2). When stopped, Mr. Baptiste was merely walking down a street and was not doing anything suspicious. (A.2). The Third District held that *J.L.*’s requirement that an anonymous tip be accompanied by specific indicia of reliability is limited to tips involving concealed firearms:

[T]he content of the original tip described not merely the easily falsified and otherwise unverifiable fact that the

defendant was carrying a concealed firearm, as in *J.L.*, but rather the quite obvious and extremely dangerous fact that a firearm was being openly displayed. In these circumstances, the “tip” itself rendered it reasonable for the officer to effect the stop necessary to inquire further.

(A.2-3).

Thus the decision of the Third District Court of Appeal in the present case affirming Mr. Baptiste’s conviction expressly and directly conflicts with the decision of the Second District Court of Appeal in *Rivera*. It is therefore respectfully submitted that this Court should exercise its discretionary jurisdiction to review the decision of the district court of appeal in this case based on this express and direct conflict of decisions.

## CONCLUSION

Based on the foregoing facts, authorities and arguments, petitioner respectfully requests this Court to exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal.

Respectfully submitted,

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BY: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by hand to the Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite 650, Miami, Florida 33131, this 31st day of July 2007.

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COLLEEN BRADY WARD  
Assistant Public Defender

**CERTIFICATE OF FONT**

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times New Roman.

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COLLEEN BRADY WARD  
Assistant Public Defender