

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC07-1583

**EDWARD CASTELLA,**

Petitioner,

vs.

**STATE OF FLORIDA,**

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the Appellant and Respondent was the Appellee in the Fourth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court of Appeal except that Appellee may also be referred to as the State.

All emphasis in this brief is supplied by Respondent unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Respondent generally agrees with Petitioner's Statement of the Case and Facts, but makes the following clarifications and additions:

The Fourth District wrote to address the denial of the motion to suppress evidence resulting from the stop of Petitioner's boat (A. 1). It discussed the different types of tipsters or informants and determined that this case involved a citizen informant (A. 6-8). It concluded that in light of this fact, as well as the totality of circumstances, the deputies were entitled to rely on the information provided to them without further corroboration before stopping Petitioner's boat (A. 8).

The Fourth District then added that because of public safety implications, the deputies were justified in the stop even without reasonable suspicion based on a "principle" called "the community caretaking doctrine." (A. 8). It explained the doctrine, describing it as being distinct from investigation relating to a criminal investigation, and applied it to the facts of this case (A. 9-10).

SUMMARY OF THE ARGUMENT

The Fourth District's decision does not expressly construe a provision of the State and Federal Constitution. The Fourth District's opinion is not an undertaking to explain or define the language or terms of a constitutional provision. Accordingly, this Court does not have jurisdiction.

ARGUMENT

**THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL  
IN THIS CASE DOES NOT EXPRESSLY CONSTRUE A PROVISION  
OF THE STATE OR FEDERAL CONSTITUTION.**

Petitioner seeks the discretionary review of this Court on the basis that the decision of the Fourth District Court of Appeal expressly construes a provision of the state or federal constitution pursuant to Art. V, § 3(b)(3), Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(ii). More specifically, petitioner argues that the decision of the Fourth District inherently construed the Fourth Amendment.

In this class of cases, review by this Court is limited to decisions that expressly construe the language or terms of a constitutional provision. Armstrong v. City of Tampa, 106 So. 2d 407 (Fla. 1958); Carmazi v. Board of County Commissioners of Dade County, 104 So. 2d 727 (Fla. 1958). The mere fact that a constitutional provision is indirectly involved in the ultimate judgment of the lower court does not in and of itself convey jurisdiction to this Court. Id. There must be an actual construction of a constitutional provision, meaning an undertaking to explain, define or otherwise eliminate existing doubts arising from the language or terms

of the constitutional provision. Id. It is not sufficient for a court to merely apply a provision of the Constitution. Id.

Moreover, a decision of a district court of appeal is not reviewable under Art. V, § 3(b)(3), Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(ii) merely because it has the practical effect of construing a provision of the state or federal constitution. Miami Herald Publishing Co. v. Brautigam, 121 So. 2d 431 (Fla. 1960). Section 3(b)(3) plainly requires a written statement explaining or defining the disputed constitutional language. It is insufficient to invoke this court's discretionary jurisdiction to assert that there was an inherent construction of a constitutional provision in the appealed judgment appealed. Rojas v. State, 288 So. 2d 234, 236 (Fla. 1973); Ogle v. Pepin, 273 So. 2d 391, 393 (Fla. 1973)(no jurisdiction to review based on construing constitutional provision unless decision explains or defines constitutional terms or language). "Applying is not synonymous with construing; the former is not a basis for our jurisdiction, while the express construction of a constitutional provision is." Rojas, 288 So. 2d at 236.

The Fourth District's opinion is not an undertaking to explain, define or otherwise eliminate existing doubts arising



from the language or terms of the constitutional provision. Accordingly, this Court does not have jurisdiction. Compare Malicki v. The Archdiocese of Miami, 814 So. 2d 347 (Fla. 2002)(jurisdiction accepted where district court explicitly construed First Amendment).

If this Court were to find that the Fourth District expressly construed the Fourth Amendment in this case, then precedent would be established allowing review of any decision considering a ruling on a motion to suppress challenging a search or stop. The Fourth District never cited a constitutional provision and only referred to the caretaker exception as a doctrine. In addition, the doctrine was not given as the only or even principal ground for upholding the trial court's decision, but rather as an additional basis that the trial court did not contemplate.

CONCLUSION

Based on the preceding argument and authorities,  
Respondent respectfully requests this Court to DECLINE to  
review the instant decision.

Respectfully submitted,  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Brief on Jurisdiction" has been furnished by mail to Michael Metz, Esquire, Richard G. Lubin, P.A., 1217 South Flagler Drive, Second Floor, West Palm Beach, FL 33401, on this \_\_\_\_day of September, 2007.

\_\_\_\_\_  
Of Counsel

CERTIFICATE OF TYPE SIZE AND STYLE

The undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not proportionately spaced.

\_\_\_\_\_  
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