

**IN THE SUPREME COURT OF FLORIDA**

CASE NO. SC08-215  
DCA CASE NO. 3D06-2731

**WILLIAM DANTE,**

**Petitioner,**

**-vs-**

**THE STATE OF FLORIDA,**

**Respondent.**

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

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**BRIEF OF RESPONDENT ON JURISDICTION**

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## **INTRODUCTION**

Petitioner, William Dante, was the defendant in the trial court and the appellant in the Third District Court of Appeal. Respondent, the State of Florida, was the prosecution in the trial court and the appellee in the Third District Court of Appeal. The parties shall be referred to as they stand in this Court.

## STATEMENT OF THE CASE AND FACTS

Petitioner appealed his conviction for possession of cannabis and cocaine to the Third District Court of Appeal. Petitioner raised one ground below, whether the trial court erred in denying his motion to suppress and finding that Petitioner consented to the police officers entering his residence. On December 26, 2007, the district court affirmed in a written opinion. *Dante v. State*, 970 So. 2d 938 (Fla. 3d DCA 2007). In its opinion, the district court held that based on a totality of the circumstances, Petitioner consented to the police officers entering his residence and accompanying him into his bedroom to retrieve photo identification. The court found that

In determining whether an encounter is consensual, the court looks to the totality of the circumstances to decide if the police encounter would make a reasonable person believe that he or she was free to terminate the encounter.

*Id.* at 939. The court then examined the circumstances present, finding that the record demonstrated

[T]he encounter took place in the early evening with two police officers in plain clothes, with proper identification and holstered weapons. The officers testified they were cordial and not abrasive. Dante agreed to a single request to follow him as he looked for his identification.

*Id.* Therefore, the court held that based on the totality of the circumstances, the record supported the trial court's denial of the motion to suppress.

No motion for rehearing or clarification was filed with the district court below. The mandate issued on January 11, 2008. Petitioner now seeks discretionary review in this Court.

**QUESTION PRESENTED**

**WHETHER THIS COURT SHOULD DECLINE DISCRETIONARY JURISDICTION TO REVIEW THE THIRD DISTRICT COURT OF APPEAL'S OPINION THAT DOES NOT DIRECTLY OR EXPRESSLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OR THIS COURT.**

## **SUMMARY OF THE ARGUMENT**

There is no basis upon which discretionary review can be granted in this case. The Third District Court's opinion does not conflict with any case of this Court or of any other district court in Florida. Consequently, conflict jurisdiction does not exist for the exercise of this Court's discretionary jurisdiction to review the decision below. This Court should therefore deny Petitioner's petition to review the decision of the district court.

## ARGUMENT

### **PETITIONER'S APPLICATION FOR DISCRETIONARY REVIEW MUST BE DENIED BECAUSE THE THIRD DISTRICT COURT OF APPEAL'S DECISION DOES NOT DIRECTLY OR EXPRESSLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OR THIS COURT.**

Petitioner contends that this Court should invoke its discretionary review power to review the Third District Court of Appeal's decision in the instant case. Petitioner does not articulate a reason for the invocation of discretionary review, and fails to make any argument on jurisdiction or name any case which allegedly conflicts with the Third District Court's opinion. Thus, Respondent submits that this Court does not have any jurisdiction to review the Third District Court's opinion.

This Court cannot exercise its discretionary jurisdiction to review the decision below because the decision is not in direct or express conflict with any decision from this Court or any other district court on the same question of law.

In the decision below, the Third District Court of Appeal cited three cases in support of its conclusion that Petitioner consented to the police officers entering his residence: *State v. Poole*, 730 So. 2d 340 (Fla. 3d DCA 1999); *Taylor v. State*, 855 So. 2d 1 (Fla. 2003); *Voorhees v. State*, 699 So. 2d 602 (Fla. 1997). These three cases are not pending review in this Court, have not been reversed or receded

from by this Court, and do not note a contrary holding. Petitioner does not allege a conflict with these three cases or any other specific case. The Third District Court's opinion also does not certify conflict with any case or certify a question to this Court.

Petitioner cites to four federal cases in his brief, however the citations refer to general search and seizure principles, and do not have argument or analysis that the cases demonstrate a conflict with the instant case: *Katz v. United States*, 389 U.S. 347 (1967) (holding that a search warrant is required prior to police officers conducting electronic surveillance); *Michigan v. Chestnut*, 486 U.S. 567 (1988) (holding that a police vehicle following a pedestrian does not amount to a seizure); *United States v. Jacobsen*, 466 U.S. 109 (1983) (holding that a federal agent's removal and subsequent test of a substance discovered in a damaged package by private citizens does not amount to an illegal search); *United States v. Doe*, 61 F.3d 107 (1st Cir. 1995) (a search of an opaque package at an airport surveillance checkpoint constitutes an illegal search). Petitioner fails to allege any conflicts between the instant case and those four cited cases. Moreover, any alleged conflict with federal cases would be irrelevant, as the Court's jurisdiction is predicated on conflicts with two or more Florida state appellate court opinions.

Therefore, the Third District Court's opinion does not give rise to any express conflict and this petition to invoke discretionary review must be denied.

**CONCLUSION**

WHEREFORE, based on the preceding authorities and arguments, Respondent respectfully requests that this Court decline jurisdiction to review this cause.

Respectfully Submitted,

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Attorney General

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent was mailed to William Dante, DC#990104043, Turner Guilford Knight Corrections, 7000 NW 41<sup>st</sup> Street, Miami, Florida 33166 on this \_\_\_\_ day of February, 2008.

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ANSLEY B. PEACOCK  
Assistant Attorney General

**CERTIFICATE OF TYPEFACE COMPLIANCE**

I HEREBY CERTIFY that the foregoing Response was written using 14 point Times New Roman in compliance with Fla. R. App. P. 9.210(a)(2).

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ANSLEY B. PEACOCK  
Assistant Attorney General

