

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC08-216

OTIS PUGH,

Petitioner,

- versus -

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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Preliminary Statement

Petitioner was the Defendant and Respondent was the Prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida. Petitioner was Appellant and Respondent was Appellee in the District Court of Appeal of Florida, Fourth District. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

Statement Of The Case And Facts

(limited to the issue of jurisdiction)

Noting that in determining jurisdiction, this Court is limited to the facts apparent on the face of the opinion, Hardee v. State, 534 So. 2d 706, 708 n.1 (Fla. 1988), Respondent will present the facts as they appear in the opinion below:

“An undercover police officer testified that Pugh asked for ‘a 20,’ which the officer explained was ‘street terminology for \$20 worth of crack cocaine.’ The officer based his translation of the slang term on his ‘knowledge and experience of working in that area,’ where crack cocaine is often purchased. On cross-examination, the defense tried to establish that the term ‘20’ might have meant marijuana or ‘just about anything.’ On redirect examination, the officer explained that in the ‘particular location’ of the sting, crack cocaine was the drug of choice, so ‘20’ referred to crack cocaine. The defense objected to the testimony on redirect examination.” Pugh v. State, 971 So. 2d 225, 226 (Fla. 4th DCA 2008).

Petitioner appealed his conviction and sentence to the Fourth District Court of Appeal, arguing, inter alia, that the trial court erred in permitting the police officer to testify that in the “particular location” of the sting, crack cocaine was the drug of choice, so “20” referred to crack cocaine.

By opinion dated January 2, 2008, the Fourth District affirmed Petitioner’s

conviction. Id. Specifically, the Court held that the officer's testimony had probative value apart from its characterization of the neighborhood. Id. The officer was explaining the basis of his opinion on the meaning of the term "20." Id. Based on his street experience, the officer testified as an expert witness regarding "street language in the drug culture." Id. The Court concluded that the danger of unfair prejudice did not substantially outweigh the high probative value of the undercover officer's testimony translating "drug argot." Id. at 227.

Petitioner now seeks review of the decision of the Fourth District Court of Appeal based on conflict jurisdiction.

Summary Of The Argument

This Court does not have jurisdiction to review the instant case. The decision of the Fourth District Court of Appeal in the instant case does not expressly and directly conflict with the decision of this Court in State v. Johnson, 575 So. 2d 1292 (Fla. 1991). Therefore, this Court should not review the case at bar and should dismiss the Petitioner's case.

Argument

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE INSTANT CASE DOES NOT CONFLICT WITH THE DECISION OF THIS COURT IN STATE V. JOHNSON, 575 So. 2d 1292 (Fla. 1991).

Petitioner alleges that the decision of the Fourth District Court of Appeal in Pugh v. State, 971 So. 2d 225 (Fla. 4th DCA 2008), expressly and directly conflicts with the decision of this Court in State v. Johnson, 575 So. 2d 1292 (Fla. 1991).

Article V, § 3(b)(3) of the Florida Constitution restricts this Court's review of a district court of appeal's decision only if it expressly conflicts with a decision of this Court or of another district court of appeal. It is not enough to show that the district court's decision is effectively in conflict with other appellate decisions. This Court's jurisdiction to review the Fourth District's decision in this case may only be invoked by either the announcement of a rule of law which conflicts with a law previously announced by this Court or another district court of appeal or by the application of a rule of law to produce a different result in a case which involves substantially the same facts as a prior case. Mancini v. State, 312 So. 2d 732, 733 (Fla. 1975).

The term "expressly" requires some written representation or expression of the legal grounds supporting the decision under review. See Jenkins v. State, 385

So. 2d 1356 (Fla. 1980). A decision of a district court of appeal is no longer reviewable on the ground that an examination of the record would show that it is in conflict with another appellate decision; it is reviewable if the conflict can be demonstrated from the district court of appeal's opinion itself. The district court of appeal must at least address the legal principles which were applied as a basis for the decision. See Ford Motor Co. v. Kikis, 401 So. 2d 1341, 1342 (Fla. 1981).

When determining whether conflict jurisdiction exists, this Court is limited to the facts which appear on the face of the opinion. Hardee v. State, 534 So. 2d at 708, n.1; White Constr. Co. v. Dupont, 455 So. 2d 1026 (Fla. 1984). In the past, this Court has held that it would not exercise its discretion where the opinion below established no point of law contrary to the decision of this Court or of another district court of appeal. The Florida Star v. B.J.F., 530 So. 2d 286, 289 (Fla. 1988). "Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision.' In other words, inherent or so called 'implied' conflict may no longer serve as a basis for this Court's jurisdiction." State, Department of Health v. National Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986) (quoting Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986)). See also School Board of Pinellas County v. District Court

of Appeal, 467 So. 2d 985, 986 (Fla. 1985).

In the case at bar, Petitioner contends that conflict exists on the issue of whether the identification of a location as a high crime area (or so-called “bad neighborhood” evidence) is per se unduly prejudicial to a defendant who is arrested there. In State v. Johnson, 575 So. 2d 1292 (Fla. 1991), this Court reiterated its recent holding in Gillom v. State, 573 So. 2d 810 (Fla. 1991), that “such an identification could be unduly prejudicial under some circumstances **but is not always so.**” Johnson, 575 So. 2d at 1292 (emphasis added).

Petitioner claims that this language is in express and direct conflict with the Fourth District’s opinion in this case, wherein the court held it was not erroneous to permit the officer to testify that in the “particular location” of the sting, crack cocaine was the drug of choice, so “20” referred to crack cocaine had a probative value apart from its characterization of the neighborhood. Because this Court has not adopted a per se exclusion of this type of testimony, the Fourth District’s opinion does not conflict with this Court’s opinion in Johnson.

Accordingly, this Court should decline to review the decision of the Fourth District in this case.

Conclusion

WHEREFORE, based on the foregoing argument and authorities, Respondent respectfully submits that this Court should decline to grant review in the above-styled cause.

Respectfully submitted,

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Certificate Of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Otis Pugh, DC# 443933, Loxahatchee Road Prison, 230 Sunshine Road, West Pal, Beach, Florida, 33411-3616, this ____ day of March, 2008.

HEIDI L. BETTENDORF
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Certificate Of Type Size And Style

In accordance with Fla. R. App. P. 9.210(a)(2), Respondent hereby certifies that the instant brief has been prepared with Times New Roman 14 point font.

HEIDI L. BETTENDORF
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