

IN THE SUPREME COURT OF FLORIDA

JEFFREY FIGURA,

PETITIONER,

V.

CASE NO. SC09-30

L.T. NO. 2D07-4364

STATE OF FLORIDA,  
RESPONDENT.

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**RESPONDENT'S JURISDICTIONAL BRIEF  
ON REVIEW FROM THE SECOND  
DISTRICT COURT OF APPEAL  
STATE OF FLORIDA**

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**TABLE OF CONTENTS**

TABLE OF CITATIONS ..... iii

OTHER AUTHORITIES ..... iii

STATEMENT OF THE CASE AND FACTS ..... 1

SUMMARY OF THE ARGUMENT ..... 3

ARGUMENT ..... 4

ISSUE ..... 4

WHETHER THE SECOND DISTRICT'S OPINION  
IN FIGURA V. STATE, 33 FLA. L. WEEKLY D  
2450 (FLA. 2D DCA OCTOBER 22, 2008),  
EXPRESSLY OR DIRECTLY CONFLICTS WITH A  
DECISION OF THIS COURT OR ANOTHER  
DISTRICT ON THE SAME QUESTION OF LAW.

CONCLUSION ..... 7

CERTIFICATE OF SERVICE ..... 8

CERTIFICATE OF FONT COMPLIANCE ..... 9

**TABLE OF CITATIONS**

State v. Collins,  
985 So.2d 985 (Fla. 2008) ..... 2, 4

Figura v. State,  
33 Fla. L. Weekly D 2450 (Fla. 2D DCA October 22,  
2008) . . . . . 3, 4, 5

**OTHER AUTHORITIES**

Fla. R. App. P. 9.030(a)(2)(A)(iv) ..... 4

## STATEMENT OF THE CASE AND FACTS

On April 18, 2006, a felony information was filed, charging petitioner with one count of petit theft, a third-degree felony. The State alleged petitioner stole merchandise valued at \$95.88 from an Albertson's grocery store in St. Petersburg on January 3, 2006, and petitioner had twice previously been convicted of theft on October 20, 2005, and December 3, 1999.

On August 23, 2007, petitioner went to trial. The trial court explained that under the Apprendi doctrine, petitioner was entitled to have a separate jury determination as to his prior theft convictions which would trigger the instant felony theft charge. Petitioner waived his right to have a jury make that decision. The Defense argued the alleged 1999, theft conviction was done in absentia, and there were no photographs or fingerprints in the file connecting petitioner to the crime. The only evidence linking petitioner to the 1999, theft conviction was his name. Petitioner argues the 1999, crime was not his conviction, instead, a case of mistaken identity. The trial court took the Defense objection under advisement. The jury subsequently returned a verdict of guilty to the instant theft.

At the Apprendi hearing following the trial, the Defense objected to the State relying on the 1999, theft conviction as the court file failed to contain sufficient identifying information to show petitioner was the same person who was convicted in the 1999, crime. The Defense did not dispute petitioner's 2005, theft conviction. The trial court ruled the court found petitioner had twice previously been convicted of theft on October 20, 2005, and December 3, 1999, therefore, was guilty of felony theft in the instant case. Petitioner was adjudicated guilty and sentenced to five (5) years Florida State Prison.

On direct appeal, the Second District Court of Appeal affirmed petitioner's conviction but reversed petitioner's sentenced and remanded for resentencing. In so doing, the appeals court said the State may present additional evidence to prove petitioner was the perpetrator of the 1999, theft conviction, and cited State v. Collins, 985 So.2d 985 (Fla. 2008). In that case, this Court held that resentencing is a new proceeding at which additional evidence may be presented. This Court further held the Double Jeopardy Clause does not preclude a second opportunity to prove a defendant had a prior conviction that would trigger a sentence enhancement. Thereafter, petitioner filed its notice of intent to invoke this

Court's jurisdiction based on a double jeopardy issue petitioner wants to preserve for federal court.

**SUMMARY OF THE ARGUMENT**

Petitioner argues this Court may exercise its discretionary jurisdiction to review the instant issue considered by the Second District Court of Appeal. Respondent, however, submits the Second District's opinion in Figura v. State, 33 Fla. L. Weekly D 2450 (Fla. 2D DCA October 22, 2008), does not expressly or directly conflict with a decision of this Court or another district on the same question of law. Accordingly, respondent respectfully requests this Court deny review of the instant case.

**ARGUMENT**

WHETHER THE SECOND DISTRICT'S OPINION  
IN FIGURA V. STATE, 33 FLA. L. WEEKLY D  
2450 (FLA. 2D DCA OCTOBER 22, 2008),  
EXPRESSLY OR DIRECTLY CONFLICTS WITH A  
DECISION OF THIS COURT OR ANOTHER  
DISTRICT ON THE SAME QUESTION OF LAW  
VIOLATES MR.

Florida Rule of Appellate Procedure  
9.030(a)(2)(A)(iv), allows this Court to exercise its  
discretionary review of decisions of district courts of  
appeals that expressly and directly conflict with a  
decision of this Court or another district on the same  
question of law. In Figura v. State, 33 Fla. L. Weekly D  
2450 (Fla. 2D DCA October 22, 2008), the Second District  
rendered an opinion which affirmed petitioner's conviction  
but reversed petitioner's sentenced and remanded for  
resentencing. The appeals court further expressed the  
State may present additional evidence to prove petitioner  
was the perpetrator of a prior theft conviction which would  
trigger a sentence enhancement in the instant conviction.  
In so doing, the appeals court cited this Court's decision  
in State v. Collins, 985 So.2d 985 (Fla. 2008). In Collins,  
this Court held that resentencing is a new proceeding at  
which additional evidence may be presented. This Court  
further held the Double Jeopardy Clause does not preclude a

second opportunity to prove a defendant had a prior conviction that would trigger a sentence enhancement.

Respondent submits this Court should decline to entertain jurisdiction because the Second District's decision in Figura v. State, 33 Fla. L. Weekly D 2450 (Fla. 2D DCA October 22, 2008), does not expressly and directly conflict with a decision of this Court or another district on the same question of law.

**CONCLUSION**

Respondent respectfully requests that this Honorable Court decline to exercise its jurisdiction in this case.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Pamela H. Izakowitz, Esq., Assistant Public Defender, Public Defender's Office, Polk County Courthouse, P.O. Box 9000-Drawer PD, Bartow, Florida 33831, on this 26th day of January, 2009.

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,

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