

IN THE SUPREME COURT OF FLORIDA

ERIC HARRIS,

Petitioner,

v.

Case No. SC11-66

STATE OF FLORIDA,

Respondent.

**JURISDICTIONAL BRIEF OF PETITIONER**

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**STATEMENT OF THE CASE AND FACTS**

In Harris v. State, 37 So. 3d 285 (Fla. 2d DCA 2010), the Second District affirmed Petitioner's conviction for aggravated battery with a deadly weapon. The court noted that hearsay evidence had been incorrectly admitted into evidence - evidence that pertained to the medical treatment of the victim after the battery. Id. at 286-87. The court determined that any error in admitting the hearsay testimony was harmless. Id. at 286. The court specifically noted that the extent of the victim's injuries was not at issue because Petitioner was not charged with that type of battery. Id. at 287.

Petitioner filed a petition for belated discretionary review with this Court. That petition was granted, and Petitioner was allowed to request discretionary jurisdiction.

**SUMMARY OF THE ARGUMENT**

There is no conflict between the instant case and those cited by Petitioner. Because there is no express and direct conflict between the decisions, the State respectfully asks this Honorable Court to deny jurisdiction.

ARGUMENT

WHETHER THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN HARRIS V. STATE, 37 SO. 3D 285 (FLA. 2D DCA 2010) EXPRESSLY AND DIRECTLY CONFLICTS WITH WILLIAMS V. STATE, 863 SO. 2D 1189 (FLA. 2003), GOODWIN V. STATE, 751 SO. 2D 537 (FLA. 1999) AND STATE V. DIGUILIO, 491 SO. 2D 1129 (FLA. 1986).

The Florida Constitution, article V, section 3(b)(3), authorizes this Court to review a decision of a district court of appeal that expressly and directly conflicts with a decision of this Court or another district court of appeal. This Court has identified two basic forms of express and direct conflict which properly justify the exercise of jurisdiction: 1) where an announced rule of law conflicts with other appellate expressions of law, or 2) where a rule of law is applied to produce a different result in a case which involves "substantially the same controlling facts as a prior case. . . ." Nielsen v. City of Sarasota, 117 So. 2d 731, 734 (Fla. 1960). "Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). No conflict exists on the face of the subject opinion. Accordingly, this Court lacks jurisdiction, and this Petition must be denied.

Petitioner claims that the Second District's decision in Harris v. State, 37 So. 3d 285 (Fla. 2d DCA 2010) expressly and directly conflicts with three prior Florida Supreme Court cases

on harmless error. The Second District provided facts and legal analysis which showed the limited hearsay testimony was harmless beyond a reasonable doubt. State v. DiGuilio, 491 So. 2d 1129, 1135 (Fla. 1986).

The test is not a sufficiency-of-the-evidence, a correct result, a not clearly wrong, a substantial evidence, a more probable than not, a clear and convincing, or even an overwhelming evidence test. Harmless error is not a device for the appellate court to substitute itself for the trier-of-fact by simply weighing the evidence. The focus is on the effect of the error on the trier-of-fact. The question is whether there is a reasonable possibility that the error affected the verdict. The burden to show the error was harmless must remain on the state. If the appellate court cannot say beyond a reasonable doubt that the error did not affect the verdict, then the error is by definition harmful.

Williams v. State, 863 So. 2d 1189, 1189-90 (Fla. 2003) (quoting DiGuilio, 491 So. 2d at 1139).

The Second District did not independently review the facts of this case. Instead, the Second District properly analyzed for harmless error beyond a reasonable doubt. Harmless error beyond a reasonable doubt is the correct standard urged by this Court in DiGuilio, Goodwin and Williams. The Second District correctly determined that the error did not affect the verdict. There was no reasonable possibility that the hearsay error contributed to the verdict. See Goodwin v. State, 751 So. 2d 537, 541 (Fla. 1999) (quoting DiGuilio, 491 So. 2d at 1135).

The Second District properly applied this Court's authority from DiGuilio in affirming Petitioner's conviction. This request for discretionary review fails to state a basis for this Court's exercise of its jurisdiction.



**CONCLUSION**

Petitioner respectfully requests that this Court accept jurisdiction in this case.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. mail to Eric Harris, #530163, Avon Park Work Camp, Post Office Box 1100, County Road 64 East, Avon Park, Florida 33826-1100, this \_\_\_\_ day of July 2011.

**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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