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IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC14-1208

**FRANCISO BROCK,**

Petitioner,

vs.

**STATE OF FLORIDA,**

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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## STATEMENT OF THE CASE AND FACTS

The portion of the district court opinion which outlines the case and facts is as follows:

Defendant, Francisco Brock, was charged with one count of fraud under section 440.105(4)(b) 9, Florida Statutes (2012). This charge arose after a wage query to the Florida Department of Revenue, Division of Unemployment Compensation database revealed that the social security number Defendant used when he was hired by Waste Pro USA was not issued to him. An investigation also revealed that Defendant was an illegal alien who had completed a "Homeland Security, I-9, Employment Eligibility Verification form" that improperly listed this same social security number. For the reasons stated herein, we reverse the trial court's pretrial order dismissing this charge.

Section 440.105 delineates the prohibited activities, reports, penalties, and limitations of the Workers' Compensation Law. The portion of the section under which Defendant was charged states that it is unlawful for any person:

To knowingly present or cause to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining employment or filing or supporting a claim for workers' compensation benefits.

§ 440.105(4)(b) 9, Fla. Stat. (2006) (emphasis added).

In his motion to dismiss, Defendant argued that: 1) Waste Pro hired Defendant knowing that the identity documents he used were either fake or false, and therefore they were not defrauded or misled by the use of the documents; and 2) Defendant had not filed a workers' compensation claim or presented any statement in support of such a claim. Under Defendant's theory, merely presenting false documents to gain employment, without more, does not trigger a violation under the statute.FN1

FN1. The State had agreed that there was no evidence that the Defendant specifically aimed for, nor did he claim or

file for, workers' compensation benefits.

The trial court granted the motion to dismiss, stating that it appeared the purpose of the statute related to insurance coverage and insurance claims, and that section 440.105(4)(b) 9 required that the obtaining of employment or filing or supporting a claim had to be connected to workers' compensation benefits. The court ruled that to sustain a violation under section 440.105(4)(b) 9, the State was required to plead and prove not only that Defendant obtained employment by a false, fraudulent, or misleading oral or written statement as evidence of identity, but that he did so with the intent to secure worker compensation benefits. This was error.

The interpretation of a statute is a purely legal matter and subject to review de novo. Kasischke v. State, 991 So. 2d 803, 807 (Fla. 2008). Courts strive to construe statutes to effectuate the Legislature's intent. See, e.g., id. at 807. In order to determine the intent, this court must first look to the statute's plain language. Id. "Florida case law contains a plethora of rules and extrinsic aids to guide courts in their efforts to discern legislative intent from ambiguously worded statutes." Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984). However, "when the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." Borden v. E.-European Ins. Co., 921 So. 2d 587, 595 (Fla. 2006) (quoting Daniels v. Fla. Dep't of Health, 898 So. 2d 61, 64 (Fla. 2005)). A departure from the letter of the statute, however, "is sanctioned by the courts only when there are cogent reasons for believing that the letter [of the law] does not accurately disclose the [legislative] intent." State ex rel. Hanbury v. Tunnickliffe, 98 Fla. 731, 735, 124 So. 279, 281 (Fla. 1929).

Here, the statute is clear and unambiguous. Section 440.105(4)(b) 9 makes it a crime to "present ... any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of obtaining employment ...." The fact that this clause is followed by the word "or" is important as it indicates the statute may be violated in more than one way: by presenting false or fraudulent documents for the purpose of obtaining employment or providing the false or

fraudulent documents to file or support a workers' compensation claim.

...

We reverse the dismissal of the information and remand the cause to the trial court for further proceedings.

Reversed and Remanded.

**SUMMARY OF THE ARGUMENT**

This Court should decline to accept jurisdiction to review the instant case because the opinion of the Fourth District Court of Appeal is not in conflict with the decision of the First District in Matrix Employee Leasing v. Hernandez, 975 So. 2d 1217 (Fla. 1st DCA 2008).

**ARGUMENT**

**THE DECISION OF THE FOURTH DISTRICT  
COURT OF APPEAL IN THE INSTANT CASE  
IS NOT IN CONFLICT WITH MATRIX  
EMPLOYEE LEASING V. HERNANDEZ, 975  
So. 2d 1217 (Fla. 1st DCA 2008)**

Petitioner contends that the Fourth District's decision in the present case, State v. Brock, 138 So. 3d 1060 Fla. 4th DCA 2014), is in conflict with the decision of First District in Matrix Employee Leasing v. Hernandez, 975 So. 2d 1217 (Fla. 1st DCA 2008). The State of Florida asserts that conflict does not exist.

Petitioner, in point 2, makes an argument based on the supremacy clause of the federal constitution. This argument was not made in the Fourth District Court of Appeal and is not mentioned in the opinion of the Fourth District Court of Appeal. An argument first expressed in a brief on jurisdiction is not a basis for this court to exercise conflict jurisdiction over the case as the opinion does not address the question of law "within the four corners of the opinion itself." The Florida Star v. B.J.F., 530 So. 2d 286, 288 (Fla. 1988).

In order for two decisions to be in express and direct conflict for the purpose of invoking this Court's discretionary jurisdiction under Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), the decisions should speak to the same point of law, in factual contexts of sufficient similarity to permit the



inference that the result in each case would have been different had the deciding court employed the reasoning of the other court as mandatory authority. See generally Jenkins v. State, 385 So. 2d 1356, 1359 (Fla. 1980); Mancini v. State, 312 So. 2d 732 (Fla. 1975). The conflict must be of such magnitude that if both decisions were rendered by the same court, the later decision would have the effect of overruling the earlier decision. Kyle v. Kyle, 139 So. 2d 885, 887 (Fla. 1962). However, "[if] the two cases are distinguishable in controlling factual elements or if the points of law settled by the two cases are not the same, then conflict cannot arise." Id. at 887.

Brock is distinguishable from Matrix. Matrix is a civil case where the First District was asked to determine if under the facts presented the Judge of Compensation Claims properly determined the claimant should receive benefits under his employers' worker's compensation insurance for an on the job injury. In stark contrast, in Brock, which is a criminal case, the sole issue was whether the actions of Brock constituted a crime under a statute. It is clear the two cases analyze dramatically different legal issues and are quite distinguishable from one another. "Obviously, two cases cannot be in conflict if they can be validly distinguished." Morningstar v. State, 405 So. 2d 778, 783 (Fla. 4th DCA 1982) (Anstead, J., concurring) Therefore, the State asserts Brock is not in conflict with Matrix.

On the face of the opinion the Fourth District Court of Appeal explained why Matrix was distinguishable as follows:

Both Defendant and the State cite to Matrix Employee Leasing & FCIC/First Commercial Claim Services v. Hernandez, 975 So. 2d 1217 (Fla. 1st DCA 2008), in support of their respective positions. In that case, the parties did not dispute the supposed violation but did argue whether this violation was cause for forfeiture of compensation benefits. The First District analyzed section 440.105(4)(b) 9 only as it applied to the denial of coverage under section 440.09(4)(a). To the extent that Matrix has any application to this case, it shows that a violation under 440.105(4)(b)9 should be considered distinctly separate from whether the violation was done for the purpose of obtaining benefits.

Respondent would point out that Petitioner utilizes extensive facts that are not found in the opinion of the Fourth District Court of Appeal. It is well established that neither a dissenting opinion nor the record itself can be used to establish jurisdiction. See Jenkins v. State, 385 So. 2d 1356 (Fla. 1980). Respondent respectfully requests this court disregard petitioners' references to numerous facts not contained in the opinion below. See Reaves v. State, 485 So. 2d 829, 830 n. 3 (Fla. 1986) (only relevant facts in a jurisdictional brief are those facts "contained within the four corners or the decisions allegedly in conflict ... it is pointless and misleading to include a comprehensive recitation of facts not appearing in the decision below, with citations to the record, as petitioner provided here.") This court should decline to accept discretionary jurisdiction as there is no conflict presented.

**CONCLUSION**

Wherefore, based on the foregoing arguments and the authorities cited therein, the State of Florida respectfully requests this Court decline to accept jurisdiction in this case.

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 forwarded to Richard Sicking, 2030 S. Douglas Rd., Suite 217, Coral Gables, FL. 33134 at [sickingpa@aol.com](mailto:sickingpa@aol.com) on August 13, 2014.

/s/Don M. Rogers

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Don M. Rogers

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New type.

/s/Don M. Rogers

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Don M. Rogers