

IN THE SUPREME COURT OF FLORIDA

TIMOTHY WALLACE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO.: SC09-1008

5TH DCA CASE NO.: 5D07-4031

5D07-4404

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

TABLE OF CITATIONS.....	ii
STATEMENT OF CASE AND FACTS.....	1
SUMMARY OF ARGUMENT.....	4
ARGUMENT.....	5

POINT OF LAW

SINCE THE DECISION BY THE DISTRICT
COURT IN THE INSTANT CASE DOES NOT
CONFLICT WITH ANY OTHER CASE,
JURISDICTION SHOULD NOT BE
ACCEPTED.

CONCLUSION.....	8
CERTIFICATE OF SERVICE.....	9
CERTIFICATE OF COMPLIANCE.....	9

TABLE OF CITATIONS

CASES:

<u>Ansin v. Thurston,</u> 101 So. 2d 808 (Fla. 1958)	5
<u>Jenkins v. State,</u> 385 So. 2d 1356 (Fla. 1980)	5
<u>Panter v. State,</u> 34 Fla. L. Weekly D 921 (Fla. 1st DCA May 7, 2009).....	6
<u>Ornelas v. United States,</u> 517 U.S. 690 (1998).....	6
<u>Reaves v. State,</u> 485 So. 2d 829 (Fla. 1986)	5
<u>United States v. Arvizu</u> 534 U.S. 266 (2002).....	6
<u>Wallace v. State,</u> 34 Fla. L. Weekly D925 (Fla. 5 th DCA May 8, 2009)	<i>passim</i>

MISCELLANEOUS:

Art. V, § 3(b)(3), Fla. Const.	5
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STATEMENT OF THE CASE AND FACTS

All relevant facts were included in the Fifth District Court's opinion Wallace v. State, 34 Fla. L. Weekly D 925 (Fla. 5th DCA May 8, 2009). Included in those facts were the following:

During the suppression hearing, the following facts were adduced. On a Friday evening in 2007, a team of officers from the Brevard County Sheriff's Office was conducting a storefront operation at a 7-Eleven in Cocoa, Florida. The area in which the 7-Eleven is located was "generally known as high crimes, high drug traffic area." One of the officers, Sgt. Molyneaux, a sixteen-year veteran officer, was in plain clothes in an undercover truck parked in 7-Eleven's parking lot looking for criminal activity, including drug sales.

At about 9:30 p.m., Sgt. Molyneaux saw Appellant drive into the 7-Eleven parking lot and park on the side of the building away from the general store traffic, although there were spaces available in front of the store. He concluded that Appellant looked "very nervous" because "[h]is eyes were very wide, and he was looking around a lot . . . like he was looking for somebody." While Appellant was in the store, he continued to look out toward the parking lot as if he was looking for somebody. Minutes after Appellant entered the store, a white Buick entered the parking lot quickly and abruptly stopped next to Appellant's vehicle. Appellant exited the store, immediately walked over to the Buick and opened the passenger's side door. The Buick's driver handed something to Appellant, who in turn handed something to

the driver and shut the door. The Buick then sped off. Sgt. Molyneaux saw Appellant put something in his left front pocket then get into his vehicle and drive off.

Sgt. Molyneaux was approximately forty feet from the transaction with a clear view, but did not see what Appellant and the Buick's driver were handing each other. Nonetheless, based on his training and experience, he believed that he had witnessed a drug transaction and called for police units to stop Appellant and the Buick. After being advised by Sgt. Molyneaux of his observations, Deputy Forrest stopped Appellant's vehicle before it left the 7-Eleven parking lot. When Appellant stepped out of the vehicle, Deputy Forrest saw a small bag of cocaine in plain view, seized it and arrested Appellant.

The trial court denied Appellant's motion to suppress, finding that there was reasonable suspicion to support the investigatory stop of Appellant's vehicle. In its order, the trial court stated:

Here, Officer Molyneaux was a seasoned law enforcement officer with extensive drug training, working six years in the narcotics unit, and vast experience in hand-to-hand drug transactions. The area was known for high drug trafficking, and Officer Molyneaux was there conducting surveillance for drug transactions. In light of Officer Molyneaux's experience, the Defendant's behavior prior to the hand-to-hand transaction was suspicious in that he did not park in the regular traffic area of the convenience store, his eyes were wide, he was acting nervous looking for someone, and while he

was in the store, he was looking
for someone.

After the court denied Appellant's motion to
suppress, he pled guilty, while preserving
the dispositive issue of whether the
investigatory stop was predicated on
"reasonable suspicion."

. . .

The appellate court set out the controlling law from the
United States Supreme Court on reasonable suspicion and upheld
the trial court's determination that the stop was legal.
Petitioner has now sought review by this Court submitting that
the opinion of the Fifth District Court of Appeal is in conflict
with Panter v. State, 34 Fla. L. Weekly D 921 (Fla. 1st DCA May
7, 2009).

SUMMARY OF ARGUMENT

This Court should decline to accept jurisdiction in this case. Petitioner has failed to demonstrate that the decision of the court below conflicts with any decision of this Court or the other district courts.

ARGUMENT

SINCE THE DECISION BY THE DISTRICT COURT IN THE INSTANT CASE DOES NOT CONFLICT WITH ANY OTHER CASE, JURISDICTION SHOULD NOT BE ACCEPTED.

This Court has jurisdiction to review the decision of a district court when that decision "expressly and directly conflicts" with a decision of either this Court or of another district court. Art. V, § 3(b)(3), Fla. Const. However, this Court has repeatedly held that such conflict must be express and direct, that is, "it must appear within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). Petitioner in this case has failed to show such a conflict. Additionally, in Jenkins v. State, 385 So. 2d 1356, 1357-1358 (Fla. 1980), this Court discussed the creation of the district courts of appeal and quoted from Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958):

It was never intended that the district courts of appeal should be intermediate courts.... To fail to recognize that these are courts primarily of final appellate jurisdiction and to allow such courts to become intermediate courts of appeal would result in a condition far more detrimental to the general welfare and the speedy and efficient administration of justice than that which the system was designed to remedy.

Petitioner alleges the instant case is in conflict with Panter v. State, 34 Fla. L. Weekly D 921 (Fla. 1st DCA May 7, 2009). Petitioner quotes a section of the Panter opinion which references Ornelas v. United States, 517 U.S. 690 (1998), and United States v. Arvizu, 534 U.S. 266 (2002). These same two cases were cited by the Fifth District Court of Appeal in the instant opinion. Furthermore, both opinions noted that the officer's actions were to be evaluated by the totality of the circumstances. When reviewing those facts, there were several notable differences. For example, the officer in the instant case was listed as a "sixteen year veteran officer," whereas, the officer in Panter was listed as being an officer for less than two years. Other facts set out in the instant case included Petitioner being very nervous, parking oddly, wide eyed, immediately responding when another car arrived and exiting the store, and the exact pockets involved in the exchanges.

The instant case was decided on the 8th of May and Panter was issued on May the 7th. The law applied by each was the standard, constitutional law that applies to Fourth Amendment search and seizure cases. Each case contained different facts

as is the case with many such cases leading to different outcomes. However, this does not show conflict in the case law.

CONCLUSION

Based on the arguments and authorities presented above, the State respectfully prays this Honorable Court does not accept jurisdiction in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Respondent's Brief on Jurisdiction has been furnished by U.S. mail to Leonard R. Ross, counsel for Petitioner, Office of the Public Defender, Suite 210, 444 Seabreeze Blvd., Daytona Beach, FL 32118, this _____ day of June 2009.

CERTIFICATE OF 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).

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