

IN THE SUPREME COURT OF FLORIDA

**CASE NO: SC09-1074
DCA CASE NO: 3D08-30**

FILED
THOMAS D. HALL
2009 OCT 16 A 11:06
CLERK, SUPREME COURT
BY _____

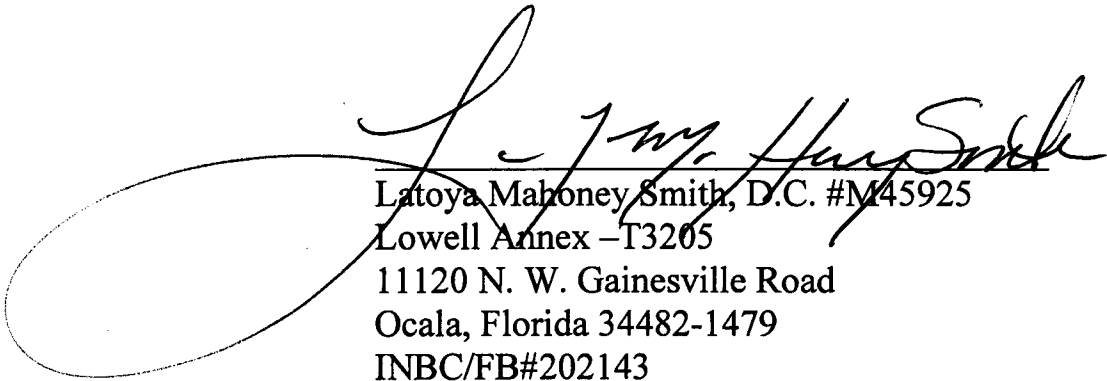
**LATOYA MAHONEY SMITH,
Petitioner,**

vs

**THE STATE OF FLORIDA,
Respondent.**

**ON APPEAL FROM
THE THIRD DISTRICT COURT OF APPEALS OF FLORIDA**

JURISDICTIONAL BRIEF OF PETITIONER



Latoya Mahoney Smith, D.C. #M45925
Lowell Annex -T3205
11120 N. W. Gainesville Road
Ocala, Florida 34482-1479
INBC/FB#202143
Washington, D.C. 20005
Attorney
Department of Government
Systems Consultant
Analyst Team Services
Investigations Agent
International Relations
Washington, D.C. 20008
M.J. M.J.

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STATEMENT OF FACTS AND THE CASE

The Third Districts written opinion dissent by Petitioner as followed:

The Petitioner Latoya Mahoney Smith was on October 11, 2007, convicted of one (1) count of aggravated stalking, one (1) count of stalking and two hundred and eight (208) counts of violation of an injunction against repeated violence on December 12, 2007. The Petitioner was sentenced to ten (10) years state prison; five (5) years minimum mandatory sentence. The Petitioner Latoya Mahoney Smith filed an appeal that stated the Trial Court failed: (1) in allowing the State to introduce testimony about the Petitioner's past case, (2) failing to instruct the jury on attempted violation of an injunction, and (3) failing to grant a judgment of acquittal because the State failed to prove on more than one account that the Petitioner maliciously, willingly, harassing, followed and stalked the victims, causing substantial emotional distress. Because the record shows: (1) no violence in this case, (2) there's no evidence to support the case, (3) the mobile phone used by victim for which the case is based upon belonged to the Petitioner that the victim provided identification willingly to receive from a U.P.S. carrier, (4) the Petitioner and victim have a 6 year old daughter which is a legitimate reason for communication, (5) the Petitioner was living in the State of Connecticut at the time she was in question of committing this so called crime, (6) the victim, Kevin Encarnacion tried to obtain visitation with the Defendant on 7/9/2008, and was denied by the Classification Department for being the victim of the offense, (7) the Trial Court allowed the State to violate the Brady Act for entering evidence at trial not previously entered in discovery. The same supplement records used by Assistant Attorney General Soler in his Appellee Appeal Brief, (8) any person who

willfully, maliciously, and repeatedly follows or harasses another person makes a credible threat with the intent to place that person in reasonable fear of death or bodily injury; commits the offense of aggravated stalking, a felony of the third degree (credible threat with the intent to place that person in reasonable fear of death or bodily injury is the key statement here).

775.084(3), which takes us to the injunction for protection against repeat violence for which a credible threat would have had to be in place to obtain defines knowingly, willfully, maliciously, and repeatedly follows or harasses another person commits the offense why charging for an offense of aggravated stalking, a felony of third degree **775.082(4)** there is a reason why charging for an offense of aggravated stalking **775.082(4)** and violation of an injunction for protection against repeat violence in the same crime episode consists of double jeopardy. The rule of **775.082(4)** already includes the violation of the injunction in its definition but yet the Petitioner was charged with violation of an injunction 208 times in that same crime episode using the same evidence for the same cause which in it self is also double jeopardy. Had the State Attorneys done the adequate research, he would have noted that the injunction was also illegally administered. There is no violence, credible threat, reasonable fear of death bodily injury, or effects of directed conduct for an injunction of that statute to have been issued with all the errors in the Trial Courts none – evidentiary rulings and the jury instructions give. We dissent the Trial Courts and District Courts opinion quoting the District Court and the Respondent. **See Dorsett v. State, 944 So. 2d. 1207, 1213 (Fla. 3d. DCA 2006)** (confirming that evidence of prior bad act may be admitted where it is inextricably intertwined with the charges being prosecuted and thus necessary to adequately describe the deed to provide

an intelligent account of the crimes charged to establish the entire context out of which the charged crimes arose or to adequately describe the events leading up to the charged crimes). The District Court erred in permitting the State to introduce **Dorsett v. State, 944 So. 2d. 1207, 1213 (Fla. 3d. DCA 2006)** as the basis in the affirmation of prior bad acts were to feebly examine; the court failed to consider the differences in the evidence of the two cases. Because prior information was entered, the Petitioner was retried on the first case again as well as tried on the case on October 9, 2007. The State Attorney gave the jury misinformation that was highly prejudicial of the right to a fair trial, and due process of the law is in jeopardy per the Petitioner. Generally all relevant evidence is defined as evidence tending to prove or disprove a material fact. **90.401 Fla. Stat. (2003)** relevant evidence however is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues mislead the jury, or needless presentation of cumulative evidence **90.403 Fla. Stat. (2002)**. Thus the prerequisite to admissibility is relevancy (**Dorsett v. State, 944 So. 2d. 1207, 1213 (Fla. App. 3 Dist. 2006)**). The District Court used **Dorsett** to affirm their decision and to support that fact. But feebly failed to, noted by entering that evidence from the prior case, it not only caused confusion on the issue and misled the jury by caused a prejudice per the Petitioner, especially when testimonies are perjured in both cases. We again dissent the Courts opinion. Also in **Fla. R. Crim. P. 3.510(a)** (confirming that the court “shall not instruct the jury if there is no evidence to support the attempt and the only evidence proves a completed offense.”)

(1) There no supportive evidence to support any charges in this case. (2) The victim was in willing possession of Mahoney-Smith’s mobile phone for which the victim lied and stated the

phone belonged to him, thus the charges. There is no Court on this green earth will convict anyone for calling their only mobile phone, "God forbid". The jury needed to be instructed of the contriving factors in order to not become confused with the onset of information given and not be misled by the State for which is what happened. Denying the Petitioner a fair trial and under handedly endangering the probative value of the evidence. Adding to the needless presentation of cumulative evidence. Instruction to the jury were advisory only except in regard to questions as to what shall be considered as evidence and the court having such right it follows of course that it also has the right to prevent counsel from arguing against such an instruction (**Bell v. State, 5, 7md. 108, 120**). The true fact here is that the mobile phone the State Attorney used as the basis of this case, these crimes belonged to the Petitioner although it was in willing possession of the victim. It belonged to the Petitioner, and there's no law that says that she can not call her own mobile phone no matter whose possession it is in. Dissent **Mahoney-Smith v. State, 7 So. 3d. 644 (Fla. 3d DCA 2009)**.

SUMMARY OF ARGUMENT

The Petitioner can establish that the decision of the Third District expressly and directly conflicts with a decision of this Court or another District Court of Appeal. It is also of a great public importance. There are too many discrepancies and judicial errors given and overlooked by both the Trial Courts and the District Courts that warrant the express opinion of the Supreme Courts. Therefore, this Court does have discretionary jurisdiction to review this case.

ARGUMENT

There is an express and direct conflict with any decision of this Court or another District Court of Appeal and therefore, this Court should grant to exercise its discretionary jurisdiction in this case. **Article V. section 3(b) (3)** of Florida's Constitution provides that this Court:

May review any decision of a District Court of Appeal that expressly declares valid a State Statute, or that expressly construes a provision of the State or Federal Constitution or that expressly affects a class of Constitutional or State Officers or that expressly and directly conflicts with a decision of another District Court of Appeal or of the Supreme Court on the same question of law.

The only facts relevant to (this courts) decision to accept or reject (petitions for review based on an alleged decisional conflict) are those facts contained within the four corners of the decisions allegedly in conflict. **Reaves v. State, 485 So. ed. 829 n.3 (Fla. 1986)** [This Court] is not permitted to base [its] conflict jurisdiction on a review of record or no facts recited only in dissenting opinion *Id.* for there to be direct conflict, the majority opinions of the District Court must involve the same facts and decide the same legal issue. **Ortiz v. State, 963 So. 2d. 226 (Fla. 2007)** (granting jurisdiction because the majority opinion agrees on the same facts of the Constitution and Amendment Rights for which are also in direct conflict of the said decision as well as factual to many discrepancies in the contributing factors of the case. The fact that the Trial Court and District Court violated the Petitioner's Constitutional Amendment Rights to a fair trial not only expresses a direct conflict in majority opinion for which every Court stands,

but are discrimination and a bias to the Amendment Liberties and Rights. The Fourteenth Amendment governs any action of State whether through its Legislature, its Courts, or its Executive or Administrative Officers, **U.S.C.A. Const. Amend. 14**; one of the many conflicts in this case. This case is not only of a great public importance, but a stepping stone to eliminate the vagueness of laws and insist on the doctrines of principle per the Constitution and Human Liberties; steering the fine lines of lawful and unlawful conducts. And laws that give an ordinary person of intelligence a reasonable opportunity to know what is prohibited so that he or she may act accordingly. **Fla. R. App. P. Rule 9.125(a)** Applicability. This rule applies to any order or judgment of a Trial Court that had been certified by the District Court of Appeal to require immediate resolution by the Supreme Court because this issues pending in the District Court are of great public importance or have a great effect on the proper administration of justice throughout the State. The District Court of Appeal may make such certification on its own motion or on suggestion by a party.

CONCLUSION

WHEREFORE, the Petitioner respectfully requests an order to grant this Court, the honor to exercise its discretionary review jurisdiction in this case. This case is also of great public importance.

Respectfully Submitted,



Latoya Mahoney Smith, D.C. #M45925

Lowell Annex -T3205

11120 N. W. Gainesville Road

Ocala, Florida 34482-1479

INBC/FB#202143

Washington, D.C. 20005

Attorney

Department of Government

Systems Consultant

Analyst Team Services

Investigations Agent

International Relations

Washington, D.C. 20008

M.J.

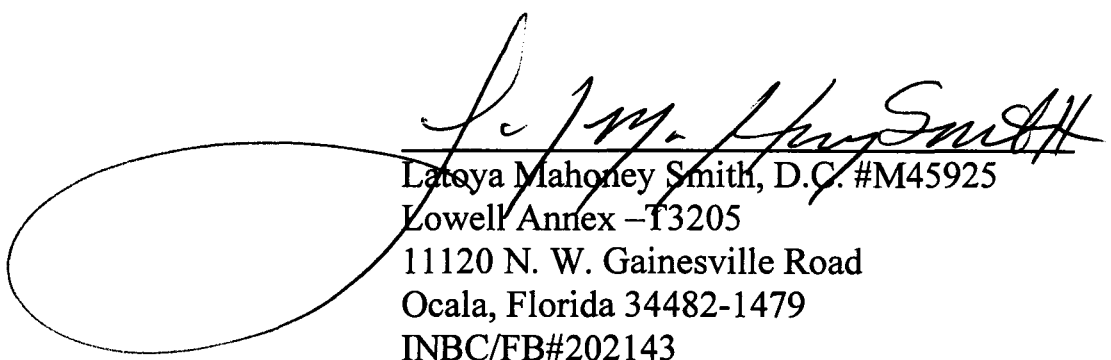


CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that this Brief is typed in compliance with the requirements set forth in Rule 9.210(a) (2) of the Florida Rules of Appellate procedure and that a true and correct copy of the foregoing Jurisdictional Brief of the Petitioner was mailed this 12th day of October, 2009 to:

Thomas D. Hall, Clerk Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399.

**Rolando A. Soler, Assistant Attorney General, Office of the Attorney General,
Department of Legal Affairs, 444 Bricknell Avenue, Suite 650, Miami, Florida 33131,
for Attorney General, Bill McCollum.**



Latoya Mahoney Smith, D.C. #M45925
Lowell Annex - T3205
11120 N. W. Gainesville Road
Ocala, Florida 34482-1479
INBC/FB#202143
Washington, D.C. 20005
Attorney
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M.J. M.J.