

**IN THE SUPREME COURT OF FLORIDA**

CASE NO. SC09-1074  
DCA CASE NO. 3D08-30

**LATOYA MAHONEY-SMITH,**

Petitioner,

-VS-

**STATE OF FLORIDA**

Respondent.

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ON APPEAL FROM  
THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

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**JURISDICTIONAL BRIEF OF RESPONDENT**

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## STATEMENT OF THE FACTS AND THE CASE

The Third District's written opinion, attached hereto, states as follows:

Latoya Mahoney-Smith appeals from her conviction and sentence for stalking, aggravated stalking, and multiple violations of an injunction against repeat violence claiming that the trial court erred (1) in permitting the state to introduce testimony about her past behavior, (2) in failing to instruct the jury on attempted violation of an injunction, and (3) in failing to enter a judgment of acquittal because the State failed to prove malice, harassment, or emotional distress. Because the record demonstrates facts sufficient to establish each element of the charges against Mahoney-Smith and because we find no error in either the trial court's evidentiary rulings or the jury instructions given, we affirm. See Dorsett v. State, 944 So.2d 1207, 1213 (Fla. 3d DCA 2006) (confirming that evidence of prior bad acts 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); see also 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").

Affirmed.

Mahoney-Smith v. State, 7 So.3d 644 (Fla. 3d DCA 2009).

## SUMMARY OF ARGUMENT

Petitioner cannot establish that the decision of the Third District expressly and directly conflicts with a decision of this Court or another district court of appeal. Therefore, this Court does not have discretionary jurisdiction to review this case.

## ARGUMENT

**THERE IS NO EXPRESS AND DIRECT CONFLICT WITH ANY DECISION OF THIS COURT OR ANOTHER DISTRICT COURT OF APPEAL, AND THEREFORE, THIS COURT SHOULD DECLINE 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. (Emphasis added.)

“The only facts relevant to [this Court's] 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.2d 829, n.3 (Fla. 1986). “[This Court is] not permitted to base [its] conflict jurisdiction on a review of the record or on facts recited only in dissenting opinions.” Id. For there to be direct conflict, the majority opinions of the district courts must involve the same facts and decide the same legal issue. Ortiz v. State, 963 So.2d 226 (Fla. 2007)(discharging jurisdiction because “the alleged conflict decisions are factually distinguishable.”).

Here, the Third District’s opinion cites only to Dorsett v. State, 944 So.2d 1207 (Fla. 3d DCA 2006), and Petitioner apparently asserts that the Third District’s opinion is in conflict with Dorsett. Petitioner cannot establish a conflict between the two cases. Further, Dorsett is also from the Third District, and therefore, Petitioner cannot establish a conflict with another district court of appeal.

### **CONCLUSION**

WHEREFORE, the State of Florida respectfully requests an Order of this Court declining to exercise its discretionary review 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 JURISDICTIONAL BRIEF OF RESPONDENT was mailed this \_\_\_\_23<sup>rd</sup>\_\_\_\_ day of October, 2009, to Latoya Mahoney-Smith, DOC # M45925, Lowell Annex – T3205, 11120 N.W. Gainesville Road, Ocala, FL 34482-1479.

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## **CERTIFICATE OF 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.

*Rolando A. Soler*

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