

IN THE SUPREME COURT OF THE STATE OF FLORIDA

JAMES EARL JACKSON,

Petitioner,

v.

Case No. SC10-1348
5th DCA No. 5D10-1380

STATE OF FLORIDA,

Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

BILL McCOLLUM
ATTORNEY GENERAL

PAMELA J. KOLLER
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 0775990

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL
Florida Bar Number 0773026
444 Seabreeze Boulevard
Suite 500
Daytona Beach, Florida 32118
(386) 238-4990
(386) 238-4997 (fax)

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
STATEMENT OF CASE AND FACTS.....	1
SUMMARY OF ARGUMENT.....	3
ARGUMENT.....	4
ON THE FACE OF THE MAJORITY DECISION IN <u>JACKSON v. STATE</u> , THERE IS NO EXPRESS AND DIRECT CONFLICT WITH <u>TINSON V. STATE</u> , 650 So. 2d 189 (Fla. 2d DCA 1995). THIS COURT SHOULD THEREFORE DECLINE TO ACCEPT JURISDICTION.....	4
CONCLUSION.....	9
CERTIFICATE OF SERVICE.....	9
CERTIFICATE OF COMPLIANCE.....	9

TABLE OF AUTHORITIES

CASES:

<u>Ansin v. Thurston,</u> 101 So. 2d 808 (Fla. 1958).....	7
<u>DHRS v. National Adoption Counseling Service, Inc.,</u> 498 So. 2d 888 (Fla. 1986).....	5
<u>Jackson v. State,</u> 36 So. 3d 132 (Fla. 5th DCA 2010)	<i>passim</i>
<u>Jenkins v. State,</u> 385 So. 2d 1356 (Fla. 1980)	7
<u>Reaves v. State,</u> 485 So. 2d 829 (Fla. 1986).....	1,4,5
<u>Tinson v. State,</u> 650 So. 2d 189 (Fla. 2d DCA 1995)	<i>passim</i>

OTHER AUTHORITY:

Article V, Section 3(b)(3), Fla. Const.....	4
Fla. R. App. P. 9.030(a)(2).....	4

STATEMENT OF THE CASE AND FACTS

The only facts relevant to this Court in determining whether to accept jurisdiction are those contained within the majority opinion of the district court.¹ Respondent offers the following as a complete statement of the case and facts.

The Fifth District Court of Appeal's (Fifth District) majority opinion in Jackson v. State, 36 So. 3d 132 (Fla. 5th DCA 2010), stated:

In early July 2008, Donald Evans, who had numerous outstanding arrest warrants, eluded Marion County deputies following a high speed pursuit. A week later, the Marion County Sheriff's Office received an anonymous tip through "crime stoppers" that Evans was staying at a house near Vanguard High School. Sheriff's Deputy Collins then contacted Courtney Wilson, Evans' bail bondsman, who Collins knew also desired to apprehend Evans. Wilson related that he had driven by the same house earlier in the day and "thought he had seen [Evans] out in front of the house." Wilson agreed to meet officers in the area of the house to assist them in attempting to find Evans. Once Wilson arrived in the area, it was agreed that he would watch the house and notify officers if he saw Evans.

Around midnight, Wilson saw a car pull up and stop at the house. Several people congregated around the car, then got in it and hurriedly drove away. Deputy Collins testified that Wilson informed him that Evans was a passenger in the car. Wilson denied telling Deputy Collins that Evans was in the car, but acknowledged that he informed Sheriff's deputies that the car was

¹ Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986).

leaving at an accelerated rate of speed and that they should stop the car. In any event, the deputies stopped the car and ordered the occupants out at gunpoint. Evans was not among the occupants.**FN1** Appellant was one of the occupants in the car. During the stop, deputies located a gun beneath Appellant's seat and arrested him for possession of a firearm by a convicted felon.**FN2** The trial court did not specifically resolve the apparent conflict in the testimony regarding what Wilson had told the deputies. It did find, however, that the stop was not the product of "whim, caprice or desire to harass all drivers leaving Evans' house." It concluded that, under the totality of the circumstances, the police officers acted reasonably in stopping the vehicle. We agree.

FN1. Evans was arrested later that evening at the residence in question.

FN2. After the stop, Appellant told deputies that he had a gun. The use of this statement and the retrieval of the gun based on the admission is not an issue on appeal.

Jackson, 36 So. 3d at 133-134.

Petitioner filed a *pro se* notice to invoke the discretionary jurisdiction of this Court on July 2, 2010. After obtaining an extension, Petitioner filed a *pro se* jurisdictional brief without an appendix on August 26, 2010. The State's jurisdictional brief follows.

SUMMARY OF THE ARGUMENT

This Court should decline to accept jurisdiction in the instant case. The Court is limited to the facts contained within the four corners of the decision in determining whether an express and direct conflict exists. On the face of the majority decision under review, there is no express and direct conflict with the case identified by Petitioner, Tinson v. State, 650 So. 2d 189 (Fla. 2d DCA 1995).

ARGUMENT

ON THE FACE OF THE MAJORITY DECISION IN JACKSON v. STATE, THERE IS NO EXPRESS AND DIRECT CONFLICT WITH TINSON V. STATE, 650 So. 2d 189 (Fla. 2d DCA 1995). THIS COURT SHOULD THEREFORE DECLINE TO ACCEPT JURISDICTION.

Petitioner seeks discretionary review with this Honorable Court under Article V, Section 3(b)(3) of the Florida Constitution. See also Fla. R. App. P. 9.030(a)(2)(A)(iv). Article V, Section 3(b)(3) provides that the Florida Supreme Court may review a district court of appeal decision only if it "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." In Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986), this Court explained:

Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction.

Reaves, 485 So. 2d at 830, n.3. This Court further stated:

This case illustrates a common error made in preparing jurisdictional briefs based on alleged decisional conflict. The only facts relevant to our decision to accept or reject such petitions are those facts contained within the four corners of the decisions allegedly in conflict. As we explained in the text above, we are not permitted to base our conflict jurisdiction on a review of the record or on facts recited only in dissenting opinions. Thus, 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. Similarly, voluminous appendices are normally not relevant.

Reaves, 485 So. 2d at 830 n.3. Therefore, Petitioner's reference in his brief to items outside of the four corners of the Fifth District Court's majority decision should be disregarded as not relevant, such as the fact that the residence was not the known or listed address of Evans. (IB 5). Additionally, this Court has held that inherent or so-called "implied" conflict may not serve as a basis for this Court's jurisdiction. DHRS v. National Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986).

Petitioner has failed to demonstrate express and direct conflict between the instant decision of the Fifth District Court and Tinson v. State, 650 So. 2d 189 (Fla. 2d DCA 1995). Respondent contends no such conflict exists between the cited authority and the instant opinion. Notably, Tinson is mentioned nowhere in the four corners of the Jackson majority opinion. Jackson v. State, 36 So. 3d at 133-134. Respondent submits it would be difficult to find express and direct conflict with any case not even contained within the four corners of the underlying opinion.

Petitioner contends that the holding in Jackson by the Fifth District cannot be reconciled with the holding by the Second District Court in Tinson that: "[w]hile the informants' tips, coupled with the pattern of vehicular activity and other observations may support the issuance of a warrant authorizing search of the residence, these circumstances do not constitute founded suspicion to stop every vehicle whose occupants enter the residence for a brief period." Id. at 190. However, in the instant case, the district court concluded that the deputies had a reasonable belief that Evans was in the car based on the following facts: Evans was a wanted felon who law enforcement believed might be found at a particular house based on information provided by both an anonymous tip and Evans's bondsman, who was familiar with Evans. Id. at 134. Further, law enforcement set up surveillance by the bondsman to watch for Evans and to notify law enforcement when the bondsman saw Evans. Id. Thus, when the bondsman advised law enforcement to stop a vehicle which was leaving hurriedly, it was reasonable to believe that Evans was in the car. Id.

Plainly, the circumstances of Jackson are easily distinguishable from Tinson. In Tinson law enforcement was not searching for a known wanted felon but simply conducting a surveillance of a residence based upon an anonymous tip. No one in Tinson, unlike in Jackson, had identified a known wanted

felon as being present at that residence. In Tinson surveillance was not established by someone who was familiar with this known wanted felon and who had agreed to notify law enforcement if he observed this known wanted felon, unlike in Jackson. Finally, law enforcement was never advised by this person conducting surveillance and who was familiar with the known wanted felon to stop a vehicle traveling away from the residence at a high rate of speed. As the facts of Tinson are not identical to the facts herein, there is no direct and express conflict.

It appears that Petitioner is simply unhappy with the unfavorable ruling of the Fifth District Court of Appeal majority and is attempting to acquire yet another review in order to obtain a different result. However, 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.

Merely because Petitioner is unhappy with the result in the Fifth District Court of Appeal, does not mean he is entitled to yet another appellate review of his case.

Petitioner has failed to establish that the Fifth District Court's majority opinion in Jackson expressly and directly conflicts with the Second District Court's opinion in Tinson. Jurisdiction should be denied.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent respectfully requests this Honorable Court decline to accept jurisdiction in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Jurisdictional Brief of Respondent has been furnished via U.S. Mail to: James Earl Jackson, *pro se* Petitioner, DOC# 634691, at Okeechobee Correctional Institution, 3420 N.E. 168th Street, Okeechobee, FL 34972, this 15th day of September, 2010.

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 Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

BILL McCOLLUM
ATTORNEY GENERAL

PAMELA J. KOLLER
ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 0775990

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL
Fla. Bar. No. 0773026
444 Seabreeze Boulevard
Suite 500
Daytona Beach, Florida 32118
(386) 238-4990/ 238-4997 (fax)
COUNSEL FOR RESPONDENT