

Supreme Court of Florida

PROVIDED TO
HAMILTON CI O
FOR MAILING, 60
JUL 19 2011

Eugene L. Lucas,
Petitioner,

VS

Case No: SC11-1236

State of Florida,
Respondent,

On Review From The First District Court of Appeal
State of Florida

Petitioner's Jurisdictional Brief

Eugene Lucas # J37645
Petitioner/Pro Se

G-2131(U) Main Unit

Hamilton Correctional Inst

10650 S.W. 46th Street

Jasper, FL 32052-3732

Table of Contents

Page No

Table of Contents.	1
Table of Authorities / Citations.	2
Other Authorities.	2
Statement of The Case And Facts	3
Summary of The Argument	4
Jurisdictional Statement.	4
Argument	
The decision of the First District Court of Appeal in this case expressly and directly conflicts with the decision of this Court in <u>Bryant v State</u> , 656 So 2d 426 (Fla. 1994), ¹¹ And <u>Johnson v State</u> , 994 So 2d 960 (Fla. 2008)	
Conclusion	5-6
Proof of Service.	6
	7

¹¹ And Barnes v State, 970 So 2d 332 (Fla. 2007)

Table Of Contents

	<u>Page No</u>
<u>Arizona v Fulminante</u> , 499 U.S. 279 (1991)	<u>5</u>
<u>Barnes v State</u> , 970 So 2d 332 (Fla. 2007)	<u>15</u>
<u>Bryant v State</u> , 656 So 2d 426 (Fla. 1994)	<u>156</u>
<u>Haines v Kerner</u> , 404 U.S. 519 (1972)	<u>6</u>
<u>Johnson v Avery</u> , 393 U.S. 483 (1969)	<u>6</u>
<u>Johnson v State</u> , 994 So 2d 960 (Fla. 2008)	<u>15</u>

Other Authorities

U.S.C. 4 th , 5 th , 6 th , 8 th , 9 th and 14 th Amend	<u>5</u>
Fla. Const. Art. I §§ 2, 9, 12, 13, 15, 16, 17, 21 and 23	<u>5</u>
Fla. Const. Art. V § 3(b)(3)	<u>4</u>
Fla. R. Appl. Proc., Rule 9.030 (a) (2) (A) (iv)	<u>4</u>
Fla. Stat. § 92.525	<u>7</u>

Statement Of The Case And Facts

The Petitioner proceeded to jury trial in this case from September 29th, 2008 through October 2nd, 2008.

The Petitioner was found guilty of first degree murder and attempted first degree murder.

Two separate life sentences were imposed.

Timely Notice of Appeal was filed December 10th, 2008.

On May 28th, 2009, the Petitioner's appellate counsel filed the Initial Brief in this case, raising three issues. (See Appendix A)

On May 6th, 2010, the First District Court of Appeal issued a Written Opinion addressing issue two only. (See Appendix B)

The Petitioner was not informed of the Court's decision until early 2011, for which the Petitioner sought belated review in this Honorable Court, which was granted on June 22nd, 2011.

On July 6th, 2011, this Honorable Court issued an Order allowing to and including July 21st, 2011, to file a brief on jurisdiction.

This present jurisdictional brief follows:

Summary Of The Argument

The district court of appeal, in this present case opined that the video recording of the Petitioner which was played for the jury during trial, was in the sound discretion of the circuit court to send a DVD player back with the jury so they could watch it as often as they wanted, was in the circuit court's discretion.

The Petitioner presented error as a "Structural Error" and the district court's failure to acknowledge and address it as it was presented is, the Petitioner contends "in direct and express conflict with the previous decisions of this very Honorable Court in Johnson, Supra°, Bryant, Supra°, Barres, Supra°

Jurisdictional Statement

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the supreme court or another district court of appeal on the same point of law, Art. V § 3(b)(3) Fla. Const (1980); Fla. R. Appl. P. 9.030(a)(2)(A)(iv).

Argument

The Decision of The District Court of Appeal In This Case Expressly And Directly Conflicts With The Decisions Of This Court In Johnson v State, 994 So 2d 960 (Fla. 2008); Barnes v State, 970 So 2d 332 (Fla. 2007); Bryant v State, 656 So 2d 426 (Fla. 1994)

The district court of appeal failed to address the fact that the issue was presented and does constitute a structural error of the gravest nature as it effected the Petitioner's ability to receive a fair trial, equal application of the law and due process and went directly to the procedural integrity of the trial process and not just to a weighing of the evidence, U.S.C. 4th, 5th, 6th, 8th, 9th and 14th Amend.; Fla. Const. Art. I §§ 2, 9, 12, 13, 15, 16, 17, 21 and 23; Also See Arizona v Fulminante, 499 U.S. 279 (1991)

The district court had a solemn responsibility to address the Petitioner's issue as it was presented, especially as nobody can say with any level of certainty that the jury did not put undue emphasis to the videotape, when they should not have even had the DVD player and tape in the jury room.

The district court's decision conflicts with the decision of this Honorable Court concerning structural defects in Johnson v State, 994 So 2d 960 (Fla. 2008). Furthermore the district court's decision conflicts with Barnes v State, 970 So 2d 332 (Fla. 2007)

and Bryant v State, 656 So2d 426 (Fla. 1994), pertaining to permissible items that can be legally sent back to the jury room during deliberations at trial.

This Honorable Court correctly set forth the law in each of the cited cases and the district court of appeal is in direct and express conflict with each of these holdings.

This Honorable Court should now reaffirm these holdings by accepting discretionary review and quashing the contrary decision of the district court below.

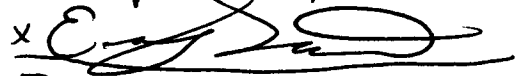
Conclusion

This Honorable Court has discretionary jurisdiction to review the decision below, and this Honorable Court should exercise that jurisdiction to consider the merits of the Petitioner's arguments.

This motion was prepared pursuant to the doctrine of Johnson v Avery, 393 U.S. 483 (1969), for the Petitioner by a "Fellow Inmate/Next Friend" who is also a layman at the law and as such seeks this Honorable Court's indulgence in viewing this pleading with the less stringent standards than pleadings drafted by attorneys.

Pro Se motions are to be liberally construed regardless of how ineptfully they are pleaded. Haines v Kerner 404 U.S. 519 (1972)

Respectfully Submitted,

x 

Eugene L. Lucas #J37645

Petitioner / Pro Se

G-2131 (U) Main Unit

Hamilton Correctional Inst.


10650 S.W. 46th Street

Jasper, FL 32052-3732

OATH/VERIFICATION pursuant to § 92.525 Fla. Stat.


UNDER PENALTY OF PERJURY, I declare that I have read the foregoing motion and the facts stated herein are true.

Executed this 19 day of July 2011.


Defendant/Appellant/Petitioner
Eugene L. Lucas # J 37645

PROOF OF SERVICE

I HEREBY CERTIFY that I have placed the foregoing motion in the hands of _____
_____, as Mailroom Representative for the FLORIDA DEPARTMENT OF
CORRECTIONS, in appropriate form, as prima facie proof of service to be mailed to Supreme
Court of Florida, Honorable Clerk, 500 S. Duval St., Tallahassee
FL 32399; Attorney General, The Capitol, PL-01, Tallahassee, FL 32399
_____ this 19 day
of July 2011.


Eugene L. Lucas # J 37645
Defendant/Appellant/Petitioner pro se
6-2131 W Main Unit, Hamilton C.I.
10650 S.W. 46th Street
Jasper, FL 32052-8732