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IN THE SUPREME COURT OF FLORIDA

SHEDREICK RESHORD JENRETTE-SMITH,

PETITIONER,

V.

CASE NO. SC13-_____
L.T. NO. 2D10-1031

STATE OF FLORIDA,

RESPONDENT.

_____/

RESPONDENT'S JURISDICTIONAL BRIEF
ON REVIEW FROM THE SECOND
DISTRICT COURT OF APPEAL
STATE OF FLORIDA

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THE SECOND DISTRICT'S OPINION IN JENRETTE-SMITH, 114 So.3d 427 (Fla. 2nd DCA 2013), DOES NOT DIRECTLY AND EXPRESSLY CONFLICT WITH OTHER DECISIONS OF THE FLORIDA SUPREME COURT OR OTHER DISTRICT COURTS OF APPEAL ON THE SAME QUESTION OF LAW, TO WIT: APPLICATION OF THE RULE OF LENITY REGARDING STATUTORY ELEMENT "EXHIBITION BEFORE AN AUDIENCE," FINDING POSSESSION OF UNEXPOSED FILM CONTAINING UNDEVELOPED IMAGES OF CHILD PORNOGRAPHY CONSTITUTED ACTUAL POSSESSION OF CHILD PORNOGRAPHY UNDER SECTION 827.071(3), FLORIDA STATUTES.

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TABLE OF CITATIONS

Cases

Jenrette-Smith v. State,
114 So.3d 427 (Fla. 2nd DCA 2013) *passim*

Jones v. State,
640 So.2d 1084 (Fla. 1994)..... 1

Rules

Fla.R.App.P. 9.030(a) 2

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's rendition of the Statement of Case and Facts for the purpose of jurisdictional briefing with the single exception the State does not concede the acts of sexual conduct between Petitioner and M.S. were "consensual" as to the victim. Jones v. State, 640 So.2d 1084 (Fla. 1994).

SUMMARY OF THE ARGUMENT

Respondent respectfully argues there is no present direct or express conflict with a decision of this Honorable Court, or any other district court of appeal, upon which to base jurisdiction as requested by Petitioner. The opinion of the Second District Court of Appeal in Jenrette-Smith v. State, 114 So.3d 427 (Fla. 2nd DCA 2013) does not conflict with this Court's opinion or any other decision of a Florida court and Petitioner improperly relies upon an argument which is simply a request for an appellate review of an appellate decision below which is not provided for under Florida Rule of Appellate Procedure 9.030(a).

ARGUMENT

THE SECOND DISTRICT'S OPINION IN JENRETTE-SMITH, 114 So.3d 427 (Fla. 2nd DCA 2013), DOES NOT DIRECTLY AND EXPRESSLY CONFLICT WITH OTHER DECISIONS OF THE FLORIDA SUPREME COURT OR OTHER DISTRICT COURTS OF APPEAL ON THE SAME QUESTION OF LAW, TO WIT: APPLICATION OF THE RULE OF LENITY REGARDING STATUTORY ELEMENT "EXHIBITION BEFORE AN AUDIENCE," FINDING POSSESSION OF UNEXPOSED FILM CONTAINING UNDEVELOPED IMAGES OF CHILD PORNOGRAPHY CONSTITUTED ACTUAL POSSESSION OF CHILD PORNOGRAPHY UNDER SECTION 827.071(3), FLORIDA STATUTES.

Pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), this Court is permitted to exercise its discretionary review of decisions of district courts of appeals that expressly and directly conflict with a decision of this Court or another district court of appeal on the same question of law. In the case now presented there is no basis upon which this Honorable Court can find conflict with the Second District Court of Appeal's decision in Jenrette-Smith v. State, 114 So.3d 427 (Fla. 2nd DCA 2013) with that of any Florida court.

Rather, Petitioner attempts to argue the position of the dissent in Jenrette-Smith, that being **all** district courts of appeal have gotten it wrong by failing to apply the Rule of Lenity properly to a defendant who possesses child pornography but does not exhibit it to others. Even

the language of the dissent itself deprives Petitioner of the proper basis for establishing jurisdiction of this Honorable Court: "The majority's determination to affirm on both issues ***perpetuates a line of decisions by district courts of appeal*** bent on disregarding a clear legislative directive governing the interpretation of criminal statutes . . .". [Emphasis added]. Simply, there is no conflict upon which to base jurisdiction in this Honorable Court.

This Court should decline to entertain jurisdiction because, based upon the facts presented below, the Second District's opinion in Jenrette-Smith does not directly and/or expressly conflict with the decisions of any district court of appeal or this Honorable Court.

Given the foregoing, Respondent respectfully argues this Honorable Court lacks jurisdiction to hear this matter as there is no direct and/or express conflict between the District Court's ruling and the rulings of this Court or any other District Court on this question of law.

CONCLUSION

Respondent respectfully requests this Honorable Court decline to exercise its jurisdiction in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to Allyn M.

Giambalvo, Assistant Public Defender, Office of the Public Defender, Polk County Courthouse, Third Floor, 225 North Broadway, P.O. Box 9000 -- Drawer PD, Bartow, Florida 33831, at appealfilings@pd10.state.fl.us, agiambalvo@pd10.state.fl.us, dcurl@pd10.state.fl.us, this 15th day of July 2013.

CERTIFICATE OF FONT 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).

Respectfully submitted,

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