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IN THE SUPREME COURT OF FLORIDA

LISA ROBERTS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC14-1446
2DCA Case: 2D13-1213

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

ANSWER BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

On March 28, 2014, the Second District Court of Appeal reversed the trial court's order dismissing the Information in case 2D13-1213. (See Order attached to Petitioner's Brief). The Second District held that the trial court erred in ruling that it lacked jurisdiction. The Second District explained:

The State alleged that Ms. Roberts, an Indiana resident, used her aunt's name and social security number to establish an Indiana utility account. The aunt lives in Florida. The trial court dismissed the case for lack of jurisdiction; it concluded that no part of the offense occurred in Florida. See § 910.005(1)(a), Fla. Stat. (2010) (authorizing Florida prosecution for offenses committed wholly or partly within Florida). However, because Ms. Roberts' failure to obtain her aunt's prior consent was both an omission of a duty imposed by Florida law and an element of the underlying offense, the offense was committed, at least in part, in Florida.

State v. Roberts, 2014 WL 1258540 (Fla. 2d DCA 2014).

SUMMARY OF THE ARGUMENT

Petitioner has not demonstrated any basis for this Court to exercise its discretionary jurisdiction to review the decision of the Second District. There is no express and direct conflict because the decision does not cite any cases as conflicting, nor create any conflicts. The cases cited by Petitioner are all distinguishable and deal with different criminal statutes and different factual scenarios. This Court should deny Petitioner's request.

ARGUMENT

PETITIONER FAILS TO DEMONSTRATE AN EXPRESS AND DIRECT CONFLICT IN THE DECISION CITED BECAUSE THE OPINION DOES NOT CITE ANY CASES AS CONFLICTING, NOR CREATE ANY CONFLICTS WITH EXISTING CASES.

The parameters of the Florida Supreme Court's appellate jurisdiction are set forth in Art. V, Section 3 of the Florida Constitution and Fla. R. App. P. 9.030(a)(2)(A). These sections identify the bases for the Court's exercise of its discretionary jurisdiction to review district court of appeal decisions:

- (i) expressly declare valid a state statute;
- (ii) expressly construe a provision of the state or federal constitution;
- (iii) expressly affect a class of constitutional or state officers;
- (iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;**
- (v) pass upon a question certified to be of great public importance;
- (vi) are certified to be in direct conflict with decisions of other district courts.

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

Petitioner claims that the Second District's March 28, 2014 opinion conflicts with existing cases holding that Florida Courts do not have jurisdiction when a crime is committed entirely outside the state of Florida. The State submits that the Second District's opinion was clear that the court was finding that the crime of Fraudulent use of Personal Identification, as specifically committed by Defendant, was *not*

committed entirely outside the State. Thus, the opinion does not create a conflict on that point of law.

In his jurisdictional brief, Defendant cites Battle, Sanders, Hicks, and D.R. as in conflict. These cases are not in direct and express conflict, and are legally and factually distinguishable.

The Battle case involved crimes of conspiracy and solicitation committed outside Florida, unlike the instant case which involved Fraudulent use of Personal Identification. Battle v. State, 365 So. 2d 1035 (Fla. 3d DCA 1978). Further, the crimes in Battle had not been completed, and thus that victim was unaffected. In the instant case, the crime was completed and the victim's personal identification was in fact abused. The Battle case also did not deal with the same statutes at issue in Roberts, and did not involve a breach of duty or omission scenario like the one discussed in the Roberts opinion. Roberts explicitly found that an element of the offense did occur in Florida. As such, Battle does not expressly and directly conflict with Roberts.

Next, the Sanders case held that a defendant was not subject to prosecution in Florida for a theft that occurred on a commercial airline flight from Arizona to Florida, where the theft was fully executed before the plane reached Florida. Sanders v. State, 77 So. 3d 914 (Fla. 4th DCA 2012). Sanders is obviously also factually distinguishable and did not involve the Fraudulent use of Personal Identification of an elderly victim residing in

Florida. The Sanders court also opined, "It is apparent that Sanders allegedly committed *all* of the elements of theft *prior to* the plane's entering Florida's territory." Id. at 917. In Roberts, on the other hand, the court found that an element of the crime *did* occur in Florida, creating jurisdiction. On this point of law, Sanders can also be reconciled with Roberts, and the case are not in conflict.

Next, the Court in the Hicks case held that that consent to enter a dwelling is affirmative defense to burglary, rather than an essential element. State v. Hicks, 421 So. 2d 510 (Fla. 1982). First, this case does not deal with jurisdiction over crimes committed partially in another state. Second, this case examines an affirmative defense in a burglary charge, and does not involve the same statutes as in Roberts. Third, the Second District did not discuss any argument about whether the victim's consent might be an affirmative defense. Thus, an issue regarding affirmative defenses was not even raised in the Roberts opinion, and as a result Hicks and Roberts are not in express and direct conflict.

Finally, in D.R., the court was dealing with a burglary statute, not a fraudulent use of identification case, and that case also had nothing to do with jurisdiction nor omission of a duty. D.R. v. State, 734 So. 2d 455 (Fla. 1st DCA 1999). Again, there is no express or direct conflict between D.R. and Roberts.

This Court should decline to entertain jurisdiction. The

Second District's opinion is not in express and direct conflict with any case. The Second District's opinion does not conflict with existing law that Florida courts lack jurisdiction when the crime is committed entirely outside the state. In fact, Roberts simply found that an element of Defendant's crime of Fraudulent use of Personal Identification occurred within Florida. The opinion did not cite any cases in conflict nor create a conflict.

As the Second District actually noted in its opinion, there were no cases addressing the issue of jurisdiction with respect to a case of Fraudulent use of Personal Identification. Said the court, "**No Florida case is directly on point.** However, analogous cases from Florida and other jurisdictions support our conclusion." Roberts at *2. Given this language, the opinion did not create an express and direct conflict.

CONCLUSION

Respondent respectfully requests that this Honorable Court decline to accept jurisdiction to review this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to Tosha Cohen, appealfilings@pd10.state.fl.us, tcohen@pd10.state.fl.us, dmorgan@pd10.state.fl.us, on this 29th day of July, 2014.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY the size and font used in this brief is 12-point Courier New, complying with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,
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