

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA

Petitioner,

vs.

CASE NO. 66,691

ROBERT WILLIAM HUME,

Respondent.

_____ /

PRELIMINARY STATEMENT

Respondent, ROBERT WILLIAM HUME, appellee below in State v. Hume, 10 FLW 357 (Fla. 1st DCA 1985), will be referred to by surname as well as appellate designation to enhance identification by this court.

Reference to relevant pleadings will conform to that method utilized by the Petitioner, The State of Florida, and will direct the reader's attention to The Appendix attached to Petitioner's BRIEF ON JURISDICTION.

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STATEMENT OF THE CASE AND FACTS

Respondent HUME accepts the State's recitation of facts with one exception to which disagreement must be voiced. The State, on page four of its brief, described the following events in pertinent part: "Acevido signalled the other officers that the cocaine was present and proceeded with Respondent to the front door of the apartment. Acevido opened the door..."

A more accurate description would be that found in the opinion of the First District: "The trial court found as a matter of fact that the undercover officer inside Appellee's residence, after signaling to officers waiting outside that an illicit drug transaction had been consummated, on his own initiative opened the front door to allow the outside officers to enter and arrest Appellee." [A-3][Emphasis supplied].

SUMMARY OF ARGUMENT

Conflict jurisdiction, and the discretionary invocation thereof, is not appropriately established. The decision of the First District, challenged as in express and direct conflict with decisions of this Court and the other Districts, expressly states the factual distinction not present in those cases, and otherwise attempts to align itself with them.

ARGUMENT

THE DECISION BELOW DOES NOT CONFLICT WITH ANY PRECEDENT OF A SISTER DISTRICT OR THIS COURT AND, IN FACT, IS EXPRESSLY ALIGNED WITH ALL PERTINENT PRECEDENT.

The issue is a narrow one. Petitioner suggests that the decision sought to be reviewed stands in direct conflict with decisions of sister courts and this tribunal. Not so.

Indeed, Petitioner cites a number of cases to substantiate this assertion: Griffin v. State, 419 So.2d 320 (Fla. 1982); Koptyra v. State, 172 So.2d 628 (Fla. 2nd DCA 1965); State v. Cantrell, 426 So.2d 1035 (Fla. 2nd DCA 1983); State v. Steffani, 398 So.2d 475 (Fla. 3rd DCA 1981); State v. Schwartz, 398 So.2d 460 (Fla. 4th DCA 1981); and State v. Perry, 398 So.2d 959 (Fla. 4th DCA 1981).

However, as the First District expressly pointed out:

We find, however, the cases alluded to by the State all involve a factual nuance not present in this case: namely, reentry...

State v. Hume, ___ So.2d___ (Fla. 1st DCA 1985) at 10 F.L.W. 357 (11 February, 1985). The District Court, per Smith, L., not only does not confront and disagree with the decisions of it's sister courts,¹ or this Court, it expressly attempts to align its decision and

¹Note, of course, that the instant opinion does allude to a potential disagreement with the "rationale" of Steffani. [A-5]. Indeed, a review of Steffani quickly reveals that the Court, gratuitously in obiter dicta, discussed a hypothetical not unlike the facts sub judice, and it is that dicta, and concomitant rationale,

reasoning with theirs. The express and direct conflict, that Petitioner would have this Court believe, simply does not exist.

¹(cont.) to which the First District alludes. If that is the basis suggested for conflict jurisdiction, the State should be reminded dicta is the view of one individual, the author, and should not fall within the contemplation of "decisions" required under 9.030(a) (2) (A) (iv), Fla. R. App. P., for conflict jurisdiction.

CONCLUSION

Based upon the foregoing argument and the authority cited herein, Respondent submits that the requisite jurisdictional conflict has not been established and simply does not exist.

WHEREFORE Respondent respectfully moves this Court to deny relief requested by Petitioner as not within this Court's discretion.

Respectfully submitted,

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