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CLERK, SUPREME COURT

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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

KEITH JOLLY,
Petitioner,

v.

CASE NO. 79,121

STATE OF FLORIDA,
Respondent.

PETITIONER'S REPLY BRIEF ON THE MERITS

ON DISCRETIONARY REVIEW FROM THE
FIRST DISTRICT COURT OF APPEAL

NANCY A. DANIELS
PUBLIC DEFENDER
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REBUTTAL ARGUMENT

Respondent has argued that neither the construction of section 775.084, Florida Statutes, nor the introduction of mug shots are issues properly before this Court. Respondent asks this Court to "follow its own precedent and decline to address these issues". The precedent respondent cites is Stephens v. State, 572 So.2d 1387 (Fla. 1991). In Stephens, this Court stated that it was not reaching an issue raised, which was beyond the scope of the certified question. However, Stephens is not authority for the proposition that this Court will decline to address issues because they lie beyond the scope of a certified question. As this Court stated in Bell v. State, 394 So.2d 979 (Fla. 1981): "{o}ur review power is not limited to the certified question only." Id. at 980.

Respondent asserts that petitioner's statutory construction argument is beyond the scope of the certified question. Although not certified as a question here,¹ the statute's construction is necessarily an issue since statutes should be construed so as not to conflict with the constitution. e.g. Firestone v. News-Press Publishing Co., 538 So.2d 457,459 (Fla. 1989). Hence contrary to respondent's assertion, it will diminish the quality of briefs if counsel

¹The first district has certified the question of the statute's proper construction in Reeves v. State, 17 FLW D281 (Fla. 1st DCA Jan, 17, 1992).

were restricted to the issue as framed by the certified question.

With judicial economy in mind, respondent requests this Court hold it will no longer address issues outside of those raised by a certified question. Yet judicial economy is best served by a consideration of all relevant issues, even if not certified, particularly if those issues will "affect the outcome of the petition after review of the certified question." Trushin v. State, 425 So.2d 1126 (Fla. 1982).

In reply to respondent's other arguments, petitioner relies on the arguments in his initial brief.

CONCLUSION

Based on the foregoing rebuttal argument and on the initial brief, Jolly requests that this Court quash the district court's opinion and order this cause reversed and remanded for a new trial.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been hand delivered to Assistant Attorney General Charles Faircloth and Assistant Attorney General James W. Rogers in Tallahassee, Florida, on 2 March 1992.

Respectfully submitted,



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