

**FILED**

SID J. WHITE

MAY 21 1992

CLERK, SUPREME COURT.

By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, :

Petitioner, :

vs. :

Case No. 79,220

RUFUS FORD, :

Respondent. :

\_\_\_\_\_ :

DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

ANSWER SUPPLEMENTAL BRIEF OF RESPONDENT ON JURISDICTION

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TENTH JUDICIAL CIRCUIT

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SUMMARY OF THE ARGUMENT

The State's initial argument for jurisdiction was wholly meritless. Allowing the State to use this meritless claim to bootstrap a later and wholly different claim of jurisdiction would encourage the filing of frivolous appeals and therefore should be disallowed.

## ARGUMENT

### ISSUE

THIS COURT SHOULD NOT ACCEPT JURISDICTION ON THE BASIS OF BELATED CERTIFIED CONFLICT.

In its supplemental brief on jurisdiction, the State argues that this Court should accept jurisdiction in this case because the third district, in Hernandez v. State, 17 F.L.W. D1048 (Fla. 3d DCA April 21, 1992), has now certified conflict with the instant decision. This Court should decline to accept jurisdiction despite the certified conflict.

Allowing the third district's decision to give jurisdiction to this Court would reward the State for having filed a frivolous appeal. The State argued in its first jurisdiction brief that this Court had jurisdiction because the second district's decision expressly construed a provision of the state or federal constitution. As Respondent pointed out in his answer jurisdiction brief, this argument was wholly meritless because the district court did not construe but merely applied existing constitutional law. This Court does not take jurisdiction for alleged misapplications of settled constitutional law. Armstrong v. City of Tampa, 106 So.2d 407 (Fla. 1958). Consequently, this appeal was frivolous.

Now, the State is arguing a wholly new basis of jurisdiction which did not exist at the time the initial jurisdiction briefs were filed. Had the State done what it should have done and not appealed this case, the decision would be final, and the third

district's later certification of conflict would be irrelevant. Instead, the State is using the initial improper request for jurisdiction as a means of bootstrapping the propriety of a later claim of jurisdiction. Allowing this maneuver would encourage others to file frivolous appeals, in the hope that some valid basis of jurisdiction might arise later. This would be unsound judicial policy and would unnecessarily increase this Court's workload.

This case may be distinguished from cases in which a party originally has an arguably valid claim of jurisdiction and then later cases are decided which reinforce this claim. For example, a party might justifiably claim that a decision conflicted with another decision, but the conflict might not be as express as the party might desire. Later, another court might certify conflict with the party's decision. Respondent believes that citing the new case as an additional basis for conflict jurisdiction would be proper, because it would reinforce the original arguably valid claim and would not encourage the filing of frivolous appeals. Arguing a wholly new basis for jurisdiction after the earlier filing of a wholly meritless jurisdiction brief, however, would encourage the filing of frivolous appeals and should therefore be disallowed.

It may be that due process would require a different result if this was a defendant's appeal and the defendant was incarcerated. Respondent does not address this point one way or the other in this brief. This is a State's appeal, however, and the State is not entitled to the same rights that a defendant might or might not

have. Accordingly, this Court should refuse to consider the merits of this case.

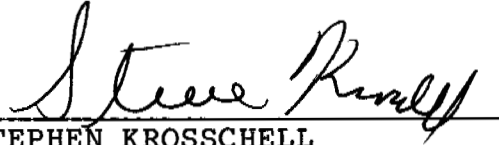
CONCLUSION

This Court should decline to accept jurisdiction.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Stephen A. Baker, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 19th day of May, 1992.

Respectfully submitted,



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