IN THE SUPREME COURT OF FLORIDA

TERRY G. TRUSSELL,
Appellant/Petitioner,

v. Case No.: SC18-2084

STATE OF FLORIDA,
Appellee/Respondent.
_____/

PETITIONER'S BRIEF ON JURISDICTION

On application for discretionary review of the decision of the First District Court of Appeal in *Terry G. Trussell v. State of Florida*, DCA Case No.: 1D16-3763.

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STATEMENT OF THE CASE AND FACTS

Terry G. Trussell ("Petitioner"), was selected to be the foreperson of the grand jury of Dixie County, Florida, in 2014. While serving in that capacity, Petitioner presented a conspiracy theory involving various individuals and entities to the grand jurors. Petitioner was given time to find evidence to support his conspiracy theory, but the grand jury declined to pursue the theory. (App. 3-4).[1]

The grand jury was scheduled to reconvene on the afternoon of August 14, 2014. Petitioner arrived at the courthouse early that morning, however, and was given access to the courtroom by the clerk of court. Upon receiving access to the courtroom, Petitioner assembled with twenty-five other persons who declared themselves to be the "People's Grand Jury Under Common Law in Dixie County, Florida." Petitioner presented his criminal conspiracy theory to this "common law" grand jury, which issued two "True Bills" calling for the arrest and prosecution of many public officials on various criminal charges. The "common law" grand jury adjourned and Petitioner returned to the courthouse later that afternoon to convene with the statutory grand jury. (App. 4).

The next day, on August 15, 2014, Petitioner returned to the courthouse and delivered the two "True Bills" approved by the common law grand jury, which called

[1] Reference to the appendix accompanying this brief will be by the symbol "App." Followed by page number.

for the arrest of several public officials and others on numerous charges. The clerk received the documents, stamped them "Sworn To and Subscribed Before Me," signed and dated them. The first line of the Bills stated:

> We the People's Grand Jury Under Common Law in Dixie County, Florida . . . met [on August 14, 2014, at 10:00 AM] at the Dixie County Court House for the purpose of considering charges against [various public officials].

(App. 4).

From there, the Bills identified the many persons and entities who were recommended for arrest and prosecution and listed various charges. Petitioner signed the "True Bills" as "Foreman, People's Grand Jury Under Common Law In Dixie County, Florida." (App. 4).

Approximately one month later, the State charged Petitioner by information with multiple counts of violating § 843.0855, *Fla. Stat.* (2014). Counts I and II of the information charged Petitioner with unlawful impersonation-related crimes for filing two purported "True Bills" as the foreman of the common law grand jury. The information alleged:

> On or about August 15, 2014, [Mr. Trussell] did unlawfully and deliberately impersonate or falsely act as a foreperson of a grand jury, a public officer or employee, in connection with or relating to the filing of a True Bill . . . , a legal process affecting persons and property, or otherwise took any action under color of law against persons or property, contrary to section 843.0855(2), Florida Statutes.

(App. 5).

The case proceeded to jury trial. During the State's case-in-chief, Dana Johnson, the clerk of the court for Dixie County, testified that Petitioner requested and received access to the courtroom on August 14, 2014, the day before he filed the two "True Bills." On cross-examination, defense counsel further explored this incident with Ms. Johnson as follows:

> Q. When Mr. Trussell asked you to use this courtroom on August 14th of 2014, where was the conversation you had with him? Where were you guys physically?
>
> A. I believe he came to my office, the main office in the building here.
>
> . . . .
>
> Q. And do you recall Mr. Trussell simply asking you if he could use the courtroom that morning?
>
> A. Uh-huh. Yes, ma'am.
>
> Q. He didn't actually tell you why, did he?
>
> A. *No, ma'am*.
>
> Q. You just made an assumption that he was using it for the grand jury, correct?
>
> A. Because I knew him to be the grand jury foreman of the statutory grand jury for Dixie County.
>
> Q. So based on the fact that he was, you just made an assumption that that was what it was for?
>
> A. That is correct.

> Q. So there was no direct representation to you, was there? You know, I'm the statutory grand jury foreman, I want to use this courtroom this morning?
>
> A. *No, ma'am*.

(App. 8).

During the State's closing argument, the prosecutor commented on Ms. Johnson's testimony as follows:

> One of the things that Terry Trussell did with Dana Johnson, the clerk of the court, was he came in, she knew him to be the foreman of the grand jury, and told her he needed the courtroom to set up for the grand jury that she knew was going to come into session at one o'clock and that she testified that she made arrangements through the county judge's judicial assistant for the courtroom to be available for him to set up for the grand jury.
>
> So as it pertains to that first element, was he falsely acting as the grand jury foreman to get that room, she knew he was, and as a public officer.
>
> . . . .
>
> So as we consider the testimony of Dana Johnson, no question that *Terry Trussell falsely acted as the statutory grand jury foreman, came in, used a session to get the courtroom to institute some legal process against Jeffrey Siegmeister and Mark Rains, which is Counts I and II of the information*.

(App. 9).

Defense counsel reminded the jury that Petitioner was not charged with "improperly reserving the room" and that Petitioner made no false representations in requesting the courtroom. (App. 9). The prosecutor revisited this issue during rebuttal by stating:

> The courtroom, she [defense counsel] just talked about that, on the morning of October [sic] the 14th was obtained by Terry Trussell. *It was obtained by fraud. Total fraud. I need to set up for the grand jury. I don't think that's in dispute in any part*.
>
> . . . .
>
> *Reserving this courtroom for the one o'clock meeting to set up was a ruse, it was falsely acting as the foreman of the grand jury and you should find the defendant guilty of Counts I and II because he used a ruse to get the courtroom*. It was not true. It was for the people's common law grand jury who circumvented the rules of this courthouse to get the courtroom.

(App. 9-10).

Defense counsel objected to the prosecutor's comments, asserting that the State was introducing improper character evidence in violation of § 90.404(b), *Fla. Stat*. The trial court overruled the objection and Petitioner was ultimately convicted of five counts, including counts I and II. (App. 10).

Petitioner appealed the judgment and sentence and the First District Court of Appeal, in a written opinion, affirmed. *See, Trussell v. State*, 43 Fla. L. Weekly D1978 (Fla. 1st DCA August 24, 2018). The court wrote specifically to address Petitioner's arguments relating to counts I and II. Petitioner alleged that the State improperly argued to the jury and secured his conviction on the basis of his actions to gain courtroom access on the morning of August 14, 2014. Petitioner argued that this was fundamental error because the information only charged him with impersonation in connection with the filing of the "True Bills" with the clerk on

August 15th, not with improperly entering or using the courtroom on August 14th. (App. 5).

Relying on this Court's "description of charging requirements" in *Price v. State*, 995 So. 2d 401, 404 (Fla. 2008), the court found "little difficulty" concluding that Petitioner was properly charged and convicted of the crimes stated in the information related to the filing of bogus True Bills. (App. 6). The court reasoned that, "evidence of Mr. Trussell's culpable acts leading to the filing of the 'True Bills' included: impersonating his own alter ego, the foreman of the real grand jury in Dixie County, to gain early access to the courthouse…" (App. 6). The court concluded that Petitioner's, "act-by-act impersonation of a legitimate grand jury foreperson over the two-day period, culminated with his filing of the two sham 'True Bills.' But it all began with his acts to gain access to the courtroom for the multimember 'People's Grand Jury,' which the State highlighted in its closing argument." (App. 6).

However, the opinion of the court was not unanimous. Judge Harvey L. Jay, III, concurred in part and dissented in part, with opinion. (App. 7-12). Judge Jay clarified that the State had conceded (in its responsive brief) that the information did *not* charge Petitioner for requesting the courtroom on August 14th, but was asserting that the issue was not properly preserved and no fundamental error occurred. (App. 10).

Judge Jay cited this Court's decisions in *Weatherspoon v. State*, 214 So. 3d 578, 583 (Fla. 2017), and *Price, supra*, as well as the Fifth District Court of Appeal's decision in *Zwick v. State*, 730 So. 2d 759, 760 (Fla. 5th DCA 1999), for the principle that both a defendant's right to be fully informed of the charges against him and due process are denied when a defendant is convicted "on a charge not made in the information or indictment." (App. 10).

In conclusion, Judge Jay opined:

> Here, Trussell advanced a defense to the charge that he was impersonating a public official when he presented the true bills to the clerk of court. It was not until closing argument that the State argued that Trussell should be convicted for fraudulently requesting the courtroom—conduct that was *not* charged in the information or supported by the evidence. The defense attempted to rebut this improper argument in the defense closing, and when the State persisted in advancing this uncharged and unproven theory, the defense objected, referencing section 90.404(b). This objection was sufficient to preserve Trussell's challenge to the improper argument, and the trial court erred in overruling the objection. Because I cannot exclude the possibility that the jury convicted Trussell based on the uncharged and unproven theory argued by the prosecutor, I would reverse the convictions as to Counts I and II and remand for a new trial.

(App. 11 - 12).

SUMMARY OF THE ARGUMENT

I. This Court should exercise its discretionary jurisdiction because the decision of the First District Court of Appeal in this case results from a misapplication of this Court's decision in *Price v. State*, 995 So. 2d 401 (Fla. 2008). In *Price*, this Court held that for an information to sufficiently charge a crime it must

follow the statute, clearly charge each of the essential elements, *and sufficiently advise the accused of the specific crime with which he is charged*. *Id*. at 404.

The information in this case alleged that on August 15, 2014, Petitioner impersonated or falsely acted as a foreperson of a grand jury in connection with "the filing of a True Bill." Yet, the State argued in closing that the jury should convict as to counts I and II based on Petitioner gaining access to the courtroom the previous day, on August 14, 2014. By concluding that Petitioner's act of gaining access to the courtroom on August 14th was properly included in the charge, the district court misapplied *Price*'s requirement that the information "sufficiently advise the accused of the specific crime with which he is charged."

II. The decision of the First District Court of Appeal in this case is in express and direct conflict with decisions of other district courts of appeal which hold that charges in an information must sufficiently advise the accused of the specific crime with which he is charged. *Richards v. State*, 43 Fla. L. Weekly D239, D241 (Fla. 2d DCA Jan. 26, 2018); *Zwick v. State*, 730 So. 2d 759 (Fla. 5th DCA 1999); *Leonetti v. State*, 418 So. 2d 1192 (Fla. 5th DCA 1982).

JURISDICTIONAL STATEMENT

The misapplication of a decision of this Court is a basis for express and direct conflict jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution. *See*, *Jaimes v. State*, 51 So. 3d 445 (Fla. 2010); *Wallace v. Dean*, 3 So. 3d 1035 (Fla.

2009). Moreover, this Court may exercise discretionary jurisdiction to resolve an express and direct conflict with decisions from another district court of appeal on the same point of law. Art. V, § 3(b)(3), *Fla. Const*.

ARGUMENT

I. The decision of the First District Court of Appeal in this case results from a misapplication of this Court's decision in *Price v. State*, 995 So. 2d 401 (Fla. 2008).

In *Price v. State*, 995 So. 2d 401 (Fla. 2008), this Court recognized that a denial of due process occurs when there is a conviction on a charge not made in the information or indictment. Therefore, "[f]or an information to sufficiently charge a crime it must follow the statute, clearly charge each of the essential elements, *and sufficiently advise the accused of the specific crime with which he is charged*." *Id*. at 404 (emphasis added).

The information in this case alleged that on August 15, 2014, Petitioner impersonated or falsely acted as a foreperson of a grand jury in connection with "the filing of a True Bill." (App. 5). Yet, the State argued in closing that the jury should convict as to counts I and II based on Petitioner gaining access to the courtroom the previous day, on August 14, 2014. (App. 9-10). The district court ultimately determined that Petitioner's act of gaining access to the courtroom on August 14th was properly subsumed within the allegations contained in the information. (App. 6).

The district court acknowledged this Court's "description of requirements" as set-forth in *Price* (App. 6), but failed to properly apply these requirements to the facts of this case. Specifically, by concluding that Petitioner's act of gaining access to the courtroom on August 14th was properly charged, the district court misapplied the requirement that the information "sufficiently advise the accused of the specific crime with which he is charged." *Price*, 995 So. 2d at 404.

II. The decision of the First District Court of Appeal in this case expressly and directly conflicts with decisions of other district courts of appeal on the same question of law.

The decision of the First District Court of Appeal in this case is also in express and direct conflict with decisions of other district courts of appeal which hold that charges in an information must sufficiently advise the accused of the specific crime with which he is charged. *See*, *Richards v. State*, 43 Fla. L. Weekly D239, D241 (Fla. 2d DCA Jan. 26, 2018); *Zwick v. State*, 730 So. 2d 759 (Fla. 5th DCA 1999); *Leonetti v. State*, 418 So. 2d 1192 (Fla. 5th DCA 1982).

CONCLUSION

The district court's misapplication of this Court's decision in *Price*, which has likewise caused express and direct conflict with decisions of other district courts of appeal on the same issue of law, warrants review. Moreover, Judge Jay's dissent is correct and the case should have been reversed and remanded for a new trial. This Court should exercise its discretionary jurisdiction to resolve the various conflicts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document was electronically filed with the Florida Court's *e*-filing portal and that a copy was served upon the Office of the Attorney General at crimapptlh@myfloridalegal.com, on this 20th day of December, 2018.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that this brief was computer-generated in Times New Roman 14-point font in compliance with the requirements of Rule 9.210(a)(2), *Fla. R. App. P*.