

IN THE SUPREME COURT OF FLORIDA

TERRY G. TRUSSELL,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC18-2084

JURISDICTIONAL BRIEF OF RESPONDENT

ASHLEY B. MOODY
ATTORNEY GENERAL

TRISHA MEGGS PATE
BUREAU CHIEF -CRIMINAL APPEALS
TALLAHASSEE
FLORIDA BAR NO. 045489

OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
TRISHA.PATE@MYFLORIDAELGAL.COM
CRIMAPPTLH@MYFLORIDALEGAL.COM
(850) 414-3300 Ext. 3603
(850) 922-6674

COUNSEL FOR RESPONDENT

RECEIVED, 01/14/2019 04:01:26 PM, Clerk, Supreme Court

TABLE OF CONTENTS

	<u>PAGE (S)</u>
TABLE OF CONTENTS..	i
TABLE OF CITATIONS.	ii
PRELIMINARY STATEMENT..	1
STATEMENT OF THE CASE AND FACTS..	1
SUMMARY OF ARGUMENT..	3
ARGUMENT.	4

ISSUE I

WHETHER THERE IS EXPRESS AND DIRECT CONFLICT BETWEEN THE FIRST DISTRICT'S DECISION IN THIS CASE AND THIS COURT'S DECISION IN <u>PRICE V. STATE</u> , 995 SO.2D 401 (FLA. 2008)?..4	4
CONCLUSION.	9
SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE.	9
CERTIFICATE OF COMPLIANCE..	10

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
<u>Ansin v. Thurston</u> , 101 So. 2d 808 (Fla. 1958)	5
<u>Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc.</u> , 498 So.2d 888 (Fla. 1986).	4
<u>Jenkins v. State</u> , 385 So.2d 1356 (Fla. 1980).	5
<u>Price v. State</u> , 995 So.2d 401 (Fla. 2008)	4, 5, 6, 8
<u>Reaves v. State</u> , 485 So.2d 829 (Fla. 1986).	1, 4
<u>Stallworth v. Moore</u> , 827 So.2d 974 (Fla. 2002).	5
<u>Trussell v. State</u> , 256 So. 3d 935, 935-36 (Fla. 1st DCA 2018), reh'g denied (Nov. 15, 2018)	2, 3, 7, 8
 <u>OTHER</u>	
Article V, § 3(b)(3), Fla. Const.	4
Fla. R. App. P. 9.030(a)(2)(A)(iv).	4
Fla. R. App. P. 9.210	10

PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Terry Trussell, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The State has restated the Statement of the case and facts because the petitioner has included facts listed in the dissent which is improper. See Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986) ("Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction."). Accordingly, the facts as set forth by the majority decision are as follows:

follows::

In 2014, Dixie County impaneled a grand jury and Mr. Trussell was selected to be its foreperson. During the grand jury proceedings, Mr. Trussell presented a theory of a large-scale criminal conspiracy involving various individuals and entities. The grand jury provided Mr. Trussell time to find evidence to support his conspiracy theory, but ultimately declined to pursue the theory. Around this same time, the grand jury was scheduled to reconvene on the afternoon of August 14, 2014. But that morning, Mr. Trussell sought early entry to the courtroom from the Clerk of Court and received

it. Upon gaining access to the courtroom, Mr. Trussell assembled with twenty-five other persons who declared themselves to be the "People's Grand Jury Under Common Law in Dixie County, Florida." Mr. Trussell assumed the role as this group's "Foreman," and presented his criminal conspiracy theory to them. The group proceeded to approve two "True Bills" calling for the arrest and prosecution of many public officials on multiple criminal charges. And then they adjourned.

The next day, on August 15, 2014, Mr. Trussell returned to the court and presented the Clerk of Court with the two "True Bills" approved by the ad hoc "People's Grand Jury" the previous day, which called for the arrest of several public officials and others on numerous charges. The Clerk of Court received the documents, stamped them "Sworn To and Subscribed Before Me," and 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].

From there, the Bills identified the many persons and entities who were recommended for arrest and prosecution and listed a smorgasbord of charges. Mr. Trussell signed the "True Bills" as "Foreman, People's Grand Jury Under Common Law In Dixie County, Florida."

Approximately one month later, the State charged Mr. Trussell by information with multiple counts of violating § 843.0855. Mr. Trussell ultimately received a jury trial and was convicted on five counts.

Trussell v. State, 256 So. 3d 935, 935-36 (Fla. 1st DCA 2018), reh'g denied (Nov. 15, 2018).

Petitioner argued that the prosecutor's closing argument was improper because the State argued to convict him based upon conduct not charged in the information. However, the First District found that:

Trussell was charged with impersonating or falsely acting as the foreperson of a grand jury "in connection with or relating to the filing of [True Bills]." (Emphasis added.) His convictions on these charges found support in the

evidence that Mr. Trussell committed multiple discrete acts of "deliberately impersonat[ing] or falsely act[ing] as a foreperson of a grand jury ... in connection with or related to the filing of True Bill[s]." The 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; assembling a sham grand jury in the Dixie County courthouse before the proper meeting of the real grand jury; assuming the role of foreman of the sham grand jury; presenting criminal conspiracy charges to the sham grand jury against a number of public officials and entities; gleaning unanimous votes recommending the arrest and prosecution of public officials and entities as foreman of the sham grand jury; and then signing and presenting the clerk of court with two "True Bills" as "Foreman" of the sham grand jury, which directed the Clerk of Court "to forward a copy of [the True Bills] to the Dixie County Sheriff for the[ir] arrest ... and for the court clerk to send the Special Prosecutor." Mr. Trussell'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 multi-member "People's Grand Jury," which the State highlighted in its closing argument.

Id. The First District found that:

That the State's closing argument chose to focus on Mr. Trussell's early actions in this episode to make its impersonation-related case is not problematic. Mr. Trussell's initial deception in gaining access to the courtroom for himself and the members of a sham grand jury inaugurated his entire charade. It led directly to Mr. Trussell's filing the two "True Bills" the next day. In fact, the "True Bills" themselves purported to establish their legitimacy and authority from the fact that they arose from a meeting the day before at the courthouse: "We the People's Grand Jury Under Common Law in Dixie County, Florida on August 14th, 2014, at 10:00 AM met at the Dixie County Court House for the purpose of considering charges against [certain public officials]." And so, Mr. Trussell's access and use of the courtroom fit squarely within the Information's charge of impersonating a foreperson of a grand jury "in connection with or relating to the filing of [the] True Bill[s]." Under these circumstances, we cannot agree with Mr. Trussell's argument that the Information was faulty, or that the State improperly argued an uncharged theory

Id. Therefore, the First District affirmed the conviction.

SUMMARY OF ARGUMENT

The appropriate focus upon the operative facts, as contained within the "four corners" of the DCA's decision, reveals no express and direct conflict with this Court or another DCA. In Price v. State, 995 So.2d 401 (Fla. 2008), this Court was address the sufficiency of an information, whereas in the case at hand, the First District was reviewing whether fundamental error occurred during closing argument. Accordingly, there is no conflict and this Court does not have jurisdiction.

ARGUMENT

ISSUE I

WHETHER THERE IS EXPRESS AND DIRECT CONFLICT BETWEEN THE FIRST DISTRICT'S DECISION IN THIS CASE AND THIS COURT'S DECISION AN PRICE V. STATE, 995 SO.2D 401 (FLA. 2008)? (Restated)

Jurisdictional Criteria/ Standard of Review

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla. Const. The constitution provides:

The supreme court ... [m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling

Service, Inc., 498 So.2d 888, 889 (Fla. 1986) (rejected "inherent" or "implied" conflict; dismissed petition). Neither the record, nor a concurring opinion, nor a dissenting opinion, can be used to establish jurisdiction. Reaves, supra; Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980) ("regardless of whether they are accompanied by a dissenting or concurring opinion"). Thus, conflict cannot be based upon "unelaborated per curiam denials of relief," Stallworth v. Moore, 827 So.2d 974 (Fla. 2002).

In addition, it is the "conflict of *decisions*, not conflict of *opinions* or *reasons* that supplies jurisdiction for review by certiorari." Jenkins, 385 So.2d at 1359. In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained:

It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

Because this is a legal issue, this issue is reviewed de novo.

The decision below is not in "express and direct" conflict with Price v. State, 995 So. 2d 401 (Fla. 2008).

The First District's decision does not expressly or directly with Price v. State, 995 So.2d 401 (Fla. 2008). In Price, Price claimed that the information charging him with sexual battery was

fundamentally defective. This Court found that it was not. This Court did state that: "Due process of law requires the State to allege every essential element when charging a violation of law to provide the accused with sufficient notice of the allegations against him[,]” and that “[t]here is a denial of due process when there is a conviction on a charge not made in the information or indictment.” Id. at 404. “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. This Court stated that “[g]enerally the test for granting relief based on a defect in the information is actual prejudice to the fairness of the trial.” Id.

Price claimed the information charging him with sexual battery was fundamentally defective because it charged alternative methods of committing the offense and failed to allege the specific manner in which the sexual battery was committed. Id. However, this Court concluded that “[t]he instant information tracked the language of statute and adequately placed Price on notice that he was charged with sexual battery. The offense of sexual battery may be proven by alternative methods, so it follows that the information should be free to include such alternative bases for conviction.” Id. at 404-05. This Court further stated that “[a]t trial Price did not claim the information was defective, nor did he file a motion to dismiss under Florida Rules of Criminal Procedure.

There is nothing in the record that shows actual prejudice to the fairness of Price's trial." Id. at 406.

In the case at bar, Petitioner was charged with impersonating a public official in connection with legal process. Petitioner argued that the prosecutor's closing argument deprived him of a fair trial because "the State improperly argued to the jury and secured his conviction on the basis of his actions to gain courtroom access for the 'People's Grand Jury' on August 14. He argues that this was fundamental error because the Information only charged him with impersonation or false acts in connection with filing the 'True Bills' on August 15, not with improperly entering or using the courtroom." Trussell v. State, 256 So. 3d 935, 936-37 (Fla. 1st DCA 2018). The First District rejected this argument finding that the State focus on petitioner's early actions was not problematic. "Mr. Trussell'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 multi-member 'People's Grand Jury,' which the State highlighted in its closing argument." Id. at 937. The First District even noted that the "True Bills themselves purported to establish their legitimacy and authority from the fact that they arose from a meeting the day before at the courthouse: 'We the People's Grand Jury Under Common Law in Dixie County, Florida on August 14th, 2014, at 10:00 AM met at the Dixie County Court House for the purpose of considering charges against [certain public officials].'

And so, Mr. Trussell's access and use of the courtroom fit squarely within the Information's charge of impersonating a foreperson of a grand jury 'in connection with or relating to the filing of [the] True Bill[s].'" Id. at 938.

Thus, there is no conflict between the First District and Price. The two decision are not addressing the same issues. In Price, this Court was address the sufficiency of an information, whereas in the case at hand, the First District was reviewing whether fundamental error occurred during closing argument. Accordingly, there is no conflict and this Court does not have jurisdiction.

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court decline to exercise jurisdiction.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Robert David Malove, Esq., by EMAIL rdm@robertmalovelaw.com, on January 14, 2019.

Respectfully submitted and served,
ASHLEY B. MOODY
ATTORNEY GENERAL

/s/ Trisha Meggs Pate

TRISHA MEGGS PATE
Bureau Chief -Criminal Appeals
Tallahassee
Florida Bar No. 045489

Attorneys for State of Florida
Office of the Attorney General
Pl-01, the Capitol
Tallahassee, Fl 32399-1050
Trisha.pate@myfloridalegal.com
CrimappTLH@myfloridalegal.com
(850) 414-3300 Ext. 3603
(850) 922-6674

[AGO# L18-1-14921]

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of
Fla. R. App. P. 9.210.

/s/ Trisha Meggs Pate

Trisha Meggs Pate
Attorney for State of Florida

[F:\Users\CRIMINAL\TRISHA\floridasupreme\terrytrussellrBJ.wpd --- 1/14/19,3:09 pm]