

IN THE SUPREME COURT OF FLORIDA

WILLIE ALLEN LYNCH,

Petitioner,

v.

Case No. SC19-0298

STATE OF FLORIDA,

Respondent.

ON DISCRETIONARY REVIEW FROM THE
THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT OF FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENT

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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, Lynch, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by 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 pertinent history and facts are set out in the decision of the lower tribunal, attached hereto. They can also be found at *Lynch v. State*, 260 So. 3d 1166 (Fla. 1st DCA 2018). Undercover officers, posing as drug buyers, were approached in their car by a man who identified himself as "Midnight," from whom they purchased crack cocaine. *Id.* "Midnight" appeared suddenly, and the officers did not have time to activate their recording system. *Id.* One officer surreptitiously took a photograph of "Midnight" with his cell phone. *Id.* That photograph was sent to the crime lab where an analyst used a database of mugshots to run a search for the neighborhood, nickname "Midnight," and basic characteristics of

the man. *Id.* at 1169. The analyst also used a facial-recognition program to compare the officer's photograph to mugshots. *Id.* Petitioner's photograph was returned in this search, which the analyst sent to the officers, who identified Petitioner as the man who sold them crack. Prior to trial, the crime analyst who conducted the search was deposed, but was not called as a witness by the State or defense at trial. *Id.* The trial court excluded the other photographs returned by the software, saying they were not relevant. The First District held that this was not a *Brady* violation because:

To prevail under *Brady*, Lynch had to show "that there is a reasonable probability that the result of the trial would have been different if the suppressed documents had been disclosed to the defense." *Strickler v. Greene*, 527 U.S. 263, 289, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999) (marks omitted). He has not made that showing here. First, because he cannot show that the other photos the database returned resembled him, he cannot show that they would have supported his argument that someone in one of those photos was the culprit. Second, his attorney stated on the record that she did not want to call the analyst who evaluated the photos because the analyst's testimony that Lynch was the man in the officers' photos would only corroborate the officers' testimony. And third, the jury convicted only after comparing the photo the officers took to Lynch himself and to confirmed photos of Lynch. Under these circumstances, we cannot conclude that Lynch met his burden to demonstrate prejudice under *Brady*.

Id. at 1170

SUMMARY OF ARGUMENT

The operative facts, as contained within the "four corners" of the First District Court of Appeal (First DCA) decision reveals no express and direct conflict with any district court of appeal or the Supreme Court on the same question of law. There is also no jurisdiction based on a construction of a provision of the Due Process Clause, because the First DCA did not expressly construe any constitutional provisions in the decision. Nor is there jurisdiction based on a question of great public importance, because the First DCA did not certify a question. The First District applied well-settled law to the facts of this case. Because Petitioner has not established a constitutional basis for this Court to exercise its jurisdiction, jurisdiction should be declined.

ARGUMENT

HAS PETITIONER SHOWN A BASIS FOR THIS COURT TO EXERCISE ITS DISCRETIONARY JURISDICTION? (RESTATED)

A. Standard of Review.

The applicable standard of review is de novo subject to the following criteria.

B. Jurisdictional Criteria.

Petitioner cites Article V, §3(b)(3) of the Florida Constitution as the grounds for this court's jurisdiction. (PJB-6). Article V, §3(b)(3), Fla. Const. provides: "The supreme court may review any decision of a district court of appeal that... expressly construes a provision of the state or federal constitution... or 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." Article V, §3(b)(4) of the Florida Constitution also allows jurisdiction when a district court of appeal "passes upon a question certified by it to be of great public importance."

In the case at bar, the First DCA's opinion was based on well settled law applied to the facts of this case. There is no conflict with any other case. Nor is there a certified question of great public importance, or any express interpretation of the U.S. Constitution that would warrant this Court accepting jurisdiction.

Because there is no basis for jurisdiction, this Court must dismiss this case.

C. The First DCA's Decision in *Lynch*

In *Lynch v. State*, 260 So. 3d 1166 (Fla. 1st DCA 2018), Petitioner was convicted of selling crack cocaine and sentenced to eight years in prison. In affirming Lynch's conviction, the First DCA did not certify conflict with any other district, nor did they certify a question of great public importance. The First DCA ruled that the State did not violate *Brady* in not turning over the photographs from the facial-recognition system because there was no probability that the trial results would have been different, without making any specific finding or comment on the Due Process Clause. The First DCA also summarily rejected Lynch's arguments regarding the denial of a motion for continuance, and the sufficiency of the *Richardson* hearing.

D. The Fourth District's Decision in *Sessions*

In *Sessions v. State*, 965 So. 2d 194 (Fla. 4th DCA 2007) the Fourth District held that the trial court abused its discretion in denying a motion for continuance after failing to consider certain factors when ruling on the motion.

E. The Fourth District's Decision in *Brown*

In *Brown v. State*, 640 So. 2d 106 (Fla. 4th DCA 1994), the Fourth District ruled that a court has an obligation to conduct a

Richardson hearing once the court is aware of a discovery violation.

F. Why *Lynch* Does Not Conflict With *Sessions* and *Brown*

The First District's opinion in *Lynch* does not expressly and directly conflict with the cases cited by Petitioner. For this Court to accept jurisdiction, 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).

In this case, Petitioner is attempting to use the trial record to establish jurisdiction. Petitioner's brief argues about the way the trial court analyzed the continuance request, and Petitioner argues at length about the series of events surrounding the *Richardson* hearing during the trial. (PJB-6-9). Petitioner is using the facts from the record to claim conflict with the decisions of other districts, an act which case law prohibits. *Jenkins v. State*, 385 So.2d 1356, 1359 (Fla. 1980) (It is the "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari.").

To satisfy the constitutional requirements for jurisdiction, the First DCA's decision must expressly conflict with the decision of another district court of appeal. The First DCA's opinion in *Lynch* on the issue surrounding the *Richardson* hearing and motion for continuance, in its entirety, states:

We have considered and rejected Lynch's remaining arguments, including his argument that the trial court held an insufficient *Richardson* hearing, his argument that the trial court abused its discretion in denying his motion for a continuance, and his arguments that the trial court should have granted a mistrial. We have carefully considered all arguments presented, and we conclude that none presents a basis for reversal.

Lynch, at 1172.

This language, while not a per curiam decision, contains no legal holding or analysis that expressly contradicts any other case, nor does it address any question of law. See *Wells v. State*, 132 So. 3d 1110, 1112 (Fla. 2014). An attempt to create conflict through the trial record is improper. Because there is no conflict in the four corners of the opinion that expressly contradicts a decision in another district, this Court must dismiss for lack of jurisdiction.

G. The Due Process Clause

Petitioner next argues that "the First District's construction of the Due Process Clause" provides this Court with jurisdiction pursuant to Article V, section 3(b)(3). (PJB-9). Specifically, Petitioner argues that the First District's decision in *Lynch* that

the photographs of the defendant were not *Brady* material is a decision that expressly construes the Constitutional Due Process Clause, thus allowing this court to invoke discretionary jurisdiction. (PJB-10). This is not the case. The opinion in *Lynch* makes clear that the First DCA is applying federal principles to the facts of this case by analyzing if the photographs were *Brady* material based on their potential impact on the outcome of the trial. *Lynch*, at 1170. There is no written statement about the Due Process Clause as it applies to the photographs in *Lynch*. A decision that only applies Constitutional principles but does not construe them is not a basis to invoke the jurisdiction of this court. See *Page v. State*, 113 So. 2d 557 (Fla. 1959).

H. No Certified Question of Great Public Importance

The First DCA did not certify a question of great public importance in this case. Article V, §3(b)(4) of the Florida Constitution grants jurisdiction on an issue of great public importance only when the lower court "passes upon a question certified by it to be of great public importance." Because no question was certified, there is no jurisdiction on this basis.

CONCLUSION

Because Petitioner has not established a basis for this Court to exercise its discretionary jurisdiction, the State respectfully requests that this Honorable Court dismiss this case for lack of jurisdiction.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Victor Holder, Esq. via email at Victor.Holder@flpd2.com on this 22nd day of March, 2019.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12-point font.

Respectfully submitted and certified,
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