

IN THE SUPREME COURT OF FLORIDA

GARRETT STATLER,

Petitioner,

vs.

CASE NO. SC21-119

STATE OF FLORIDA,

Respondent.

_____ /

RESPONSE TO MOTION TO STRIKE

Petitioner Statler requests that this Court deny the Respondent's February 26, 2021, Motion to Strike the Jurisdictional Brief, for the following reasons:

1. Two days before its jurisdictional answer brief was due, Respondent moved to strike Statler's jurisdictional brief because it refers to matters outside the opinion of the district court below. Respondent also asked the Court to toll the time for its brief on jurisdiction.

2. The state's guns are evidently trained on three paragraphs in the Statement of the Case and Facts discussing the evidence below and the exchange between court and counsel on the motion for judgment of acquittal. (See Petitioner's Jurisdictional Brief at 3,

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4). This discussion neither violates the appellate rules nor contravenes precedent.

3. Florida Rule of Appellate Procedure 9.120(d) specifies that the “argument section” of a jurisdictional brief shall be “limited solely to the issue of the supreme court’s jurisdiction.” There is no reference to record material outside the district court’s opinion in the argument section of Petitioner’s brief. Rule 9.120(f) specifies that jurisdictional briefs shall contain a statement of the case and facts but does not limit the statement’s content.

4. The state’s position and the precedent it cites ultimately turn on the following footnote in *Reaves v. State*, 485 So. 2d 829 (Fla. 1986):

This case illustrates a common error made in preparing jurisdictional briefs based on alleged decisional conflict. The only facts relevant to our decision to accept or reject such petitions are those facts contained within the four corners of the decisions allegedly in conflict. As we explain in the text above, we are not permitted to base our conflict jurisdiction on a review of the record or on facts recited only in dissenting opinions. Thus, it is pointless and misleading to include a comprehensive recitation of facts not appearing in the decision below, with citations to the record, as petitioner provided here. Similarly, voluminous appendices are normally not relevant.

Id. at 830 n.3.

5. The Court in *Reaves* was offering a practice pointer; it did not strike the jurisdictional brief or state that such an action would be justified. The holding in *Reaves* is that a dissenting opinion in the district court may not be used to establish express and direct conflict jurisdiction. Petitioner's jurisdictional brief does rely on material in a dissenting opinion or contain "a comprehensive recitation of the facts." If it wishes, this Court may simply disregard the contextual material in the Statement of the Case and Facts.

For these reasons, Petitioner requests that this Court deny the Respondent's Motion to Strike.

CERTIFICATES AND ATTORNEY SIGNATURE

I certify that this pleading complies with the font requirements in Florida Rule of Appellate Procedure 9.045, and was served, via the Florida Courts E-Filing Portal, on Trisha Meggs Pate and Steven E. Woods, Assistant Attorneys General, at crimapptlh@myfloridalegal.com, on February 26, 2021.

Respectfully submitted,

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