IN THE SUPREME COURT OF THE STATE OF FLORIDA

ZAVION ALAHAD,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

Case No. SC21-1450
Fourth District Court of Appeal Case No. 4D19-3438

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE ISSUES

The State does not have any issues for cross-review.

STATEMENT OF THE CASE AND FACTS

The only relevant facts to a determination of this Court's discretionary jurisdiction under section 3(b)(3) of article V of the Florida. Constitution are those set forth in the order of the Fourth District Court of Appeal. (Petitioner's Appendix 1).

SUMMARY OF THE ARGUMENT

This Court should decline jurisdiction. The decision of the Fourth District Court of Appeal does not conflict with this Court's decision in *Walton v. State*, 208 So. 3d 60 (Fla. 2016) or the Third District's decision in *McWilliams v. State*, 306 So. 3d 131 (Fla. 3d DCA 2020). Just as in those cases, the Fourth District cited the correct standard and completed an independent review of the issue.

ARGUMENT

THERE IS NO BASIS FOR DISCRETIONARY REVIEW OF THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL. THE DECISION DOES NOT CONFLICT WITH DECISIONS OF THIS COURT OR OF ANOTHER DISTRICT COURT OF APPEAL.

A. Basis of jurisdiction.

Petitioner seeks review of the Fourth District's decision in this case because it "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." Art. V, § 3(b)(3), Fla. Const. In this circumstance, "[t]he question of a conflict is of concern to this Court only in those cases where the opinion and judgment of the district court announces a principle or principles of law that are conflict with a principle or principles of law of another district court or this Court." *N&L Auto Parts Co. v. Doman*, 117 So. 2d 410, 412 (Fla. 1960).

This Court has made it clear that conflict jurisdiction exists only to prevent a lack of uniformity of the application of the law to the same set of facts or to prevent a district court of appeal from adopting a contrary legal principle than one announced by this Court:

> 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.
>
> To fail to recognize that these are courts primarily of final appellate jurisdiction and to allow such courts to become intermediate courts of appeal would result in a condition far more detrimental to the general welfare and the speedy and efficient administration of justice than that which the system was designed to remedy.

Jenkins v. State, 385 So. 2d 1356, 1357-58 (Fla. 1980).

One test to determine whether an opinion from one district court of appeal conflicts with another from a different district court of appeal is whether the opinions are irreconcilable. *Aravena v. Miami-Dade County*, 928 So. 2d 1163, 1166 (Fla. 2006). 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). The opinion from the Fourth District in

this case does the opposite – it simply applies this Court's and its own precedents rather than announcing any differing principle or principles of law. As the Fourth District's opinion announced the correct standard and completed an independent review of the law to the facts, exactly as was done in the cited cases, there is no basis for this Court to accept conflict jurisdiction.

B. The opinion does not conflict with *Walton v. State*, 208 So. 3d 60 (Fla. 2016) or *McWilliams v. State*, 306 So. 3d 131 (Fla. 3d DCA 2020).

Petitioner asserts that the Fourth District's opinion expressly conflicts with *Walton* and *McWilliams*. This is not the case. The Fourth District's opinion begins by quoting the applicable standard of review directly from *Walton*:

> In reviewing a trial court's ruling on a motion to suppress, appellate courts must accord a presumption of correctness to the trial court's determination of the historical facts, but must independently review mixed questions of law and fact that ultimately determine the constitutional issues arising in the context of the Fourth Amendment.

Alahad v. State, No. 4D19-3438, *4 (Fla. 4th DCA Sept. 1, 2021) (quoting *Walton*, 208 So. 3d at 65).[1]

[1] Citation to page numbers will be made to the pages in the slip opinion provided by Petitioner in his appendix.

The opinion then noted that the Fourth District needed to determine whether the trial court abused its discretion in permitting evidence of the identification, however, the Fourth District did not simply give deference to the trial court's decision in its opinion. Rather, it conducted its own independent analysis of the applicable law to the facts and determined that, under the circumstances, the trial court's decision was reasonable and correct. As a result of this independent analysis, the Fourth District determined that the trial court did not abuse the discretion granted to it to determine the admissibility of evidence. While the Fourth District did determine the trial court did not abuse its discretion, it did so by conducting an independent, de novo review of the issue; the standard previously announced by the Fourth District in its opinion. *Alahad*, No. 4D19-3438, at *4. This is the same analysis conducted by this Court in *Walton* and by the Third District in *McWilliams*. *See Walton*, 208 So. 3d 60; *McWilliams*, 306 So. 3d 131.

In its opinion, the Fourth District did point out that the determination of whether the show up was unnecessarily suggestive was likely a close call due to the facts of the case. *Alahad*, No. 4D19-

3438 at *5-6. It also noted that it was compelled to affirm due to the abuse of discretion standard. *Id.* at *6. The Court then undertook a complete de novo analysis of the issue, however. *Id.*

The Fourth District rejected Petitioner's first argument out of hand, finding "the presence of officers or handcuffs, standing alone, does not render a show-up impermissibly suggestive." *Id.* (citing *State v. Jackson*, 744 So. 2d 545, 548 (Fla. 5th DCA 1999)). The Court then conducted an analysis of whether there was a substantial likelihood of misidentification because the police told the witness the individual matched the description she gave and was found in the area she had indicated. *Id.* at *5-6. The Fourth District compared the facts to two other cases then stated, "[i]n light of these differences, we decline to hold that the statement at issue here that the defendant 'matche[d] the description' was an unnecessarily suggestive procedure used to obtain the identification and that no reasonable judge would rule otherwise." *Id.* at *6. The fact that the Court declined to find the procedure was unnecessarily suggestive demonstrates the de novo standard was applied.

The Fourth District then moved on to the issue it found most

troubling: the absence of the other individual who matched the witness' description. *Id.* While the Fourth District stated that the trial court's decision was not unreasonable and therefore not an abuse of discretion, it discussed the applicable facts and law and distinguished the facts of this case from other opinions. *Id.* at *7. The fact that a de novo review was undertaken, despite the mention of the abuse of discretion standard, becomes clearer when reviewing the footnotes. *Id.* Footnote two undertook an analysis of the applicability of an examination of whether an exigency existed or whether the court should have determined whether less suggestive procedures should have been applied. *Id.* at *7 n.2.

Footnote three involved a determination that this final issue, the absence of the second individual at the show up, was more applicable to the second step of the analysis, the determination of whether the procedure gave rise to a substantial likelihood of irreparable misidentification. *Id.* at *7 n.3. This second step analysis was not undertaken by the Fourth District in its opinion. *Id.* at *7. Therefore, the entire portion of the analysis addressing the absent individual is relegated to dicta as the Fourth District found the

analysis was not applicable to a step one determination. As dicta, it does not trigger this Court's jurisdiction.

The question for this Court is whether the Fourth District's opinion directly and expressly conflicts with the opinion of this Court or another district court. Despite the Fourth District's statement that it had to determine whether the trial court abused its discretion, it conducted a full independent review in making that determination. As such, there is no conflict, and it is therefore respectfully submitted that this Court lacks jurisdiction.

CONCLUSION

Wherefore, based on the foregoing argument, Respondent respectfully requests that this Honorable Court DECLINE to accept discretionary jurisdiction of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was furnished via the E-Filing Portal to David John McPherrin, Esq., Counsel for Appellant, 421 Third Street, 6th Floor, West Palm Beach, FL 33401 at DMcpherr@pd15.state.fl.us and appeals@pd15.org on November 22, 2021.

/s/Deborah Koenig
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font and word count limit requirements of Florida Rules of Appellate Procedure 9.045(b) and 9.210(a)(2).

/s/Deborah Koenig
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