

IN THE SUPREME COURT OF FLORIDA

CHARLES MURPHY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Supreme Ct. Case No. SC05-747
	)	DCA Case No. 5D04-1095
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
_____	)	

**ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL**

**AMENDED
PETITIONER'S JURISDICTIONAL BRIEF**

JAMES S. PURDY
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TABLE OF CONTENTS

	PAGE NO.
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	4
ARGUMENT	5
POINT ONE: THIS COURT HAS DISCRETIONARY JURISDICTION AS THERE IS EXPRESS AND DIRECT CONFLICT BETWEEN THIS CASE AND THE DECISION OF <i>VASQUEZ v STATE</i> , 870 SO. 2D 26 (FLA. 2D DCA 2003).	4
POINT TWO: THIS COURT MAY EXERCISE ITS DISCRETIONARY JURISDICTION BECAUSE THE COURT BELOW EXPRESSLY CONSTRUED PROVISIONS OF THE STATE AND FEDERAL CONSTITUTIONS.	
CONCLUSION	9
CERTIFICATE OF SERVICE	10
CERTIFICATE OF FONT	10

TABLE OF CITATIONS

CASES CITED:	PAGE NO.
<i>Murphy v. State</i> __So. 2d__, 30 Fla. L. Weekly D713, 2005 WL 562676, p. 1 (Fla. 5th DCA March 11, 2005)	3
<i>Romero v. State</i> 870 So.2d 816 (Fla. 2004)	3
<i>Vasquez v. State</i> 870 So. 2d 26 (Fla. 2d DCA 2003)	4, 5
OTHER AUTHORITIES CITED:	
Fourth Amendment, United States Constitution	4
Article 1, § 12, Florida Constitution	4
Florida Rules of Appellate Procedure 9.030(a)(2)(A)(iv)	5, 8

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STATEMENT OF CASE AND FACTS

The facts underlying this case were stated in the following fashion by the district court in its decision:

Murphy appeals from a final judgment of conviction and sentence for possession of cocaine. He filed a motion to suppress evidence of cocaine seized by a police officer who entered his motel room without a warrant. The trial court denied his motion. It also found the motion was “dispositive.” Murphy entered a no contest plea and reserved his right to appeal. We have jurisdiction and we affirm.

The record in this case is sparse. At the hearing on the motion to suppress, the state called only one witness, Officer Morford, and the defense called none. Morford testified that he was a patrol officer with the Daytona Beach Police Department and had five years of experience in narcotics investigations and arrests. He and his partner, Officer Youngman, were called by their supervisor to do a “knock and talk” at room 109 of a motel located on the north side of Atlantic Avenue. The Police Department had received complaints that

contraband was being sold out of that room. The owner of the motel told Officer Youngman that Murphy had been residing in room 109 for a couple of weeks.

The two officers approached Murphy's room from a patio area where chairs were placed along the walkway. The defense agrees that the two officers were standing in a public area when they knocked on the door.

Murphy answered the knock and opened the door. Officer Morford testified that within seconds of the door opening he saw, and instantly recognized as cocaine, a white powder substance in two baggies, on a table five or six feet inside the room.

Murphy stepped out of the room. Officer Youngman immediately arrested him and had him sit in a chair in the patio, outside the room. Officer Morford entered the motel room, seized the baggies, and tested them for cocaine. The field test proved positive.

After Officer Morford was in the motel room and after he seized the cocaine, he noticed that there was another person in the room-a young female.

On cross-examination, the defense asked him if he had any specific facts to indicate that his safety was in jeopardy in any way, prior to entering the motel room. He responded he did not believe he was in any danger. The defense asked if there were any specific facts to indicate, prior to entering the room, that the evidence (cocaine) could or would be destroyed. Officer Morford first responded that "there's also a potential" but he admitted he had no specific facts he was aware of that the evidence would be destroyed.

Based on these facts, the trial judge ruled that the police officer had the right to seize the contraband because it was in plain view and because there were exigent circumstances that excused the Fourth Amendment mandate to obtain a warrant prior to entering a private residence to seize evidence of a crime.

Murphy v. State, __ So. 2d __, 30 Fla. L. Weekly D713, 2005 WL 562676, p. 1 (Fla. 5th DCA March 11, 2005).¹

Near the beginning of its legal discussion, the district court expressly stated:

The Fourth Amendment to the United States Constitution and article 1, section 12 of the Florida Constitution guarantee the right to be free from unreasonable searches and seizures, in a constitutionally protected place; *i.e.*, here a rented motel room, which is legally the equivalent of a lawful tenant's residence. Absent exigent circumstances, warrantless searches and seizures from a constitutionally protected place are *per se* unreasonable and the state has the burden to establish any exception to the requirement of obtaining a warrant prior to a search or seizure in a protected place. *See Davis v. State*, 834 So. 2d 322 (Fla. 5th DCA 2003); LeFave, 3 *Search and Seizure*, §§ 6.1(b) at 375 (4th ed. 2004).

Id., at p. 2.

In affirming, the *Murphy* court held that the facts detailed above reflected exigent circumstances.

Id., at 4.

The instant petitioner filed composite motions of “Motion for Rehearing”, “Motion for Rehearing *En Banc*”, and “Motion for Certification.” The composite motions were denied by order dated April 19, 2005.

This timely proceeding follows. *Romero v. State*, 870 So.2d 816, 817-818 (Fla. 2004).

¹ See appendix.

SUMMARY OF ARGUMENT

POINT ONE: Discretionary jurisdiction exists because there is an express and direct conflict between the instant decision and *Vasquez v. State*, 870 So. 2d 26 (Fla. 2d DCA 2003). The Fifth District Court of Appeal decided that entry into a motel room by an officer without a warrant was justified by exigent circumstances, *i.e.*, potential destruction of drug evidence, even though there was no basis articulated to suggest that another person was in the room. The Second District, under virtually identical circumstances held that entry into the defendant's room was unconstitutional because there were no articulable bases to excuse the warrant requirement.

POINT TWO: Discretionary jurisdiction also lies because the decision expressly construes provisions of the state and federal constitutions. The decision contains an explicit reference to article 1, § 12, of the Florida Constitution and the Fourth Amendment to the United States Constitution. Based upon these passages, the district court decided a search and seizure issue.

**ARGUMENT
POINT ONE**

**THIS COURT HAS DISCRETIONARY
JURISDICTION AS THERE IS EXPRESS AND
DIRECT CONFLICT BETWEEN THIS CASE AND
THE DECISION OF *VASQUEZ v. STATE*, 870 SO.
2D 26 (FLA. 2D DCA 2003).**

“The discretionary jurisdiction of the supreme court may be sought to review decisions of district courts of appeal that . . . expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law[.]” Fla. R. App. P. 9.030(a)(2)(A)(iv).

The pertinent facts in the instant case are the police went to the defendant’s motel door and executed a “knock and talk.” As the officer stood outside of the door to the room, he immediately recognized a white powder on a table to be cocaine. The defendant was arrested when he stepped out of the room. Prior to the officer’s unconstitutional entry there were no reasons for the officer to believe that the room remain occupied. Although there was no articulable basis for the officer to think that the room remained occupied after the defendant’s arrest, the court below ruled that the exigent circumstances exception to the warrant requirement applied because there was a potential for the drugs to be destroyed:

In *Vasquez v. State*, 870 So. 2d 26 (Fla. 2d DCA 2003), the operative factual scenario was virtually identical to that in the instant case. Officers were speaking with Vasquez as they approached his room. Upon reaching the door it swung

open and the co-defendant came out. One officer looked past the co-defendant and saw a full syringe, a pipe, and a single bullet. The Second District found that there were no exigent circumstances that would justify the entry of the officer into the room:

In the absence of exigent circumstances or permission, the police clearly may not enter a home without a search warrant simply because they think that they have probable cause to believe evidence of a crime may be found therein. *Butler v. State*, 697 So. 2d 907, 908 (Fla. 2d DCA 1997); [see also *Vale v. Louisiana*, 399 U.S. 30, 34, 90 S.Ct. 1969, 26 L.Ed.2d 409 \(1970\)](#). Thus, the officer's view of drugs, drug paraphernalia, or a bullet in Mr. Castell and Mr. Vasquez's motel rooms did not permit the officer to enter the rooms without a warrant.

____ Similarly, although these items may have provided probable cause to arrest either occupant for possessing drugs or drug paraphernalia as they stood outside the residence, the officers could not constitutionally enter the residence unless the exigencies of the situation made it imperative that they do so prior to seeking a warrant.

Id., at 29-30.

Here, there were no articulable facts suggesting that anyone other than Mr. Castell and Mr. Vasquez were in these rooms or that anyone who might be in the rooms would be a danger to the officers if they merely shut the door and waited to enter until they obtained a warrant.

Id., at 31.

____ In sum, the Fifth District held in *Murphy* that there were exigent circumstances justifying the police entry into the constitutionally protected area when drugs were observed in order to negate the possibility of destruction of the drugs, even though there was no indication that anyone remained in the constitutionally protected area. The Second District, on the other hand, found no

exigent circumstances in *Vasquez*. Despite observing contraband in the defendant's room, the appellate court held that entry into the room was unconstitutional because there were no articulable facts suggesting that anyone was left in the room.

POINT TWO

THIS COURT MAY EXERCISE ITS DISCRETIONARY JURISDICTION BECAUSE THE COURT BELOW EXPRESSLY CONSTRUED PROVISIONS OF THE STATE AND FEDERAL CONSTITUTIONS.

“The discretionary jurisdiction of the supreme court may be sought to review decisions of district courts of appeal that . . . expressly construe a provision of the state or federal constitution.” Fla. R. App. P. 9.030(a)(2)(A)(ii). The district court expressly referred to constitutional provisions that it later construed:

The Fourth Amendment to the United States Constitution and article 1, section 12 of the Florida Constitution guarantee the right to be free from unreasonable searches and seizures, in a constitutionally protected place; *i.e.*, here a rented motel room, which is legally the equivalent of a lawful tenant's residence. Absent exigent circumstances, warrantless searches and seizures from a constitutionally protected place are *per se* unreasonable and the state has the burden to establish any exception to the requirement of obtaining a warrant prior to a search or seizure in a protected place.

Murphy, supra, at WL, p. 2.

The Fifth District construed the two constitutional provisions to reach the result discussed under point one, *ante*.

CONCLUSION

Based upon the authorities cited and the argument presented, petitioner is entitled to discretionary review of the decision of the Fifth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Charles J. Crist, Jr., Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, Florida 32118 via his basket at the Fifth District Court of Appeal and mailed to: Mr. Charles Murphy, 200 N. Caroline Street, Apartment J5, Daytona Beach, Florida 32114, this ____ day of May 2005.

David S. Morgan
Assistant Public Defender

CERTIFICATE OF FONT

I hereby certify that the size and style of type used in this brief is point proportionally spaced Times New Roman, 14pt.

David S. Morgan
Assistant Public Defender