

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC12 -1703
DCA CASE NO. 4D12-1775

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SAMUEL D. YOHANAN

Petitioner,

v.

CITY OF FORT LAUDERDALE

Respondent.

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

**City of Fort Lauderdale
City Attorney's Office
HARRY A. STEWART
CARRIE L. SARVER
Assistant City Attorney
Florida Bar No. 26963
100 North Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: 954-828-5025
Facsimile: 954-828-5915**

Attorneys for Respondent

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ISSUES PRESENTED

- I. Whether the Fourth District Court of Appeal's opinion expressly construes a provision of the state or federal constitution.
- II. Whether the Fourth District Court of Appeal's opinion expressly or directly conflicts with the court decisions cited by Petitioner.

SUMMARY OF THE ARGUMENT

Respondent submits that Petitioner's Brief on Discretionary Jurisdiction should be denied because the opinion at issue in no way expressly construes a provision of the state or federal constitution. The opinion of the Fourth District Court of Appeal restates long settled legal principals. The Fourth District Court of Appeal held that Petitioner's arguments were not raised in the proceedings in Circuit Court and are beyond the scope of review. *Custer Medical Center v. Unites Auto Ins. Co.*, 62 So.3d 1086, 1092 (Fla. 2010). Petitioner also asserts that the opinion conflicts with other court decisions. However, the decisions cited by Petitioner are not in conflict with the Fourth District Court of Appeal's opinion.

ARGUMENT

I. Petitioner's Brief on Discretionary Jurisdiction should be denied because the Fourth District Court of Appeal's opinion does not expressly construe a provision of the State or Federal Constitution.

The Fourth District Court of Appeal's opinion does not expressly construe any provision of the state or federal constitution. Petitioner has not established any basis upon which this Court could exercise its discretionary jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(ii). Therefore, Respondent respectfully requests that this Court deny Petitioner's Brief on Discretionary Jurisdiction.

This Court may invoke discretionary jurisdiction to review opinions of the district courts of appeal which "expressly construe a provision of the state or federal constitution." Art. V, § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(ii). Petitioner mischaracterizes the Fourth District Court of Appeal's opinion, giving the false impression that the court reached unprecedented conclusions concerning the Fourth and Fourteenth Amendments.

The opinion of the Fourth District Court of Appeal restates long settled legal principals. Petitioner's arguments were not raised in the proceedings in Circuit Court and are beyond the scope of review. *Custer Medical Center v. Unites Auto Ins. Co.*, 62 So.3d 1086, 1092 (Fla. 2010). The opinion does not address any unresolved or controversial questions of constitutional interpretation. As in the

past, this Court should reserve the invocation of discretionary jurisdiction for matters of significance. No purpose would be served by reviewing a case that merely reiterates established doctrines. *Rojas v. State*, 228 So. 2d 234, 236 (Fla. 1973).

II. The Fourth District Court of Appeal's opinion does not conflict expressly or directly with the court decisions cited by Petitioner.

Petitioner further contends that the opinion of the Fourth District Court of Appeal expressly and directly conflicts with *Saracusa v. State*, 528 So.2d 520 (Fla. 4th DCA 1988) and *Allstate Insurance Co. v. Kaklamanos*, 843 So.2d 885 (Fla. 2003). In *Allstate*, the court opined that “there must be a violation of clearly established principles of law resulting in a miscarriage of justice” to warrant certiorari review. Petitioner argues that the “violation of his 4th and 14th constitutional rights to cover up a scheme to defraud is an egregious miscarriage of justice and is used to quell Petitioner’s rights to seek redress from grievances of misuse of municipality’s resources.” However, the decisions cited by Petitioner are not in conflict with the Fourth District Court of Appeal’s opinion.

In the instant case, the Fourth District Court of Appeal, in affirming the lower tribunal’s ruling, expressed no new interpretation of the law. The Fourth District Court of Appeal held that Petitioner’s arguments were not raised in the proceeding in Circuit Court and are thus beyond the scope of review. The Fourth District Court of Appeal then considered Petitioner’s motion for rehearing, but

denied his motion. Contrary to Petitioner's assertions, there are no express or direct conflicts between the decisions.

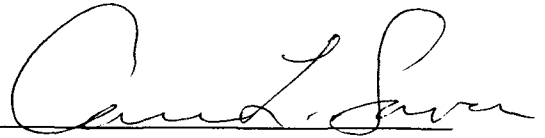
As the Fourth District Court of Appeal's opinion does not expressly construe the state or federal constitution, Respondent respectfully requests that this Court deny Petitioner's Brief on Discretionary Jurisdiction.

CONCLUSION

Based on the foregoing argument and authorities, Respondent respectfully submits that Respondent's Answer Brief on Jurisdiction for discretionary review by this Court must be denied.

CERTIFICATE OF SERVICE

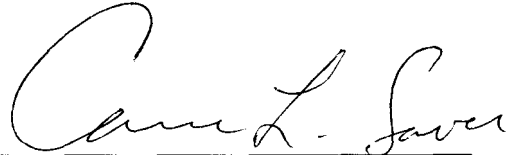
The undersigned certifies that a copy hereof has been furnished to Petitioner,
Mr. Samuel D. Yohanan by mail this 5 day of October 2012.

A handwritten signature in black ink, appearing to read "Carrie L. Sarver", written over a horizontal line.

CARRIE L. SARVER
Assistant City Attorney
Florida Bar No. 26963
City of Fort Lauderdale
City Attorney's Office
100 North Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: 954-828-5025
Facsimile: 954-828-5915
Attorney for Respondent

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that this jurisdictional answer brief was prepared in Times New Roman 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

A handwritten signature in cursive script, reading "Carrie L. Sarver", written over a horizontal line.

CARRIE L. SARVER
Assistant City Attorney
Florida Bar No. 26963