

IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,170

STATE OF FLORIDA,

Petitioner,

vs.

RICKIE LEE PALMORE,

Respondent.

FILED
SID J. WHITE
NOV 26 1984
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

ON PETITION FOR DISCRETIONARY REVIEW OF
THE DECISION OF THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

JURISDICTIONAL BRIEF OF PETITIONER

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INTRODUCTION

Petitioner, State of Florida was the Appellant in the Third District Court of Appeal. Respondent, Rickie Lee Palmore was the Appellee. The parties shall be referred to in these terms.

The symbol "A" designates that appendix attached to the brief.

STATEMENT OF THE CASE AND FACTS

The State of Florida appealed¹ a trial court order [denying a motion in limine] excluding from evidence a sworn statement made by the Defendant and filed with a Motion to Dismiss, as required by Rule 3.190(c)(4) F.R.Crim.P. This sworn statement admitted that the victim in the case was kidnapped, raped and robbed as set out in the information filed against Rickie Lee Palmore, but denied any involvement by Palmore. (A.6). The State contended that this document was a reliable admission of the Defendant and admissible as evidence. (A.12).

The Third District Court of Appeal dismissed the Appeal on authority of State v. C.C., 449 So.2d 280 (Fla. 3d DCA 1983)

¹ This Appeal was alternatively styled as a Petition for Writ of Certiorari. (A.2).

Review Pending, Case No. 64,354. The appellate court also declined to issue a Writ of Certiorari, holding the State failed to meet the requirements of State v. Steinbrecher, 409 So.2d 510 (Fla. 3d DCA 1983). (A.1). No rehearing was sought by the State of Florida. This timely Petition for Discretionary Review follows.

POINT ON REVIEW

WHETHER THE APPELLATE COURT ERRED IN
DISMISSING A STATE APPEAL OF A TRIAL
COURT ORDER SUPPRESSING EVIDENCE FOR
LACK OF JURISDICTION, WHEN THE DISMISSAL
IS MADE SOLELY ON AUTHORITY OF STATE
V. C.C., 449 SO.2D 280 (FLA. 3D DCA 1983)
AND THEN DENYING CERTIORARI REVIEW
ALTHOUGH THE STATE LACKED A FUTURE
REMEDY TO CORRECT THE CLEARLY ERRONEOUS
RULING OF THE TRIAL COURT.

ARGUMENT

THE APPELLATE COURT ERRED IN DISMISSING A STATE APPEAL OF A TRIAL COURT ORDER EXCLUDING EVIDENCE FOR LACK OF JURISDICTION WHEN THE DISMISSAL WAS MADE SOLELY ON THE AUTHORITY OF STATE V. C.C., 449 SO.2D 280 (FLA. 3D DCA 1983) AND THEN DENYING CERTIORARI REVIEW ALTHOUGH THE STATE LACKED A FUTURE REMEDY TO CORRECT THE CLEARLY ERRONEOUS RULING OF THE TRIAL COURT.

As is well known to this court a divided Third District Court of Appeal has held en banc that the right of the Petitioner, State of Florida, to pursue appeals from pre-trial orders is strictly controlled by Statute:

The state's right to appeal is purely statutory. Whidden v. State, 159 Fla. 691, 32 So.2d 577 (1947); State v. Brown, 330 So.2d 535 (Fla. 1st DCA 1976). Because the Florida Juvenile Justice Act, Chapter 39, Florida Statutes (1981) contains no provision authorizing an appeal by the state, we grant appellees' motions to dismiss. We expressly disagree with the decision of the Fifth District Court of Appeal in State v. W.A.M., 412 So.2d 49 (Fla. 5th DCA), review denied, 419 So.2d 1201 (Fla.1982) insofar as it finds a constitutional right of appeal in the state. Furthermore, in our view, Article V, section 4(b)(1) of the Constitution of the State of Florida * permits interlocutory review only in cases in which appeal may be taken as a matter of right.

Appeals dismissed.

at 449 So.2d 280.

This view is in express and direct conflict with the opinion of the Fifth District, as noted above, and with the Fourth District, State v. J.P.W., 433 So.2d 616 (Fla. 4th DCA 1983). This court has exercised jurisdiction over State v. C.C., and the case has been briefed and argued to the court. The Petitioner contends that this case should be accepted by this court and decided contemporaneous with State v. C.C.. As counsel for The State of Florida in State v. C.C., the undersigned Assistant Attorney General has previously moved, with complete success, to have this court exercise jurisdiction over the dozen or so cases dismissed solely upon authority of State v. C.C.. see State v. J.M. et al, Case No. 64,395-403; State v. K.H., Case No. 64, 639; and State v. R.A., Case No. 64,945. Although the Third District Court of Appeal did not certify this issue in the case sub judice, the sole issue in the controlling case is the sole issue below. Accordingly this court should accept jurisdiction of this case and review it in the same manner outlined in State v. J.M. et al, supra.

Furthermore, the appellate court's refusal to review this case by certiorari is in direct and express conflict with the decision in State v. Horvatch, 413 So.2d 469 (Fla. 4th DCA 1982), followed in State v. Haynes, 453 So.2d 926 (Fla. 2nd DCA 1984), which holds that the only requirements needed to justify certiorari review are: (1) Lack of a future state remedy upon appeal of the final disposition of

this case; and (2) a legally erroneous ruling by the trial court.

The court declined to review the case because the suppression of the sworn statement of the defendant did not meet the requirements of State v. Steinbrecher, 409 So.2d 510 (Fla. 3d DCA 1982). Steinbrecher, supra., goes beyond the two part test of Horvatch, supra., and requires an additional showing of a substantial impairment of the prosecution's case:

We believe, therefore, that the correct interpretation of Florida law is that if the requirements permitting certiorari jurisdiction otherwise exist, a pre-trial order excluding evidence which has the effect of substantially impairing the ability of the state to prosecute its case is subject to certiorari review. We are mindful of a prior opinion in this case declining certiorari review of a pre-trial evidentiary ruling, State v. Steinbrecher, 398 So.2d 66 (Fla. 3d DCA 1981), and expressly recede from its holding. Cf. People v. Young, 82 Ill.2d 234, 45 Ill.Dec. 150, 412 N.E.2d 501 (Ill.1980), setting forth the rationale for permitting appeal by the state of pre-trial evidentiary rulings that review of an erroneous pre-trial evidentiary ruling which the state certifies as crucial to its case is desirable in order to promote justice by ensuring proper application of the governing law and by protecting the ability of the trial court to determine the truth of the factual allegations involved.

Having determined that Florida Rule of Appellate Procedure 9.140(c) is no proscription on the power of this court to review by common-law certiorari pre-trial evidentiary rulings, we must now determine whether the facts of this case meet the requirements permitting such review.

It is obvious that the Third District Court of Appeal is determined to limit the State of Florida's constitutionally guaranteed right to appeal, and its common law right to certiorari review of clearly erroneous trial court decisions regarding pre-trial motions. The distinction between an exclusion based on a violation of constitutional right and an exclusion based upon a motion in limine seeking to protect the Defendant's right to remain silent at trial is extremely thin. State v. Segura, 378 So.2d 1240, 1242 (Fla. 2nd DCA 1980). This court should accept this case as a forum for clarifying the standards for certiorari review of pre-trial orders excluding state evidence because while the Miami prosecutor must convince his judges that the evidence is crucial to his case the prosecutors in Tampa and West Palm Beach do not. This is an express and direct conflict of law which demands the immediate attention of this court.

CONCLUSION

Based upon the above-cited authorities the Petitioner respectfully urges this court to accept this case for review under the discretionary review powers granted to this court by Florida's Constitution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF was furnished by mail to JEFFREY SAMEK, ESQ., 1925 Brickell Avenue, Suite D-207, Miami, Florida, 33125, on this 20th day of November, 1984.



RICHARD E. DORAN
Assistant Attorney General

/nw