

IN THE SUPREME COURT OF FLORIDA

CASE NO.

HENRY LAVADO, JR.,

Petitioner,

THE STATE OF FLORIDA,

Respondent.

67279
FILED
SUPREME COURT
JUL 30 1985
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By Chief Deputy Clerk

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON JURISDICTION

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INTRODUCTION

The respondent, THE STATE OF FLORIDA, was the prosecution in the trial court and the appellee in the District Court of Appeal of Florida, Third District. The petitioner, HENRY LAVADO, JR., was the defendant in the trial court and the appellant in the District Court of Appeal.

The symbol "A" will be utilized to designate petitioner's appendix. All emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Respondent accepts petitioner's Statement of the Case and Facts as an accurate account of relevant proceedings.

POINT INVOLVED ON APPEAL

WHETHER THE PETITIONER HAS FAILED
TO DEMONSTRATE AND EXPRESS AND
DIRECT CONFLICT OF DECISIONS TO
WARRANT THE INVOCATION OF THIS
COURT'S DISCRETIONARY JURIS-
DICTION?

SUMMARY OF THE ARGUMENT

Petitioner asserts the instant case conflicts with Washington v. State, 371 So.2d 1108 (Fla. 4th DCA 1979); Jones v. State, 378 So.2d 797 (Fla. 1st DCA 1979); Pope v. State, 94 So. 865 (Fla. 1922) and Pait v. State, 112 So.2d 380 (Fla. 1959). None of those cases held that a prospective juror may be asked whether she would entertain voluntary intoxication as a defense to a specific intent crime. It is well established that jurors may be asked questions to determine whether they are biased or prejudiced. The Third District's ruling in this case is consistent with the well settled law in Florida.

ARGUMENT

THE PETITIONER HAS FAILED TO DEMON-
STRATE AN EXPRESS AND DIRECT CON-
FLICT OF DECISIONS TO WARRANT THE
INVOCATION OF THIS COURT'S DIS-
CRETIONARY JURISDICTION.

Petitioner claimed, before the Third District Court of Appeal, that reversible error was committed, where he was not permitted to ask prospective jurors whether they would entertain the premise of voluntary intoxication as a defense to a specific intent crime. The trial court did permit trial counsel to inquire as to the juror's bias against drinking in general. (A 1) The Appeals Court found that a juror's bias or prejudice may be elicited through specific questions and answers, but their disposition as to whether or not they would entertain a particular defense is not appropriate. (A 2) The trial court additionally instructed the jury that they must follow the law as given. R. 3.360 Florida Rules Criminal Procedure; Sections 1.01, 2.05(1) Florida Standard Jury Instructions in Criminal Cases.

Petitioner urges this court to find that the case sub judice conflicts with Washington v. State, 371 So.2d 1108 (Fla. 4th DCA 1979); Jones v. State, 378 So.2d 797 (Fla. 1st DCA 1979); Pope v. State, 94 So. 865 (Fla. 1922) and Pait v. State, 112 So.2d 380 (Fla. 1959).

In Jones, supra the court reiterated a longstanding principle that voir dire is to be used to ascertain juror's prejudgments. It further states that jurors may be questioned concerning general due process requirements such as the State's burden of proof, the defendant's presumption of innocence and the defendant's right to testify. It does not indicate that a juror may be questioned concerning their willingness to accept a particular defense. Additionally, reversible error was not found.

Washington, supra involved an entirely different problem. At the time Washington was being tried, bifurcated trials on the issues of guilt and sanity were held.¹ The same jury was used for both trials. Thus, only one voir dire was needed. The trial judge erroneously prohibited any mention of insanity during voir dire. In the instant cause, the trial judge specifically suggested that the jurors could be questioned on their perceptions of intoxication.

¹ The statutory bifurcated trial system for the adjudication of guilt and insanity in criminal trials was held unconstitutional in State ex rel Boyd v. Green, 355 So.2d 789 (Fla. 1978).


Pait, supra, held that jurors may be asked hypothetical questions in order to determine whether they are qualified and acceptable. Pope, supra had a similar holding but added that the question may not "call for a prejudgment of the case or any supposed case on the facts" at 869. That is precisely what counsel in this case sought to do by asking whether the jury, given a certain set of facts would acquit the defendant. That practice has consistently been prohibited in Florida, and petitioner has not presented this court with any authority to change that well established principle. Dicks v. State, 93 So. 137 (Fla. 1922); Saulsberry v. State, 398 So.2d 1017 (Fla. 5th DCA 1981).

CONCLUSION

Based upon the foregoing, respondent requests this Court to deny petitioner's application for discretionary review.

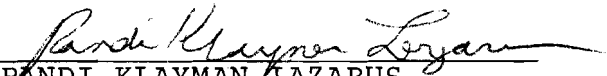
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON JURISDICTION was served by mail to HOWARD BLUMBERG, Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125 on this 26th day of July 1985.


RANDI KLAYMAN LAZARUS
Assistant Attorney General

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