

Supreme Court of Florida

No. 67,845

STATE OF FLORIDA, Petitioner,

v.

KENNETH WARD, Respondent.

[March 5, 1987]

PER CURIAM.

The Third District Court of Appeal has certified the following question as one of great public importance:

IS A NEW TRIAL REQUIRED WHEN THE TRIAL COURT'S FAILURE TO CONDUCT A RICHARDSON INQUIRY IS, IN THE OPINION OF THE REVIEWING COURT, HARMLESS ERROR?

Ward v. State, 477 So.2d 66, 67 (Fla. 3d DCA 1985). We have jurisdiction pursuant to article V, section 3(b)(4), Florida Constitution.

We recently answered the identical question in the affirmative in Smith v. State, Nos. 67,772 and 67,773 (Fla. Dec. 24, 1986). Accordingly, we approve the decision of the district court.

It is so ordered.

OVERTON, EHRLICH and BARKETT, JJ., and ADKINS, J. (Ret.), Concur
McDONALD, C.J., Dissents with an opinion, in which SHAW, J.,
Concurs

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF
FILED, DETERMINED.

McDONALD, C.J., dissenting.

For the reasons expressed in my dissent in Smith v. State, Nos. 67,772 and 67,773 (Fla. Dec. 24, 1986), I dissent from the majority opinion and call for the modification of the per se rule of Richardson v. State, 246 So.2d 771 (Fla. 1971). The harmless error standard should be applicable to a trial court's failure to hold a Richardson hearing.

SHAW, J., Concur

Application for Review of the Decision of the District Court
of Appeal - Certified Great Public Importance

Third District - Case No. 85-616

Robert A. Butterworth, Jr., Attorney General, and Mark J. Berkowitz,
Assistant Attorney General, Miami, Florida,

for Petitioner

N. Joseph Durant of Gelber, Glass & Durant, P.A., Miami, Florida,

for Respondent