

IN THE SUPREME COURT OF FLORIDA

BILLY JOE KIRKLAND,

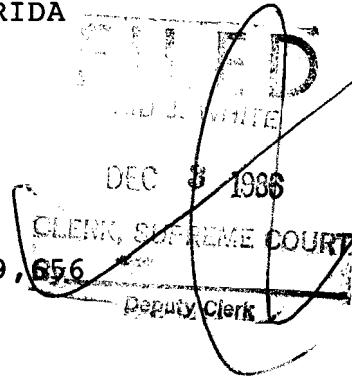
Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

Case No. 69,656



RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner, Billy Joe Kirkland, the criminal defendant and appellant below in Kirkland v. State, ____ So.2d ____ (Fla. 1st DCA 1986), 11 F.L.W. 2118, on motion for rehearing denied, 11 F.L.W. 2438, will be referred to as "petitioner." Respondent, the State of Florida, the prosecuting authority and appellee below, will be referred to as "the State."

Pursuant to Fla.R.App.P. 9.120 and 9.220, a conformed copy of the decision under review is attached to this brief as an appendix, as are copies of appellant's and the State's post-decisional filings and the orders entered thereupon.

Any emphasis will be supplied by the State.

STATEMENT OF THE CASE AND FACTS

Those details relevant to a resolution of the threshold jurisdictional question are related in the majority opinions of the First District Court of Appeal in Kirkland v. State, which the State adopts as its statement of the case and facts. The State thus rejects petitioner's statement of the case and facts to the extent that these impermissibly stray from the face of the decision over which review is sought, see Jenkins v. State, 385 So.2d 1356 (Fla. 1980); Reaves v. State, 485 So.2d 829 (Fla. 1986).

STATEMENT OF JURISDICTION/SUMMARY OF ARGUMENT

Petitioner seeks to invoke the discretionary jurisdiction of this Court under Article V, Section 3(b)(3) of the Constitution of the State of Florida and Fla.R.App.P. 9.030(a)(2)(A)(iv) on the grounds that this decision allegedly conflicts with a decision of this Court, State v. Delgado-Santos, ____ So.2d ____ (Fla. 1986), 11 F.L.W. 565 on the same question of law. However, no basis for conflict certiorari jurisdiction exists insofar as the case petitioner relies on for same is factually and legally distinguishable from the decision over which review is sought.

ISSUE

THE COURT SHOULD NOT GRANT DISCRETIONARY REVIEW OVER THE DECISION BELOW ON THE BASIS OF AN ALLEGED BUT NONEXISTENT CONFLICT WITH ONE OF ITS OWN DECISIONS.

ARGUMENT

Petitioner argues that the First District's decision in Kirkland v. State is in express and direct conflict with this Court's decision in State v. Delgado-Santos. The State can do no better than rely upon the First District itself to explain why these two decisions are not in conflict:

In Delgado-Santos, the Supreme Court held that a "police interrogation" was not intended to be an "other proceeding" within the meaning of Section 90.801(2)(a), Florida Statutes. We do not believe that the Supreme Court intended that its holding disqualify the kind of statement given in the instant case; i.e. a sworn statement given by an assault victim in her hospital room to a police officer/notary public for the purpose of securing a warrant and instituting prosecution under Fla.R.Cr.P. 3.120.

We believe that our October 6 opinion sufficiently explicates the rationale for our distinction between (1) the above-referred process which was relied upon to secure the sworn complaint from Kirkland's victim and (2) the police interrogation of Delgado-Santos' accomplice which produced the accomplice's statement deflecting the blame for the stabbing from him onto Delgado-Santos.

Kirkland v. State, 11 F.L.W. 2438.

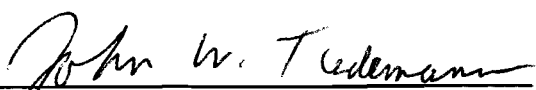
In a nutshell, Kirkland is distinguishable from Delgado-Santos in that it involves a reliable sworn complaint given by a crime victim to a notary public who also happened to be a police officer in a hospital for the purpose of initiating a clearly justified criminal prosecution, not an unreliable sworn statement given by a crime accomplice to a police officer in a police station prison cell for the purpose of deflecting culpability, compare also Tisdale v. State, ____ So.2d ____ (Fla. 4th DCA 1986), 11 F.L.W. 2282 and Wilkie v. State, ____ So.2d ____ (Fla. 4th DCA 1986), 11 F.L.W. 2286. "Obviously, two cases cannot be in conflict if they can be validly distinguished." Morningstar v. State, 405 So.2d 778, 783 (Fla. 4th DCA 1981) (Anstead, J., concurring), affirmed, 428 So.2d 220 (Fla. 1982). Because there is no genuine conflict in decisions here, the State asks that this Court deny certiorari.

CONCLUSION

WHEREFORE respondent, the State of Florida, respectfully submits that this Court must summarily DENY the petition for writ of conflict certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Ms. Ann Cocheu, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida, 32302 on this 3rd day of December, 1986.



JOHN W. TIEDEMANN
ASSISTANT ATTORNEY GENERAL