

FILED
DEC 23 1971
CLERK OF SUPREME COURT
By _____
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,392

STATE OF FLORIDA

Petitioner,

vs.

CARLOS ROGRIGUEZ,

Respondent.

ON APPLICATION FOR DISCRETIONARY REVIEW
RESPONDENT'S BRIEF ON THE MERITS

MICHAEL S. HACKER
Attorney for Respondent
14 Northeast First Avenue
Suite 1400
Miami, Florida 33132
Telephone: (305) 371-4286

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	i
INTRODUCTION	1
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	1
ISSUE ON APPEAL	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4, 5
CONCLUSION	6
CERTIFICATE OF SERVICE	7
APPENDIX	A-1

*Opinion Filed April 14, 1987.
Third DCA*

TABLE OF CITATIONS

	<u>Page</u>
CASES	
<u>State v. Upton</u> , 392 So.2d 1013 (Fla. 5th DCA 1981)	4
<u>Scott v. State</u> , 464 So.2d 1171 (Fla. 1985)	5

OTHER AUTHORITIES

R. 12	1
Tr. 4, 9	
<u>Scott</u>	5

INTRODUCTION

Petitioner was the plaintiff in the trial court and Appellant in the Third District Court of Appeal. Respondent was the Defendant and later the Appellee. The letter "R." will represent the record on appeal and "Tr." will represent the transcript of proceedings.

STATEMENT OF THE CASE

Respondent is in agreement with Petitioner's statement of the case.

STATEMENT OF THE FACTS

Respondent is in agreement with Petitioner's statement of the facts, but adds the following fact.

Petitioner filed a Traverse to the Sworn Motion to Dismiss after the Motion had been heard and granted by the trial court (R. 12).

ISSUE ON APPEAL

WHETHER THE TRIAL COURT
DID NOT ERR IN GRANTING
THE SWORN MOTION TO
DISMISS?

SUMMARY OF ARGUMENT

Respondent, CARLOS RODRIGUEZ, stated on oath, that the facts contained in his sworn motion to dismiss were true and correct to the best of his knowledge. Thus, he complied with the requirement set forth under the case law and the rules that a declarant attest to his statement's truth with sufficient specificity to expose him to the penalties of perjury should it later be found to be untrue.

A R G U M E N T

THE TRIAL COURT DID NOT
ERR IN GRANTING THE
SWORN MOTION TO DISMISS

A motion to dismiss under Rule 3.190(c)(4), Florida Rules of Criminal Procedure, must specifically allege the facts on which the motion is based and the motion must be sworn to. This requirement is met by having the declarant state on oath that the facts alleged are true, to his knowledge, and not that he believes them to be true because someone else has told him. State v. Upton, 392 So.2d 1013 (Fla. 5th DCA 1981) (emphasis supplied).

In the instant case, Mr. RODRIGUEZ, the Defendant at the trial level, thus complied with the requirement that a declarant attest to his statement's truth.

In fact, the trial Judge predicated his granting of the subject motion on the fact that a sworn statement would only be obtained through an individual's own best knowledge (Tr. 4, 9). After all, a statement may be based on hearsay, belief, speculation, guesswork, or one's best knowledge. Mr. RODRIGUEZ was present at the hearing below. It was never alleged that the jurat in question was an attempt to delimit the State from prosecuting Mr. RODRIGUEZ for perjury. If that would have been the case, the State could have asked that he be placed under oath for examination.

The State relies heavily on the authority of Scott v. State, 464 So.2d 1171 (Fla. 1985). However, it is clear that Scott, and the later cases that follow its reasoning, strictly dealt with Rule 3.850 motions. It is obvious this Court believed a postconviction situation merited different treatment than a pretrial Rule 3.190(c)(4) motion. Therefore, Rule 3.987, Florida Rules of Criminal Procedure, set out word for word what exact language is to be included in the jurat of a motion for postconnection relief. No such specificity exists under the Rules for the jurat of a pretrial motion to dismiss. Therefore, Mr. RODRIGUEZ's oath was sufficient to expose him to the penalties of perjury under the rules and case law.

CONCLUSION

Based upon the foregoing, the decision of the
Third District Court of Appeal should be affirmed.

Respectfully submitted,

MICHAEL S. HACKER
Attorney for Respondent CARLOS RODRIGUEZ
14 Northeast First Avenue
Suite 1400
Miami, Florida 33132
Telephone: (305) 371-4286

By: 

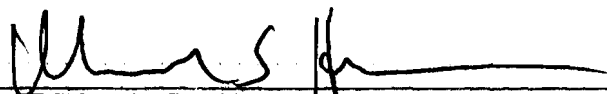
MICHAEL S. HACKER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief On The Merits was served by mail to Robert A. Butterworth, Attorney General, and Steven T. Scott, Assistant Attorney General, for appellant, Department of Legal Affairs, 401 Northwest Second Avenue, Suite 820, Miami, FL 33128, via Airborne Express Mail, this 22nd day of December, 1987.

MICHAEL S. HACKER
Attorney for Respondent, CARLOS RODRIGUEZ
14 Northeast First Avenue
Suite 1400
Miami, Florida 33132
Telephone: (305) 371-4286

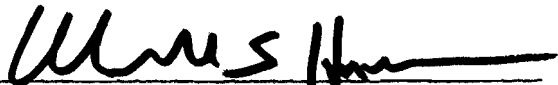
By:



MICHAEL S. HACKER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON JURISDICTION was furnished by mail to the Office of the Attorney General, STEVEN T. SCOTT, Assistant Attorney General, Department of Legal Affairs, 401 Northwest Second Avenue, Suite 820, Miami, Florida 33128, on this day of May, 1987.


MICHAEL S. HACKER
Attorney for Respondent,
CARLOS RODRIGUEZ
14 Northeast First Avenue
Suite 1400
Miami, Florida 33132
Telephone: (305) 371-4286