



TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
AUTHORITIES CITED	ii
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	2, 3
REASONS FOR DENYING THE WRIT	4-6
CONCLUSION	7
CERTIFICATE OF SERVICE	7

AUTHORITIES CITED

CASES:	<u>PAGE</u>
<u>Donovan v. State</u> , 417 So.2d 674 (Fla. 1982)	4,5
<u>Gains v. State</u> , 417 So.2d 719 (Fla. 1st DCA, 1982)	5
<u>Kinchen v. State</u> , 432 So.2d 586 (Fla. 4th DCA, 1983)	5
<u>Roban v. State</u> , 384 So.2d 683 (Fla. 4th DCA, 1980), <u>rev. den.</u> , 392 So.2d 1378, 1379 (Fla. 1980)	4
<u>State v. Bolton</u> , 383 So.2d 924 (Fla. 2nd DCA, 1980)	5
OTHER:	
Article V, Section 3(b), Florida Constitution (1968)	5

STATEMENT OF THE CASE

Respondent agrees with petitioner's statement of the case.

STATEMENT OF THE FACTS

The facts of this case, set forth by the Court of Appeal in its opinion below are:

Between 11:30 a.m. and 12:00 p.m. on January 31, 1982, appellant (respondent) was arrested for the murder of James Williams. At that time appellant showed a willingness to talk, but was cut off by the police reading him his Miranda rights. Appellant was then transported to the police station and arrived approximately ten minutes after his arrest (i.e., between 11:40 and 12:10). At 12:50 p.m. an interview of appellant began. Officer Ciani asked appellant where the gun was and a few other questions. Appellant did not answer. Appellant was told there were witnesses claiming that "he did it" and that he would feel better if he talked about the incident. Appellant refused to talk until he heard what the witnesses had to say. At 1:00 p.m. appellant signed a waiver of rights form after having been read his Miranda rights again. Appellant then made a statement claiming self-defense.

At trial the prosecutor attempted to show that appellant was warned of his constitutional rights, that he waived those rights and voluntarily made a statement in which he admitted killing James Williams but only in self defense. The prosecutor asked Officer Ciani about the first time he read appellant his Miranda rights at the time of his arrest.

Q Did Mr. Thornton, the first time you read him his rights, give you an indication that he did not understand what you were saying?

Officer Ciani's answer was not confined to the question asked:

A No, sir. He replied, "Yes," that he understood, and he did not answer any questions at the initial time of arrest.

Counsel for appellant timely objected and moved for a mistrial on the ground that the witness commented on appellant's right to remain silent. The trial judge denied the motion.

Appellant refused to talk to Officer Ciani prior to signing the waiver of rights form and subsequent to the post-arrest Miranda warnings.

442 So.2d at 1105.

REASONS FOR DENYING THE WRIT

A. Petitioner is incorrect in arguing that the decision below conflicts with this Court's decision in Donovan v. State, 417 So.2d 674 (Fla. 1982).

In Donovan, the accused agreed to go to the sheriff's department for questioning. When he arrived, he at first denied any knowledge of the crime in question. Then, within ten minutes of his arrival, he made an inculpatory statement. During that period, Donovan was twice advised of his right to remain silent. When asked if Appellant indicated that he understood his rights, a deputy testified, "No, sir, Tim didn't say anything." In affirming Donovan's conviction, this Court specifically held that its ruling did not conflict with Roban v. State, 384 So.2d 683 (Fla. 4th DCA, 1980), rev. den., 392 So.2d 1378, 1379 (Fla. 1980).

In Roban, a deputy testified that he advised the accused of his rights. The prosecutor then asked the deputy what he did next, and the deputy replied, "I asked him if he wanted to say anything, and he said no." Roban later made an inculpatory statement. The Court of Appeal reversed the conviction on the basis that the deputy had improperly commented on Appellant's right to remain silent.

Manifestly, the facts at bar are much more like those in Roban than they are like those in Donovan. At bar, Officer Ciani went far beyond testifying that respondent understood his rights: He specifically testified that respondent refused to answer any questions. Significantly, Donovan never really sought to invoke his right to silence: he agreed to go to the station and volunteered that he knew

nothing about the crime at hand. Respondent, on the other hand, repeatedly refused to answer questions for over an hour until his will was overborn by repeated suggestions that the police already knew he was guilty, and that respondent "would feel better if he talked about the incident." 442 So.2d at 1105.

From the foregoing, the decision at bar does not conflict with Donovan, supra.

B. Petitioner also erroneously asserts as a basis for the grant of the writ that the decision below relies upon Kinchen v. State, 432 So.2d 586 (Fla. 4DCA, 1983), and that Kinchen in turn conflicts with Gains v. State, 417 So.2d 719 (Fla. 1st DCA, 1982) and State v. Bolton, 383 So.2d 924 (Fla. 2nd DCA, 1980), and that therefore (so far as counsel understands the argument of his learned opponent) the decision below conflicts with Gains and Bolton.

In Bolton and Gains, the courts ruled that there is no comment on silence where the prosecutor in his summation argues that defense counsel has failed to explain or contradict the evidence against the accused. Thus those cases have no bearing on the case at bar, where Officer Ciani specifically testified that respondent "did not answer any questions at the initial time of arrest." 442 So.2d at 1105. Accordingly, there is no conflict between those cases and the case at bar.

C. Finally, petitioner asserts that the decision below "conflicts" with various federal cases. The undersigned has carefully reviewed Article V, Section 3(b), Florida Constitution (1968), and found nothing therein to the effect that a "conflict"




with some federal decision forms a basis for this Court's certiorari jurisdiction.

CONCLUSION

This Court should deny certiorari review in this cause.

Respectfully submitted,

RICHARD L. JORANDBY  
Public Defender  
Fifteenth Judicial Circuit  
of Florida  
224 Datura Street-11th Floor  
Harvey Building  
West Palm Beach, FL 33401  
(305) 837-2150

  
GARY CALDWELL  
Assistant Public Defender  
Counsel for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to MARLYN J. ALTMAN, ESQUIRE, Assistant Attorney General, 111 Georgia Avenue, West Palm Beach, Florida, by courier, this 29 day of February, 1984.

