

65886

IN THE SUPREME COURT OF FLORIDA

CASE NO.

ALFREDO CHAO,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

ON APPLICATION FOR DISCRETIONARY REVIEW
FROM THE THIRD DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON JURISDICTION

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By *[Signature]*
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INTRODUCTION

The Petitioner/Appellant, ALFREDO CHAO was the Defendant in the trial court. The Appellee/Respondent, STATE OF FLORIDA was the prosecution.

An Appendix is attached to this Brief. It includes a copy of the decisions which are the alleged source of conflict.

STATEMENT OF THE CASE AND FACTS

Alfredo Chao was convicted of attempted first degree murder. His defense was one of accidental discharge of the weapon. However, the State difused this claim by having a police officer tell the jury that Chao stated to him, through an interpreter, that he loved the victim "...and wants no other man to have her." (A.1). The defense objected to the policeman's testimony of what the interpreter told him the defendant had said on grounds of hearsay. The trial judge overruled this objection and the appellate court affirmed the judgment and sentence. (A.1-3).

Appellant failed to seek rehearing or rehearing en banc and the mandate was issued in this case on August 23, 1984. (A.15). On August 31, 1984, Appellant petitioned this Court for discretionary review.

POINT ON APPEAL

WHETHER THE DECISION OF THE DISTRICT COURT OF APPEAL IS NOT IN DIRECT AND EXPRESS CONFLICT WITH ANOTHER DISTRICT COURT OF APPEAL OR IN REACHING A DIFFERENT RESULT THAN A SISTER COURT OR THIS COURT GIVEN IDENTICAL FACTS AND LEGAL ISSUES.

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL IS NOT IN DIRECT AND EXPRESS CONFLICT WITH ANOTHER DISTRICT COURT OF APPEAL OR THIS COURT ON A MATTER OF LAW OR IN REACHING A DIFFERENT RESULT THAN A SISTER COURT OR THIS COURT GIVEN IDENTICAL FACTS AND LEGAL ISSUES.

The long held rule in Florida is that conversations made through interpreters are admissible evidence in trial notwithstanding the interpreter's failure to testify. Meacham v. State, 45 Fla. 71, 33 So. 983 (1903) (A.4). Any decision of an appellate court announcing a contrary rule of law would be in violation of the stare decisis policy set forth by this Court in Hoffman v. Jones, 280 So.2d 431 (Fla. 1973). Contrary to Petitioner's claim, no Florida case directly and expressly conflicts with Meacham to the extent that the case law of this State is not uniform. As indicated in both the Chao opinion and Henao v. State, ___ So.2d ___ (Fla. 3d DCA Case No. 82-2534, opinion issued July 24, 1984) [9 FLW 1644], (A.5), the Florida cases "suggesting" a contrary rule of law do so in non-binding dictum which overlooks Meacham, supra. Indeed the district court thought so little of its so-called conflicting opinion, State Farm Mutual Automobile Insurance Co. v. Ganz, 119 So.2d 319 (Fla. 3d DCA 1960), (A.11), it did not even feel compelled to resolve

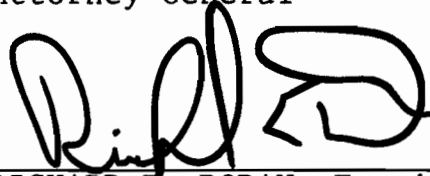
the situation by calling for rehearing en banc, as provided for in the Rules of Appellate Procedure. This Court should follow that lead, because without express and direct conflict affecting the outcome of a case jurisdiction does not lie with this court. To quote Justice Atkins, "...it is a conflict of decisions, not conflict of opinions or reasons, that supplies jurisdiction for review by certiorari..." Gibson v. Maloney, 231 So.2d 823, 824 (Fla. 1970); See also Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980). The opinions expressed in the Rosell v. State, 433 So.2d 1261 (Fla. 1st DCA 1983), (A.7) and State Farm, supra, cases were not essential to or involved in the decision. Accordingly, jurisdiction does not lie in this court.

CONCLUSION

The State of Florida urges this Court to refuse jurisdiction in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S BRIEF ON JURISDICTION was furnished by mail to MARY V. BRENNAN, Special Assistant Public Defender, 606 Petronia Street, Key West, Florida 33134, on this 30TH day of September, 1984.



RICHARD E. DORAN, Esquire
Assistant Attorney General

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