

# Supreme Court of Florida

CORRECTED OPINION

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No. 66,808

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ART CRAWFORD, JR., Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[JULY 17, 1986]

PER CURIAM.

We have for review Crawford v. State, 473 So.2d 700 (Fla. 4th DCA 1985). In that decision, the district court certified the following question as being of great public importance:

May the harmless error doctrine be applied to cases in which a witness's testimony violated a defendant's right to remain silent under the Fifth Amendment?

Id. at 701. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

We have answered the certified question affirmatively in State v. DiGuilio, No. 65,490 (Fla. July 17, 1986). Accordingly, we quash the decision below and remand with instructions that the Fourth District Court of Appeal review the record in its entirety and determine whether the impermissible comment was in fact harmless in accordance with the standard expressed in DiGuilio:

The [harmless error] test must be conscientiously applied and the reasoning of the court set forth for the guidance of all concerned and for the benefit of further appellate review. The test is not a sufficiency-of-the-evidence, a correct result, a not clearly wrong, a substantial evidence, a more probable than not, a clear and convincing, or even an overwhelming evidence test. Harmless error is not a device for the appellate court to substitute itself for the trier-of-fact by simply weighing the evidence. The focus is

on the effect of the error on the trier-of-fact. The question is whether there is a reasonable possibility that the error affected the verdict. The burden to show the error was harmless must remain on the state. If the appellate court cannot say beyond a reasonable doubt that the error did not affect the verdict, then the error is by definition harmful.

Slip op. at 17.

It is so ordered.

McDONALD, C.J., BOYD, OVERTON and SHAW, JJ., Concur  
EHRlich, J., Concur specially with an opinion  
BARKETT, J., Concur specially with an opinion  
ADKINS, J., Dissents

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

EHRlich, J., concurring specially.

I concur because this case is controlled by State v. DiGuilio, No. 65,490 (Fla. July 17, 1986), for the reasons expressed in the dissenting opinion therein.

BARKETT, J., concurring specially.

I concur because this case is controlled by State v. DiGuilio, No. 65,490 (Fla. July 17, 1986). I agree, however, with Justice Adkins' opinion in that case.

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

Fourth District - Case No. 83-1322

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