

# Supreme Court of Florida

CORRECTED OPINION

No. 67,039

STATE OF FLORIDA, Petitioner,

v.

JAMES L. SMITH, Respondent.

[JULY 17, 1986]

McDONALD, C.J.

The following question has been certified as being of great public importance:

May the harmless error rule be applied in a case involving an impermissible comment on the defendant's right to remain silent?

Smith v. State, 467 So.2d 501, 501 (Fla. 4th DCA 1985). We have jurisdiction pursuant to article V, section 3(b)(4), Florida Constitution. In State v. DiGuilio, no. 65,490 (Fla. July 17, 1986), we answered virtually the identical question in the affirmative. We therefore quash the instant decision and remand to the district court for reconsideration in light of DiGuilio.

It is so ordered.

BOYD, OVERTON and SHAW, JJ., Concur  
ADKINS and EHRLICH, JJ., Dissent

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

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

Fourth District - Case No. 84-2006

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