

015

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,  
Petitioner/Cross-Respondent,

vs.

CHARLES WESLEY PRICE,  
Respondent/Cross-Petitioner.

CASE NO. 67,240

FILE  
SID J. WHITE  
AUG 27 1985  
CLERK OF SUPREME COURT  
EDWARD J. ...

PETITIONER/CROSS-RESPONDENT'S  
BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Petitioner/Cross-Respondent would rely on its original Statement of the Case and Facts as contained in Petitioner's Brief on Jurisdiction previously filed with this court.

## SUMMARY OF ARGUMENT

Respondent/cross-petitioner has failed to demonstrate the direct and express conflict between the instant case and any decision of another district court of appeal required by Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) (1985). All of the case authorities cited by respondent/cross-petitioner address the admissibility of evidence concerning third-party threats when such evidence is offered as substantive evidence of a defendant's guilt. None of these cases speak to the propriety of admitting evidence concerning third-party threats for the sole purpose of explaining a prior inconsistent statement of a witness. Consequently, there is not even "apparent" conflict between the instant case and those cases relied upon by the respondent/cross-petitioner.

POINT ON APPEAL

EXPRESS AND DIRECT CONFLICT  
BETWEEN THE INSTANT CASE AND  
ANY DECISION OF ANOTHER DISTRICT  
COURT OF APPEAL HAS NOT BEEN  
SHOWN.

Respondent/ cross-petitioner has failed to demonstrate the direct and express conflict between the instant case and any decision of another district court of appeal required by Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) (1985). Moreover, petitioner/cross-respondent would assert that no "apparent" conflict has even been shown, as the cases relied upon by respondent/cross-petitioner are clearly distinguishable from the instant case. Consequently, this honorable court should decline to accept jurisdiction to resolve a conflict which, in fact, does not exist.

Petitioner/cross-respondent would contend that respondent/cross-petitioner's reliance upon Coleman v. State, 335 So.2d 364 (Fla. 4th DCA 1976); Johnson v. State, 355 So.2d 200 (Fla. 3d DCA 1978); Jones v. State, 385 So.2d 1042 (Fla. 1st DCA 1980); and Reeves v. State, 423 So.2d 1017 (Fla. 4th DCA 1982) is completely misplaced. In the instant case, testimony concerning threats made upon a state's witness was not offered as substantive evidence of respondent/cross-petitioner's guilt. Petitioner/cross-respondent never sought to prove that respondent/cross-petitioner had actual knowledge of or gave authorization for the third-party threats. To the contrary, testimony concerning the threats was offered for the sole purpose of explaining a prior inconsistent statement of the witness.

None of the cases cited by respondent/cross-petitioner address the issue of testimony concerning third-party threats which is offered for the sole purpose of rehabilitation or, as in the instant case, "anticipatory rehabilitation." In Coleman, supra, the Fourth District Court of Appeal held that evidence that the victim was offered one hundred dollars (\$100) not to testify against the defendant at trial was not only hearsay, but was immaterial to the issue concerning the defendant's guilt on the substantive charge of robbery. Coleman, at 365. The Coleman decision was subsequently cited with favor by the Third District Court of Appeal in Johnson, supra. Nevertheless, in the absence of objection to testimony that someone other than the defendant, or someone shown to be acting with the defendant's knowledge, offered the witness two hundred dollars (\$200) to testify falsely for the defendant at trial, the Johnson court determined that the defendant was not deprived of a fair trial. Johnson, at 201.

Although Coleman, supra, and Johnson, supra, appear to be relied upon by the First District Court of Appeal in Jones, supra, the facts of the latter case so clearly distinguish it from the facts of the instant case that direct conflict between the two cannot seriously be suggested. In Jones, supra, the prosecutor asked a witness on redirect examination if she had been previously threatened about testifying at the defendant's trial. Although the witness repeatedly denied the existence of any threats, counsel continued to lead the witness in a testimonial fashion, leaving the probable impression in the minds of the jury that someone had threatened the witness and that the defendant was therefore guilty. Jones at 1042-3.

Significantly, not only was there no evidence presented connecting the defendant to any threats made against the witness in Jones, supra, but neither was there any evidence of the threats themselves, other than the "testimony" of the prosecutor! Clearly, then, the scenario presented in the Jones case is not even remotely similar to the facts presented by the instant case. Indeed, Jones, supra, clearly stands for the proposition that:

(a)n attempt by a defendant or third person to induce a witness not to testify or to testify falsely is admissible on the issue of defendant's guilt. . .

with certain qualifications. Jones, at 1043. However, the Jones decision does not speak to the issue of the admissibility of such testimony for the purpose of rehabilitation.

Likewise, in Reeves, supra, the Fourth District Court of Appeal found testimony concerning third-party threats irrelevant to the issue of whether the defendant committed the crime for which he is charged, absent a link to such defendant. Reeves, at 1018, citing Jones, supra. Because these above-cited cases do not directly address the issue presented by the instant case, it cannot fairly be said that direct conflict among the cases exists. For this reason, petitioner/cross-respondent would respectfully suggest that this honorable court is without authority to exercise its jurisdiction over the "issue" presently asserted to be in conflict by the respondent/cross-petitioner.



CONCLUSION

Based on the arguments and authorities presented herein, petitioner/cross-respondent respectfully prays this honorable court decline to exercise its discretionary jurisdiction in this cause.

Respectfully submitted,

JIM SMITH  
ATTORNEY GENERAL

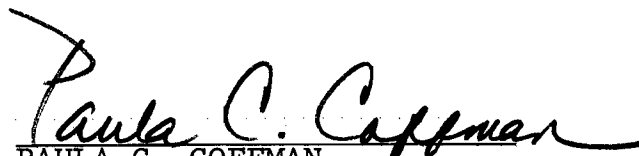


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing petitioner/cross-respondent's brief on jurisdiction has been furnished by mail to: Samuel R. Mandelbaum, Esquire, 701 N. Franklin Street, Tampa, Florida 33602, on this 26th day of August, 1985.



PAULA C. COFFMAN  
OF COUNSEL