IN THE SUPREME COURT OF FLORIDA

CASE NO. 68,365

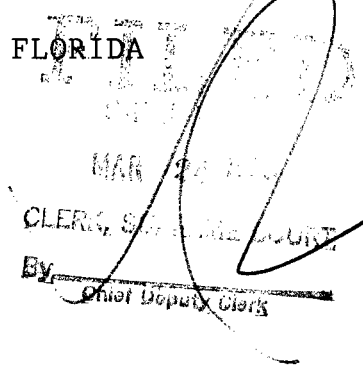
RUBEN LAWHORNE,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

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ON PETITION FOR DISCRETIONARY REVIEW

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**BRIEF OF RESPONDENT ON JURISDICTION**

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## INTRODUCTION

Petitioner was the defendant in the trial court and the appellant in the Third District Court of Appeal. Respondent was the prosecution in the trial court and the appellee in the Third District Court of Appeal. The parties will be referred to as they appear before this court. The symbol "A" will be used to represent the Appendix contained in Petitioner's brief.

## STATEMENT OF THE CASE AND OF THE FACTS

Respondent would accept the Statement of the Case and of the Facts contained in Petitioner's brief as an accurate account of the proceedings below.

## POINT ON APPEAL

WHETHER THE PETITIONER HAS FAILED TO DEMONSTRATE AN EXPRESS AND DIRECT CONFLICT OF DECISIONS TO WARRANT THE INVOCATION OF THIS COURT'S DISCRETIONARY JURISDICTION?

## SUMMARY OF THE ARGUMENT

The instant case involves the question of whether a defendant may be asked on direct examination about the specifics of six prior convictions where he had just admitted the convictions in response to questions posed by defense counsel during the same examination. The specifics about which he sought to inquire were that in the prior cases the defendant pled guilty, because he was guilty and pled not guilty in this case, because he was not guilty.

Petitioner urges this court to find conflict with Bell v. State, 473 So.2d 734 (Fla. 2d DCA 1985), review granted, Case No. 67,434, and Sloan v. State, 472 So.2d 488 (Fla. 2d DCA 1985), review granted Case No. 67, 421. Those cases are distinguishable on their facts for two reasons. First, Bell, supra, and Sloan, supra involve anticipatory rehabilitation regarding a prior inconsistent statement, rather than questions regarding prior convictions. Second, the inquiry herein is inadmissible under any circumstance; whereas in Bell, supra, and Sloan, supra, the inquiry was admissible.

## ARGUMENT

THE PETITIONER HAS FAILED TO DEMONSTRATE AN EXPRESS AND DIRECT CONFLICT OF DECISIONS TO WARRANT THE INVOCATION OF THIS COURT'S DISCRETIONARY JURISDICTION.

Where a cause is before this Honorable Court because of an apparent conflict, jurisdiction will not be accepted, where the cause is distinguishable on its facts. Department of Revenue v. Johnson, 442 So.2d 950 (Fla. 1983). Petitioner argues that the case sub judice directly and expressly conflicts with Bell v. State, 473 So.2d 734 (Fla. 2d DCA 1985), review granted, Case No. 67, 434 and Sloan v. State, 472 So.2d 488 (Fla. 2d DCA 1985), review granted Case No. 67,421. Respondent would assert, however, that this case is distinguishable on its facts.

Bell, supra and Sloan, supra dealt with the issue of whether a witness on direct examination, who is questioned about a prior inconsistant statement may then be asked to explain why such a statement was made. In the instant case defense counsel asked the defendant on direct examination whether he had prior convictions. Counsel then sought on direct examination to have the defendant explain the fact that in his prior cases he had plead guilty, because he was guilty; and in the instant case he plead not guilty, because

he was not guilty. Such a factual distinction is sufficient to have this court refuse to find an express and direct conflict.

Petitioner claims that the real issue is whether the inquiry sought herein is the same type of anticipatory rehabilitation approved in Bell, supra and Sloan, supra. That assumption, however, is erroneous. The answer urged not only constituted improper bolstering, but as Chief Judge Schwartz pointed out was inadmissible.

> But Lawhorne's proffer did not involve any of these appropriate reasons. He sought to show only that each of his multiple previous convictions was entered on a plea of guilty; thus, it would appear, seeking to raise the implication that, because he had admitted guilt in the past, he must not be guilty of the present charges which he specifically contested and denied on the stand. I am aware of no authority which would permit the admission of such testimony upon this bizarre theory. To the extent that it can be categorized at all within accepted evidentiary principles, the prior pleas would seem to involve an attempt to bolster one's credibility by showing that he had told the truth on some previous specific occasions. Such evidence is of course plainly inadmissible. See §90.404-405, 90.609-610, Fla.Stat. (1983). Thus, I would uphold the exclusion of the evidence not because of when it was offered, but because of what it contained.

> 1. The admission of such testimony would open the door to endless collateral evidence as to all the underlying circumstances--the proposed plea-bargain, the evidence against the defendant, and the like which led to the guilty pleas in the previous cases and the trial in the instant one respectively. But see §90.403 Fla.Stat. (1983).
>
> (A. 5-6).

In Sloan, supra and Bell, supra, the answer sought, regarding a prior inconsistent statement would have unquestionably been admissible under any circumstance.

There being no express and direct conflict, jurisdiction of this cause should not be accepted.

## CONSLUSION

Based upon the foregoing, respondent requests this court to deny petitioner's application for discretionary review.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing **BRIEF OF RESPONDENT ON JURISDICTION** was served by mail to **HOWARD BLUMBERG,** Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125 on this 20th day of March, 1986.

**RANDI KLAYMAN LAZARUS**
Assistant Attorney General

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