

9-1-06

IN THE SUPREME COURT OF FLORIDA

CASE NO. 68,365

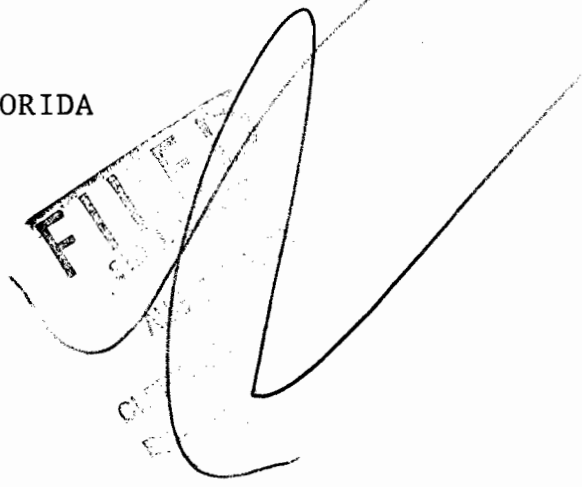
RUBEN LAWHORNE

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.



ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

BRIEF OF RESPONDENT ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, **Ruben Lawhorne**, was the appellant in the district court of appeal and the defendant in the trial court. Respondent, the **State of Florida**, was the appellee in the district court of appeal and the prosecution in the trial court. In this brief, the symbol "R" will be used to designate the record on appeal. The symbol "TR" will be used to designate the transcript of the trial court proceedings. All emphasis is supplied unless otherwise indicated.

STATEMENT OF THE CASE

The Petitioner's statement of the case is a correct account of the proceedings below and is accepted by the Respondent.

STATEMENT OF THE FACTS

The Petitioner's statement of the Facts is a true account of the facts in this case and is accepted by the Respondent.

SUMMARY OF ARGUMENT

The Third District Court of Appeal was correct in affirming the Petitioner's conviction below. In this case, the Petitioner's proposed proffer as to his prior convictions did not involve admissible evidence and further, the trial court's ruling on this matter was harmless in view of the overwhelming evidence of the Petitioner's guilt.

QUESTION PRESENTED

WHETHER THE TRIAL COURT WAS CORRECT
IN REFUSING TO ALLOW THE PETITIONER
TO TESTIFY CONCERNING HIS PLEADING
GUILTY TO PRIOR CHARGES RESULTING
IN CONVICTIONS?

ARGUMENT

THE TRIAL COURT CORRENTLY
REFUSED TO ALLOW THE PETITIONER
TO TESTIFY REGARDING HIS PLEADING
GUILTY TO PRIOR CHARGES RESULTING
IN CONVICTIONS.

In Petitioner's brief, it is asserted that the trial court erred in excluding his testimony concerning his prior convictions, which testimony was purportedly sought to be introduced for purposes of "anticipatory rehabilitation" or to eliminate adverse implications from them. However, as noted in Lawhorne v. State, 481 So.2d 19, 20-21 (Fla. 3d DCA 1986) (Chief Judge Schwartz, specially concurring), the trial court's ruling was correct in that the Petitioner's attempt to offer testimony that his multiple prior convictions were entered on pleas of guilty was not, in fact, a permissible attempt to soften the blow of anticipated impeachment. Rather, the Petitioner's theory for seeking to introduce the subject testimony has no basis in law and did not involve any appropriate reasons as set forth in McArthur v. Cook, 99 So.2d 565, 567, (1957). In McArthur, supra, at 567, the Supreme Court of Florida indicated the appropriate basis for attempting to explain previous convictions:

... If the witness so desires he may of his own volition state the nature of the crime and offer any relevant testimony that would eliminate any adverse implications; for example, the fact that he had in the meantime been fully pardoned or that the crime was a minor one and occurred many years before.

In this case, the Petitioner's proffer did not involve any of these reasons. Thus, the exclusion of evidence by the trial court was proper, even if not based upon when the testimony was to be heard, since the substance of the proffer was inappropriate. See Bell v. State, 11 FLW 305, 306 (Fla. July 11, 1986).


Moreover, as indicated in Lawhorne, (Chief Judge Schwartz, specially concurring) supra at 21, the Petitioner was found guilty at trial of "three misdemeanors on evidence which... overwhelmingly established that he committed not only those offenses, but also a felony on which he was acquitted. In these circumstances,... the trial judge's ruling on the evidentiary issue was entirely harmless!"

CONCLUSION

Based upon the foregoing arguments and authorities, Respondent respectfully submits that this court should affirm the decision of the Third District Court of Appeal.

Respectfully submitted,

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CERTIFICATE SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON THE MERITS was furnished by mail to HOWARD K. BLUMBERG, 1351 N. W. 12th Street, Miami, Florida 33128, on this 7th day of August, 1986.


DEBORA J. TURNER
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/gp