

IN THE
SUPREME COURT OF FLORIDA

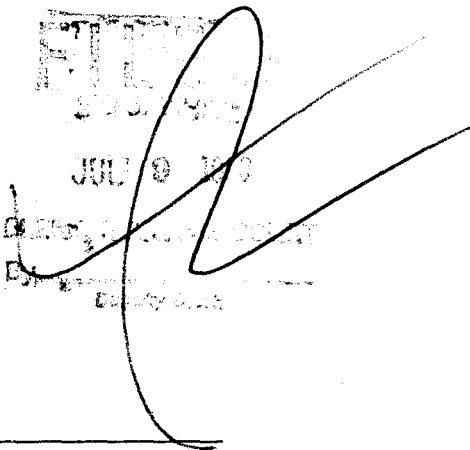
CASE NO. 75, 719

CBS Inc.,
Petitioner,

vs.

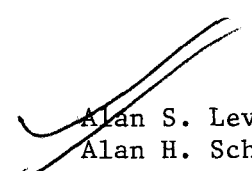
Kareem Jackson,
Respondent

FILED
JUL 9 1975
CLERK OF THE SUPREME COURT
TALLAHASSEE, FLORIDA



On Review from the District Court
of Appeal of Florida, Fourth District

Respondent Cross Reply Brief



Alan S. Levine
Alan H. Schreiber
Public Defender
17th Judicial Circuit
201 S.E. 6th Street, Rm. 740
Ft. Lauderdale, Florida 33301

TABLE OF CONTENTS

PRELIMINARY STATEMENT.....	1
STATEMENT OF FACTS.....	1
ARGUMENT.....	2
<u>MOREJON</u> DOES GOVERN THIS CASE.....	2
CONCLUSION.....	3

TABLE OF AUTHORITIES

CASES

Page

MIAMI HERALD PUBLISHING CO. V. MOREJON, 15 Fla. L.W. S302
(Fla. May 18, 1990)..... 1-2

PRELIMINARY STATEMENT

On May 18, 1990, this Court issued a decision in Miami Herald Publishing Co. v. Morejon, 15 Fla.L.W. S302 (Fla. May 18, 1990), holding that a journalist must "divulge information learned as a result of being an eyewitness to a relevant event in a criminal case -- i.e., the police arrest and search of the defendant." Id. at S302.

This memorandum will briefly discuss why the Morejon ruling does control the outcome in this case.

STATEMENT OF FACTS

The respondent stands on the facts as stated in his answer brief. However, it must be noted that in the petitioners initial brief and reply brief the petitioner makes the assertion that "the respondent has not made a motion to suppress or any other motion alleging that his arrest was unlawful, that he was not read his Miranda warnings, that his Fourth Amendment rights were violated in any way, or that any specific event occurred subsequent to his apprehension which is critical to his defense". (Petitioner's Reply Brief at 4).

The respondent cannot bring such a motion until the respondent has grounds to do so. Such grounds cannot be established until the only known witness (other than the arresting officer) CBS, Inc., has provided Kareem Jackson's defense counsel with its eyewitness testimony of all witnessed events subsequent to Kareem Jackson's arrest.

ARGUMENT

MOREJON DOES GOVERN THIS CASE

Although the facts in Morejon differ from the case at bar in that the reporter for the Herald in Morejon witnessed the search and arrest of the defendant this Court stated in its opinion "We adhere to the district court's conclusion that there is no privilege, qualified, limited, or otherwise, which protects journalists from testifying as to their eyewitness observations of a relevant event in a subsequent court proceeding. The fact that the reporter in this case witnessed the event while on a newsgathering mission does not alter our decision." Miami Herald v. Morejon, S302 (Fla. May 18, 1990). Also, the Court found: "Unlike the factual situations in Branzburg, Morgan, and Huffstetler, there is no confidential source involved in this case which may 'dry up' if revealed." Id. at S304.

In the case at bar CBS was witness to observations (i.e., other possible witnesses at the scene not known to respondent, conduct of the police subsequent to arrest, statements, etc...) of what would be a relevant event in a subsequent court proceeding while on a news gathering mission. Further there are no confidential sources involved in this case.

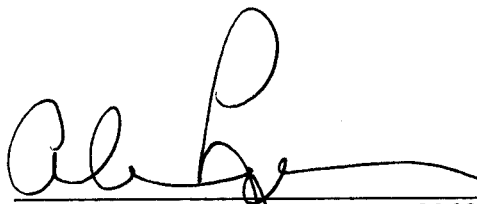
The court also recognized the importance for the public to have the right to a man's evidence and that such an evidentiary privilege as represented by the petitioner are not favored - "even those rooted in the constitution must give way in proper circumstances." Morejon at S304 (citing, Herbert v. Landa, 441 U.S. 153, (1979).)

Lastly, the respondent re-asserts that if this court finds a privilege to exist, the respondent has overcome the privilege and as grounds would stand on the arguments expressed in Respondent's Answer Brief.

CONCLUSION

For the foregoing reasons, as well as those stated in Respondent's Answer Brief, Kareem Jackson respectfully request that this Court enforce the subpoena and order directing CBS to produce the outtakes as requested.

Respectfully submitted,



ALAN S. LEVINE, Bar No.: 836826
Alan H. Schreiber
17th Judicial Circuit
201 S.E. 6th Street
Rm. 740
Ft. Lauderdale, Fl. 33301
(305) 357-8650

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this brief was mailed to Thomas R. Julin, Steele Hector and Davis, Attorney's for CBS Inc., 4000 Southeast Financial Center, Miami, Florida 33131-2398 and to Douglas P. Jacobs, Susanna P. Lowy, John W. Zucker, CBS Inc., 51 West 52nd Street, New York, N.Y. 10019, and the State Attorney's Office, Broward County Courthouse, Fort Lauderdale, Florida, this 6th day of July, 1990.



ALAN S. LEVINE
Assistant Public Defender
Attorney for Defendant
Broward County Courthouse
201 S. E. 6th Street, Suite 740
Fort Lauderdale, Florida 33301
Tel. No.: (305) 357-8834