

WOODA

IN THE SUPREME COURT OF FLORIDA

FILED

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CLERK, SUPREME COURT

By _____
Deputy Clerk

BILLY WOODS, et al.,
Petitioner,

Case No: 76,163

vs.

STATE OF FLORIDA,
Respondent.

PETITIONER'S BRIEF ON THE MERITS

FLEM K. WHITED, III
LAMBERT, WHITED & TOUNG
630 North Wild Olive, Suite A
Daytona Beach, Florida 32118
(904)253-7865
ATTORNEY FOR PETITIONER

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STATEMENT OF THE CASE

Petitioners were charged in the county court with violations of Florida's DUI Law, Section 316.193(1), Fla. Stat. (1987). All petitioners submitted to a test of their breath to determine the alcohol content of their blood. All filed Motions in Limine seeking exclusion of the test in their trials. The reasons for exclusion are not relevant to this proceeding.

The trial court heard evidence, argument of counsel and granted the motions. The trial judge certified a question of great public importance to the 5th District Court of Appeals. The Fifth District Court of Appeals initially accepted jurisdiction but later relinquished jurisdiction back to the Circuit Court.

The Circuit Court then reversed the County Court in a thirteen page opinion.

Petitioners sought re-hearing in the Circuit Court maintaining the Circuit Court applied the wrong rule of law when it decided the case. The petitioners argue the County Court order must stand unless the state can show the County Court departed from essential requirements of law, the standard when dealing with a petition for writ of certiorari. Nowhere in the opinion did the Circuit Court identify the essential rule of law much less tell us how the County Court departed from it.

Re-hearing was denied. The petitioners then sought review of the Circuit Court's appellate opinion in the 5th District Court of Appeals by Petition for Writ of Certiorari. That court denied Certiorari review. Woods v. State, 15 F.L.W. D1351 (Fla. 5th DCA May 25, 1990). The District Court of Appeals declined to grant the review "for the reasons stated in Williams v. State, 540 So.2d 229 (Fla. 5th DCA 1989) and Baker v. State, 518 So.2d 457 (Fla. 5th DCA 1988)." The DCA also stated "The defendants have an adequate remedy by plenary appeal if the trial court enters a judgment of conviction."

The 5th DCA expressed direct conflict with their Williams' decision with Fieselman v. State, 537 So.2d 603 (Fla. 3d DCA 1988) and Mitchell v. State, 538 So.2d 106 (Fla. 4th DCA 1989).

This court has approved the decision in Fieselman and quashed that in Williams. Fieselman v. State, 15 F.L.W. S431 (Fla. Sept. 7, 1990).

SUMMARY OF ARGUMENT

Petitioners sought certiorari review in the District Court of Appeals from a Circuit Court order reversing a County Court decision dealing with an evidentiary issue. The Circuit Court was sitting in its appellate capacity and the decision is binding on all courts within the circuit.

Petitioners argue the sole criterion for certiorari review of a Circuit Court appellate decision is whether the decision departs from the essential requirements of the law.

This court has held that if a decision of a Circuit Court sitting in its appellate capacity affects parties outside the original litigation it is reviewable by petition for writ of certiorari in the District Court of Appeals without regard for the availability vel non to the ultimately convicted defendant's right to seek appellate review of the conviction. Fieselman v. State, 15 F.L.W. S431 (Fla. Sept 7, 1990).

Petitioners argue their situation is the same as in Fieselman. The decision in the instant case is binding on the entire circuit and thus affects parties outside the original litigation, thus subject to review in the District Court of Appeals DCA by petition for writ of certiorari.

ARGUMENT

A DECISION OF THE CIRCUIT COURT SITTING IN ITS APPELLATE CAPACITY THAT AFFECTS PARTIES OUTSIDE THE ORIGINAL LITIGATION AND IS THUS BINDING ON ALL COUNTY COURTS IN THE CIRCUIT IS REVIEWABLE IN THE DISTRICT COURTS OF APPEAL BY PETITION FOR WRIT OF CERTIORARI.

The rule of law set forth in the Fieselman, supra, decision is simple and easy to apply. Does the decision affect parties outside the original litigation? If it does then it is binding on all County Courts in the circuit and thus reviewable in the DCA by petition for writ of certiorari.

The only question to be determined in the instant case is does the order of the Circuit Court sitting in its appellate capacity affect parties outside the original litigation? The petitioners believe, without question, that it does.

A simple review of the Motion in Limine, order of the County Court and order of the Circuit Court leads one to the conclusion that it fits within the Fieselman rule. The Motion in Limine alleged the rules that have been adopted by the Department of Health and Rehabilitative Services (HRS) were insufficient to fulfill the legislative mandate and requirements of State v. Bender, 380 So.2d 697 (Fla. 1980). Evidence was presented at the hearing. The trial court made certain findings of fact and came to certain conclusions of law that were contained in it's lengthy opinion granting the Motion.

The Circuit Court then went on for thirteen pages reversing the trial court without ever addressing the substance of the original Motion in Limine and County Court order granting it. The Circuit Court's appellate opinion reversing the County Court fails to recognize the legal theory presented. That fact alone sets precedent throughout the circuit since there is no other higher appellate decision on point.

Petitioners argue this court should follow the rule in Fieselman and quash Woods, as it did Williams.

CONCLUSION

Petitioners request this court quash the 5th DCA opinion in Woods v. State, 15 F.L.W. D1351 (Fla. 5th DCA May 25, 1990) and Baker v. State, 518 So.2d 457 (Fla. 5th DCA 1989) as it did Williams v. State, 540 So.2d 229 (Fla. 5th DCA 1990). This would once and for all establish the correct jurisdictional requirements of the District Courts of Appeal in cases coming out of the Circuit Court sitting in its appellate capacity where the decision of the Circuit Court affects parties outside the original litigation and are binding on other County Courts in the circuit.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail delivery this 15th day of November, 1990, to the Honorable Robert P. Butterworth, Esquire, Attorney General, 210 North Ridgewood Avenue, Suite 447, Daytona Beach, Florida, 32114; to Belle Turner, Assistant Attorney General, 210 North Ridgewood Avenue, Suite 447, Daytona Beach, Florida, 32114; to John Tanner, State Attorney, 251 North Ridgewood Avenue, Third Floor, Daytona Beach, Florida, 32114; to Honorable John W. Watson, Circuit Court Judge, 125 East Orange Avenue, Daytona Beach, Florida, 32114; and to Honorable Shawn L. Briese, County Court Judge, 125 East Orange Avenue, Daytona Beach, Florida, 32114.

LAMBERT, WHITED & TOUNG
630 North Wild Olive Avenue, #A
Daytona Beach, Florida 32118
(904)253-7865
ATTORNEY FOR PETITIONER

BY: 

Clem K. Whited, III, Esquire
Fla.Bar No: 0271071