IN THE SUPREME COURT OF FLORIDA

MARVIN V. TAYLOR,

Petitioner,

v. CASE NO. 81,446

STATE OF FLORIDA,

Respondent.
_____/

JURISDICTIONAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF CITATIONS

JURISDICTIONAL STATEMENT

Article V, section 3(b)(3) of the Florida Constitution states, in pertinent part, the following:

> The supreme court ... [m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

The conflict between decisions "must appear within the four corners of the majority decision," and "[n]either a dissenting opinion nor the record itself can be used to establish jurisdiction." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Neither will a concurring opinion support jurisdiction under section 3(b)(3). Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980). In addition, it is the "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari." Id., at 1359.

STATEMENT OF THE CASE AND FACTS

In the instant case, Gerald Jefferson and the Clay County Sheriff's Office had an oral agreement--Jefferson would participate in recorded controlled buys of cocaine and testify in deposition and at trial, and the police would pay Jefferson for his services, depending on the amount of drugs involved and the extent of his involvement. The police paid Jefferson an average of $20 for each drug transaction. Jefferson participated in approximately 40 to 60 cases. The most money he ever made in one day was approximately $200 to $250. Jefferson did not know how much he would be paid to testify in court, but he expected to be "treated right."

Petitioner, Marvin Taylor (hereinafter Taylor), was charged with two counts of selling cocaine, which occurred on June 7, 1991 and June 21, 1991 respectively. To prove its case, respondent, State of Florida (hereinafter State), relied on the testimony of Gerald Jefferson and Detective Jett, who described the controlled street buys. A videotape of the first transaction depicted Taylor, but the second did not. Taylor did not claim the entrapment defense. The jury convicted Taylor of the first transaction, but acquitted him on the second. Based on these facts, the First District Court of Appeal held that no due process violation occurred. (Slip Opinion of First District Court of Appeal, 2-5,8)

SUMMARY OF ARGUMENT

The decision of the First District Court of Appeal in the instant case does not expressly and directly conflict with the decision of this Court in State v. Glosson, infra. The same legal principle was applied in both cases. The facts were different, which explains the opposite results that were reached in each case.

ARGUMENT

ISSUE

WHETHER THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN STATE V. GLOSSON, 462 SO. 2D 1082 (FLA. 1985).

In State v. Glosson, 462 So. 2d 1082 (Fla. 1985), Norwood Wilson and the Sheriff of Levy County had an oral agreement--Wilson promised to initiate and participate in criminal investigations and to testify in court, and the Sheriff promised to pay Wilson 10% of the proceeds received from all civil forfeitures resulting from Wilson's criminal investigations. The State Attorney's Office knew about this agreement and even supervised Wilson's investigations.

Wilson traveled from Levy County do Dade County where he made a deal to sell several hundred pounds of marijuana to six people. These six people came to Levy county, took possession of the marijuana that was unknowingly controlled by the Sheriff, and soon afterwards were arrested. The Sheriff seized several vehicles and over $80,000 in cash that were subject to civil forfeiture. Wilson's testimony was critical to a successful prosecution of the six defendants. The defendants' theory of defense was entrapment.

In disposing of the case, this court stated, "We ... hold that the agreement in this case to pay an informant a contingent fee conditioned on his cooperation and testimony in criminal prosecutions violates constitutional due process." Id., at 1084.

The decisions in Glosson and the instant case are not in express and direct conflict. The same principle of law was applied in both cases. The courts reached different results because of different facts. The financial reward in Glosson was conditioned on a certain result (conviction), whereas in the instant case, the financial reward was conditioned on the performance of a certain act (testifying). (Agreements to obtain testimony are a common occurrence. Experts are paid to testify, and codefendants are given leniency in exchange for their testimony.) The informant, in the instant case, was also paid for controlled buys, whereas in Glosson, the informant acted alone.

CONCLUSION

Based on the foregoing discussion, the State respectfully requests this Honorable Court to decline to accept discretionary jurisdiction to review the instant case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing jurisdictional brief has been furnished by U.S. Mail to James R. Thies, Sr., attorney for appellant, Post Office Box 815, Orange Park, Florida, 32067-0815 this 15th day of April, 1993.

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