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IN THE

SUPREME COURT OF FLORIDA

CASE NO. 82,484

RAMON LOPEZ,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

FILED
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AMICUS BRIEF ON BEHALF OF PETITIONER BY THE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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PRELIMINARY STATEMENT

Amicus Curiae, the Florida Association of Criminal Defense Lawyers, submits this brief on behalf of the petitioner, Ramon Lopez. This brief is limited to the issue of the propriety of petitioner's cross-appeal of the trial court's order granting in part and denying in part petitioner's motion to suppress. Mr. Lopez will be referred to by name or as "petitioner." The State will be referred to as "the State" or "respondent."

STATEMENT OF THE CASE AND FACTS

On March 3, 1993, the trial court entered its order granting in part and denying in part petitioner's motion to suppress. The State then appealed the order and petitioner cross-appealed that part of the order denying suppression of certain statements. The Third District granted the State's motion to dismiss petitioner's cross-appeal, citing State v. DeConingh, 396 So.2d 858 (Fla. 3d DCA 1981); State v. Clark, 384 So.2d 687 (Fla. 4th DCA), rev. denied, 392 So.2d 1372 (Fla. 1980); and State v. Ferguson, 405 So.2d 294 (Fla. 4th DCA 1981). Recognizing conflict with the Fifth and Second Districts, the Third District certified conflict to this Court, staying petitioner's appeal. This Court took conflict jurisdiction pursuant to Article V, Section 3(b)(4) of the Florida Constitution.

Because the issue raised by petitioner is one of great importance to the proper administration of justice in this state, the Florida Association of Criminal Defense Attorneys petitioned to file an amicus curiae brief in support of petitioner. This brief followed.

SUMMARY OF THE ARGUMENT

Neither the Florida Rules of Appellate Procedure nor Florida Statutes expressly forbids a defendant from cross-appealing an appeal by the State of an order granting in part a motion to suppress, pursuant to Fla.R.App.P. 9.140(c)(1)(B). In State v. McKinney, 212 So.2d 761 (Fla. 1968), this Court, addressing precisely the issue now under review, explicitly ruled that the cross-appeal of an order partially granting a motion to suppress is permissible. McKinney relied on the earlier ruling by the First District Court of Appeal in State v. McInnes, 133 So.2d 581, 583 (Fla. 1st DCA 1961), that a cross-appeal will be permitted in a criminal case when "... it relates to the same order from which the State's appeal is taken."

The holdings of McInnes and McKinney were subsequently reiterated by the Fifth District Court of Appeal twenty years later in the en banc opinion, State v. McAdams, 559 So.2d 601 (Fla. 5th DCA 1990). In McAdams the Fifth District decided the precise point raised in the instant appeal, providing numerous policy grounds for holding that a cross appeal of a motion to partially suppress evidence is properly entertained by a reviewing court. These grounds, which will be discussed independently in this brief, include the recognition that (1) nothing in the Florida Rules of Appellate Procedure forbids the instant cross-appeal; (2) cross-appeals are not jurisdictional and thus a ruling court is not foreclosed from entertaining them;

and (3) the interest of justice and judicial economy justifies consideration of a cross-appeal in such instances. Similarly, this Court should conform to its prior holding in McKinney and hold that petitioner's cross-appeal of the trial court's order partially granting and partially denying his motion to suppress is proper.

ARGUMENT

I.

WHERE THE STATE APPEALS THE PARTIAL GRANT OF A MOTION TO SUPPRESS, A DEFENDANT'S CROSS-APPEAL OF THE SAME ORDER IS PROPERLY ENTERTAINED BY THE REVIEWING COURT

In State v. McKinney, 212 So.2d 761 (Fla. 1968), this Court reviewed the precise issue currently under review and expressly held that a cross-appeal of an order partially granting a motion to suppress should be permitted, citing State v. McInnes, 133 So.2d 581 (Fla. 1st DCA 1961). McKinney is long-standing, valid precedent from which this Court should not depart.

The general rule of stare decisis provides that a point of settled law should not be disturbed in the absence of a compelling reason. Forman v. Florida Land Holding Corp., 102 So.2d 596 (Fla. 1958). This rule is particularly appropriate in the case under review, since the cases relied upon by the Third District to dismiss petitioner's cross-appeal do not provide compelling reasons to recede from a principle of law firmly established by this Court twenty-five years ago. State v. DeConingh, 396 So.2d 858 (Fla. 3d DCA 1981), provides no grounds for its denial of the defendant's cross-appeal. Similarly, State v. Ferguson, 405 So.2d 294, 297 (Fla. 3d DCA 1983) provides only the following statement:

> We also find that we do not have jurisdiction to entertain the appellee's cross-appeal of the pretrial order denying her motion to suppress the results of the breathalyzer test. Fla.R.App.P. 9.130(a)(2) limits review of non-final orders in criminal cases to those prescribed by Rule 9.140. Rule 9.140

> does not authorize review of the trial court's denial of appellee's motion to suppress. After final judgment she may appeal the denial of her motion to suppress, assuming the issue is properly preserved at trial.

Likewise, in State v. Clark, 384 So.2d 687 (Fla. 4th DCA 1980), the court dismissed the defendant's cross-appeal after concluding that it was without jurisdiction, but also noting, "[w]e find no authority directly answering this question." Id. at 690.

The Clark, DeConingh and Ferguson decisions make no reference to this Court's ruling in McKinney. Undoubtedly, had the Third and Fourth Districts been aware of McKinney, they would have ruled in accordance with the decision and held that a cross-appeal of an order partially granting a motion to suppress is permissible. Moreover, the opinions of the Third and Fourth Districts provide absolutely no compelling grounds for receding from binding authority. Accordingly, this Court should adhere to its own ruling and disapprove DeConingh, Clark and Ferguson.

The Florida Rules of Appellate Procedure do not mandate a contrary conclusion. State v. McInnes, supra held that the Rules of Appellate Procedure do not prohibit a criminal defendant from taking a cross-appeal, and criminal cross-appeals are permissible because they are permitted in civil actions. Indeed, Fla.R.App.P. 9.140(a) provides that '[a]ppeal proceedings in criminal cases shall be as in civil cases except as modified by this rule."

Clearly, appellate review of a cross-appeal originating from an order granting partial suppression satisfies McInnes' requirement that the cross-appeal "relate to the same judgment from which the main appeal is taken." 133 So.2d at 583. Moreover, such review satisfies the appellate requirement that criminal appeals shall be treated like civil appeals. Cross-appeals are liberally permitted in civil appeals, as stated by this Court in Wolfe v. City of Miami, 154 So.196 (Fla. 1934)[1]:

> Our conclusion is that while a cross writ of error in common-law cases is permissible to be sued out and prosecuted by the defendant in error whenever an ordinary writ of error has been sued out by the opposite party (citation omitted), yet such cross writ of error must be addressed to the same judgment or order as is brought up by the original writ of error and can extend no further than a review and reversal or modification of the judgment or appealable order complained of on the original writ of error.

(Emphasis added). See also, Webb General Contractors v. PDM Hydrostorage Inc., 397 So.2d 1058 (Fla. 3d DCA 1981).

This view comports with Fla.R.App.P. 9.140(f), which itself mandates an expansive construction of the rules of criminal appellate procedure. The rule provides in relevant part:

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[1] See also, 3 Fla.Jur.2d, Appellate Review §13: "In accordance with the remedial purpose of appellate review, statutes and rules governing the right to appeal and the exercise thereof are to be liberally construed in the interests of manifest justice."

> In the interest of justice, the court may grant any relief to which any party is entitled.

In McAdams, supra, the Fifth District interpreted this provision to permit a defendant's cross-appeal of a partial motion to suppress, observing that the rule accords with McInnes' holding that the rules do not preclude a cross-appeal.

The silence of the rules on the matter of criminal cross-appeals, combined with the rules' mandate to grant necessary relief as necessary and treat criminal appeals like civil appeals except where expressly provided otherwise, requires this Court to conclude that petitioner's cross-appeal was proper and should have been considered by the Third District Court of Appeal.

II.

THERE IS NO JURISDICTIONAL BAR TO A CROSS-APPEAL UNDER THE FACTS OF THIS CASE

The Fifth District observed in McAdams that there is no jurisdictional bar to a defendant's cross-appeal where the State undertakes an interlocutory appeal on a related issue, citing, Safeco Ins. Co. v. Rochow, 384 So.2d 163 (Fla. 5th DCA 1980). See also Agrico Chemical Co. v. Department of Environmental Regulation, 365 So.2d 759 (Fla. 1st DCA 1978). Following McAdams, the Second District held in State v. Waterman, 613 So.2d 565 (Fla. 2d DCA 1983) that it would permit the cross-appeal of a suppression order because "the notice of a cross-appeal is not jurisdictional ... [and accordingly] a cross-appeal in the present circumstance is not foreclosed." Id. at 566. The Waterman court was careful to limit cross-appeals to matters arising from the order under review, in accordance with the general rule that the scope of review of a cross-appeal is confined to issues arising from the order under review. Waterman is also consistent with the general rule that the scope of review of an interlocutory order is confined to matters directly involved in the order. 3 Fla. Jur.2d, Appellate Review §302.

The Fourth District, faced with the same issue in State v. Clark, 384 So.2d 687 (Fla. 4th DCA 1980), determined that because the Florida Rules of Appellate Procedure do not expressly provide for a right of cross-appeal of an order partially granting a motion to suppress, it lacked jurisdiction to hear the

cross-appeal. Clark ignores the fact that cross-appeals are not jurisdictional but can be heard under the court's general mandate to treat criminal appeals like civil appeals, and the latter do provide for cross-appeals, under Fla.R.App.P. 9.140(a) and (f). Accordingly, this court should disapprove Clark's erroneous conclusion that cross-appeals from suppression orders are barred by a lack of jurisdiction and affirm the Fifth District's holding in McAdams.

III.

JUDICIAL ECONOMY IS BEST SERVED BY PERMITTING THE INSTANCE CROSS-APPEAL

Promotion of judicial efficiency is particularly important in the review of suppression orders, which are often dispositive of a criminal case. The McAdams court was fully cognizant of this point when it observed that "[s]ince an adverse decision at trial could trigger the appeal of the same order before a different panel, the interest of justice and judicial economy justifies considering the cross-appeal in this case." 559 So.2d at 603. The need to maximize judicial efficiency in appellate review was similarly emphasized in Zirin v. Charles Pfizer Co., 128 So.2d 594, 596 (Fla. 1961), where this Court held:

> Needless steps in litigation should be avoided wherever possible and courts should always bear in mind the almost universal command of constitutions that justice should be administered without "sale, denial or delay." Piecemeal determination of a cause by our appellate court should be avoided and when a case is properly lodged here there is no reason why it should not be terminated here. In the **Lissenden** case [P.C. Lissenden Co., Inc. v. Board of County Commissioners of Palm Beach County, 116 So.2d 632, 636 (Fla. 1959)] we said, with respect to appeals and in discussing an analogous matter '"[m]oreover, the efficient and speedy administration of justice is *** promoted" by doing so.

Piecemeal litigation has been and should continue to be discouraged by the courts of this State, particularly where there exist interrelated claims involving the same parties. See, Amelco Investment Corporation v. Bryant Electric Co., 487 So.2d

386 (Fla. 1st DCA 1986); Miami-Dade Water and Sewer Authority v. Metropolitan Dade County, 469 So.2d 813 (Fla. 3d DCA 1985); Szewczyk v. Bayshore Properties, 456 So.2d 1294 (Fla. 2d DCA 1984).

Moreover, the exercise of pendent appellate jurisdiction promotes judicial economy, permitting the appeal of an ordinarily unappealable interlocutory order when that order is "inextricably entwined" with an appealable interlocutory order. People of the State of Illinois ex rel Hartigan v. Peters, 861 F.2d 164, 166 (7th Cir. 1988). Pendant review is permitted when there are "compelling reasons for not deferring the appeal of the ... order to the end of the lawsuit." Id.

Common sense as well as conservation of scarce judicial resources support the conclusion of the Fifth District in McAdams that a single appellate review of a motion to suppress is appropriate. Such review will no doubt result in a faster disposition of those cases in which acquittal or conviction hangs on suppression issues. Consolidated review will also reduce the need of appellate courts to revisit the same case, and indeed the same order, at a future time. One thorough review of all aspects of an order to suppress will not only assist the courts by avoiding redundant, piecemeal review, but will also assist the State and defendant through a speedy, efficient resolution of crucial issues in the case.

CONCLUSION

Amicus curiae, the Florida Association of Criminal Defense Lawyers, urges this Court to uphold its ruling in State v. McKinney, 212 So.2d 761 (Fla. 1968), and approve the decisions of State v. McAdams, 599 So.2d 601 (Fla. 5th DCA 1990) (en banc) and State v. Waterman, 613 So.2d 565 (Fla. 2d DCA 1993). It should reject as unworkable and inefficient the decision rendered below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Michael Neimand, Assistant Attorney General, 401 NW 2d Avenue, Ste. 921N, Miami, FL 33128; Law Office of Mark King LeBan, P.A., 200 So. Biscayne Blvd., Ste. 2920, Miami, FL 33131-5302; Arturo Alvarez, Esquire, 2151 SW LeJeune Road, Ste. 310, Coral Gables, FL 33134; Elliot H. Scherker, Esquire, Greenberg, Traurig, et al., 1221 Brickell Avenue, Twenty-third Floor, Miami, FL 33131; and Deborah Brueckheimer, Assistant Public Defender, Polk County Courthouse, PO Box 9000, Drawer PD, Bartow, Florida 33830; by U.S. Mail, this 12th day of November, 1993.

ATTORNEY

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