

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

MAY 13 1996

CLERK, SUPREME COURT

By _____
Clerk

STATE OF FLORIDA,

Appellant,

v.

CASE NO. 87,331

STEVEN GUTHRIE

Appellee.

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF APPELLANT ON JURISDICTION

EARL MORELAND
STATE ATTORNEY

PETER J. LOMBARD0
ASSISTANT STATE ATTORNEY
Fourth Floor
2071 Ringling Blvd.
Sarasota, FL 34237-7000
(941) 953-7158
Florida Bar #0740829

ATTORNEYS FOR APPELLANT

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TABLE OF CITATIONS

CASES

Sapp v. State,

660 so. 2d 1146 (Fla. 1st DCA 1995)

McNeil v. Wisconsin,

501 U.S. 171, 11 S.Ct. 2204, 115 L. Ed. 2d. 158 (1991)

OTHER AUTHORITIES

Fla. R. App. P.

9.030(a)(2)(IV)

SUMMARY OF THE ARGUMENT

Based upon the issue in this case being one of great public importance and there being a conflict with the 1st DCA the Florida Supreme Court should invoke their discretionary jurisdiction.

STATEMENT OF THE CASE AND FACTS

In the Circuit Court for Sarasota County, the State filed an information on November 17, 1994 charging Respondent, STEVEN GUTHRIE, with multiple counts of sexual activity with a child by a person in familial authority. [R11-16] Respondent filed a motion to suppress his statements to law enforcement. [R17-19] Respondent argued in the motion that he had, by signing a notification of rights form, invoked his constitution rights to remain silent and to have counsel during questioning. [R17-19, 21-23,24] Following a hearing, the trial court granted the motion. [R25,77] The state filed a timely notice of appeal. [R26] An order to stay the proceedings was issued. [R32]

On December 29, 1995, the Second District Court of Appeal affirmed the lower court ruling on Respondent's motion to suppress. The Second District certified conflict with Sapp v. State, 660 so. 2d 1146 (Fla. 1st DCA 1995). The state filed a timely notice to invoke discretionary jurisdiction on January 29, 1996.

ISSUE

Should this court accept jurisdiction of the present appeal?

ARGUMENT

Appellant seeks the Florida Supreme Court to invoke their discretionary jurisdiction pursuant to Fla.R. Crim.P. 9.030 (a) (2) (IV).

In Sapp v. State, 660 So.2d. 1146 (Fla. 1st DCA 1995), Sapp was arrested on an unrelated charge and put in jail where he signed an "invocation of rights form" which attempted to invoke his right to counsel and right to remain silent pursuant to Amendments 5 and 6 of the U.S. Constitution. A week later Sapp was interrogated and gave a post-Miranda confession to other unrelated crimes.

The Court in Sapp cited to McNeil v. Wisconsin, 501 U.S. 171, 111 S.Ct. 2204, 115 L.Ed.2d. 158 (1991), said that the Fifth Amendment right to counsel explicated in Miranda cannot be invoked outside the context of custodial interrogation. Sapp at 1151.

The Sapp court then certified the following question to the Florida Supreme Court as a question of great public importance: "Whether an accused in custody effectively invokes his Fifth Amendment right to counsel under Miranda when, even though interrogation is not imminent, he signs a claim of rights form at or shortly before a first appearance hearing specifically claiming a Fifth Amendment right to counsel." Sapp at 1151.

In our case, State v. Guthrie, the Second District Court of Appeal was presented with the same "Invocation of Rights form" issued and held that the invocation of the constitutional right to counsel at first appearance on separate, unrelated charges bars uncounseled interrogation during continuous custody unless initiated by the defendant.

The Guthrie Court said that their opinion to a certain extent conflicts with Sapp and certified conflict to the Florida Supreme Court.

CONCLUSION

Based upon that conflict and the issue being one of great public importance, the Florida Supreme Court should invoke their discretionary jurisdiction pursuant to Fla. R. Crim. P.

9.030(a)(2)(IV)

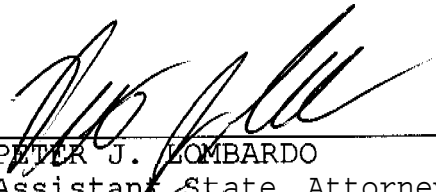
EARL MORELAND
STATE ATTORNEY
TWELFTH JUDICIAL CIRCUIT

BY: 

PETER J. LOMBARDO
Assistant State Attorney
Suite 400
2071 Ringling Boulevard
Sarasota, FL 34237-7000
941-953-7158
Florida Bar 0740829

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to Florida Supreme Court, 500 S. Duval St., Tallahassee, FL 32399; Second District Court of Appeal, William Haddad, Postal Drawer 327, Lakeland Fl; and Kevin Briggs, Assistant Public Defender, P.O. Box 9000, Bartow, FL this 8 day of April, 1996.



PETER J. LOMBARDO
Assistant State Attorney