

# Supreme Court of Florida

STATE OF FLORIDA,  
Petitioner,

vs.

STEVE GUTHFUE,  
Respondent.

No. 87,331

[May 1, 1997]

PER CURIAM.

We have for review the opinion in State v. Guthrie, 666 So. 2d 562 (Fla. 2d DCA 1995), which certified conflict with the opinion in Sapp v. State, 660 So. 2d 1146 (Fla. 1st DCA 1995). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

This Court recently approved Sapp and held that an accused may not effectively invoke the right to counsel under the Fifth Amendment of the federal constitution or article I, section 9 of the Florida Constitution until custodial interrogation has begun or is imminent. Sapp v. State, 22 Fla. L. Weekly S 115 (Fla. March 10, 1997). We therefore quash the decision of the district court below and remand for further proceedings.

It is so ordered.

OVERTON, GRIMES, HARDING and WELLS, JJ., concur.  
KOGAN, C.J., and SHAW and ANSTEAD, JJ., dissent.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF

FILED, DETERMINED.

Application for Review of the Decision of the District Court of Appeal - Direct Conflict of Decisions

Second District - Case No. 94-03721

(Manatee County)

Robert A. Butterworth, Attorney General; Robert J. Krauss, Senior Assistant Attorney General and John M. Klawikofsky, Assistant Attorney General, Tampa, Florida; and Earl Moreland, State Attorney and Peter J. Lombardo, Assistant State Attorney, Sarasota, Florida,

for Petitioner

James Marion Moorman, Public Defender and Kevin Briggs, Assistant Public Defender, Tenth Judicial Circuit, Bartow, Florida,

for Respondent