

047

IN THE SUPREME COURT OF FLORIDA

FILED

CASE NO. 89,849

SID J. WHITE

MAR 24 1997

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

MATTHEW CULLEN,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT
(CERTIFIED CONFLICT)

BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

Respondent, THE STATE OF FLORIDA, was the prosecution in the trial court and the appellee in the District Court of Appeal of Florida, Third District. Petitioner, MATTHEW CULLEN, was the defendant in the trial court and the appellant in the District Court of Appeal. The parties shall be referred to as they stood in the trial court. The symbols "R." and "T." will refer to the record on appeal and the transcript of proceedings

STATEMENT OF THE CASE AND FACTS

The State accepts the Statement of the Case and Facts contained in the initial brief of Petitioner, to the extent that it represents an accurate, non-argumentative synopsis of the course of the proceedings and evidence adduced below.

QUESTIONS PRESENTED

WHETHER THE LOWER COURT ERRED IN AFFIRMING THE TRIAL COURT'S DENIAL OF THE DEFENDANT'S MOTION TO SUPPRESS, WHERE THE DEFENDANT ATTEMPTED TO INVOKE HIS FIFTH AMENDMENT RIGHT TO COUNSEL OUTSIDE THE CONTEXT OF CUSTODIAL INTERROGATION? [Restated.]

SUMMARY OF THE ARGUMENT

As this Court recently held, a defendant may not invoke his Fifth Amendment right to counsel outside the context of custodial interrogation. As such, this Court should affirm the lower court.

ARGUMENT

THE LOWER COURT WAS CORRECT IN AFFIRMING THE TRIAL COURT'S DENIAL OF THE MOTION TO SUPPRESS, WHERE THE DEFENDANT ATTEMPTED TO INVOKE HIS FIFTH AMENDMENT RIGHT TO COUNSEL OUTSIDE THE CONTEXT OF CUSTODIAL INTERROGATION.

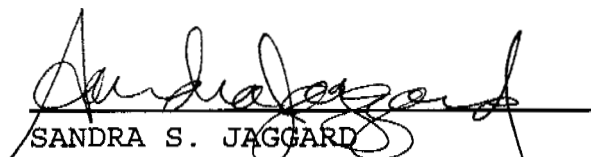
The Defendant contends that the lower court erred in following *Sapp v. State*, 660 So. 2d 1146 (Fla. 1st DCA 1995) instead of *State v. Guthrie*, 666 So. 2d 562 (Fla. 2d DCA 1995). However, on March 13, 1997, this Court approved *Sapp* and disapproved *Guthrie*. *Sapp v. State*, 22 Fla. L. Weekly S115 (Fla. Mar. 17, 1997). The Court held that a defendant may not invoke his Fifth Amendment right to counsel outside the context of custodial interrogation. As such, this Court should affirm the lower court decision.

CONCLUSION

WHEREFORE, based on the preceding authorities and arguments, Respondent respectfully requests that the Court affirm the lower court's decision in this matter.

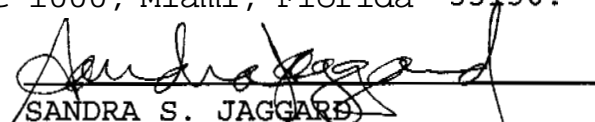
Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 20th day of March, 1997, to Clayton R. Kaeiser, Esq. 28 West Flagler Street, Suite 1000, Miami, Florida 33130.


SANDRA S. JAGGARD
Assistant Attorney General