

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-139

NATHANIEL WILLIAMS

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

BRIEF OF RESPONDENT ON JURISDICTION

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TABLE OF CONTENTS

	<u>PAGES</u>
TABLE OF CITATIONS	ii
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS	2
QUESTION PRESENTED	3
SUMMARY OF THE ARGUMENT	4
ARGUMENT.

5

THE DECISION OF THE LOWER COURT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISIONS IN STATE V. DIGUILIO, 491 So.2d 1129 (Fla. 1986) AND GOODWIN V. STATE, 751 So.2d 537 (Fla. 1999).

CONCLUSION	8
CERTIFICATE OF SERVICE	8
CERTIFICATE OF TYPEFACE COMPLIANCE
. 9	

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGES</u>
<i>Chapman v. California</i> , 386 U.S. 18(1967)	6
<i>Goodwin v. State</i> , 751 So.2d 537 (Fla. 1999)	5,7
<i>State v. Schopp</i> , 653 So.2d 1016(Fla.1995)	6
<i>State v. DiGuilio</i> , 491 So.2d 1129 (Fla. 1986)	5,6,7

INTRODUCTION

The Petitioner, Nathaniel Williams, was the Appellant below. The Respondent, the State of Florida, was the Appellee below. The parties will be referred to as they stand before this Court. The letter "A." will designate the appendix to this brief.

STATEMENT OF THE CASE AND FACTS

The State accepts Petitioner's statement of the case and facts as a substantially accurate account of the proceedings below.

QUESTIONS PRESENTED

WHETHER THE DECISION OF THE LOWER COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS IN STATE V. DIGUILIO, 491 So.2d 1129 (Fla. 1986) AND GOODWIN V. STATE, 751 So.2d 537 (Fla. 1999)?

SUMMARY OF THE ARGUMENT

In the instant case, the Third District concluded that the error in not permitting the defense to elicit the fact that Hunt had been expelled from the police explorers did not deprive Williams of his due process right to a fair trial. In order for the District Court to have reached this conclusion, due process required the Third District to determine that the State met its burden and established that there was no reasonable possibility that the error contributed to the conviction. This is the only reasonable interpretation of the Third Districts holding. The Petitioner's contention that said holding placed the burden of proving the harmless nature of the error on him is simply not supported by any language contained in the Third District's decision. Thus, the instant decision does not expressly and directly conflict with *DiGuilio* and *Goodwin*.

ARGUMENT

THE DECISION OF THE LOWER COURT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISIONS IN STATE V. DIGUILIO, 491 So.2d 1129 (Fla. 1986) AND GOODWIN V. STATE, 751 So.2d 537 (Fla. 1999).

In the instant case, the Third District held that the trial court abused its discretion in not permitting the defense to elicit the fact that Hunt had been expelled from the police explorers since it could have been elicited without the reason for the expulsion. The district court then held that "given all of the other evidence as to Williams guilt, we cannot conclude that this error necessarily deprived Williams of a fair trial to warrant reversal." (A. 4).

Petitioner contends that by the foregoing holding the Third District shifted the burden to Petitioner to establish that the error was harmful. It is on this basis that Petitioner contends the instant decision is in conflict with *State v. DiGuilio*, 491 So.2d 1129 (Fla. 1986) and *Goodwin v. State*, 751 So.2d 537 (Fla. 1999).

The State submits that the foregoing holding does not conflict with *DiGuilio* and *Goodwin*, but is a mere application of those cases to the facts. Petitioner attempts to transform some inartful language into a holding that is contrary to the long

standing principle that harmless error rule is concerned with the due process right to a fair trial.

In *DiGuilio*, this Court considered whether the per se rule of reversal should continue to be applied to improper comments on the right to remain silent, or section 924.33 and the United States Supreme Court's decision in *Chapman v. California*, 386 U.S. 18(1967), permitted a harmless error analysis. *Id.* at 1130. *DiGuilio* began its analysis by acknowledging that the authority of the legislature to enact harmless error statutes is unquestioned. The Court further observed that the harmless error rule is "concerned with the due process right to a fair trial," *id.* at 1135, and "preserves the accused's constitutional right to a fair trial by requiring the state to show beyond a reasonable doubt that the specific comment(s) did not contribute to the verdict." *Id.* at 1136. Thus, *DiGuilio* stands for the proposition "that a defendant has a constitutional right to a fair trial free of harmful error." *State v. Schopp*, 653 So.2d 1016, 1020 (Fla.1995). The Court then enunciated the harmless error test which places the burden on the state, as the beneficiary of the error, to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction.

In the instant case, the Third District concluded that the error in not permitting the defense to elicit the fact that Hunt had been expelled from the police explorers did not deprive Williams of his due process right to a fair trial. In order for the District Court to have reached this conclusion, due process required the Third District to determine that the State met its burden and established that there was no reasonable possibility that the error contributed to the conviction. This is the only reasonable interpretation of the Third District's holding. The Petitioner's contention that said holding placed the burden of proving the harmless nature of the error on him is simply not supported by any language contained in the Third District's decision. Thus, the instant decision does not expressly and directly conflict with *DiGuilio* and *Goodwin*.

CONCLUSION

WHEREFORE, based on the preceding authorities and arguments, the State respectfully requests that the Court not exercise its discretionary jurisdiction to review this cause.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing of **RESPONDENT'S BRIEF ON JURISDICTION** was furnished by mail to **ROBERT KALTER**, Attorney for Petitioner, 1320 N.W. 14th Street Miami, Florida, 33125, on this ____ day of February, 2003.

MICHAEL J. NEIMAND

Assistant Attorney General

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that the typeface used in this brief is 12 point Courier New.

MICHAEL J. NEIMAND
Assistant Attorney General