

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-760

DIETER RIECHMANN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA

AMICUS CURIAE BRIEF (BY AGREEMENT OF THE PARTIES)
OF THE FEDERAL REPUBLIC OF GERMANY
IN SUPPORT OF APPELLANT DIETER RIECHMANN

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INTENDED

**TO USE THE EVIDENCE TAKEN FROM
GERMANY TO IMPOSE THE DEATH PENALTY,
IT WOULD HAVE ALLOWED THE TRANSFER
OF EVIDENCE ONLY UNDER THE
CONDITION THAT IT WOULD NOT BE USED
TO SEEK THE DEATH PENALTY AGAINST
RIECHMANN. BECAUSE OF THIS BREACH OF
INTERNATIONAL PROTOCOL, THIS COURT
SHOULD BAR ITS USE, OR ANY EVIDENCE
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INTRODUCTION

Throughout this brief the Appellant Dieter Riechmann will be referred to by name and the State of Florida as the State. The Federal Republic of Germany, the amicus, will be referred to by its full name or as the German Government. The following abbreviations for record references, adopted from Dieter Riechman's initial brief, will be used when appropriate.

R.____.	Record on direct appeal to this Court;
PC-R__.	Record on 1996 post-conviction hearing;
PC-R2__.	Record on 2002 post-conviction hearing;
Supp. PC-R2__	Supplemental Record on 2002 post-Conviction hearing.
D-Ex.____	Defense exhibits entered at the evidentiary hearing and made a part of the post-conviction record on appeal. A designation will be made as to which post- conviction proceeding the exhibit was received.
S-Ex.____	State exhibits entered at evidentiary hearing with a designation as to which post-conviction proceeding the exhibit was received.

THE AMICUS AND ITS INTEREST IN THIS CASE

A. The Federal Republic of Germany

The amicus here is the Federal Republic of Germany, a federation of individual states (the Länder) located in the heart of Europe. Unified in 1990,¹ Germany has over 80 million persons living within its borders and is now an integral part of both the European Union and the North Atlantic Treaty Organization (NATO).

The Federal Republic of Germany is a constitutional parliamentary democracy whose citizens periodically choose their representatives in free, multiparty elections. The head of Germany's federal government is its Chancellor, who is elected by the Bundestag, the democratically elected legislative body that enacts the legislation affecting Germany's citizens.²

Germany's judiciary is independent; and its legal system is grounded on its constitution, legislatively enacted laws, international law and the law of the

¹ Germany, which from 1945 until 1990 had been two states, is now the most densely populated country in Europe, with a highly developed industrial economy that provides its citizens with one of the highest standards of living in the world.

² There is a second legislative body, the Bundesrat, which consists of representatives of the individual states, and it deals with matters concerning law enforcement, the courts, education and the environment.

European Union.³

B. The Federal Republic of Germany's Interest In This Case

The German Government has taken the extraordinary step of intervening in this case,⁴ as a friend of the Court, because of facts which came to light after Dieter Riechmann, a German citizen, was tried, convicted and sentenced to die by a Florida state circuit court. These disturbing facts, hidden from Riechmann's lawyers and from the court that presided over his trial, reveal an effort by the Florida state prosecutors and police to by-pass obligations that govern both the United States and Germany, and to take documents in Germany which were used against Riechmann at his trial in Florida. Based on an informal request made by the State through the United States Department of State, the German Government sought and obtained a search warrant to search Riechmann's property in Germany. This warrant was obtained with the explicit guarantee by the State Department that formal Letters Rogatory - - the proper method to obtain assistance in these matters - - would be forthcoming.

³ Germany's laws, which in part date back to Roman law, are enacted by the Bundestag, and now consist of approximately 1,900 acts and 3,000 statutory instruments.

⁴ The Federal Republic of Germany's Ambassador to the United States of America, the Honorable Wolfgang Ischinger, has authorized the German Government's participation in this case as an amicus curiae.

The Letters Rogatory promised in 1987 or 1988 were never delivered to the German Government, and assurances from the State that documents taken in Germany would not be used against Riechmann to seek the death penalty, which has been abolished in Germany, were never given. These serious breaches of international protocol, honored by the German Government in its dealings with the United States, resulted in Riechmann's conviction and death sentence; and this Court has the authority to remedy these serious breaches and should do so.

AMICUS FACTS⁵

Dieter Riechmann, a German citizen, was arrested on December 30, 1987; and in January 1988, a grand jury sitting in Miami returned an indictment charging him with one count of first degree murder and one count of displaying a firearm. Riechmann was accused of the October 25, 1987 killing of Kersten Kischnick, also a German national, who was his lifelong companion. Beginning in November 1987, Dade County prosecutors and local police were busy trying to justify Riechmann's imminent arrest; and to do so, a prosecutor and police detective, bypassing the formal government-to-government diplomatic channels required for a Letter

⁵ The German Government has omitted a statement of the case and facts, Fl.R.App.P. 9.370(b), but approves of the Statement of the Case and Facts set out the Brief of Appellant Dieter Riechmann. The facts here (amicus facts) are those that are necessary to understand the German Government's position in this case.

Rogatory,⁶ sent a number of telexes to the police in Lörrach, Germany, Riechmann's home town, demanding that the police search Riechmann's apartment there, falsely telling the German police that Riechmann had already been charged with murder. Acting on this informal request, and having been assured by the United States that a formal request would be forthcoming through the proper diplomatic channels,⁷ the German police applied to the German courts for a warrant to search Riechmann's apartment, which was executed on November 5, 1987. In January 1988, evidently not happy with the results of the November 1987 search, a Dade County prosecutor, Kevin DiGregory, and a Miami detective, Robert Hanlon, went to Germany and insisted that the German police again search Riechmann's apartment. On September 20, 1990 the Higher Regional Court of Karlsruhe (Germany)⁸ held that this January 14, 1988 search, done at the specific request of Assistant State Attorney DiGregory and Detective Hanlon, did

⁶ 28 U.S.C. §1781 states, in part, that "the Department of State has the power. . . to receive a Letter Rogatory issued or a request made by a tribunal in the United States, to transmit it to the foreign or international tribunal to who it is addressed and to receive and return it after execution."

⁷ The "informal" request was made because the Florida authorities insisted that time was of the essence.

⁸ Case Number 2 VAS 1/90.

not comply with applicable German criminal procedure and was illegal.⁹

All told, a number of documents, including insurance policies on Ms. Kischnick's life naming Riechmann as the beneficiary,¹⁰ and thirty-seven statements taken from persons living in Germany, were made available to the State and taken back to Florida, all on a promise to formalize the State's request with a Letter Rogatory to the German Government, and were eventually used to convict Riechmann and sentence him to death.¹¹

Finally, the State deliberately misrepresented German law to the Florida court, when a prosecutor said that "Germany does not have a Fourth Amendment [sic] and the test becomes what shocks the conscience of the court." In fact, the Federal Republic of Germany, through its laws, Constitutions and treaty obligations guarantees to all persons within its borders charged with violations of law, the same

⁹ The other searches did comply with German law and procedure.

¹⁰ The prosecutors used these insurance policies to hammer away to the jurors that money - - the proceeds of the insurance policies - - was Riechmann's motive for killing Ms. Kischnick.

¹¹ To compound this serious breach of international protocol, none of the thirty-seven statements taken in Germany were given to Riechmann's lawyers and when the defense learned of them, the State, through its prosecutor, told the circuit court that they were "lost" and that there was nothing of value in them.

protections and rights as those guaranteed by the United States.¹²

Germany has abolished the death penalty¹³ and consequently German Government agencies on all levels will make every effort not to provide evidence that could be used in the imposition of the death penalty. If the State had observed the proper procedures, and had followed up its informal request with a formal Letter Rogatory (as it promised it would do) the German Government would have cooperated and honored the State's request for assistance, but would have forbidden the transfer to the State of any evidence, and would not have permitted any persons in Germany to be interviewed, unless it had written assurances from both the State of Florida and the United States government that this evidence and the statements would not be used to seek or impose the death penalty against Riechmann.

¹² A week before Riechmann's trial in Florida, a German court held that the November 4, 1987 German search warrant was illegally expanded by the search on November 5th, and therefore the searches after November 4th were "irregular and not compatible with the principle of a constitutional state." (PC-R306, App. 87). The Florida prosecutors never told the circuit court of this ruling by the German court.

¹³ Article 102, Basic law for the Federal Republic of Germany (Grundgesetz, GG) ("capital punishment is abolished").

SUMMARY OF ARGUMENT

The United States and Germany, as do all democratic and sovereign nations, have ratified formal procedures for dealing with requests for information and assistance in both criminal and civil matters. The procedures have been formalized so that each country will be able to request assistance in a way that the requesting country will not impinge upon the laws and procedures of the requested country. These formal procedures, here Letters Rogatory, ensure that both German and American citizens charged with a crime are treated fairly and are assured that they will be accorded all safeguards that each country guarantees to them.

Here, the United States Department of State, acting on a request from the State of Florida, and relying on the State's representations, misrepresented to the German authorities in Dieter Riechmann's hometown the status of the investigation against him in order to seek evidence and testimony within Germany. On January 7, 1988, the local German authorities were told that "if no indictment is returned within twenty one days, Riechmann must be released from custody," implying that he would flee the jurisdiction. Based on this representation Florida authorities, through the State Department, informally asked the German authorities to seek a warrant to search for evidence in Germany, promising to formalize its request in writing by utilizing the proper and well-established procedures and government-to-

government protocols.

That formalized request has never been received by the German Government.

As soon as they had the evidence they received in Germany, the Florida prosecutor and detective took it to Florida and used it to convict Riechmann and to convince a jury and a judge to sentence him to death. Had the German Government known that Florida was going to seek the death penalty in Riechmann's case, it would not have cooperated with the Florida prosecutor and police unless it had written assurances that this evidence would not be used against Riechmann to seek the death penalty; and this Court should now bar Florida from using this evidence at Riechmann's court-ordered re-sentencing; and the State should be prohibited from using it, or any evidence derived from it, if he is retried for the murder of Ms. Kischnick.

ARGUMENT

THE EVIDENCE THE STATE TOOK FROM GERMANY, AND USED AGAINST DIETER RIECHMANN, WAS OBTAINED ON THE BASIS OF AN INFORMAL REQUEST, BECAUSE OF TIME CONSTRAINTS, AND WAS TO BE FORMALIZED IN ACCORDANCE WITH EXISTING INTERNATIONAL PROTOCOLS AND PROCEDURES RECOGNIZED AND ADHERED TO BY BOTH GERMANY AND THE UNITED STATES. DESPITE THESE ASSURANCES, GERMANY HAS NEVER RECEIVED THIS FORMAL REQUEST AND THE EVIDENCE TAKEN FROM GERMANY WAS USED TO CONVICT RIECHMANN AND SENTENCE HIM TO DEATH. IF THE GERMAN GOVERNMENT HAD BEEN TOLD THAT THE STATE INTENDED TO USE THE EVIDENCE TAKEN FROM GERMANY TO IMPOSE THE DEATH PENALTY IT WOULD HAVE ALLOWED THE TRANSFER OF EVIDENCE ONLY UNDER THE CONDITION THAT IT WOULD NOT BE USED TO SEEK THE DEATH PENALTY AGAINST RIECHMANN. BECAUSE OF THIS BREACH OF INTERNATIONAL PROTOCOL, THIS COURT SHOULD BAR ITS USE, OR ANY EVIDENCE DERIVED FROM IT, AT RIECHMANN'S RE-SENTENCING OR RE- TRIAL

The United States is a signatory, as is Germany and 142 other sovereign

nations, to the International Covenant on Civil and Political Rights (ICCPR).¹⁴ The ICCPR guarantees basic, but important, safeguards for all persons charged with a crime.

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
2. Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - a. To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - b. To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
 - c. To be tried without undue delay;
 - d. To be tried in his presence, and to defend himself in

¹⁴ Florida, as are all States, is bound by treaties and international agreements, through the Supremacy Clause of the United States Constitution. Art. 2, VI, cl 2. See also Skiriotes v. Florida, 313 U.S. 69, 73 (1946) (“International law is a part of our law and as such is the law of all the states of the union.”).

person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any case if he does not have sufficient means to pay for it;

e. To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

f. To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

g. not to be compelled to testify against himself or confess guilt.

ICCPR, art. 14.

In addition to its fundamental importance in all criminal cases, where capital punishment is an option, the ICCPR is absolutely critical.¹⁵ Germany, as have most democratic nations, abolished the death penalty; and the ICCPR, recognizing that there are a few countries that still cling to this ultimate punishment, requires that the sentence of death should not be imposed contrary to the provisions of the

¹⁵ “The International Covenant on Civil and Political Rights is one of the fundamental instruments created by the international community for the global promotion and protection of human rights.” Senate Committee on Foreign Relations Report on the Ratification of International Covenant on Civil and Political Rights, S.Rep.No. 102-23 (1992).

present covenant. . . .” ICCPR, art. 6(2).¹⁶

A fair trial, even without the possibility of the death sentence, is a basic requirement of any country, but here the State thwarted - - at almost every stage of these proceedings - - Mr. Riechmann’s guarantee of that most elementary of legal principles. See generally Brief of Appellant Riechmann.

These tactics by the State - - misrepresenting to the German authorities the status of the investigation against Riechmann and using this misrepresentation to obtain evidence and statements in Germany through an informal request - - were improper. When the State's tactics are combined with its deliberate by-passing proper international procedure to obtain this evidence, the fairness of Riechmann’s trial, conviction and sentence is in doubt; as is the State’s commitment to due process and fair play for persons charged with crimes within Florida.¹⁷ The German Government would have never permitted the State authorities to seek documents or take statements in Germany unless and until it had written assurances that the

¹⁶ It is important for the United States to know its international commitments “[i]n order to set the proper example and avoid diminishing the trust and respect of other nations.” United States v. Noriega, 808 F.Supp. 791, 798 (S.D. Fla. 1992).

¹⁷ Although not all-encompassing, the state prosecutors and police violated German law by not seeking Letters Rogatory from a United States district court, asking the United States to request assistance from the German Government.

documents and statements would not be used against Riechmann to seek the death penalty. Nor would the German government have allowed the State to withhold critical evidence from Riechmann and his defense attorneys. And had this evidence not been used against him at his trial, the German Government believes that Mr. Riechmann, who has always maintained his innocence, might very well been acquitted.¹⁸

CONCLUSION

The State's actions in gathering evidence in the Federal Republic of Germany were based upon an “informal” request for assistance that was never formalized, despite assurances that a formal request in a Letter Rogatory would be forthcoming; and evidence taken in Germany, based on this informal request, was used by the State to convict Dieter Riechmann, a German citizen, and sentence him

¹⁸ The United States Supreme Court has concluded that “death qualified” jurors are more likely to convict than those chosen to decide a non-capital punishment case. Buchanan v. Kentucky, 483 U.S. 402, 415, fn.16 (1987) “[J]ust as it was assumed in [Lockhart v.] McCree that the studies were “both methodologically valid and adequate to establish that ‘death qualification’ in fact produces juries *somewhat* more ‘conviction-prone’ than ‘non-death-qualified’ juries,” ... we make a similar assumption here. (citation omitted) (emphasis in original). Thus, if the State had not sought the death penalty because of a commitment to the German Government not to do so, in exchange for legally obtaining evidence in Germany, Riechmann’s chance for an acquittal - - without a death qualified jury - - would have improved.

to death. Because the German Government would not have assisted the State authorities under these circumstances; and because international protocol in obtaining assistance from Germany was not followed (and was deliberately ignored) this Court should remand this case to the circuit court with instructions to grant Riechmann a new trial and exclude from that trial any documents or statements obtained in the Federal Republic of Germany, or any evidence derived therefrom. In the alternative, the Court should remand this case and instruct the circuit court to re-sentence Riechmann and prohibit the State from using any of the German evidence, and any evidence derived from it. Wong Sun v. United States, 371 U.S. 471 (1963).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that two copies of the Amicus Curiae Brief of the Federal Republic of Germany were delivered by first class mail, postage prepaid to:

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CERTIFICATE OF COMPLIANCE

I CERTIFY that the type used throughout this Brief is Times New Roman
14, using WordPerfect 12.

Michael Tarre