

IN THE SUPREME COURT OF THE STATE OF FLORIDA

JUAN RAUL CUERVO,

Petitioner,

v.

CASE NO.: SC06-1156

STATE OF FLORIDA,

Respondent.

\_\_\_\_\_ /

ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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TABLE OF CITATIONS

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STATEMENT OF FACTS

The facts of this case were set forth in the opinion below as follows:

The Defendant was convicted of attempted first-degree murder with a weapon and burglary of a conveyance with an assault or battery with a weapon. Cuervo v. State, 31 Fla. L. Wkly. D1359 (Fla. 5<sup>th</sup> DCA May 12, 2006). Testimony at trial revealed that the Defendant had hidden in the back seat of the victim's vehicle and emerged from the back as she was driving. Id. He held a knife to her throat, told her that "her day had come," and continuously stabbed her until she escaped the vehicle. Id. He then exited the vehicle and continued to stab her. Id.

On appeal, the Defendant claimed the trial court erred in denying his motion to suppress his confession. The district court rejected this argument, finding as follows:

The trial court found that Cuervo's statements were ambiguous and that the exchange that followed was only for clarification, and did not amount to a violation of Cuervo's constitutional rights. We agree that Cuervo's statements were not subject to suppression.

At the very least, the brief exchange between [the interrogating officer] and Cuervo, with [another detective] translating, was sufficiently uncertain to allow clarifying questions. The

entire dialogue took only about five minutes and arose in the context of a translation. Cuervo began by responding that he did not want to "declare anything." The follow-up question elicited from him an odd narrative about his family that was the opposite of "not speaking" and which compounded the ambiguity about whether he wished "to speak" or not. In response to the question about whether he had counsel the police could talk to, he responded by volunteering to answer questions put to him - or not - as he chose. In the entire exchange, there was manifestly no coercion of any sort, no effort to overcome a settled decision to invoke his right to remain silent, no interrogation.

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Bright lines are valuable tools in this area of the law, but there is nothing in this brief exchange, as it is communicated back and forth in two languages, for which the protection of Miranda is required. When asked point blank if he was refusing to speak, Cuervo could simply have said, "yes." He chose, instead, to hear the investigator's questions and to respond - or not, as he chose.

Id. at D1359-60.

SUMMARY OF ARGUMENT

This Court should decline to accept jurisdiction of this case. The district court applied black-letter law to a unique factual situation. None of the cases cited by the Petitioner expressly and directly conflict with the decision of the court below.

ARGUMENT

THIS COURT SHOULD DECLINE TO ACCEPT  
JURISDICTION OF THIS CASE.

This Court has jurisdiction under article V, section (3)(b)(3) of the Florida Constitution where a decision of a district court "expressly and directly conflicts" with a decision of this Court or another district court. This Court has repeatedly held that such conflict must be express and direct, that is, "it must appear within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986).

In this case, the Petitioner argues that the district court's decision conflicts with four decisions, two from this Court, one from the Third District Court of Appeal, and one from the Fourth District Court of Appeal. See Globe v. State, 877 So. 2d 663 (Fla. 2004); Traylor v. State, 596 So. 2d 957, 966 (Fla. 1992); Smith v. State, 915 So. 2d 692 (Fla. 3d DCA 2005); Dooley v. State, 743 So. 2d 65, 68 (Fla. 4<sup>th</sup> DCA 1999). This argument must be rejected, as all the cases cited are in fact in harmony.

In Traylor, this Court issued a broad decision addressing the right to counsel and the right to remain silent under the Florida Constitution. 596 So. 2d at 961-970. In pertinent

part, this Court held that under the Florida Constitution, if a suspect indicates that he does not want to be interrogated, interrogation must immediately stop. Id. at 966.

As this Court has subsequently recognized, however, the Florida Constitution does not provide greater protection than the United States Constitution in this area - that is, under both federal and state law a defendant who has received proper Miranda warnings and validly waived his Miranda rights must *unequivocally and unambiguously invoke those rights* if he wishes police to terminate an interview. State v. Owen, 696 So. 2d 715, 719 (Fla.), cert. denied, 522 U.S. 1002 (1997). The district court in the instant case applied that black letter law, concluding that the Defendant's responses were not unambiguous, but rather uncertain enough to allow clarifying questions. Cuervo, 31 Fla. L. Wkly. at D1359. This decision does not conflict with this Court's precedent, but rather properly applies it.

The Defendant contends that the lower court's opinion conflicts with Smith and Dooley. In each of those cases, the district court found that the defendant had unequivocally invoked his right to silence. Smith, 915 So. 2d at 693 (defendant "stated in no uncertain terms that he had 'nothing to say'" to detective); Dooley, 743 So. 2d at 68 (defendant



"clearly stated that he did not wish to waive" Miranda rights). In this case, on the other hand, the court found to the contrary. Cuervo, 31 Fla. L. Wkly. at D1359-60 (brief exchange between Defendant and detective "was sufficiently uncertain to allow clarifying questions" where Defendant was "asked point blank if he was refusing to speak" and did not answer "yes," but chose to hear questions and respond or not, as he chose).

Finally, the opinion of the court below does not conflict with this Court's opinion in Globe. There, this Court discussed various factors to determine whether a suspect's rights have been properly honored once he has unequivocally invoked his right to silence. 877 So. 2d at 670. Because the Defendant never invoked his right to silence here, there was no occasion for the lower court to discuss the Globe factors upon a resumption of questioning.

There is no express and direct conflict between the lower court's opinion here and the opinions cited by the Petitioner. This Court should decline to exercise jurisdiction.

CONCLUSION

Based on the arguments and authorities presented herein,  
the Respondent respectfully requests this Honorable Court  
decline to accept jurisdiction of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Jurisdictional Brief has been furnished to Leonard R. Ross, counsel for Petitioner, 444 Seabreeze Boulevard, Suite 210, Daytona Beach, Florida 32118, by hand delivery to the Public Defender's Basket at the Fifth District Court of Appeal, this \_\_\_\_\_ day of July, 2006.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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