

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC06-1207
DCA CASE NO. 3D04-2340

NICKULIS GILLIS,

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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STATEMENT OF THE CASE AND FACTS

Petitioner, Nickulis Gillis, was the defendant in the trial court and Appellant in the District Court of Appeal, Third District. Respondent, the State of Florida, was the prosecution in the trial court and the Appellee in the District Court of Appeal, Third District.

Petitioner took a direct appeal to the Third District Court of Appeal challenging his conviction following a jury trial. Petitioner raised four grounds below, but seeks jurisdictional review based on the second ground only: suppression of Petitioner's statement based on compliance of the Miami-Dade County *Miranda*¹ form with the requisites of *Miranda*. The district court affirmed the trial court's ruling in a written opinion. *Gillis v. State*, 31 Fla. L. Weekly D1520 (Fla. 3d DCA May 31, 2006). Petitioner's Appendix A. No motion for rehearing or clarification was filed with the district court below.

This petition only takes issue with the second claim of error, that which concerned the Miami-Dade *Miranda* form. The district court rejected Petitioner's claim of error as to his statement to the police where Petitioner claimed the Miami-Dade *Miranda* form was defective for not advising him he had the right to an attorney prior to question or the right to terminate the interview at any time. The district court noted the first claimed deficiency had been raised and rejected by this

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

Court in *Chavez v. State*, 832 So. 2d 730, 750 (Fla. 2002); *Johnson v. State*, 750 So. 2d 22, 25 (Fla. 1999) and so the form tracked the *Miranda* language and was sufficient. As to the second issue, Petitioner relied upon cases from the Fourth District Court of Appeal which found the form used by the Broward Sheriff's Office defective for failing to inform the suspect that he could stop questioning at any time. The Third District Court of Appeal concluded the Miami-Dade form informed an accused s/he did not have to answer *any* questions posed by the officer and therefore implicitly warned the accused s/he could invoke his right to remain silent at any time during the interrogation or terminate further questioning.

SUMMARY OF THE ARGUMENT

The decision below does not expressly and directly conflict with the cited opinions of this Court or the other appellate courts of this State. Consequently, conflict jurisdiction does not exist for the exercise of this Court's discretionary jurisdiction to review the decision below. This Court should therefore deny Petitioner's petition to review the decision of the district court.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH ANY CASE CITED BY PETITIONER.

Petitioner contends the Third District Court of Appeals opinion in the instant case, *Gillis v. State*, 31 Fla. L. Weekly D1520 (Fla. 3d DCA May 31, 2006), directly and expressly conflicts with (1) *West v. State*, 876 So. 2d 614 (Fla. 4th DCA 2004), *reh'g denied* (July 30, 2004); (2) *Ripley v. State*, 898 So. 2d 1078 (Fla. 4th DCA 2005). Petitioner claims the Third District Court of Appeal opinion conflicts as to the following two questions: (1) whether a *Miranda* form must advise an accused of the right to consult with an attorney prior to questioning; and (2) whether a *Miranda* form must advise an accused of the ability to terminate the interview at any time?

This Court's jurisdiction is limited to a narrow class of cases enumerated in the Florida Constitution. For example, this Court may "review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance." Art. V, § 3(b)(4), Fla. Const. (1980); *see also*, Fla. R. App. P. 9.030(a)(2)(A)(v). The determination of whether an issue is one of great public importance is within the discretion of the district court. No motion for certification was filed below, so Art. V, § 3(b)(4), Fla. Const. (1980), does not apply.

Article V, § 3(b)(3), Fla. Const. (1980) and Fla. R. App. P. 9.030(a)(2)(A)(iv), provide that this Court's discretionary jurisdiction may be sought to review a decision of a District Court of Appeal which expressly and directly conflicts with a decision of another District Court of Appeal or of this Court on the same question of law. Decisions are considered in express and direct conflict when the conflict appears within the four corners of the majority decisions. "Neither a dissenting opinion nor the record itself can be used to establish jurisdiction." *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986).

The rationale for limiting this Court's jurisdiction is the recognition that district courts "are courts primarily of final appellate jurisdiction and to allow such courts to become intermediate courts of appeal would result in a condition far more detrimental to the general welfare and the speedy and efficient administration of justice than that which the system was designed to remedy." *Jenkins v. State*, 385 So. 2d 1356, 1358 (Fla. 1980). This Court cannot exercise its discretionary jurisdiction to review the decision below as it does not conflict with Petitioner's cited cases on the same questions of law.

Miami-Dade Miranda Form and Consultation with an Attorney Prior to Questioning

As to the first claim, the Third District Court of Appeal held the question of whether the Miami-Dade *Miranda* form complied with the requisites of *Miranda* regarding the right to consult with an attorney prior to questioning had been raised and rejected by this Court in *Chavez* and *Johnson, supra*. In *Chavez* and *Johnson*, this Court specifically found the Miami-Dade *Miranda* form tracked the language of *Miranda* and so adequately apprised the accused of his right to counsel prior to and during questioning. As to that question, the Third District Court of Appeal followed the controlling law as set forth in *Chavez* and *Johnson* which addressed the same question. This Court has not receded from either *Chavez* or *Johnson*.

Of the cases cited by Petitioner in support of its argument as to this issue: *Franklin v. State*, 876 So. 2d 607 (Fla. 4th DCA 2004); *Roberts v. State*, 874 So. 2d 1225 (Fla. 4th DCA 2004); *Ripley and West, supra*, none cite to the cases of *Chavez* or *Johnson*.

In *Roberts*, the district court reproduced the Broward Sheriff's Office's ("BSO") *Miranda* form. Within that form, an accused is informed of the right to remain silent and the right to have an attorney present before any questioning. In contrast, the Miami-Dade *Miranda* form, reproduced within the *Gillis* opinion, informs an accused:

- (a) You have the right to remain silent and you do not have to talk to me if you do not wish to do so. You do not have to answer any of my questions. Do you understand that right?
- (c) If you want a lawyer to be present during questioning, at this time or anytime hereafter, you are entitled to have a lawyer present. Do you understand that right?

Gillis, Petitioner's Appendix A, p. 4 None of the cases cited by Petitioner in support of this point addressed the issue of having an attorney present prior to questioning. The BSO form failed to inform an accused of the right to an attorney during questioning. The Miami-Dade form has been specifically upheld by this Court as to the issue of informing an accused of the right to counsel prior to, *Chavez* and *Johnson*, *supra*, and during questioning, *Johnson*, *supra*.

Miami-Dade Miranda Form and Termination of an Interview at Any Time During Questioning

This Court may wish to note that neither *Franklin* nor *Roberts* address this issue within their opinions as noted by the Third District Court of Appeal in *Gillis*. In *West*, the defendant alleged the BSO *Miranda* form was defective for the failure to advise of: (1) the right to counsel prior to and during questioning; and (2) the ability to stop the interrogation at any time during questioning. The district court engaged in an analysis as to the first issue, but none as to the second issue. The district court then baldly declared the trial court erred for overlooking that the defendant was not told of the right to counsel during interrogation or that she could stop the interrogation at any time.

In *Ripley*, the district court engaged in no analysis whatsoever when it declared the BSO *Miranda* form defective for the failure to advise the defendant of the ability to stop the interrogation at any time during questioning. The district court cited its own cases of *Franklin*, *West*, and *Roberts* for this proposition. Neither *Franklin* nor *Roberts* addressed this issue. As to *West*, it simply concluded, without any analysis, that the BSO *Miranda* form was defective for the failure to advise of the ability to stop the interrogation at any time.

In contrast, the Third District Court of Appeal analyzed the Miami-Dade *Miranda* form and concluded that “because the Miranda form used informs the accused that he/she does not have to answer any questions posed by the officer, implicit in this warning is the fact that the accused may invoke his right to remain silent at any time during the interrogation or to terminate further questioning during the interrogation.” *Gillis*, Petitioner’s Appendix A, p. 5 (emphasis in original).

The Third District Court of Appeal only addressed the *Miranda* form used by Miami-Dade. The BSO *Miranda* form only informs an accused of the right to remain silent. The Miami-Dade *Miranda* form goes much further and informs an accused that s/he has the right to remain silent, does not have to speak with the officer, and does not have to answer *any* of the officer’s questions.

The *Miranda* forms analyzed by each district court were not comparable. As such, it is not surprising the Third and Fourth District Courts of Appeal reached different results based on the facts before them. Moreover, the Fourth District Court of Appeal engaged in no analysis of the BSO *Miranda* form before making its determination. As such, those cases provided no legal analysis which another district court could use to analyze the legality of a different *Miranda* form as to this issue.

CONCLUSION

No conflict exists as to this issue where the *Miranda* forms analyzed by the Third and Fourth District Courts of Appeal were factually different and would result in different conclusions by each respective district court. There is no express or direct conflict between these cases and the district court's opinion below given the factual differences between the forms. Moreover, the Third District Court of Appeal followed controlling law as set forth by this Court in *Chavez* and *Johnson* which held the Miami-Dade *Miranda* form tracked the Miranda language sufficiently and informed an accused of the right to counsel before and during questioning. As no conflict exists between the face of the district court's opinion below and the cases cited by Petitioner, discretionary review as to this matter should be denied.

WHEREFORE, based on the preceding authorities and arguments, Respondent respectfully requests that this Court decline 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 Brief of Respondent was mailed to Dorothy F. Easley, Esq., Special Assistant Public Defender, P.O. Box 144389, Coral Gables, Florida 33114, this 18th day of July, 2006.

MARÍA T. ARMAS
Assistant Attorney General

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that the foregoing Brief was written using 14-point Times New Roman in compliance with Fla. R. App. P. 9.210(a)(2).

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