IN THE
SUPREME COURT OF FLORIDA

CASE NO. SC07-1105

LOWER TRIBUNAL NO. 3D06-199

RODNEY CALABRO,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.
_____/

APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

AMENDED JURISDICTIONAL BRIEF OF PETITIONER **RODNEY CALABRO**

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STATEMENT OF THE CASE

RODNEY CALABRO had successfully suppressed a statement made by

him in open Court at his Arraignment on charges of second-degree murder. The State appealed, and the Third District Court of Appeal reversed. State v. Calabro, 957 So.2d 1210 (Fla. 3d DCA 2007). CALABRO seeks this Court accept jurisdiction over the case on the grounds that the Third District's Opinion is in conflict with the Opinions of this and other Courts in the following cases: Davis v. State, 842 So.2d 989 (Fla. 1st DCA 2003), Dobiasio v. State, 789 So.2d 1061 (Fla. 4th DCA 2001), McCray v. State, 760 So.2d 988 (Fla. 2d DCA 2000), and Russell v. State, 614 So.2d 605 (Fla. 1st DCA 1993).

RODNEY CALABRO has been charged by Information with Second-Degree Murder, in violation of Florida Statute Section 782.04(2) (R. 17-19). He had been arrested on November 4, 2002 (R. 1). The following day, the Public Defender's Office was appointed at his Initial Appearance (R. 22). Concurrent with that Appointment, CALABRO executed a Notice of Defendant's Invocation of the Right to Counsel (R. 21).

On November 26, 2002, CALABRO appeared before Judge Cecelia Altonaga for his Arraignment. At that time, a new appointment process was undertaken and the Public Defender reappointed (R. 158). After the Assistant Public Defender arraigned CALABRO, the trial date was set for March 10, 2003,

which was almost four months in the future (R. 158). It was at that point that CALABRO issued an unsolicited offer to commence plea bargaining. He stated:

> MR. CALABRO: Is there any possible way I can get an earlier date? I just want to get this over with as soon as possible. I know what I'm saying. I'm very coherent, my mind is a proven perspective. I'll just like to avoid trial and get sentenced on this.
>
> You should have talked to me three weeks ago, I haven't had no representation since I've been in jail, for three weeks. Where have you been? I will like to avoid the trial and have some kind of plea agreement set earlier than March or whatever that was.
>
> THE COURT: Four weeks for Report.
>
> MS. SEITCHIK: No.
>
> THE COURT: Just Report regarding status.
>
> MS. SEITCHIK: That's fine, Judge.
>
> MR. CALABRO: I know this is unusual but unfortunately I'm guilty of this. And the police up there, what they say up there is; this is what you are getting. And you are getting the truth, maybe I'm catching some people off guard here.
>
> But if an attorney came to see me within its past three weeks, maybe they'll have an idea of where my mind is at but right now I'm guilty. I'm not proud of it, but.

(R. 158-159).

The Court finally addressed CALABRO to inform him that although he had

been appointed a Public Defender earlier, he now had a specific lawyer to handle his case. CALABRO responded, and the hearing was concluded.

The State announced its intention to introduce CALABRO's comments at trial. CALABRO filed a Motion to Suppress alleging that the statements were excludable because they were made during an offer to plea bargain. Before the hearing on the Motion to Suppress, the State conceded that the initial comment made by CALABRO was an offer to plea bargain and would be inadmissible. The State claimed, however, that after the Court comment, CALABRO no longer had a reasonable expectation that the State was willing to plea bargain, and his second statement was admissible.

After hearing evidence and argument, the Circuit Court granted the Motion to Suppress. It made a finding that the statements were made in connection with the plea bargain and inadmissible. No separate findings were made as to the two statements. The State appealed.

The Third District Court of Appeal reversed. It found that CALABRO did not have a reasonable expectation that he would be able to plea bargain in his case at Arraignment. It described his circumstance as follows:

> At the time Calabro uttered the statement admitting his guilt neither side was in any position to negotiate a plea. Calabro had just been

> appointed a public defender, whom he met for the first time at the arraignment hearing. Calabro's counsel did not know the facts of the case nor the evidence against his client. The State never indicated a willingness to enter into a plea bargain with Calabro nor were negotiations taking place between the State and Calabro. Calabro's statement admitting his guilt was not made in response to any preliminary questions or in exchange for any concession from the State. Calabro, instead, made the statement without prompting or inducement. Clearly, Calabro's unsolicited, unilateral statement was not made during a free and open discussion between the prosecution and the defense in an attempt to reach any compromise.

957 So.2d at 1213.

SUMMARY OF ARGUMENT

Petitioner made an offer to plea bargain his case at Arraignment. The Court below found that it was unreasonable for him to do. This decision was in direct conflict with other District Courts of Appeal's decisions under similar facts.

ARGUMENT

ISSUE I

THAT PETITIONER MADE AN OFFER TO PLEA BARGAIN THAT WAS OBJECTIVELY REASONABLE.

The Opinion in this case was not grounded in solid legal precedent. The

Third District relied upon Owens v. Crosby, 854 So.2d 182 (Fla. 2003); Richardson v. State, 706 So.2d 1349 (Fla. 1998); Groover v. State, 548 So.2d 226 (Fla. 1984); Bottoson v. State, 443 So.2d 962 (Fla. 1983); and Stevens v. State, 419 So.2d 1058 (Fla. 1982). None of these cases involved proceedings in open court. In other ways, they are factually and legally distinguishable from the case at bar.

In Owens, the defendant was attempting to plea bargain with a police officer. Despite his clear subjective intent, the police officer made it clear that there would be no plea bargaining by him, only the State Attorney's Office. The defendant's subsequent confession was admitted.

In Richardson, a fully executed plea agreement was honored, and the defendant's inculpatory statements suppressed. Owens distinguished its facts from those in Richardson.[1] Obviously, there was no executed plea agreement in this case, and CALABRO never said there was.

In Groover, the issue before the Court was whether the statement in question was made to induce the plea bargain or as a consequence of it. The defendant had entered into a cooperation agreement which was dependent upon

him giving a truthful sworn statement. Since the agreement had already been

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[1] Owens had supposedly negotiated a prior case, and tried to combine his earlier negotiation with the one in question. The Florida Supreme Court determined Richardson did not apply.

reached, and the defendant in question had been warned that any false statements would result in the revocation of the plea agreement, his inculpatory remarks were admissible. In reaching that conclusion, the Florida Supreme Court did not suggest that had the facts been different, and the defendant had made the statements in order to induce a plea bargain, they would have been rendered inadmissible.

In Bottoson, a jailhouse informant had suggested that the defendant plea bargain his case. The defendant summoned two ministers to the jail, and gave them letters to present to the State Attorney's Office. These letters contained confessions. The letters were delivered, and used by the State at trial. Clearly, the defendant in that case had nothing upon which to base his belief he was plea bargaining but his own subjective intent. There is nothing in the Opinion suggesting that he had had the State contacted in advance of the delivery of the letters to render them anymore than gratuitous confessions apply.

In Stevens, the defendant agreed to submit to a polygraph examination as a

condition of a plea bargain. When he failed the polygraph, and the State ended the negotiations, the inculpatory remarks he made during the polygraph examination were excluded from being introduced in the State's case-in-chief. The issue on appeal was whether they were admissible on cross-examination to impeach a

testifying defendant. In rejecting that argument, the Court noted that the statements in question were uttered spontaneously at a time unrelated to the polygraph examination.

The Opinion did not reference Davis v. State, 842 So.2d 989 (Fla. 1st DCA 2003). In his Answer Brief, CALABRO had referred to Davis as being on "all fours with the case at bar". Davis involved a pre-trial hearing where there was a discussion in open court about the defendant's case. The incriminating remark was made in the context of those discussions.

To the extent that CALABRO's unsolicited remark might justify a different result, he cited the cases of Dobiasio v. State, 789 So.2d 1061 (Fla. 4th DCA 2001); McCray v. State, 760 So.2d 988 (Fla. 2d DCA 2000); and Russell v. State, 614 So.2d 605 (Fla. 1st DCA 1993), for the proposition that unsolicited offers to plea guilty are admissible. All three of these cases involved unsolicited letters written by defendants to the State Attorney's Office requesting leniency and, in the

process, containing admissions of guilt.

Both before the Circuit Court and in its appeal, the State recognized that CALABRO had initiated an unsolicited offer to plead guilty in this case. That was the rationale for its concession as to what it characterized as the first statement. The State's argument focused on the contention that the response to his offer to plead guilty made it objectively unreasonable for him to believe that plea bargaining was possible, and therefore, the so-called second statement was admissible. It was important to the State's argument that a finding be made under the law that there were two separate definable statements which would be treated differently for purposes of admissibility.

In its Opinion, however, the Court added in a footnote the following:

> We also conclude that whether the statements are viewed as two separate statements or the continuation of a single statement, is of no consequence. The State's agreement not to introduce the initial statement made by Calabro does not constitute a waiver nor does it preclude the introduction of the remainder of Calabro's statement, which we have found was not made in connection with plea negotiations.

957 So.2d at 1213.

By these words, the Court essentially repudiates the State's argument. If there was one continuous statement then in order for it not to be considered an

offer to plea bargain, CALABRO's specific words would have to be given no consideration. He did ask for "some kind of plea agreement" in his first remarks. To discount the legal significance of those words is to leave the holding in direct conflict with Davis on its facts, and Dobiasio, McCray, and Russell, on the legal issue of the admissibility of an unsolicited offer to plea bargain. In Russell, the First District Court of Appeal noted that "[t]he State has cited no Florida case in

which a defendant's unaccepted offer to plead guilty has been held admissible against him at trial." 614 So.2d at 611. Neither the State nor this Court has done so either. By holding or suggesting that no defendant could have a reasonable expectation that he could be plea bargaining at Arraignment or at any other pre-trial proceeding where his attorney is not prepared to go to trial or there has not been adequate communication between them adds an additional element to the issue not considered in Davis. What may be to lawyers and judges familiar with the criminal justice system as an opportune time to negotiate a case may not be so clear to a defendant.

CONCLUSION

Upon the arguments and authorities aforementioned, Petitioner requests this Court assume jurisdiction over this case.

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 September, 2007, to: ANGEL FLEMING, ASST. ATTORNEY GENERAL, Office of the Attorney General, 444 Brickell Avenue, Miami, FL 33131.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the Jurisdictional Brief of Petitioner was typed in Times New Roman 14.

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CHARLES G. WHITE, ESQ.