

IN THE SUPREME COURT OF FLORIDA

JUAN PANTOJA,

Petitioner,

v.

Case No. SC08-1879

STATE OF FLORIDA,

Respondent.

_____ /

JURISDICTIONAL BRIEF OF PETITIONER

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I STATEMENT OF THE CASE AND FACTS

This is an appeal from the decision of the First District Court of Appeal. *Pantoja v. State*, ____ So.2d ____ (no. 1D06-2810)(Fla. 1st DCA Sept. 4, 2008):

Juan Pantoja, Appellant, challenges his conviction and sentence for sexual battery and lewd or lascivious molestation. . .Only one [issue], whether the trial court erred in excluding evidence that the victim recanted a prior accusation of molestation against another person, merits discussion. We hold that the trial court properly excluded this evidence under the well-settled rule that a witness' credibility may not be attacked by proof that she committed specific acts of misconduct that did not end in a criminal conviction. We find the instant case factually indistinguishable from *Jaggers v. State*, [*infra*], where the Second District reached a contrary holding. Accordingly, in affirming the trial court, we certify conflict with the Second District's opinion in *Jaggers*.

Slip op. at 1.

II SUMMARY OF THE ARGUMENT

The issue is whether the trial court erred in excluding evidence that the alleged victim recanted a prior accusation of molestation against another person, her uncle. The First District affirmed the trial court's decision to exclude the evidence. The district court also found the instant case to be factually indistinguishable from Jaggers v. State, 536 So.2d 321 (Fla. 2d DCA 1988), in which the Second District reached a contrary holding on very similar facts, and certified conflict. This court should grant review to resolve the actual and certified conflict in the district court decisions.

III ARGUMENT

ISSUE PRESENTED

THIS COURT SHOULD REVIEW THE FIRST DISTRICT'S DECISION DUE TO CERTIFIED CONFLICT WITH THE DECISION OF THE SECOND DISTRICT COURT IN JAGGERS V. STATE, 536 SO.2D 321 (FLA. 2D DCA 1988).

The issue is whether the trial court erred in excluding evidence that the alleged victim recanted a prior accusation of molestation against another person, her uncle. The First District said:

We hold that the trial court properly excluded this evidence under the well-settled rule that a witness' credibility may not be attacked by proof that she committed specific acts of misconduct that did not end in a criminal conviction.

Pantoja. The First District also found the instant case factually indistinguishable from Jaggers, supra, in which the Second District reached a contrary holding on very similar facts, and certified conflict.

Both the instant case and Jaggers involve similar charges of sexual battery on a child under the age of 12, and both cases involve similar evidence of a witness (the alleged victim here, a Williams rule witness in Jaggers) making a prior accusation of molestation/sexual battery against another person. Williams v. State, 110 So.2d 654 (Fla. (Fla.)), cert. denied, 361 U.S. 847, 80 S.Ct. 102, 4 L.Ed.2d 86 (1959), codified as §90.404(2), Fla.

Stat. Because the two district courts reached different results on the same issue and similar facts, the decisions directly and expressly conflict on the same question of law. Presumably, this brief could end at this point, but counsel will go on.

The same issue, but in a case with much different facts, reached this court in Roebuck v. State, 953 So.2d 40 (Fla. 1st DCA 2007). The alleged victim, A.B., accused Roebuck of sexual battery, and he was convicted of lewd and lascivious molestation (statutory rape). The defense wanted to introduce evidence of a prior accusation A.B. had made against her brother, but crucially for conflict vis-a-vis Jaggers, the prior accusation did not involve a sex crime. This court said:

We initially accepted jurisdiction to review Roebuck . . . a decision in which the First District Court of Appeal certified conflict with the Second District Court of Appeal's decisions in Jaggers, [*supra*] and Cliburn v. State, 710 So.2d 669 (Fla. 2d DCA 1998). Upon further consideration, we have now determined that Roebuck is not in conflict with Jaggers and Cliburn and that jurisdiction should be discharged. Accordingly, this review proceeding is dismissed.

Roebuck v. State, 982 So.2d 683 (Fla. 2008). In the opinion below, the First District distinguished Roebuck from the instant case vis-a-vis conflict with Jaggers:

While the supreme court did not explain its determination of no conflict, we recognize several potential reasons for the determination: (1) that the Roebuck Court expressly distinguished Jaggers and Cliburn, (2) that the Roebuck Court acknowledged that, "based on the facts of a particular case, due process may require germane cross-examination of a witness regarding a prior incident of false reporting," see Roebuck, 953 So.2d at 43-44, or (3) that the supreme court did not interpret these cases as creating a general exception to the Evidence Code. We are now presented with facts more closely aligned with the facts of Jaggers. After reviewing the facts and law applicable to both cases, we have determined that our

position in this case is irreconcilable with the position taken by the Second District in Jaggers. (emphasis added)

Pantoja.

The facts of the instant case are much closer to Jaggers than were the facts of Roebuck. The First District said this case was "factually indistinguishable" from Jaggers, the effect of which is to put the cases in express and direct conflict, as the court certified.

IV CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, petitioner requests that this Court exercise its discretion to accept jurisdiction of this case and order briefing on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been mailed to Giselle Lysten Rivera, Assistant Attorney General, The Capitol, Plaza Level, Tallahassee, Florida, and a copy has been mailed to Mr. Juan Pantoja, inmate no. N01519, Okaloosa Correctional Institution, 3189 Little Silver Road, Crestview, FL 32539-6708, this _____ day of October, 2008.

CERTIFICATION OF FONT AND TYPE SIZE

This brief is typed in Courier New 12.

KATHLEEN STOVER