

IN THE SUPREME COURT OF FLORIDA

NO. SC09-2163
DCA CASE NO. 3D08-1094

ALFREDO MORENO-GONZALEZ,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL, THIRD DISTRICT

PETITIONER'S REPLY BRIEF

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ARGUMENT

I. THE AFFIDAVIT FAILED TO SUPPORT ISSUANCE OF A WARRANT TO SEARCH PETITIONER'S HOME UNDER FLORIDA LAW SINCE IT WAS NOT SIGNED BY THE AFFIANT.

The State's Brief has marshaled numerous cases construing the warrant requirements of various other states. Federal Appeal Court decisions are discussed that construe federal warrant requirements. In terms of United States Supreme Court jurisprudence, the State does not cite any case involving the failure of an affiant to sign an affidavit in support of a search warrant.

Florida law specifically requires that an affidavit in support of a search warrant be sworn to and subscribed. Florida Statute Section 933.06. Petitioner is satisfied that he has sufficiently briefed this issue in his initial brief and that the law in Florida is clear and settled.

II. THE STATE NEVER ARGUED THAT OFFICERS ACTED IN GOOD FAITH TO THE TRIAL COURT.

The State's Brief has revived the "good faith" argument that was never argued to the Trial Court and rejected by the Third District Court of Appeal. A review of the entire trial court record, including transcripts and pleadings reveal

that the words “good” and “faith” are never uttered together. The argument was first presented in the State’s appellate brief.

The two officers who testified at the Motion to Suppress directly contradicted each other on every material fact that could support probable cause. They did not sign the Affidavit in support of the warrant and they never filed a return on the warrant. For numerous reasons, not relevant to the issues now before the Court, the State never contended the officers acted in good faith to the Trial Judge.

III. THE CONFORMITY CLAUSE IS INAPPLICABLE TO THE STATUTORY REQUIREMENT THAT THERE MUST BE A WRITTEN APPLICATION, SWORN TO AND SIGNED, PRIOR TO THE ISSUANCE OF A SEARCH WARRANT.

In an effort to mandate that the Courts in Florida not construe Article I, Section 12, rights to be more expansive than the Fourth Amendment rights as construed by United States Supreme Court decisions, the so-called “Conformity Clause” was added by amendment to Article I, Section 12 of the Florida Constitution.

The Legislature has provided in Florida Statue Section 933.06 that no search warrant shall be issued except upon a written application both sworn to and

subscribed. Florida courts have had no problem interpreting the clear meaning of the statute. The State's Brief, pg. 31, states:

Prior to the 1982 amendment, courts in this state "were free to provide its citizens with a higher standard of protection from governmental intrusion than that afforded by the Federal Constitution". *State v. Lavazolli*, 434 So.2d 321, 323 (Fla. 1983)

The right in this case derives not from Article I, Section 12, of the Florida Constitution. It is statutory. It requires no interpretation by the Courts of the rights afforded under the Florida Constitution. Rather, Florida Statute Section 933.06 is controlling.

Additionally, there is no decision of the United States Supreme Court concerning the issue at bar. To the extent that reference to the protections afforded Florida citizens by the Florida Constitution has some bearing on this case, the Conformity Clause would still have no applicability.

CONCLUSION

Florida Statute Section 933.06 is clear in its meaning and in its requirement that an application for a search warrant be signed. The statute is not unconstitutional by virtue of the Conformity Clause, the laws of other state jurisdictions, or decisions of federal appellate courts.

For the reasons stated, the decision of the Trial Court granting suppression was correct and the Trial Court's decision should be reinstated.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief is in compliance with Fla.R.App.P.
9.210(a)(2) and that the brief has been typed in Times New Roman 14 point font.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was
mailed this 22nd day of September, 2010, to NIKOLE HICIANO, ESQUIRE,
Assistant Attorney General, Office of the Attorney General, Department of Legal
Affairs, 444 Brickell Avenue, Suite 650, Miami, FL 33133.

Respectfully submitted,

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