IN THE SUPREME COURT OF FLORIDA

CASE NO.

05-1250

TRINITY CHANEY,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

BRIEF OF RESPONDENT ON JURISDICTION

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

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

LINDA S. KATZ
Assistant Attorney General
Florida Bar Number 0672378

RICHARD L. POLIN
Florida Bar No. 0230987
Bureau Chief, Miami
Office of the Attorney General
Department of Legal Affairs
RiverGate Plaza Suite 950
444 Brickell Ave.
Miami, Florida 33131
(305) 377-5441

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INTRODUCTION

The Petitioner, TRINITY CHANEY, was the Appellant in the district court of appeal, and the Defendant in the Circuit Court. Respondent, the State of Florida, was the Appellee in the district court of appeal, and the prosecution in the Circuit Court. In this brief, the parties will be referred to as they appear before this Court.

STATEMENT OF THE CASE AND FACTS

Defendant was convicted of second degree murder with a firearm and sentenced to life in prison. (A. 1). On March 17, 2001, at approximately 10:35 p.m., Defendant arrived at the Cutler Ridge Police Station with blood on his forehead and clothes. He stated to the officer at the front desk that he just shot someone in self-defense. A gun was retrieved from Defendant’s pocket and he was placed in a holding cell. Detective Capote transported Defendant to the department's homicide office at approximately 12:30 a.m. where, after being advised of his Miranda rights, he signed a waiver form. At some point, Defendant asked Capote if he thought he needed a lawyer, to which the detective responded with the question "Do you think you need a lawyer?" Defendant was interrogated for several hours and a formal, recorded statement was taken from him before he

was released to his parents.

After further investigation, Defendant was charged with second degree murder with a firearm. The police had difficulty serving the arrest warrant. On April 19, 2001, Defendant was arrested during a traffic stop. He was very angry and screamed that his life was over and he wanted to die. The police used pepper spray to subdue him. Once at the station, Defendant was still agitated and jittery. Capote testified that he showed Defendant a Miranda warnings form and told him that they "had to go over this again." Defendant refused to sign the form, stating that his dad was a cop and that he knew his rights. Capote then proceeded with his second interrogation of Defendant.

On direct appeal, Defendant claimed it was error for the trial court to deny his motion to suppress the statements he gave to the police. As to the statement given during the first interrogation, Defendant argued that Detective Capote failed to make a good-faith effort to give a simple and straightforward answer to Defendant's question as to whether he needed a lawyer, thus rendering the waiver involuntary. Defendant argued that Capote's response of "Do you think you need one?" was evasive and intended to steam roll the suspect as in Almeida v. State, 737 So. 2d 520 (Fla. 1999). The lower court's opinion found that Capote's question correctly informed Defendant that it was up to

Defendant to decide whether or not he needed a lawyer.

Defendant additionally argued that he did not validly waive his Miranda rights prior to the second interrogation on April 19, 2001. Based on a careful review of the transcript of the suppression hearing, the lower court concluded that Defendant refused to listen to or sign the Miranda form which was offered to him. Thus, the trial court did not err in refusing to suppress the statements. Accordingly, the court affirmed the conviction. Judge Ramirez wrote a dissenting opinion. (A. 2-3). Defendant moved for rehearing *en banc*, which was denied. A substituted dissenting opinion was entered at the time of the denial. (A. C).

QUESTION PRESENTED

WHETHER THE SUPREME COURT OF FLORIDA HAS JURISDICTION TO REVIEW THE THIRD DISTRICT COURT OF APPEAL'S DECISION?(REPHRASED).

A. WHETHER THE DECISION OF THE LOWER COURT EXPRESSLY CONSTRUED A PROVISION OF THE STATE OR FEDERAL CONSTITUTION? (REPHRASED).

B. WHETHER THE DECISION OF THE LOWER COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THIS COURT IN ALMEIDA V. STATE, 737 SO.2D 520 (FLA. 1999) cert denied, 528 U.S. 1182(2000); STATE V. GLATZMAYER, 789 SO.2D 297 (FLA. 2001);

THOMPSON V. STATE,595 SO.2D 16 (FLA. 1992); OR TRAYLOR V. STATE, 596 SO.2D 597 (FLA. 1992)?(REPHRASED).

SUMMARY OF THE ARGUMENT

This Court does not have jurisdiction to review the Third District Court of Appeals' decision. The lower court's opinion did not expressly construe the provision of the state or federal constitutions on the right to counsel. The lower court merely applied a constitutional provision to the facts of this case.

Additionally, the lower court's decision does not expressly and directly conflict with Almeida v. State; State v. Glatzmayer; Thompson v. State; or Traylor v. State. As to the first statement, the opinion is not in express or direct conflict with Almeida, because the facts indicate that Capote made a good faith effort to provide a simple and straightforward answer. As to Glatzmayer, the response provided by Capote complied with Glatmayer's requirement that a defendant be informed that it is his decision to make. As to the second statement, there is a lack of conflict with Thompson because Thompson dealt with an insufficiency in the content of the warnings. Lastly, there is no conflict with Traylor, which required the police to stop the interrogation when a suspect indicates that he wants the assistance of an attorney. The facts indicate that Defendant made no such indication, instead he

indicated that he knew his rights and did not want to sign an additional form.

ARGUMENT

THE SUPREME COURT OF FLORIDA DOES NOT HAVE JURISDICTION TO REVIEW THE THIRD DISTRICT COURT OF APPEAL'S DECISION.

Petitioner seeks the Court's discretionary review of the district court's decision based on two subsections of Rule 9.030 (a)(2)(A), Fla. R. App. P. Respondent maintains that the Court is without jurisdiction to review this decision.

A. THE DECISION OF THE LOWER COURT DID NOT EXPRESSLY CONSTRUE A PROVISION OF THE STATE OR FEDERAL CONSTITUTION. (REPHRASED).

Petitioner is claiming that the Court has jurisdiction pursuant to Rule 9.030(a)(2)(A)(ii), Fla. R. App. P., which provides for this Court's discretionary review of decisions of district court's of appeal that *expressly construe* a provision of the state or federal constitution. Defendant alleges that the opinion below expressly and directly and "by direct implication", construes the Fifth Amendment of the United States Constitution and Article I section 9 of the Florida Constitution. Jurisdiction must be based on an opinion *expressly* construing a provision of the state or federal constitution. Direct *implication* does not constitute a basis for this Court's jurisdiction.

Defendant also asserts that the lower Court expressly construed the right to counsel. This is not so. The lower court's opinion merely applied the established law on the right to counsel in connection with interrogation. This Court does not have jurisdiction on this basis, as the lower court did not "expressly construe" a provision of the state or federal constitution. For purposes of this Court's jurisdiction, a lower court opinion does not "expressly construe" a provision of the state or federal Constitution by merely applying a constitutional provision to the facts of this case. Rojas v. State, 288 So. 2d 234 (Fla. 1973).

Fla. R. App. P. 9.030(a)(2)(A)(ii). As this Court explained in Armstrong v. City of Tampa, 106 So. 2d 407, 409 (Fla. 1958), in order for a lower court to be considered to have *construed* a constitutional provision, the lower court:

must undertake to explain, define or otherwise eliminate existing doubts arising from the language or terms of the constitutional provision. It is not sufficient merely that the [lower court] examine into the facts of a particular case and then apply a recognized, clear-cut provision of the Constitution.

Id. at 409. See also Ogle v. Pepin, 273 So. 2d 391 (Fla. 1973)

(holding that the court lacked jurisdiction because the lower court's decision failed to explain or define any constitution terms or language). The Third District Court of Appeal's opinion below does not even enumerate the provisions relating to the right to counsel, much less expressly construe any provision of the state or federal Constitution.

B. THE DECISION OF THE LOWER COURT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISIONS OF THIS COURT IN ALMEIDA V. STATE, 737 SO.2D 520 (FLA. 1999) cert denied, 528 U.S. 1182(2000); STATE V. GLATZMAYER, 789 SO.2D 297 (FLA. 2001); THOMPSON V. STATE,595 SO.2D 16 (FLA. 1992); OR TRAYLOR V. STATE, 596 SO.2D 597.(REPHRASED)

As its next basis for jurisdiction, Petitioner has claimed that the Court has jurisdiction pursuant to Rule 9.030(A)(2)(iv),Fla. R. App. P., which provides for this Court's discretionary review of decisions of district court's of appeal that *expressly and directly* conflict with a decision of another district court of appeal or of the supreme court on the same question of law. Petitioner contends that the lower court's opinion in the instant case conflicts with Almeida v. State, 737 So.2d 520 (Fla. 1999) cert denied, 528 U.S. 1182(2000); State v. Glatzmayer, 789 So.2d 297 (Fla. 2001); Thompson v. State,,595 So.2d 16 (Fla. 1992) and Traylor v. State, 596 So.2d 597 (Fla.

1992). No such conflict exists.

As to the first statement, which was given on March 17, 2001, where Defendant asked Detective Capote if he thought he needed an attorney, it is clear that the lower court's opinion is not in express and direct conflict with Almeida v. State or State v. Glatzmayer.

In Almeida, this Court applied Traylor's proscription to the situation where a defendant was seeking information in order to make an informed decision concerning his right to counsel. In Almeida, prior to waiving his Miranda rights, the defendant asked the police "what good is an attorney going to do?" Instead of stopping the questioning, as required by Traylor, the officers ignored the question and did not attempt to give an answer. This Court reversed the conviction in Almeida and held that:

.. if, at any point during custodial interrogation, a suspect asks a clear question concerning his or her rights, the officer must stop the interview and make a good-faith effort to give a simple and straightforward answer. To do otherwise--i.e., to give an evasive answer, or to skip over the question, or to override or "steamroll" the suspect--is to actively promote the very coercion that Traylor was intended to dispel.

Almeida, 737 So. 2d 520, 525 (Fla. 1999)

Unlike the police action in Almeida, Detective Capote followed the directives of the Almeida opinion and stopped the interview and made a good-faith effort to give a simple and straightforward answer. Thus, the lower court's decision is not in direct and express conflict with Almeida. The State maintains that the response, even if it was in the form of a question, was appropriate.

The case which is closest to the instant case is State v. Glatzmayer, 789 So. 2d 297 (Fla. 2001). This Court in Glatzmayer first decided that the utterance ''should I have an attorney'' was a bona fide question calling for an answer. Second, the Court decided that the answer given by the police (that it was not their decision but his) was proper--it was a good-faith effort to give a simple and straightforward answer. When the Defendant asked Detective Capote if he thought he needed an attorney, Capote responded "[d]o you think you need a lawyer? Even if Defendant's question was answered with the question "[d]o you think you need a lawyer?", Capote was in fact informing Defendant that he needed to make his own decision. Based on Glatzmayer, the response was clearly appropriate. Thus, it is clear that the instant case is in accordance with

Glatzmayer and not in direct and express conflict with Glatzmayer.

As to the second statement, which was given on April 19, 2001, where Defendant refused listen to his rights or sign the waiver form, it is clear that the lower court's opinion is not in express and direct conflict with Thompson v. State, or Traylor v. State, 596 So.2d 597 (Fla. 1992).

In Thompson, this Court dealt an insufficiency in the Miranda warnings that were read to the defendant. As the question in the case sub judice is not about the content of the Miranda warnings themselves, but instead about the Defendant's reaction to law enforcement's attempt to advise him of his rights, the lower court can not be *in conflict* with Thompson because the decision is not *on the same question of law.* Instead, Thompson contained general language in connection with ensuring the voluntariness of confessions.

Likewise, Traylor established guidelines for use in Florida to ensure the voluntariness of confessions. In connection with the right to counsel, Traylor held that if a suspect indicates in any manner that he wants the assistance of a lawyer, the interrogation must cease. In the present case, Defendant's express statements in no way indicated that he wanted the assistance of a lawyer. To the contrary, he had previously

waived his rights, refused to sign the form again and stated that his father was a police officer and that he knew his rights. Thus, the case is not in direct and express conflict with Traylor.

Accordingly, the lower court decision is not in direct and express conflict with any of the cited cases from this Court. Thus, there is no jurisdiction on the basis of conflict.

CONCLUSION

As indicated by the foregoing facts, authorities and reasoning, the lower court's opinion did not expressly construe a provision of the state or federal constitutions and does not expressly and directly conflict with the cases cited by Defendant. Thus, the State respectfully maintains that this Court lacks jurisdiction for any proceedings and the petition to invoke discretionary jurisdiction should be denied.

Respectfully Submitted,

CHARLES J. CRIST, JR.
Attorney General

LINDA S. KATZ
Assistant Attorney General
Florida Bar Number 0672378
Office of the Attorney General
Department of Legal Affairs
RiverGate Plaza Suite 950
444 Brickell Ave.
Miami, Florida 33131

(305) 377-5441

RICHARD L. POLIN
Florida Bar No. 0230987
Bureau Chief, Miami

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent On Jurisdiction was mailed this 15th day of August, 2005, to Benjamin S. Waxman, Esq., Robbins, Tunkey, Ross, Amsel, Raben, Waxman & Eoglarsh, P.A., 2250 S.W. 3rd Avenue, 4th Floor, Miami, Florida 33129.

LINDA S. KATZ
Assistant Attorney General

CERTIFICATION OF TYPE SIZE AND STYLE

Pursuant to the Court's Administrative Order regarding the type size of briefs filed in the Supreme Court of Florida, Respondent hereby certifies that the subject brief was typed in font Courier New, 12 point.

LINDA S. KATZ
Assistant Attorney General