

IN THE SUPREME COURT OF FLORIDA

SIMEI MOREIRA DA SILVA,)
)
 Petitioner/Appellant,)
)
 vs.) F.S.Ct. CASE NO. _____
) 4TH DCA CASE NO. 4D06-551
 STATE OF FLORIDA,)
)
 Respondent/Appellee.)
 _____)

PETITIONER’S BRIEF ON DISCRETIONARY JURISDICTION

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PRELIMINARY STATEMENT

Petitioner, Simei Moreira Da Silva, was the defendant and the Appellant in the Fourth District Court of Appeal. Respondent was the prosecution and the Appellee. In this brief, the parties will be referenced as they appear before this Honorable Court.

STATEMENT OF THE CASE¹

Petitioner, Simei Moreira Da Silva, was convicted of second degree murder. On appeal, Petitioner argued that other crimes evidence was improperly admitted.

Bernice, Maria and Vera were longtime acquaintances. Vera broke up with Appellant, then hid from Appellant. Bernice and Maria would not reveal Vera's location. Appellant bought a .357 magnum revolver. Maria was shot with a .357 magnum revolver and died. Two months later, Appellant located Vera, fire his .357 magnum revolver, then kidnapped Vera. Vera soon escaped and reported the events to the police. Appellant's .357 magnum revolver was used to shoot Maria, and was fired during Vera's kidnapping.

The Fourth District found that Vera's kidnapping was relevant to Maria's shooting. Vera's entire kidnapping incident was part of the *res gestae*, was inseparable from Maria's shooting or was inextricably intertwined. Vera's kidnapping showed the relationship among the persons involved and tied the firearm to Maria's shooting. Maria's killing was almost incomprehensible without Vera's entire kidnapping incident.

Petitioner argued Vera's kidnapping became a feature of the trial because the prosecutor placed undue emphasis on it. The Fourth District questioned the applicability of Afeature of the trial@ limitation on relevant, non-*Williams* rule evidence. The Fourth District did not agree that the prosecutor's emphasis of Vera's kidnapping in opening

¹ Statement of the case is taken directly from *Da Silva v. State*, 32 Fla. L. Weekly D2487 (Fla. 4th DCA Oct. 17, 2007, rehearing denied Nov. 14, 2007) (see Appendix); '9.120(d) *Fla. R. App. P.* (2007).

statement, in introducing evidence, and in closing argument was improper. Without Vera's kidnapping, the jury would have difficulty in understanding how and why Petitioner acted as he did in killing Maria.

On November 14, 2007, Petitioner's motion for rehearing, clarification and certification was denied. Petitioner filed a timely Notice of Invocation of Discretionary Jurisdiction on November 26, 2007 ('9.120(b) *Fla. R. App. P.* (2007)).

SUMMARY OF THE ARGUMENT

This decision of the Fourth District Court of Appeal expressly and directly conflicts with *Steverson v. State*, 695 So. 2d 687 (Fla. 1997). This Honorable Court found that Steverson was unfairly prejudiced by the trial judge's error in allowing the prosecutor to present excessive collateral crime evidence. Notwithstanding the trial judge apparently found the collateral crime evidence to be non-*Williams* rule evidence, inextricably intertwined and relevant to show consciousness of guilt, this Honorable Court found no justification for the admission of extensive collateral crime details..

ARGUMENT

THIS HONORABLE COURT HAS JURISDICTION BECAUSE OF DIRECT AND EXPRESS CONFLICT WITH A DECISION OF THIS HONORABLE COURT.

This Honorable Court has authority, pursuant to Article V, Section 3(b)(3) of the *Florida Constitution*, to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or the Supreme Court on the same question of law. See *The Florida Star v. B.J.F.*, 530 So. 2d 286, 288 (Fla. 1988); ' 9.030(a)(2)(A)(iv) *Fla. R. App. P.* (2007).

This decision of the Fourth District Court of Appeal expressly and directly conflicts with *Steverson v. State*, 695 So.2d 687 (Fla. 1997). This Honorable Court found that Steverson was unfairly prejudiced by the trial judge's error in allowing the prosecutor to present excessive collateral crime evidence. *Steverson v. State*, 695 So.2d at 688. Notwithstanding the trial judge apparently found the collateral crime evidence to be non-*Williams* rule evidence, inextricably intertwined and relevant to show consciousness of guilt (*Steverson v. State*, 695 So.2d at 690), this Honorable Court found no justification for the admission of extensive collateral crime details (*Steverson v. State*, 695 So.2d at 690). Although the Fourth District did not mention *Steverson* in the opinion, Petitioner argued *Steverson* in the initial brief, oral argument and in the motion for rehearing.

CONCLUSION

Petitioner respectfully requests this Honorable Court to accept jurisdiction and to review this argument on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Petitioner's Brief On Discretionary Jurisdiction has been furnished to: AUGUST BONAVIDA, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 North Flagler Drive, West Palm Beach, Florida 33401-3432, by courier this _____ day of November, 2007.

Counsel for Petitioner

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that Petitioner's Brief On Discretionary Jurisdiction has been prepared with 14 point Times New Roman type, in compliance with a *Fla. R. App. P.* 9.210(a)(2), this _____ day of November, 2007.

JAMES W. McINTIRE
Assistant Public Defender

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APPENDIX

Da Silva v. State, 32 Fla. L. Weekly D2487 (Fla. 4th DCA
Oct. 17, 2007, rehearing denied Nov. 14, 2007)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Appendix to Petitioner's Brief On Discretionary Jurisdiction has been furnished to: AUGUST BONAVIDA, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 North Flagler Drive, West Palm Beach, Florida 33401-3432, by courier this _____ day of November, 2007.

Counsel for Petitioner