

IN THE SUPREME COURT OF FLORIDA

JOSEPH SCOTT FREEMAN,

Petitioner,

v.

CASE NO. SC09-402

STATE OF FLORIDA,

Respondent.

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

The facts of this case were set forth in detail in the opinion below, as follows:

This case is a textbook example of the futility and potential danger in attempting to negotiate with or mollify a controlling, abusive partner. Karen Kummerer was Freeman's ex-girlfriend in a relationship that lasted approximately eight months. For four of these months Freeman and Kummerer lived together in her home. When the relationship soured, Freeman moved out but continued to visit and frequently call - on one day alone he left 27 voice mail messages. Hoping to stop the phone calls, Kummerer agreed to see Freeman the following day but then avoided his attempts to contact her. The next day, approximately two weeks before the events underlying the charges in this case, Freeman jumped into Kummerer's car when she was stopped at a stop sign on her way to work. Angry at her deception, he threatened Kummerer, who once again attempted to placate Freeman by agreeing to see him that evening. She then drove him to his Jeep and he got out. Upon arriving at work, she reported the matter to co-workers and the police.

Hoping to stop the threats and harassment, Kummerer obtained a temporary injunction for protection against domestic violence. She also changed the code to her car's remote keyless entry because Freeman had one of the keyless entry remotes; this enabled him to unlock the car's doors at the stop sign. However, she inadvertently forgot to change the code to the trunk.

The following week included a pre-planned business trip out of state. Upon return, Kummerer was met and accosted by Freeman in the Orlando International Airport's parking garage. Freeman grabbed her and insisted she accompany him back to his parents' house in Daytona Beach, stopping on the way in an unsuccessful attempt to obtain a cash advance on Kummerer's credit card. After giving her sleeping pills, Kummerer awoke to find herself in the back seat of Freeman's Jeep, in Ocala, wearing different clothing. When Kummerer attempted to get the attention of passersby, Freeman threatened to take her into the Ocala National Forest and kill her. At some point in time, Kummerer spoke with Freeman's

family and agreed not to report the matter to the police after they agreed to put him into rehabilitation for substance abuse. Freeman then drove her back to the Orlando airport where she picked up her car and returned to her home in Daytona Beach.

Upon returning home, Kummerer related the events to her sister who urged her to go to the police, but she declined, afraid of the repercussions. However, they agreed that if anything out of the ordinary occurred to her, her sister should contact the police. On November 21, after a hearing Freeman attended, a judge issued a permanent injunction against domestic violence that prohibited Freeman from directly or indirectly contacting Kummerer.

After spending the Thanksgiving holiday with family out of state, Kummerer drove to work the following Monday. Noticing the "trunk ajar" light was on, she pulled over to secure it. As she reached the rear of the car, Freeman jumped out of the trunk, brandishing a knife. Threatening to cut her if she screamed again, he put her into the car, drove to his Jeep, and attempted to tie her hands behind her back. What occurred next was a seven-day odyssey through six states.

During the course of these seven days, Freeman smoked crack cocaine and used steroids. He forced Kummerer to withdraw money from her bank account and call family members to report she was fine and request they write checks to Freeman's mother. They only stayed in motels that did not require identification, and he paid in cash. Freeman also replaced the Jeep's Florida license plate with a series of stolen plates. On four occasions, Kummerer was able to leave notes in restrooms reporting her abduction and urging the finder to notify the Daytona Beach Police Department.

One of several phone calls Freeman forced Kummerer to make was to her niece, Brenna Randall, with whom she lived. Suspecting something was wrong, Randall asked Kummerer to repeat a phrase if she wanted the police to be called. She repeated the phrase, and Randall notified law enforcement of her aunt's kidnapping. The police located Kummerer's car near Freeman's parents' home and began a search, aided by the notes recovered along the route. An arrest warrant was issued, and alerts were put on both Freeman's and

Kummerer's bank accounts. Additionally, phone calls to Freeman's parents were monitored. The FBI was able to trace ATM withdrawals and learned Freeman had a former cellmate who lived in the Sevierville, Tennessee area. Ultimately, the FBI traced the two to Greenville, Mississippi, where, after a short pursuit, Freeman was apprehended.

When removed from the Jeep, Kummerer was hysterical and would not let go of the officer. A subsequent search of the Jeep revealed a knife, a Ford key and keyless entry remote, a Florida license plate, a rope, plastic ties, and a partially-consumed bottle of vodka. Additionally, a box containing syringes and vials of steroids was found. Freeman's defense at trial was the Kummerer voluntarily accompanied him on an impromptu vacation. Various witnesses from the six-state trek testified. The State's witnesses were called to establish Kummerer's emotional state and Freeman's constant proximity to her. His witnesses testified about Kummerer's opportunities to free herself or that nothing unusual or out of the ordinary appeared to be happening. The jury found Freeman guilty, as charged.

Freeman v. State, 1 So. 3d 373 (Fla. 5th DCA 2009) (footnote omitted).

In discussing the alleged errors at trial, the district court considered the nature of the errors, their influence on the jury's verdict, and the other evidence of guilt, ultimately concluding that any error was harmless. Id.

SUMMARY OF ARGUMENT

The district court's decision does not expressly and directly conflict with any other decision. Contrary to the Petitioner's argument, the district court did not take the extreme step of rejecting long-standing black letter law on harmless error. Rather, the court applied the appropriate test and properly concluded that any error was harmless under the facts of this case.

ARGUMENT

THE DISTRICT COURT'S DECISION DOES NOT
EXPRESSLY AND DIRECTLY CONFLICT WITH THIS
COURT'S OPINION.

This Court has jurisdiction under article V, section (3)(b)(3) of the Florida Constitution where a decision of a district court "expressly and directly conflicts" with a decision of this Court or another district court. This Court has repeatedly held that such conflict must be express and direct, that is, "it must appear within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986).

Here, the Petitioner contends that the decision of the lower court expressly and directly conflicts with the holding of this Court in State v. DiGuilio, 491 So. 2d 1129 (Fla. 1986). There, this Court set out the black letter law for harmless error, holding that a new trial is not warranted where there is no reasonable possibility that the alleged error contributed to the jury's verdict, considering the strength and nature of the permissible evidence of the defendant's guilt as well as the strength and nature of the alleged error. Id. at 1137-38.

Contrary to the Petitioner's position, the district court's opinion below does not reject this long-standing law or adopt a different version of the harmless error test. The opinion includes a lengthy discussion of the nature and scope of the

evidentiary errors and the nature and strength of the permissible evidence demonstrating the Defendant's guilt - as required by DiGuilio.

Petitioner obviously disagrees with the court's conclusion on this matter; this does not demonstrate a basis for this Court to exercise its jurisdiction here. The lower court opinion does not reject DiGuilio's harmless error test, but properly applies it, and the cases do not expressly and directly conflict with one another.

CONCLUSION

Based on the arguments and authorities presented herein, the Respondent respectfully requests this Honorable Court decline to accept jurisdiction of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Jurisdictional Brief has been furnished to Michael S. Becker, counsel for Petitioner, 444 Seabreeze Boulevard, Suite 210, Daytona Beach, Florida 32118, by hand delivery to the Public Defender's Basket at the Fifth District Court of Appeal, this ___ day of April, 2009.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

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