

IN THE DISTRICT COURT OF APPEAL, SECOND DISTRICT
STATE OF FLORIDA

THE SARASOTA HERALD-TRIBUNE,
TAMPA TRIBUNE, AND
WFLA-TV NEWS CHANNEL 8

Petitioners,

v

Case No. 2D05-5408

STATE OF FLORIDA,
AND JOSEPH P. SMITH,

Respondents.

NOTICE TO INVOKE DISCRETIONARY JURISDICTION

NOTICE IS GIVEN that Respondent, State of Florida, by and through the undersigned counsel, invokes the discretionary jurisdiction of the Supreme Court to review The Sarasota Herald-Tribune et. al. v. State, (Fla. 2d DCA November 22, 2005).

The decision is within the appellate and the discretionary jurisdiction of the Florida Supreme Court because the decision presents a question certified to be one of great public importance to wit:

IN ORDER TO PROTECT THE PRIVACY OF THE VICTIM'S FAMILY, DOES A TRIAL COURT HAVE LEGAL AUTHORITY TO BAR ALL MEMBERS OF THE MEDIA FROM VIEWING PHOTOGRAPHS OF A MURDER VICTIM THAT HAVE BEEN INTRODUCED INTO EVIDENCE DURING A PUBLIC TRIAL AT WHICH THE STATE SEEKS THE DEATH PENALTY?

The decision further declares invalid a State statute, expressly construes a provision of the State or Federal Constitution, Article I, article 23 and expressly and directly conflicts with the decision of the Fifth District in Campus Communication v. Earnhardt, 821 So. 2d 388 (5th DCA 2002), rev. denied, 848 So. 2d 1153 (Fla. 2002), cert. denied, 2003 U.S. LEXIS 8622 (Dec. 1, 2003), and the decisions of the Florida Supreme Court in Barron v. Florida Freedom Newspapers, Inc., 531 So. 2d 113 (Fla. 1988) and Miami Herald Publishing Co. v. Lewis, 426 So. 2d 1 (Fla. 1982). Fla. R. App. P. 9.030(a)(1)(A)(ii), (a)(2)(A)(ii) and (a)(2)(A)(iv); Ford Motor Company v. Kikis, 401 So. 2d 1341 (Fla. 1981) (finding that the District court decision not need cite to conflicting decisional authority to create express conflict for purposes of Supreme Court jurisdiction); Ogle v. Pepin, 273 So. 2d 391 (Fla. 1973) (discussing what language in a district court opinion constitutes construction of a statute, for purposes of invoking the Supreme Court's jurisdiction).

Respectfully submitted,

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ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing EMERGENCY MOTION TO STAY THE EFFECT OF THIS COURT'S NOVEMBER 17, 2005 ORDER has been furnished by U.S. mail to The Honorable James Birkhold, Clerk of the Court, Second District Court of Appeal, P.O. Box P.O. Box 327, Lakeland, Florida 33802; The Honorable Andrew D. Owens, Jr., Circuit Court Judge, Sarasota County Judicial Center, 2002 Ringling Blvd., 5th Floor, Sarasota, Florida 34237; The Honorable Elliott C. Metcalfe, Jr., Public Defender and Adam Tebrugge, Assistant Public Defenders, Twelfth Judicial Circuit, 2071 Ringling Blvd., Sarasota, Florida 34237; The Honorable James Marion Moorman, Public Defender, Paul Valcore and Robert A. Young, Assistant Public Defenders, Tenth Judicial Circuit, P.O. Box 9000-Drawer PD, Bartow, Florida 33831-9000; The Honorable Earl Moreland, State Attorney and Debra Johnes Riva, Assistant State Attorney, 2071 Ringling Blvd., Sarasota, Florida 34237; James J. McGuire, Esq., Gregg D. Thomas, Esq. and Rachel E. Fugate, Esq.,

Holland & Knight LLP, P. O. Box 1288, Tampa, Florida 33601-1288,
this 23rd day of November, 2005.

CERTIFICATION OF TYPE SIZE AND STYLE

I HEREBY CERTIFY that the size and style of type used in this
motion is 12-point Courier New, in compliance with Fla. R. App. P.
9.210(a)(2).

COUNSEL FOR PETITIONER
