

IN THE
SUPREME COURT OF FLORIDA

VINCENT J. ROEBUCK,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No.

District Court Case No. 1D05-2882

JURISDICTIONAL BRIEF OF PETITIONER

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C. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS.

Vincent J. Roebuck (hereinafter Petitioner Roebuck) was convicted after a jury trial of one count of lewd or lascivious battery, pursuant to section 800.04(4)(a), Florida Statutes. The offense allegedly occurred in 2004 in Leon County, Florida. The alleged victim (A.B.)¹ was fourteen years old at the time that she made the allegation.

At trial, defense counsel proffered (outside the presence of the jury) that A.B. had made a previous false criminal accusation against her brother. A.B. acknowledged that when she lived in the Virgin Islands, she accidentally burned herself on her face with an iron. When questioned about the burn by her teachers, a nurse, and her mother, A.B. blamed the burning incident on her brother. A.B. admitted that she had lied about the allegation (i.e., her brother did not actually burn her). As a result of the false accusation, A.B.'s brother was sent to jail and/or a juvenile detention center for six months. At the conclusion of the proffered testimony, the trial court ruled that Appellant Roebuck would not be able to present to the jury the testimony regarding A.B.'s previous false criminal accusation.

¹ Out of respect for all of the parties in this case, only the initials of the alleged minor victim will be used in this brief. *See J.H.C. v. State*, 642 So. 2d 601, 601 n.1 (Fla. 2d DCA 1994).

On appeal, Petitioner Roebuck argued that the trial court erred by preventing him from introducing evidence that the alleged victim had made a previous false criminal accusation. In support of his argument, Petitioner Roebuck relied upon *Cliburn v. State*, 710 So. 2d 669 (Fla. 2d DCA 1998), *Jaggers v. State*, 536 So. 2d 321 (Fla. 2d DCA 1988), and *Williams v. State*, 386 So. 2d 25 (Fla. 2d DCA 1980), wherein the Second District Court of Appeal held that a defendant has a right to impeach a witness if the witness has previously made a false criminal accusation.

On March 30, 2007, the First District Court of Appeal issued a written opinion affirming Petitioner Roebuck's conviction. *See Roebuck v. State*, 32 Fla. L. Weekly D846 (Fla. 1st DCA March 30, 2007). A copy of the district court's decision is included in the appendix to this brief. In the decision, the First District rejected the Second District's "false accusation" line of cases and held that section 90.610, Florida Statutes, prohibits a defendant from impeaching a witness based on a previous false criminal accusation. *See Roebuck*, 32 Fla. L. Weekly at D847-48. The First District certified conflict with *Cliburn* and *Jaggers*. *See Roebuck*, 32 Fla. L. Weekly at D847 ("However, in affirming as to appellant's first issue, we certify conflict with *Cliburn v. State*, 710 So. 2d 669 (Fla. 2d DCA 1998), and *Jaggers v. State*, 536 So. 2d 321 (Fla. 2d DCA 1988), to the extent these cases create a false reporting exception to section 90.610, Florida Statutes (2005).").

In light of the certified conflict, Petitioner Roebuck requests the Court to accept jurisdiction in this case. Petitioner Roebuck submits that it is necessary for this Court to resolve the conflict among the district courts regarding whether a witness can be impeached with a previous false criminal accusation.

D. SUMMARY OF ARGUMENT.

There is a current conflict among the district courts as to whether a witness can be impeached with a previous false criminal accusation. The First District Court of Appeal in the instant case held that section 90.610, Florida Statutes, does not allow a criminal defendant to impeach a witness with a previous false criminal accusation. In contrast, the Second District Court of Appeal has held that a criminal defendant has the right to impeach a witness with a previous false criminal accusation. *See Cliburn v. State*, 710 So. 2d 669 (Fla. 2d DCA 1998); *Jaggers v. State*, 536 So. 2d 321 (Fla. 2d DCA 1988); *Williams v. State*, 386 So. 2d 25 (Fla. 2d DCA 1980). In the decision below, the First District certified conflict with *Cliburn* and *Jaggers*. Accordingly, Petitioner Roebuck submits that it is proper for this Court to accept jurisdiction and resolve this conflict.

E. JURISDICTIONAL STATEMENT.

The Court has discretionary jurisdiction to review a decision of a district court of appeal that is certified by it to be in direct conflict with a decision of

another district court of appeal. *See* Art. V, § 3(b)(4), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(vi).

F. ARGUMENT AND CITATIONS OF AUTHORITY.

The district court below certified that its decision is in direct conflict with *Cliburn v. State*, 710 So. 2d 669 (Fla. 2d DCA 1998), and *Jaggers v. State*, 536 So. 2d 321 (Fla. 2d DCA 1988), regarding whether a witness can be impeached with a previous false criminal accusation.

At trial, Petitioner Roebuck attempted to impeach the alleged victim with a previous false criminal accusation that she had made against her brother. The alleged victim admitted (in a proffer) that she had, in fact, falsely accused her brother of a crime and that he was prosecuted based on her false accusation. Despite this admission, the trial court prohibited Petitioner Roebuck from impeaching the alleged victim with the previous false criminal accusation. On appeal, the First District Court of Appeal affirmed, holding that section 90.610, Florida Statutes, does not allow a criminal defendant to impeach a witness with a previous false criminal accusation. *See Roebuck v. State*, 32 Fla. L. Weekly D846, D847-48 (Fla. 1st DCA March 30, 2007).

In contrast, the Second District Court of Appeal has held that a criminal defendant has the right to impeach a witness with a previous false criminal accusation. *See Cliburn v. State*, 710 So. 2d 669 (Fla. 2d DCA 1998); *Jaggers v. State*, 536 So. 2d 321 (Fla. 2d DCA 1988); *Williams v. State*, 386 So. 2d 25 (Fla. 2d DCA 1980). In *Williams*, the defendant was charged with murder and the

defendant's version of events at trial conflicted with the version provided by the only other witness to the crime. The defense attempted to impeach the witness by establishing that the witness had lied to the police on a previous occasion,² but the trial court prevented the impeachment. *See Williams*, 386 So. 2d at 26. The Second District reversed, reasoning:

The trial court erred in refusing to allow the defense to cross-examine Brown regarding her prior false statement to the police. Brown was the key prosecution witness because she was the only witness to the shooting other than Williams. Thus, her credibility was a crucial issue. In *Stradtman v. State*, 334 So. 2d 100, 101 (Fla. 3d DCA 1976), the Third District Court of Appeal held:

It is a well recognized rule that limiting the scope of cross-examination in a manner which keeps from the jury relevant and important facts bearing on the trustworthiness of crucial testimony constitutes error, especially where the cross-examination is directed to the key prosecution witness.

We agree and hold that it was error for the court to refuse to permit defense counsel to impeach Brown's credibility by showing that she had lied to the police on a prior occasion. This right is particularly important in a capital case such as this where a defendant's right to cross-examine witnesses is carefully guarded, and limiting cross-examination on any matter plausibly relevant to the defense may constitute reversible error.

Williams, 386 So. 2d at 26-27 (footnote omitted) (citations omitted).

² The previous lie involved an incident where the witness observed a known person throw a brick at her car, which caused the witness to call the police, but when the police arrived, the witness lied and said that she did not know who had thrown the brick. *See Williams*, 386 So. 2d at 26.

Similarly, in *Jagers*, the Second District held that a child witness who testified regarding similar sexual acts committed by the defendant could be impeached based on her prior false accusation of sexual assault:

The state succeeded in persuading the trial court to restrict appellant's cross-examination on the basis of the very broad general principle of law that the credibility of a witness may not be impeached by proof that the witness has committed specific acts of misconduct However, for every broad general principle of law, there seems to be an exception applicable to particular circumstances. Section 90.405(2), Florida Statutes (1985) allows proof of specific incidents of conduct where that evidence is offered to prove a particular trait of character. In this case, that trait of character was that the witness may be inclined to lie about sexual incidents and charge people with those acts without justification.

There is a long line of authority from this court and others which permits the type of testimony on cross-examination that was prohibited here. Evidence that is relevant to the possible bias, prejudice, motive, intent or corruptness of a witness is nearly always not only admissible, but necessary, where the jury must know of any improper motives of a prosecuting witness in determining that witness' credibility. That is particularly true in the case of allegations of sexual abuse where there is no independent evidence of the abuse and the defendant's sole defense is either fabrication or mistake on the part of the alleged victims.

. . . .

The trial court erred in refusing to allow the defense to cross-examine Brown regarding her prior false statement to the police. Brown was the key prosecution witness because she was the only witness to the shooting other than Williams. Thus, her credibility was a crucial issue.

Jagers, 536 So. 2d at 327-28.

Finally, in *Cliburn*, the defendant was charged with burglarizing his former girlfriend's apartment. The defendant attempted to introduce evidence that the

former girlfriend had previously filed a false kidnapping charge against another boyfriend, but the trial court held that the evidence regarding the previous false accusation was inadmissible. *See Cliburn*, 710 So. at 670. The Second District reversed, stating:

The victim was the prosecution's key witness on the burglary charge. In fact, she was the State's only witness to the events constituting the charged crime. As we noted in *Williams v. State*, 386 So. 2d 25, 26 (Fla. 2d DCA 1980), the credibility of such a witness is a crucial issue. In that case, we held that the trial court erred when it refused to allow defense counsel to impeach the State's key witness by showing that she had made a false statement to police on a previous occasion. *Id.* at 26-27. Moreover, in *Jaggers v. State*, 536 So. 2d 321, 327 (Fla. 2d DCA 1988), where the witness previously had made a false allegation of sexual abuse, we noted that evidence relevant to a prosecuting witness's possible bias or corruptness is admissible. When assessing a key witness's credibility, the jury must know about any improper motives. *Id.*

The reasoning in *Williams* and *Jaggers* requires reversal of the burglary conviction in this case. We remand for a new trial on that count. The proffered testimony concerning the false police report is admissible on retrial.

Cliburn, 710 So. 2d at 670. *See also Clark v. State*, 567 So. 2d 1070, 1071 (Fla. 3d DCA 1990) (holding that the trial court erred by preventing defense from questioning witness about whether she had lied about a previous accusation).

In the opinion below, the First District recognized the "false accusation" line of cases from the Second District, but the First District rejected the Second District's reasoning:

In his first issue, appellant asserts the trial court erred in preventing him from introducing evidence that A.B. had previously falsely accused her brother of physical abuse. Section 90.610, Florida Statutes, provides that a party may attack the credibility of any witness through the presentation of evidence establishing that a witness has been (1) convicted of a crime punishable in excess of one year's imprisonment, or (2) convicted of a crime of dishonesty or false statement. Thus, as a general rule, credibility may not be attacked by proof that a witness committed specific acts of misconduct which did not end in a criminal conviction.

However, the Second District has recognized an exception to section 90.610 where a witness has previously falsely reported an incident to authorities even though the witness has never been convicted of the false report. The exception was first noted in *Jagers*, 536 So. 2d at 321. But see *Williams v. State*, 386 So. 2d 25, 26 (Fla. 2d DCA 1980) (reversing based on trial court's failure to allow evidence of a prior false report where credibility of the witness was crucial to the defense, without expressly acknowledging that such a ruling was based on an exception to section 90.610).

....

This court has never expressly adopted the Second District's precedent in this regard. See *Baker v. State*, 804 So. 2d 564 (Fla. 1st DCA 2002) (acknowledging the Second District's exception while declining to expressly adopt the exception where any error would have been harmless in light of defendant's confession); *Reeves v. State*, 862 So. 2d 60 (Fla. 1st DCA 2003) (declining to rule on applicability of the Second District's false reporting exception because the witness in question had not admitted that her previous accusation was false); *State v. Taylor*, 928 So. 2d 473 (Fla. 1st DCA 2006) (again declining to rule on the Second District's false reporting exception where certiorari review did not require the same standard of review as the direct appeal of a conviction). However, for the following reasons, we respectfully decline to adopt the exception and certify conflict with the line of cases adopting a false reporting exception to section 90.610, Florida Statutes.

First, the Legislature adopted the express wording of section 90.610, Florida Statutes, in an effort to bar all character impeachment based on prior misconduct that did not involve a criminal conviction. The plain language of section 90.610, Florida Statutes, authorizes

impeachment with only prior convictions; there is no exception written into or considered by the statute. When a statute is clear on its face, the plain meaning must control. Although Federal Rule of Evidence 608(b) specifically allows character impeachment through prior misconduct without a criminal conviction requirement, the Florida Legislature chose to adopt our evidence code without this language. Professor Charles Ehrhardt, an acknowledged expert on Florida evidence, states:

Occasionally decisions ignore the limitation and permit impeachment with prior acts of misconduct of a witness when they involve prior false accusations of a crime by the witness.

....

The drafters of the Code specifically intended not to adopt [a] provision similar to Federal Rule 608(b) because it did not reflect the existing Florida law and because they felt the possibility for abuse of this type of evidence was great.

C. Ehrhardt, Florida Evidence § 610.8 (2006 Edition). The statute as written properly implements legislative intent, and it is not for this court to add unwritten provisions to the statute where the statute is clear on its face.

Second, in *Jaggers* and *Cliburn*, the Second District provided for an exception from the statute without articulating a specific legal reason for its creation.

Roebuck, 32 Fla. L. Weekly at D847 (some citations omitted). In light of its disagreement with the Second District, the court below certified conflict with

Cliburn and *Jaggers*:

[We] certify conflict with the line of cases adopting a false reporting exception to section 90.610, Florida Statutes.

Roebuck, 32 Fla. L. Weekly at D847.

Accordingly, for all of the reasons set forth above, Petitioner Roebuck submits that there is a clear conflict among the district courts – a conflict that is both express and direct (as established by the certification from the court below). Petitioner Roebuck respectfully requests the Court to accept jurisdiction in this case and resolve the conflict between the First and Second Districts regarding whether a witness can be impeached with a previous false criminal accusation. There is a need for clarity on this issue because the issue frequently arises in criminal cases.

G. CONCLUSION.

The Court has discretionary jurisdiction to review the decision below. The Court should exercise its discretion and resolve the conflict among the district courts regarding whether a witness can be impeached with a previous false criminal accusation.

H. CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished to:

Assistant Attorney General Giselle Lylen Rivera
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by U.S. mail delivery this 3rd day of May, 2007.

Respectfully submitted,

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I. CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies pursuant to Florida Rule of Appellate Procedure 9.210(a)(2) that the Jurisdictional Brief of Petitioner complies with the type-font limitation.

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