APPENDIX G (Additional to Previous Amend/"Supplemental Brief" Per Rule 15(g))

MYRON FRANKLIN, Appellant, v. STATE OF FLORIDA, Appellee.
COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT
876 So. 2d 607; 2004 Fla. App. LEXIS 8361; 29 Fla. L. Weekly D 1445
CASE NO. 4D03-741
June 16, 2004, Opinion Filed

Editorial Information: Subsequent History

Released for Publication July 22, 2004. Rehearing denied by Franklin v. State, 2004 Fla. App. LEXIS 11360 (Fla. Dist. Ct. App. 4th Dist., July 22, 2004)US Supreme Court certiorari denied by, Motion granted by Fla. v. Franklin, 543 U.S. 1081, 125 S. Ct. 890, 160 L. Ed. 2d 825, 2005 U.S. LEXIS 289 (U.S., Jan. 10, 2005)

Editorial Information: Prior History

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; James I. Cohn, Judge; L.T. Case No. 01-20804CF10A.

Disposition:
Reversed and remanded.

Counsel Carey Haughwout, Public Defender, and Ian Seldin, Assistant Public Defender, West Palm Beach, for appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and James J. Carney, Sr. Assistant Attorney General, West Palm Beach, for appellee.

Judges: GUNTHER, POLEN and GROSS, JJ., concur.

CASE SUMMARY

PROCEDURAL POSTURE: The Circuit Court for the Seventeenth Judicial Circuit, Broward County (Florida), convicted defendant of robbery with a firearm, aggravated fleeing and eluding, and grand theft of a motor vehicle. Defendant appealed. Where defendant was not advised of his right to consult with a lawyer during questioning, his convictions were reversed. As his two statements filled in gaps in the State's case, the error was not harmless.

OVERVIEW: Defendant appealed his convictions. Central to the conviction, and at issue on appeal, were two statements he gave while in the hospital. In examining these statements, the appeals court held that the Miranda warnings given were deficient. At the suppression hearing, the defense offered 90 rights forms obtained from federal and state law enforcement agencies. Eighty-nine of these forms properly indicated that the suspect could consult with a lawyer during questioning. Only the form utilized in the instant case omitted that portion of the Miranda warning, and this was reversible error. Furthermore, as defendant's two statements filled in gaps in the State's case, the error was not harmless.

OUTCOME: The judgment was reversed, and the case was remanded for a new trial.

LexisNexis Headnotes

Furthermore, the error in this case was not harmless. Harmless error **{876 So. 2d 609}** exists where the state can prove beyond a reasonable doubt that the error did not contribute to the verdict. See State v. DiGuilio, 491 So. 2d 1129, 1135 (Fla. 1986); Sims v. State, 839 So. 2d 807, 811 (Fla. 4th DCA2003). "Application of the test requires an examination of the entire record by the appellate court including a close examination of the permissible evidence on which the jury could have legitimately relied, and in addition an even closer examination of the impermissible evidence which might have possibly influenced the jury verdict." DiGuilio, 491 So. 2d at 1135.

Here, Franklin's two statements filled in gaps in the state's case. We cannot say beyond a reasonable doubt that they did not contribute to the verdict.

Reversed and remanded for a new trial.

GUNTHER, POLEN and GROSS, JJ., concur.

Footnotes

1

Miranda v. Arizona, 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966).