

SUPREME COURT OF FLORIDA

State v. DiGuilio

491 So. 2d 1129 (Fla. 1986) · No. No. 65490 · Decided July 17, 1986

SUMMARY

The Florida Supreme Court held that prosecutorial comments on a defendant's post-arrest silence are subject to harmless-error analysis rather than automatic reversal. Applying the Chapman standard, the court concluded that the impermissible comment in this case was harmful beyond a reasonable doubt and quashed the conviction for conspiracy to traffic in cocaine. The opinion also addressed Florida's prior per se reversal rules and the relationship between those rules, legislative harmless-error provisions, and constitutional protections.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Shaw, J.; McDonald, C.J.; Boyd, J.; Overton, J.; Adkins, J.; Ehrlich, J.; Barkett, J.
JURISDICTION	Florida
DECIDED	July 17, 1986
DOCKET	No. 65490
DISPOSITION	approved
PROCEDURAL POSTURE	On rehearing of a Florida Supreme Court decision concerning the harmless-error treatment of a prosecutor's comment on the defendant's post-arrest silence, following certification of a question by the Florida Fifth District Court of Appeal.
STANDARD OF REVIEW	Harmless constitutional error: the State bears the burden of proving beyond a reasonable doubt that the error did not contribute to the verdict, or that there is no reasonable possibility that the error contributed to the conviction. The appellate court must examine the entire record, including both the permissible evidence and the impermissible evidence.
PRECEDENTIAL VALUE	Published binding precedent of the Supreme Court of Florida
PARTIES	State of Florida v. Angelo John DiGuilio

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QUESTIONS PRESENTED

1. Whether a prosecutor's comment on a defendant's post-arrest silence after the defendant answered some questions constitutes constitutional error.
2. Whether comments on a defendant's post-arrest silence are subject to harmless-error analysis rather than automatic per se reversal.
3. Whether the comment on DiGuilio's silence was harmless beyond a reasonable doubt on the record of this case.

HOLDINGS

1. A defendant may invoke the right to remain silent at any time before or during questioning; therefore, a comment on the defendant's invocation of that right after answering some questions is constitutional error.
2. Comments on a defendant's silence are subject to harmless-error analysis; they are not automatically per se reversible unless the type of constitutional error is one that always vitiates the right to a fair trial.
3. The State must prove beyond a reasonable doubt that the error did not contribute to the verdict, or that there is no reasonable possibility that the error contributed to the conviction.
4. The comment was not harmless beyond a reasonable doubt and constituted reversible error because the permissible evidence was ambiguous and the impermissible testimony highlighted DiGuilio's failure to provide an innocent explanation and his failure to testify.

KEY QUOTATIONS

“The harmless error test, as set forth in Chapman and progeny, places the burden on the state, as the beneficiary of the error, to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction.” (491 So. 2d at 1135)

“The question is whether there is a reasonable possibility that the error affected the verdict. The burden to show the error was harmless must remain on the state. If the appellate court cannot say beyond a reasonable doubt that the error did not affect the verdict, then the error is by definition harmful.” (491 So. 2d at 1139)

FACTUAL BACKGROUND

DiGuilio was arrested with Rosa after Rosa returned to a motel with DiGuilio and cocaine during an undercover controlled-buy operation. After receiving Miranda warnings, DiGuilio answered some questions, refused to provide an address or identify the driver, and said he felt he should speak to an attorney. A police officer testified about those events, and the testimony was susceptible to interpretation as a comment on DiGuilio's invocation of

his right to remain silent. The jury acquitted DiGuilio of trafficking but convicted him of conspiracy to traffic in cocaine.

PROCEDURAL HISTORY

DiGuilio was convicted by a jury of conspiracy to traffic in cocaine. The Fifth District Court of Appeal reversed, applying Florida precedent treating a comment on a defendant's silence as per se reversible error, and certified a question of great public importance. The Florida Supreme Court granted rehearing, reaffirmed that the comment was constitutional error, applied harmless-error analysis itself, found the error harmful beyond a reasonable doubt, approved the district court's decision, and remanded for further proceedings.

DISPOSITION

approved

REMAND INSTRUCTIONS

The decision of the Florida Fifth District Court of Appeal is approved, and the cause is remanded for further proceedings consistent with the opinion. The conviction remains subject to reversal because the constitutional error was harmful.

CASES CITED

- State v. Murray, 443 So. 2d 955 (Fla. 1984)
- United States v. Hasting, 461 U.S. 499 (1983)
- Donovan v. State, 417 So. 2d 674 (Fla. 1982)
- Shannon v. State, 335 So. 2d 5 (Fla. 1976)
- Bennett v. State, 316 So. 2d 41 (Fla. 1975)
- DiGuilio v. State, 451 So. 2d 487 (Fla. 5th DCA 1984)
- Miranda v. Arizona, 384 U.S. 436 (1966)
- Michigan v. Mosley, 423 U.S. 96 (1975)
- Peterson v. State, 405 So. 2d 997 (Fla. 3d DCA 1981)
- Thompson v. State, 386 So. 2d 264 (Fla. 3d DCA 1980)
- State v. Kinchen, 490 So. 2d 21 (Fla. 1985)
- David v. State, 369 So. 2d 943 (Fla. 1979)
- Gordon v. State, 104 So. 2d 524 (Fla. 1958)
- Trafficante v. State, 92 So. 2d 811 (Fla. 1957)
- Way v. State, 67 So. 2d 321 (Fla. 1953)
- Rowe v. State, 87 Fla. 17, 98 So. 613 (1924)
- Jones v. State, 200 So. 2d 574 (Fla. 3d DCA 1967)
- State v. Marshall, 476 So. 2d 150 (Fla. 1985)
- Chapman v. California, 386 U.S. 18 (1967)

- Delaware v. Van Arsdall, 475 U.S. 673 (1986)
- United States v. Mechanik, 475 U.S. 66 (1986)
- United States v. Lane, 474 U.S. 438 (1986)
- Clark v. State, 363 So. 2d 331 (Fla. 1978)
- Arango v. State, 437 So. 2d 1099 (Fla. 1983)
- Spenkelink v. Wainwright, 372 So. 2d 927 (Fla. 1979) (Alderman, J., concurring specially)
- Jackson v. State, 421 So. 2d 15 (Fla. 3d DCA 1982)
- Bertolotti v. State, 476 So. 2d 130 (Fla. 1985)
- Wilson v. United States, 149 U.S. 60 (1893)
- Griffin v. California, 380 U.S. 609 (1965)
- Albano v. State, 89 So. 2d 342 (Fla. 1956)
- Jackson v. State, 45 Fla. 38, 34 So. 243 (1903)
- Steffanos v. State, 80 Fla. 309, 86 So. 204 (1920)
- State v. Moxley, 102 Mo. 374, 14 S.W. 969 (1890)
- Hart v. State, 38 Fla. 39, 20 So. 805 (1896)
- Hawkins v. State, 29 Fla. 554, 10 So. 822 (1892)
- Miller v. State, 15 Fla. 577 (1876)
- Barber v. State, 13 Fla. 675 (1871)
- People v. Ross, 67 Cal. 2d 64, 429 P.2d 606, 60 Cal. Rptr. 254 (1967), rev'd sub nom. Ross v. California, 391 U.S. 470 (1968)
- Ross v. California, 391 U.S. 470 (1968)
- Kotteakos v. United States, 328 U.S. 750 (1946)

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