

Supreme Court of Florida

No. SC02-619

JOSEPH MCBRIDE,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[September 30, 2004]

PER CURIAM.

We have for review McBride v. State, 816 So. 2d 656 (Fla. 2d DCA 2002), which expressly and directly conflicts with this Court's decision in Cardenas v. State, 867 So. 2d 384 (Fla. 2004), on the harmless error analysis to be applied in DUI cases in which an instruction on the statutory presumption of impairment is given in error. We have jurisdiction. See art. V, § 3(b)(3), Fla. Const. We accept this case for review, quash the decision of the Second District Court of Appeal, and remand for reconsideration in light of our opinion in Cardenas.

It is so ordered.

PARIENTE, C.J., and ANSTEAD, LEWIS, CANTERO and BELL, JJ., concur.
WELLS, J., dissents with an opinion, in which QUINCE, J., concurs.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND
IF FILED, DETERMINED.

WELLS, J., dissenting.

I dissent for the reasons stated in Cardenas v. State, 867 So. 2d 384, 397-98
(Fla. 2004) (Wells, J., concurring in part and dissenting in part).

QUINCE, J., concurs.

Application for Review of the Decision of the District Court of Appeal - Direct
Conflict

Second District - Case No. 2D99-2629

(Hillsborough County)

James Marion Moorman, Public Defender and Joseph N. D'Achille, Jr., Special
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for Petitioner

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General and Susan D. Dunlevy, Assistant Attorney General, Tampa, Florida,

for Respondent