

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2011

AUGUST URBANEK,
Petitioner,

v.

GERALD URBANEK, COMMERCIAL MANAGEMENT CORPORATION,
and **PHILIP W. HOPKINS,** as Trustee,
Respondents.

No. 4D10-2459

[January 26, 2011]

PER CURIAM.

August Urbanek seeks certiorari review of a non-final order compelling him to answer certain interrogatories that he refused to answer based on his Fifth Amendment privilege against self-incrimination. At issue are questions surrounding a tape recorded conversation. We grant his petition with respect to questions four through seven, which concern the details surrounding the decision to tape, the taping itself, the equipment used, and whether the tape was altered or edited. *See generally, Belniak v. McWilliams*, 44 So. 3d 1282 (Fla. 2d DCA 2010). The record does not reflect that the privilege is being used in this case as a “sword and shield.” *DeLisi v. Bankers Ins. Co.*, 436 So. 2d 1099 (Fla. 4th DCA 1983). Also, we reject any suggestion that petitioner waived the privilege by acknowledging that the conversation at issue was tape recorded. *Pisciotti v. Stephens*, 940 So. 2d 1217 (Fla. 4th DCA 2006).

Certiorari granted and order quashed.

GROSS, C.J., WARNER and TAYLOR, JJ., concur.

* * *

Petition for writ of certiorari to the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Mel Grossman, Judge; L.T. Case No. 07-4536-603.

David Howard Goldberg of Ellis & Goldberg, P.L., Miami, and Michael J. Weber of Michael J. Weber, P.A., Miami, for petitioner.

Jesse H. Diner, Jack Geckler and Sean P. Sullivan of Atkinson, Diner, Stone, Mankuta & Ploucha, P.A., Fort Lauderdale, for respondents Gerald Urbanek and Commercial Management Corporation.

Not final until disposition of timely filed motion for rehearing.