

IN THE SUPREME COURT OF APPEAL

**FILED**

APR 11 1983 ✓

**SID J. WHITE**  
**CLERK SUPREME COURT**  
By \_\_\_\_\_  
Chief Deputy Clerk *jd*

PEDRO CRUZ, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
STATE OF FLORIDA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Case No. 63,451

ON DISCRETIONARY REVIEW OF THE DISTRICT  
COURT OF APPEAL OF FLORIDA IN AND FOR THE SECOND DISTRICT

BRIEF OF RESPONDENT ON JURISDICTION

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OTHER AUTHORITIES:

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## PRELIMINARY STATEMENT

The Petitioner was the defendant in Hillsborough County Circuit Court and Appellee in the Second District Court of Appeal and will be referred to as "Petitioner" in this brief. Respondent was the Plaintiff in the trial court and the Appellant in the Second District Court of Appeal and will be referred to as "State" or "Respondent" in this brief.

### STATEMENT OF THE CASE AND FACTS

Petitioner seeks to invoke the jurisdiction of this Court pursuant to Rule 9.030(a)(2)(a)(iv), Florida Rules of Appellate Procedure.

Respondent will rely on the opinion of the Second District Court of Appeal in State v. Cruz, Case No. 82-1502, opinion filed February 25, 1983, for a comprehensive statement of the case and facts and also accepts the statement of the case and facts filed herein by the Petitioner.

### QUESTION PRESENTED

WHETHER THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN THE INSTANT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH STATE V. CASPER, 417 So.2d 263 (Fla. 1st DCA 1982) ON THE SAME POINT OF LAW.

### ARGUMENT

THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN STATE V. CASPER, 417 So.2d 263 (Fla. 1st DCA 1982) MAY BE DISTINGUISHED FROM THE CASE AT BAR.

Respondent must agree with the Second District Court of Appeal that the facts of the instant case and State v. Casper, 417 So.2d 263 (Fla. 1st DCA 1982) are nearly identical, and thus, the cases would appear to be in conflict.

The Second District in its opinion in State v. Cruz, Case No. 82-1502, opinion filed February 25, 1983, acknowledges that the law relating to entrapment is correctly set forth in Casper, supra. but held that where a defendant's state of mind or predisposition to commit a crime is at issue the entrapment question cannot be resolved on a motion to dismiss pursuant to Rule 3.190(c)(4), Florida Rules of Criminal Procedure. This argument was not advanced in Casper, supra. until the petition for rehearing and was given only cursory consideration by that Court. See Casper, supra. at 265, 266. For this reason, Respondent submits that Casper may be distinguished from the instant case.

#### CONCLUSION

Based on the foregoing arguments and authorities, Respondent respectfully requests that this Court decline to exercise its discretionary jurisdiction since no conflict exists. Should this Honorable Court determine, however, that there is express and direct conflict between the instant case and Casper, Respondent would submit that this is an issue of statewide impact and should be resolved by this Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Robert F. Moeller, Assistant Public Defender, Courthouse Annex, Tampa, Florida, 33602, this 8th day of April, 1983.

*Ann Harrison Paschall*  
\_\_\_\_\_  
Of Counsel for Respondent