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IN THE SUPREME COURT OF FLORIDA

63,451

PEDRO A. CRUZ,)
 Defendant/Petitioner,)
)
 v.)
)
 STATE OF FLORIDA,)
 Plaintiff/Respondent.)
)
)

CASE NO: _____

FILED

MAR 31 1983

SID J. WHITE
CLERK SUPREME COURT

By _____
Chief Deputy Clerk

PETITIONER'S BRIEF ON JURISDICTION

JERRY HILL
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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TOPICAL INDEX AND STATEMENT OF ISSUES

	<u>PAGE</u>
STATEMENT OF THE CASE AND FACTS	1-2
ARGUMENT	
THIS COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL, WHICH EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL ON THE SAME QUESTION OF LAW.	3-4
CONCLUSION	5
CERTIFICATE OF SERVICE	5

CITATIONS OF AUTHORITY

PAGE

State v. Casper,
417 So.2d 263 (Fla. 1st DCA 1982)

3, 4

IN THE SUPREME COURT OF FLORIDA

PEDRO A. CRUZ,)
Defendant/Petitioner,)
v.) CASE NO: _____
STATE OF FLORIDA,)
Plaintiff/Respondent.)
_____)

STATEMENT OF THE CASE AND FACTS

The petitioner, Pedro Cruz, was charged with grand theft. Cruz moved to dismiss under Florida Rule of Criminal Procedure 3.190(c)(4) on the ground he was entrapped as a matter of law. The trial court granted Cruz's motion, basing its ruling on State v. Casper, 417 So.2d 263 (Fla. 1st DCA 1982). (P. 2 of appendix)

The undisputed facts showed:

1. A police decoy dressed as a drunken bum, simulated the state of intoxication, pretended to drink wine from a bottle, and was coughing and belching.
2. The decoy was stationed near an alleyway leaning near a building with \$150.00 in bills hanging from his right rear pocket.
3. The petitioner approached the decoy and attempted to speak with him and walked away.
4. The petitioner later came back and after pausing for a moment lifted the money from the decoy's pocket.

After defense counsel argued Casper, the trial court dismissed the charge against the petitioner. However, on review, the Second District Court of Appeal reversed. Noting the facts in the case at bar are identical to those in Casper, the Court nevertheless held that the facts did not constitute entrapment as matter of law. (P. 7 of appendix.)

ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW THE
DECISION OF THE SECOND DISTRICT COURT OF
APPEAL, WHICH EXPRESSLY AND DIRECTLY CONFLICTS
WITH A DECISION OF ANOTHER DISTRICT COURT OF
APPEAL ON THE SAME QUESTION OF LAW.

The question of law involved herein is whether entrapment as a matter of law exists when a defendant takes money protruding from a pocket of a police decoy, a seemingly drunken bum, where there was no evidence that the defendant was predisposed to engage in criminal activity, and where the police decoy provided an opportunity to commit a crime to anyone who succumbed to temptation. In its decision, the Second District Court of Appeal answered in the negative. The court held that although entrapment as a matter of law exists, the facts did not necessarily negate the conclusion that petitioner was predisposed to commit the crime.

This decision expressly conflicts with the decision of the First District Court of Appeal in State v. Casper, 417 so.2d 263 (Fla. 1st DCA 1982). In Casper, the court found that the police decoy was dressed as a drunken bum and had \$150 in bills protruding from his pocket. If someone approached him he would not respond. The defendant walked by the decoy, returned and removed the money protruding from his pocket. The First District Court of Appeal held that no ready acquiescence was shown and that the defendant's acts demonstrated he only succumbed to temptation.

In the case at bar, the Second District Court of Appeal acknowledged the conflict. In fact it stated:

As noted, the facts in this case are nearly identical to those in Casper. We disagree with our sister court that such facts constitute entrapment as a matter of law. Our decision, we acknowledge, conflicts with State v. Casper.

(P. 7 of appendix)

In sum, the Second District Court of Appeal created express and direct conflict with the case discussed above, vesting jurisdiction in this Court. Appellant also asserts that the above police tactic is a continuing operation throughout Hillsborough County if not the State of Florida, and therefore requires a resolution by this Court.

CONCLUSION

Based upon the foregoing argument, reasoning, and citations of authority, this Court has jurisdiction to review the decision of the Second District Court of Appeal, pursuant to Article V, Section 3(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv).

Appellant respectfully suggests that the Court should accept jurisdiction and decide this case to maintain uniformity within appellate decisions in Florida.

Respectfully submitted,

JERRY HILL
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to the Office of the Attorney General, Park Trammell Building, 1313 Tampa Street, 8th Floor, Tampa, Florida this 29th day of March, 1983.

Robert F. Moeller
Robert F. Moeller