

**FILED**

IN THE SUPREME COURT OF FLORIDA

SEP 2 1983 ✓

SID J. WHITE  
CLERK SUPREME COURT

Chief Deputy Clerk *pl*

VICTOR K. GOLDSTEIN,  
Defendant/Petitioner,

v.

STATE OF FLORIDA,  
Plaintiff/Respondent.

CASE NO: 64,168

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PETITIONER'S BRIEF ON JURISDICTION

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JERRY HILL  
PUBLIC DEFENDER  
TENTH JUDICIAL CIRCUIT

BY: Robert F. Moeller  
Assistant Public Defender  
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CASE NO: 64,168

STATEMENT OF THE CASE AND FACTS

Petitioner, Victor K. Goldstein, was charged with grand theft in the second degree by an information filed in circuit court in Hillsborough County on September 28, 1982.

On November 30, 1982 Goldstein filed a motion to dismiss, pursuant to Rule 3.190(c)(4) of the Florida Rules of Criminal Procedure. The motion alleged the following facts:

1. That on the date listed in the Information, the Defendant was in the vicinity [sic] of the Greyhound Bus Station on the Corner of Morgan and Polk Street.
2. That Det. Hogue of the Tampa Police Department was in this same vicinity [sic] dressed as a wino with money hanging out of his pocket.
3. That Det. Hogue did not have any suspect in mind as a possible pickpocket.
4. That the Defendant was not a suspect as a pickpocket.
5. That the Defendant is alleged to have taken the money from the pocket of Det. Hogue.
6. That this is entrapment as a matter [sic] of law according to State v. Casper.

The State did not file a traverse or otherwise dispute the facts set forth in Goldstein's motion.

The motion to dismiss was heard by the Honorable J. Rogers Padgett on December 1, 1982. At the hearing Goldstein's counsel mentioned as additional facts that Detective Hogue smelled of alcohol, and the amount of money protruding from his pocket was \$150.00.

The court denied the motion, and Goldstein entered a plea of no contest, specifically reserving his right to appeal the denial of his motion to dismiss.

The court adjudicated Goldstein guilty and sentenced him to six months in the county jail.

Goldstein appealed to the Second District Court of Appeal. The court initially affirmed Goldstein's conviction on May 27, 1983. However, after Goldstein filed a motion for clarification, the court withdrew its original opinion on July 27, 1983, and substituted the decision which is the subject of this proceeding. In the clarified opinion the court rejected Goldstein's argument that the facts asserted in his motion to dismiss constituted entrapment as a matter of law and affirmed his conviction, but acknowledged that this holding was in direct conflict with State v. Casper, 417 So.2d 263 (Fla. 1st DCA 1982). (Appendix, pp. 1-4).

Petitioner, Victor K. Goldstein, filed his notice in the Second District Court of Appeal to invoke the discretionary jurisdiction of this Court on August 24, 1983.

### ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN VICTOR K. GOLDSTEIN V. STATE OF FLORIDA, CASE NO. 82-2888, WHICH EXPRESSLY AND DIRECTLY CONFLICTS WITH STATE V. CASPER, 417 SO.2D 263 (FLA. 1ST DCA 1982) ON THE SAME QUESTION OF LAW.

The facts of this case are virtually indistinguishable from those of State v. Casper, 417 So.2d 263 (Fla. 1st DCA 1982). In each case the defendant was arrested after removing \$150.00 in currency which was protruding from the pocket of a police decoy who was posing as a drunken vagrant. In neither case were the police employing the decoy operation to apprehend any particular suspect. In Casper the First District Court of Appeal concluded that these facts constituted entrapment as a matter of law. The court held that to defeat Casper's motion to dismiss, the State would have had to allege facts tending to show a predisposition on his part to commit a crime. The Second District Court of Appeal reached an opposite conclusion in the instant case, and acknowledged direct conflict with Casper.

Thus, the decision of the Second District Court of Appeal in Goldstein expressly and directly conflicts with the decision of the First District Court of Appeal in Casper on the same question of law, to-wit: whether the police decoy tactic employed herein constitutes entrapment as a matter of law.

This Court has recently agreed to review two other cases involving almost identical police decoy operations. One of them, State v. Cruz, 426 So.2d 1308 (Fla. 2d DCA 1983), review granted, Case No.

63,451 (Fla. 1983), was cited by the Second District Court of Appeal in support of its Goldstein decision. (Oral argument in Cruz has been scheduled for November 10, 1983.) In the other case, State v. Holliday, 431 So.2d 309 (Fla. 1st DCA 1983), review granted, Case No. 63,832 (Fla. 1983), the First District Court of Appeal followed its decision in Casper. (Holliday actually involves three appeals which were consolidated.)

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 in Victor K. Goldstein v. State of Florida, Case Number 82-2888, pursuant to Article V, Section 3(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv).

Victor Goldstein respectfully suggests that this Court should accept jurisdiction and decide this case to maintain uniformity within appellate decisions in Florida. Resolution of the conflict involved herein is particularly important because police use of the decoy tactic at issue continues to be a common practice not only in the City of Tampa, but in other parts of Florida as well. See State v. Holliday, 431 So.2d 309 (Fla. 1st DCA 1983), review granted Case No. 63,832 (Fla. 1983).

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 and to the Petitioner, Victor K. Goldstein, # 090274, P.O. Box 99, Clermont, Florida 32711, this 31st day of August, 1983.

Robert F. Moeller  
Robert F. Moeller