IN THE SUPREME COURT OF FLORIDA

JERRY W. JOHNSON,

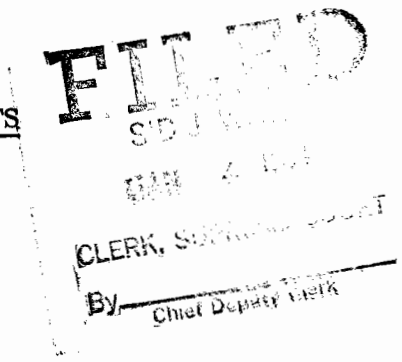
Appellant,

vs. CASE NO.: 64,628

STATE OF FLORIDA,

Appellee.

PETITIONER'S BRIEF ON THE MERITS



LOUIS O. FROST, JR.
PUBLIC DEFENDER

Ronald D. Trow
Assistant Public Defender

Fourth Judicial Circuit
407 Duval County Courthouse
Jacksonville, Florida 32202
904/633-6820

Attorney for Petitioner

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PRELIMINARY STATEMENT

Petitioner was the Appellant in the District Court of Appeal, First District, and the Defendant in the Circuit Court, in and for Duval County, Florida. Respondent was the Appellee and the Prosecution respectfully. The parties will be referred to as they appear before this Court.

The symbol (R.) followed by the appropriate volume and page number will refer to the record on appeal in the District Court. The symbol (A) will be used to designate the appendix to this brief.

STATEMENT OF THE CASE

Petitioner was arrested on June 14, 1982, for sale of a controlled substance. (R. at Vol. I, pages 1 and 2). On July 29, 1982, the Office of the Public Defender, Fourth Judicial Circuit, was appointed to represent Petitioner. The Petitioner entered a plea of not guilty the same day. (R. at Vol. II, pages 10 and 11 and R. at Vol. I, page 4).

On September 10, 1982, the Petitioner filed a Motion to Compel Disclosure of Confidential Informant (R. at Vol. I, pages 11 and 12) and a hearing on this motion was conducted the same day. (R. at Vol. II, pages 21 through 56). At the conclusion of the hearing, the trial court entered its written order deying the Petitioner's motion (R. at Vol. I, page 29) based on its findings stated on the record (R. at Vol. II, pages 50 through 55).

On November 2, 1982, after motions by this Petitioner were denied (R. at Vol. II, pages 91) the trial began (R. at Vol. II, pages 100 through R. at Vol. III, page 351). During the charge conference the Petitioner requested that a special jury instruction on the burden of proof regarding entrapment be given (R. at Vol. III, page 283) which was denied by the trial court. (R. at Vol. I, page 49 and R. at Vol. III, page 287). The court gave the standard instruction as amended (R. at Vol. III, pages 321 and 322). The jury requested the entrapment instruction three times during their six hours of deliberation (R. at Vol. III, pages 331, 339 and 345). The Petitioner was convicted of Count I of the information and on December 15, 1982, was adjudicated and sentenced to four years in the Florida State Prison. (R. at Vol. III, pages 384 and R. at Vol. I, pages 59 through 63).

On December 8, 1983, the First District Court of Appeals filed its opinion on Petitioner for Rehearing which certified the following question as passing upon a matter of great public importance. (A-1).

> IF THE STATE HAS THE BURDEN TO PROVE BEYOND A REASONABLE DOUBT THAT A DEFENDANT WAS NOT ENTRAPPED WHEN THAT DEFENSE HAS BEEN RAISED, IS

THE GIVING OF THE PRESENT ENTRAPMENT INSTRUCTION AS SET FORTH IN STANDARD JURY INSTRUCTION 3.04(c) ALONG WITH THE GENERAL REASONABLE DOUBT INSTRUCTION SUFFICIENT, NOTWITHSTANDING THE DEFENDANT HAVING SPECIFICALLY REQUESTED THE COURT TO INSTRUCT THE JURY THAT THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS NOT THE VICTIM OF ENTRAPMENT BY LAW ENFORCEMENT OFFICERS?

STATEMENT OF FACTS

On June 4, 1982, the Petitioner was approached by an individual now known to him as John Paul by the pool at a Howard Johnson's Motel located in Jacksonville Beach, Florida. John Paul was a paid confidential informant for the Federal Government used in the arrest and prosecution of Petitioner by the Respondent. (R. at Vol. I, pages 9 and 16) (R. at Vol II, page 143). During a conversation, both the Petitioner and John Paul were invited to a party that night. Petitioner agreed to give John Paul a ride to the party because John Paul indicated he knew where the location was (R. at Vol. III, page 227). After picking up John Paul, the Petitioner had a flat tire on the way to the party (R. at Vol. III, page 228). While changing the tire a conversation took place between Petitioner and John Paul regarding the fact that Petitioner couldn't work and was in dire financial shape due to a back injury he had sustained (R. at Vol. III, page 229). During the conversation, John Paul asked the Petitioner if he had any drugs. The Petitioner indicated he didn't and he didn't want any due to prior drug problems in his family (R. at Vol. III, page 229). At the party John Paul asked the Petitioner for a ride back to his room so he could pick up his drugs. The Petitioner stated he would give John Paul a ride back to his room but that the Petitioner would not be returning to the party (R. at Vol. III, page 230). On the way back to John Paul's motel room, John Paul indicated that he could help Petitioner earn some money and the Petitioner and John Paul exchanged phone numbers. The Petitioner did not see John Paul after dropping him off at his motel room any further on June 4, 1982 (R. at Vol. III, pages 230 and 231).

On June 5, 1982, the Petitioner was approached by John Paul at the pool a second time. John Paul stated to Petitioner, "Listen, you know, I got to get rid of some drugs and I need some help and if you do, you can earn some quick and easy money." The Petitioner replied, "Well, that sounds like a problem for you, not for me." (R. at Vol. III,

pages 231 and 232). The Petitioner did not see John Paul for the next three days (R. at Vol. III, page 232).

On June 8, 1982, John Paul phoned the Petitioner at his home and indicated that he wanted to see the Petitioner. John Paul intimated that it was urgent and important that he meet Petitioner. When the Petitioner indicated he could not get to the beach that day, John Paul asked Petitioner about getting together on the following day. The Petitioner indicated he would see if it could be arranged (R. at Vol. III, pages 232 and 233).

The following day, June 9, 1982, John Paul phoned the Petitioner's residence (R. at Vol. III, page 233). Later that day Petitioner met John Paul and they went to Howard Johnsons to get a few beers. During the ensueing conversation, John Paul "tried explaining what he would want me to do so I could earn one hundred dollars if I helped him get rid of some drugs because he had a court thing come up, he had to get rid of them before he went back." (R. at Vol. III, pages 233 and 234).

On June 10, 1982, John Paul phoned the Petitioner at his residence. The Petitioner told John Paul, "No, John Paul, I really, just forget about me, just, you know, do your own thing. I don't care." The Petitioner did not hear from or see John Paul until June 14, 1982 (R. at Vol. III, page 235).

On June 14, 1982, John Paul called the Petitioner at his residence in the morning. John Paul indicated to Petitioner that they must meet that day. He said it was "real urgent" and was persistent. This was the sixth time John Paul approached (emphasis supplied) the Petitioner. The Petitioner indicated he would try to meet him later that day (R. at Vol. III, page 235).

The previously mentioned numerous contacts by John Paul with the Petitioner are verified to some extent by the testimony of Doug Driver (R. at Vol. I, pages 73 and 78) (R. at Vol. II, pages 163 and 165), and Tommy Maxwell (R. at Vol. I, pages 106 and 108).

Later on the afternoon of June 14, 1982, the Petitioner met John Paul in the bar at Howard Johnson's Motel located in Jacksonville Beach. During the conversation John Paul said to Petitioner, "I've got to do this thing, you know, I've got to go, it's got to be done today." Petitioner replied, "John Paul, just forget it." The Petitioner and John Paul then went to Strickland's restaurant located across the street from Howard Johnsons. On the way there, John Paul handed the Petitioner a fifty dollar bill. John Paul stated, ". . . why don't you go over to Strickland's, buy yourself a beer, and if it's all right, I'll just borrow your car and run to my motel room, take me ten, fifteen minutes." Petitioner offered to drive John Paul. John Paul replied, "No, I just need to run down there and do something real quick, and I'll be right back." (R. at Vol. III, page 236). John Paul then borrowed Petitioner's car and later returned to Strickland's and gave Petitioner his car keys. John Paul stated, ". . . well, listen, I've already got this thing all set up and ready to go. I'll tell you what, you can keep the fifty dollars and I'll give you another four hundred and fifty dollars if you just go along with what we talked about on Wednesday afternoon," and which was he wanted some people to think there were more people involved so he could get a higher price for this drug . . . "just tell the person it's good, you know, and it's twenty-four hundred dollars . . ." The Petitioner replied, ". . . I don't want nothing to do with it, John Paul, I told you that before." John Paul replied, "Look, you don't have to go around the money, you don't have to go around the cocaine, you don't have to be anywhere around it, . . .". The Petitioner then reflected on his financial status and involvement and agreed to "pump up the story." (R. at Vol. III, pages 236 through 238).

John Paul, the confidential informant, then left Petitioner in Strickland's and went back across the street to Howard Johnsons. Some time later D.E.A. Special Agent Doug Driver and D.E.A. Special Agent Doc Shannon met with the confidential informant and engaged in a conversation regarding the sale of one ounce of cocaine for $2,400.00 (R.

at Vol. I, pages 57, 73, 74 and R. at Vol. II, page 154). The confidential informant told Agent Driver that the cocaine was in Petitioner's car (R. at Vol. I, pages 72, 82, 98, 115 through 116, 120) (R. at Vol. II, page 155). Agent Driver and the confidential informant then went across the street to Strickland's to meet Petitioner (R. at Vol. I, pages 73 and 74). Agent Driver was introduced to Petitioner by the confidential informant (R. at Vol. I, pages 74 and 75) (R. at Vol. II, page 143). In Strickland's, Agent Driver, the confidential informant and Petitioner were all party to, and all engaged in a conversation in which the price, quality, quantity and availability of cocaine was discussed (R. at Vol. I, pages 80, 81 and 89) (R. at Vol. II, page 155). The Petitioner then gave Agent Driver the keys to his car (R. at Vol. II, pages 76 and 81) (R. at Vol. II, page 147). This was the same car the confidential informant had borrowed from Petitioner earlier that afternoon (R. at Vol. III, page 236). The confidential informant and Agent Driver then went out to Petitioner's car, got the cocaine from under the seat, inspected and field tested it. Agent Driver and the confidential informant then returned to Strickland's, where Petitioner had stayed and tried to convince Petitioner to come outside and exchange the cocaine for the money (R. at Vol. I, pages 2 and 76) (R. at Vol. II, page 147). When Petitioner would not do so Agent Driver then went back to Petitioner's car, seized the cocaine and had Petitioner arrested (R. at Vol. I, pages 77, 116 annd 117) (R. at Vol. II, page 149).

The conversation between Agent Driver, the confidential informant and Petitioner was not witnessed by any other person, and while available, no audio or video equipment was used to record this conversation. The seized cocaine and its brown glass container was never processed for latent fingerprints (R. at Vol. I, page 89) (R. at Vol. II, pages 152 and 153).

ARGUMENT

I. THE TRIAL COURT ERRED IN NOT GRANTING THE PETITIONER'S REQUESTED JURY INSTRUCTION NUMBER ONE AND BY DOING SO THUS DENIED THE PETITIONER A FAIR TRIAL.

In the case before the Court, the Petitioner admitted committing the crime charged and also admitted each and every piece of evidence presented by the State. The Petitioner raised the defense of entrapment and the Trial Court instructed the jury on the defense of entrapment from Florida Standard Jury Instructions (Crim.) 3.04(c) (R. at Vol. III, pages 321 and 322). The Trial Court at the charge conference amended the standard instructions last paragraph to read (R. at Vol. III, page 286):

> "If you find from the evidence that the Defendant was entrapped, or if the evidence raises a reasonable doubt about WHETHER THE DEFENDANT WAS ENTRAPPED, you should find him not guilty."

(R. at Vol. III, pages 321 and 322).

The Petitioner at the charge conference provided the Trial Court and the State with a copy of Defendant's Requested Jury Instruction Number One (R. at Vol. I, page 49) (R. at Vol. III, page 283). This proposed instruction read:

> "The State must prove beyond a reasonable doubt that the Defendant was not the victim of entrapment by law enforcement officers or State agents and unless the State has done so, you should find the Defendant not guilty."

The Trial Court declined to give the Petitioner's requested special instruction (R. at Vol. I, page 49) (R. at Vol. III, page 287) and gave the standard instruction as amended, (supra), apparently on grounds that the requested special instruction was no longer part of the standard jury instructions in criminal cases. (R. at Vol. III, pages 284 through 287).

The Petitioner's requested special instruction was clearly appropriate and is based on both federal and Florida case law. State v. Casper, 417 So. 2d 263 (Fla. lst DCA 1982), Story v. State, 355 So. 2d 1213 (Fla. 4th DCA 1978), Dupuy v. State, 141 So. 2d 825 (Fla. 3rd DCA 1962), Moody v. State, 359 So. 2d 557 (Fla. 4th DCA 1978), United State v. Webster, 649 F.2d 346 (5th Cir. 1981), United States v. Hammond, 598 F.2d 1008 (5th Cir. 1979), United States v. Dickens, 524 F.2d 441 (5th Cir. 1975), United States v. Goodwin, 625 F.2d 693 (5th Cir. 1980).

The denial of Petitioner's special instruction regarding the burden being on the State to show the Defendant was not entrapped clearly was fundamental error in this case as the record shows that the jury during their six hours of deliberation asked for the entrapment instruction three times (R. at Vol. III, pages 331, 339 and 345). In Moody v. State, 359 So. 2d 557 (Fla. 4th DCA 1978), the Court stated, at page 560:

> "A trial judge should generally adhere to the Standard Jury Instructions; however, he is not relieved from his obligation to determine whether the standard instructions accurately and adequately state the relevant law."

In this case the special instruction should have been given when requested because the Standard Jury Instruction does not accurately and adequately state the relevant law as to the State's burden and when not given it constituted a denial of Petitioner's right to a fair trial.

The Trial Judge's denial of Petitioner's requested special instruction misconceived the purpose of standard instructions. They neither excuse the giving of erroneous standard instructions nor the omission of the appropriate instructions, just as the Fourth District recognized in Moody, supra. See also, Wilcox v. State, 258 So. 2d 298 (Fla. 2 DCA 1972).

Based on the facts of this case the District Court and Trial Court erred in finding the instructions as given adequate to delineate the State's burden of proof. Since there was evidence strongly suggesting entrapment, the jury should have been required to acquit unless it was convinced of the absence of entrapment beyond a reasonable doubt, Moody v. State, supra. Though this jury was told that a reasonable doubt could arise from the evidence, conflict in the evidence or lack of evidence, the critical entrapment instruction directed it to acquit if the evidence raises a reasonable doubt and made no mention of lack of evidence. At least by implication, the jury was told it had to find evidence of entrapment to acquit on that grounds. Ever since McNish v. State, 45 Fla. 83, 34 So. 219 (Fla. 1903), the faulty implication of the first part of the entrapment instruction has been known.

This Court has previously recognized that standard jury instructions are not to be administered automatically or blindly regardless of the circumstances, but are to be used to such an extent as may be applicable in the judgment of the trial court. State v. Bryan, 287 So. 2d 73 (Fla. 1973). The court should use the standard instructions,

> but without prejudice to the rights of any litigant objecting to the use of one or more of such approved form of instruction.

287 So. 2d at 75. Here, petitioner objected to the use of the standard entrapment instruction, 3.04(c), because it did not clearly inform the jury of the state's burden of proof when the defense of entrapment was raised. Petitioner contended that the requested special instruction, which followed the former instruction 2.11(e) stated the law with regard to the state's burden in clearer terms.

Former standard jury instruction 2.11(e) instructed the jury in pertinent part:

> The state must prove beyond a reasonable doubt that the defendant was not the victim of entrapment by law enforcement officers, and unless it has done so you should find the defendant not guilty.

Similar language was approved in Pratti v. United States, 389 F.2d 660 (9th Cir. 1968), which held that when entrapment is an issue, the jury must be charged that the burden of showing that there is no entrapment is on the prosecution. This must be made explicit even though the jury is properly informed in a general instruction as to the burden of proof which rests on the state. Moody v. State, supra; Notaro v. United States, 363 F.2d 169 (9th Cir. 1966). See also, Government of Virgin Islands v. Cruz, 478 F.2d 712 (3d Cir. 1973).

The court in Moody v. State, supra, adopting the federal view, stated the law on entrapment as follows:

> (1) [t]he defendant has the burden of adducing any evidence of entrapment;
>
> (2) the trial court determines the sufficiency of the evidence of entrapment;
>
> (3) if the evidence of entrapment is sufficient the jury must be instructed that the state has the burden of disproving entrapment beyond a reasonable doubt; and
>
> (4) the jury should never be instructed on the defendant's burden of adducing evidence.

359 So. 2d at 560. Accord, United States v. Braver, 450 F.2d 799 (2d Cir. 1971), cert. den., 405 U.S. 1064 (1972), where the court recommended a simplification of the entrapment instruction that did not give the jury two ultimate factual issues to decide on the two different burdens of persuasion imposed upon the defendant and the prosecution. The court suggested that the jury should not be told that the defendant has any burden, but that it would be enough to tell the jury that if it found some evidence of government initiation or inducement, then the government had to prove beyond a reasonable doubt that the defendant was ready and willing to commit the crime.

Clearly, once the defendant has adduced evidence of entrapment and the issue is submitted to the jury, the ultimate question for the jury to decide is whether the state has established beyond a reasonable doubt that the accused was not entrapped. It is reversible error for the trial court to fail to instruct the jury on the state's burden of proof with the respect to the entrapment issue. Moody v. State, supra. In Moody, the trial court instructed the jury on the defense of entrapment but omitted the last paragraph of instruction 2.11(e) regarding the state's burden of proof. In lieu of this paragraph, the court instructed:

> If you find the State did entrap the Defendant into committing the crime, then you should find him not guilty.

In reversing the appellant's conviction, the Moody court held:

> The giving of this instruction without also instructing on the State's burden could well have left the jury with the impression that it was incumbent upon the appellant to prove his innocence. . . . In effect, the jury was told that the state must prove the essential elements of the crime beyond a reasonable doubt but the appellant must prove entrapment. Such is not the law.

359 So. 2d at 561. The present standard jury instruction suffers from the same infirmities as the instruction given in Moody.

The rewritting of the former entrapment instruction 2.11(e) eliminated that portion of the charge to the jury that "the state must prove beyond a reasonable doubt that the defendant was not the victim of entrapment. . ." In Wheeler v. State, 425 So. 2d 109 (Fla. 1st DCA 1982) (case number 63,346), the court noted that no significance should be attached to the change in the standard jury instructions as the intent of the deletion was not to change the law "but was to merely avoid undue emphasis as to the state's burden of proof." 425 So. 2d at 111.

However, the deletion has resulted in a misleading and confusing charge which wholly fails to inform the jury that the burden of disproving entrapment still lies with the state. While setting forth the correct standard proof, the language, "If the evidence raises a reasonable doubt about the defendant's guilt," absent a clear statement as to who bears the burden of proof, creates the impression that the defendant must carry the burden as to the positive elements of his defense. The instruction begins, "The defense of entrapment has been raised," suggesting that since the accused raised the defense, the accused had the burden of raising the doubt about his guilt.

As aptly stated by one federal court:

> When a party has the burden of proof as to a factual issue, it cannot be proper that instructions pertaining to the issue are so vague or ambiguous as to permit of misinterpretation by the jury of the standard which is to be applied. The desire of a careful judge to avoid language which to him may seem unnecessarily repetitive should yield to the paramount requirement that the jury in a criminal case be guided by instructions framed in language which is unmistakably clear. (Emphasis added).

Nataro v. United States, 363 F.2d 169, 175 (9th Cir. 1966).

Notaro v. United States, supra, is the leading federal case on entrapment instructions. The court in Notaro held that the trial court committed reversible error by failing to adequately instruct the jury that it was the prosecution's burden to establish beyond a reasonable doubt that the accused was not entrapped. The court condemned the following portion of the entrapment charge:

> On the other hand, if the jury should find from the evidence in the case that the accused had no previous intent or purpose to commit any offense of the character here charged, and did so only because he was induced or persuaded by some agent of the Government, then the defense of unlawful entrapment is a good defense and a jury should acquit the defendant.

The court found that the wording "should find from the evidence" improperly required "a definite, conclusive determination of disputed factual issues . . . as a condition of acquittal." 363 F.2d at 176. The language of the instant instruction, "If you find from the evidence that the defendant was entrapped, . . . , you should find him not guilty," likewise requires a definitive finding as a condition to acquittal. To further complicate the instant instruction, the reasonable doubt language is employed in the disjunctive — "or if the evidence raises a reasonable doubt about the defendant's guilt" — but is not included in the foregoing portion of the charge.

Clearly, the standard instruction here is misleading and confusing: misleading because it fails to inform the jury which party bears the burden of proof; confusing because the standard of proof is employed in the disjunctive. Even if the langauge is not an incorrect statement of the law, it is at the very least ambiguous. It is suggested that the First District Court of Appeal in Wheeler was correct in observing that the 1981 revision of the entrapment instruction was not intended to change the law but was intended to avoid undue emphasis as to the state's burden of proof. However worthy that intention, it must yield to the paramount consideration that the jury be properly informed about the rules of law applicable to the entrapment defense.

In its opinion, the district court below observed that "Instruction 3.04(c), standing alone, may be inadequate in light of the Moody requirements of proof," but noted that the trial court "also instructed the jury on the general reasonable doubt subject and told them that 'the defendant is not required to prove anything.'" 429 So. 2d at 380. (See R. 168). The court concluded:

> Considering the totality of the instructions given relating to entrapment, reasonable doubt, and the state's burden of proof, it is our conclusion that the requirements of Moody were adequately met.

Id. Petitioner submits that the general instructions on reasonable doubt and the state's burden of proof do not sufficiently apprise the jury of the ultimate burden in an entrapment defense so as to overcome the infirmities of the instant instruction. The Ninth Circuit Court of Appeals addressed the "totality of the instructions" argument in Notaro v. United States, 363 F.2d at 176, reasoning:

> [W]e have been mindful of the obligation to consider the instructions in their entirety. The jury was properly informed, in a general instruction, as to the burden of proof which rested upon the prosecution; however, we cannot assume that it carried the advice of the general instruction into application of the instruction emphasizing the specific elements of the defense. The possibility that there was confusion or misunderstanding is strengthened, not eliminated, by view of the instructions as a whole.

Similarly, in Moody v. State, supra, the court rejected the state's contention that the failure to instruct the jury that the burden of proof was on the state was justified when considering all the instructions in their entirety. 359 So.2d at 561. Here, as in Moody and Notaro, the entrapment instruction, absent an instruction on the state's burden of proof, "could well have left the jury with the impression that it was incumbent upon the appellant to prove his innocence." Moody v. State, supra, at 561. The giving of the general instructions on presumption of innocence and reasonble doubt do not remove this erroneous impression.

The entrapment offense focuses on the intent or predisposition of the defendant to commit a crime. State v. Casper, 417 So. 2d 263 (Fla. 1st DCA 1982). Just as the state must prove the intent to commit the substantive offense beyond a reasonable doubt, so, too, the state must prove predisposition beyond a reasonable doubt when the entrapment defense is raised. The state may demonstrate predisposition in a variety of ways, see Story v. State, 355 So. 2d 1213 (Fla. 4th DCA 1978), as long as the state meets its standard of proof. It must be made clear to the jury that the state bears the burden and

that the defendant has no burden of proof. The standard jury instruction fails to make that clear. To the jury, the final paragraph of the instruction would not mean that the state was required to disprove entrapment beyond a reasonable doubt, but would mean that the defendant had to prove he was in fact entrapped. In effect, the instruction seems to indicate that even though the defendant had adduced sufficient evidence of entrapment to warrant a jury instruction on his defense, the state was required to present nothing to contravene such evidence.

The necessity of instructing the jury as Petitioner requested in his special instruction that the State must prove beyond a reasonable doubt that Petitioner was not entrapped becomes clear when one considers the nature of the defense. The defense raised says the government does not have clean hands in that its agents have done certain acts which offends due process. The burden to disprove these acts properly belongs to the government who is in the best position to police and detect unconstitutional behavior and acts done by its very own agents. The facts of this case demand in fairness that the special requested instruction should have been given as the only other proof of the acts constituting the defense of entrapment was the government's confidential informant which the trial court would not require the State to produce. These facts require that the jury be instructed as to the burden being on the State as to the particular defense raised because the government, through the trial courts ruling denied the Petitioner the only proof of his defense other than his own testimony.

The defense of entrapment is unique in that its proof or disproof is best obtained by the government who has control and access to the essential facts. The government must only come forward with these facts after the trial court has determined that sufficient evidence of entrapment has been presented to require the defense instruction be given. It is only proper in our constitutional democracy that the

government have such a burden and that when the unique defense of entrapment is raised the jury be so informed in clear and unambiguous language.

CONCLUSION

The standard jury instruction as amended by the trial court did not adequately inform the jury as to the state's burden of proof and thus denied the Petitioner a fair trial. The standard jury instruction on entrapment is vague and ambiguous and the trial court, when faced with a written special instruction which correctly and clearly stated the law of this state, fundamentally erred when it denied the requested instruction. This particularly so, based on the facts of this case where the Petitioner has been denied access to the only other source of evidence of the entrapment defense by the trial court. The certified question of the District Court of Appeal should be answer in the negative and the Petitioner's conviction reversed and remanded for a new trial.

Respectfully submitted,

LOUIS O. FROST, JR.
PUBLIC DEFENDER

BY: Ronald D. Trow
Ronald D. Trow
Assistant Public Defender

Fourth Judicial Circuit
407 Duval County Courthouse
Jacksonville, Florida 32202
904/633-6820

Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to the Attorney General, the Capitol, Tallahassee, Florida, 32302, by mail, this 30th day of December, A.D., 1983.

Ronald D. Trow