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STATEMENT OF THE FACTS

The opinion of the Second District Court of Appeal stated the facts of this case as follows (Appendix, p. 2):

On January 13, 1982, the Tampa Police Department deployed a decoy at Kennedy Boulevard and Bernard Avenue in Tampa. The policy [sic] decoy was dressed in old clothes and acted sick or drunk. He had \$150 protruding from a pocket. Defendant was not a suspect or a target of the decoy. However, at 9:20 p.m., he approached the decoy and removed the money from the decoy's pocket. Defendant was immediately arrested.

(The offense actually occurred on January 12, as alleged in the information and established by Smith's motion to dismiss. This discrepancy is not relevant to the issues involved herein.)

ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW
THE DECISION OF THE SECOND DISTRICT COURT
OF APPEAL IN RAYMOND LEE SMITH V. STATE
OF FLORIDA, CASE NO. 82-2155, WHICH EX-
PRESSLY 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 an incapacitated vagrant. In neither case was the defendant a particular target of the decoy stratagem employed by the police. 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 some facts tending to show a predisposition on his part to commit a crime. (The First District followed Casper in State v. Holliday, 431 So.2d 309 (Fla. 1st DCA 1983), petition for review granted, No. 63,832 (Fla. 1983)).

In the instant case the Second District Court of Appeal reached a conclusion opposite to that of the Casper court. The Second District acknowledged conflict with Casper (and Holliday) by citing it as a "but see" citation in the opinion.

Thus, the decision of the Second District Court of Appeal in Smith 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.

Smith would point out that this Court recently has agreed to review at least two cases in addition to Holliday which involve almost identical police decoy operations. They are State v. Cruz, 426 So.2d 1308 (Fla. 2d DCA 1983), petition for review granted, No. 63,451 (Fla. 1983), which was cited by the Second District Court of Appeal in support of its decision in Smith, and Drumm v. State, 432 So.2d 765 (Fla. 2d DCA 1983), petition for review granted, No. 63,948 (Fla. 1983). Cruz was argued orally before the Court on November 10, 1983.

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 Raymond Lee Smith v. State of Florida, Case Number 82-2155, pursuant to Article V, Section 3(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv).

Smith 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), petition for review granted, No. 63,832 (Fla. 1983).

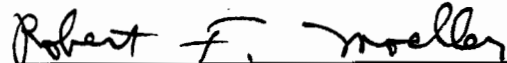
Respectfully submitted,

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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, Tampa, FL, 33602, this 3rd day of January, 1984.



Robert F. Moeller