

IN THE SUPREME COURT OF FLORIDA

LORENZO TEAGUE

Petitioner,

vs.

STATE OF FLORIDA

Respondent

**FILED**

SID J. WHITE

MAY 29 1984

CLERK, SUPREME COURT

By *M*  
Chief Deputy Clerk

Case No. 65,315

DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA

BRIEF OF PETITIONER ON JURISDICTION

JERRY HILL  
PUBLIC DEFENDER  
TENTH JUDICIAL CIRCUIT

ROBERT F. MOELLER  
Assistant Public Defender

Hall of Justice Building  
455 North Broadway Avenue  
Bartow, Florida 33830  
(813) 533-1184 or 533-0931

COUNSEL FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS

Petitioner, Lorenzo Teague, was charged by an information filed in Hillsborough County Circuit Court on April 13, 1982 with grand theft in the second degree.

Teague filed a motion to dismiss the information on May 7, 1982. The motion alleged that the following facts of this case constituted entrapment as a matter of law:

1. On March 25, 1982, the Tampa Police Department deployed a decoy at 7th Avenue and No. Nebraska Avenue.
2. The police decoy was dressed in old clothes and acted sick with \$150.00 protruding from his pocket.
3. The Defendant was not a suspect and was not a particular target of the decoy.
4. On March 25, 1982 at approximately 8:00 p.m., the Defendant was walking along 7th Avenue when he observed a sick man at the intersection with Nebraska Avenue. Defendant asked if the sick man was okay.
5. That as the Defendant started to leave, he noticed money protruding from the sick man's pocket. The Defendant then removed the money from the decoy's pocket and was immediately arrested by detectives who were nearby.

A hearing on Teague's motion to dismiss was held before the Honorable Harry Lee Coe, III on May 20, 1982. The State did not dispute the facts recited by Teague. Judge Coe denied the motion.

On June 1, 1982, Teague entered a plea of nolo contendere, specifically reserving his right to appeal the denial of his motion to dismiss. The plea negotiations called for him to receive straight probation. The court accepted the plea and placed Teague on three years' probation, with adjudication of guilt withheld. As special conditions of probation, Judge Coe

required Teague to pay a public defender's fee (no amount was specified) and \$100.00 in court costs. A separate Final Judgment Assessing Attorney's Fees (of \$250.00) and Costs (of \$50.00) also was entered on June 1.

Teague appealed to the Second District Court of Appeal. On March 21, 1984 that court issued an opinion affirming the order placing Teague on probation (except for the provisions requiring him to pay costs and an attorney's fee) on the authority of Goldstein v. State, 435 So.2d 352 (Fla.2d DCA 1983) and State v. Cruz, 426 So.2d 1308 (Fla.2d DCA 1983), noting that the instant case is "almost a carbon copy of" Goldstein and Cruz. (A1-3) The court recognized that State v. Casper, 417 So.2d 263 (Fla.1st DCA 1982) is "contra" its decision in the case now before this Court. (A2)

Teague filed a timely motion for rehearing, which the Second District Court of Appeal denied on May 10, 1984.

On May 16, 1984, Teague filed his notice to invoke the discretionary jurisdiction of this Court.

## ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN LORENZO TEAGUE v. STATE OF FLORIDA, CASE NO. 82-1398, 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 which was protruding from the pocket of a police decoy who was posing as an incapacitated vagrant. In neither case was the defendant a suspect or a particular target of the decoy operation. 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.<sup>1/</sup> The Second District Court of Appeal reached an opposite conclusion in this case, and acknowledged that Casper is "contra" its decision.

Significantly, the Second District Court of Appeal found Teague's case to be "almost a carbon copy of State v. Cruz, 426 So.2d 1308 (Fla.2d DCA 1983) and Goldstein v. State, 435

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<sup>1/</sup> The First District Court of Appeal followed its decision in Casper in State v. Holliday, 431 So.2d 309 (Fla.1st DCA 1983), review granted, Case No. 63,832 (Fla.1983).

So.2d 352 (Fla.2d DCA 1983)," in both of which this Court has granted review on the basis of conflict with Casper. (Cruz is Case Number 63,451 in this Court, and Goldstein is Case Number 64,168).<sup>2/</sup> As in Goldstein and Cruz, the decision of the Second District Court of Appeal in Teague 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.

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<sup>2/</sup> In addition to Holliday, Cruz, and Goldstein, this Court has accepted jurisdiction in at least two other similar decoy-entrapment cases: Drumm v. State, Case No. 63,948 and Smith v. State, Case No. 64,678.

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 Lorenzo Teague v. State of Florida, Case Number 82-1398, pursuant to Article V, Section 3.(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv).

Lorenzo Teague 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

BY: Robert F. Moeller  
ROBERT F. MOELLER  
Assistant Public Defender

Hall of Justice Building  
455 North Broadway Avenue  
Bartow, Florida 33830-3798  
(813)533-0931 or 533-1184

COUNSEL FOR PETITIONER



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Attorney General's Office, Park Trammell Building, 1313 Tampa Street, 8th Floor, Tampa, Florida 33602 by mail on this 24th day of May, 1984.

Robert F. Moeller  
ROBERT F. MOELLER

RFM:js