OA 1-8-86

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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NO.: 66,691

ROBERT WILLIAM HUME,

Respondent.

CONSOLIDATED

ROBERT WILLIAM HUME,

Petitioner,

v. CASE NO.: 66,704

STATE OF FLORIDA,

Respondent.
/

PETITIONER'S REPLY BRIEF

CASE NO.: 66,691

RESPONDENT'S BRIEF ON THE MERITS

CASE NO.: 66,704

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PRELIMINARY STATEMENT

This instrument contains Petitioner's Reply Brief in Case No. 66,691 and Respondent's Brief on the Merits in Case No. 66,704. To avoid confusion, Robert William Hume, the criminal defendant and appellee below, will be referred to as Hume. The State of Florida, the prosecution and appellant below, will be referred to as the State.

Citations to the record on appeal will be indicated parenthetically as "R" with the appropriate page number(s). Citations to Hume's answer brief in Case No. 66,691 and initial brief in Case No. 66,704, will be indicated parenthe-

tically as "HB" with the appropriate page number(s).

The lower court's decision is reported as State v. Hume, 463 So.2d 499 (Fla. 1st DCA 1985), a copy of which is attached as an appendix hereto.

STATEMENT OF THE CASE AND FACTS

While Hume's Statement of the Case and Facts (HB 1-9) appears to be accurate, the State is compelled to reject it on the grounds that it contains material irrelevant to the disposition of the issues raised herein as well as an unacceptable level of argumentative and conclusory editorial commentary. Consequently, the State will rely upon its Statement of the Case and Facts set forth at pages two through four of its initial brief on the merits in Case No. 66,691, and the following additional information:

Detective Louis Acevedo, an undercover investigator with the Narcotics and Organized Crime Bureau of the Gainesville Police Department (R 323), was first introduced to Hume by Terrence Lee McKinney, a confidential source. This first meeting occurred on September 8, 1982, at Hume's residence (R 329,330). After some discussion concerning Detective Acevedo's purchase of cocaine from Hume, Hume produced three grams of cocaine which the detective purchased for $235 (R 331-333).

On December 23, 1982, Detective Acevedo, wearing a body bug, went to Hume's residence in an effort to secure a taped admission of Hume's September 8, 1982 sale to him (R 336). The detective met Hume in the hallway outside of his residence and engaged him in a conversation wherein Hume admitted the sale, and discussion was had concerning future

purchase of cocaine by Detective Acevedo (R 336,337). Due to the malfunction of the bug, none of the conversation was recorded (R 336).

On December 30, 1982, Detective Acevedo, wearing a body bug and accompanied by a surveillance team, met with Hume in his apartment complex parking lot as he was entering his vehicle. During the course of the conversation, Hume advised the detective that his cocaine source was out of town. Detective Acevedo then agreed to call Hume on January 4, 1983 (R 338-339).

The detective telephoned Hume at his residence on January 4, 1983, on more than one occasion, and discussed the purchase of an ounce of cocaine from him. The conversations were taped (R 339,340).

Detective Acevedo again engaged in a taped telephone conversation with Hume on January 5, 1983. Hume advised the detective that he would be able to make a one ounce purchase of cocaine. The detective, wearing a body bug and accompanied by a surveillance team proceeded to Hume's residence (R 340, 341).

Upon his arrival at Hume's residence, Detective Acevedo met with Hume and followed him into the southeast bedroom. Hume entered a walk-in closet where the detective observed a plastic bag containing what appeared to be cocaine resting on a scale located on top of a table inside the closet. Detective Acevedo then verified the weight of the cocaine and paid Hume

the sum of 1,900 or 1,950 dollars for it (R 341-343).

The detective then discussed with Hume the possibility of obtaining three to four ounces of cocaine in the future. Hume advised Detective Acevedo that he would be obtaining cocaine on the 10th of January, 1983. The above communications were intercepted and recorded (R 343,344).

On January 10, 1983, Detective Acevedo and the State Attorney's Office procured the issuance of an arrest warrant for Hume (R 345). Subsequently, the detective had numerous telephone conversations with Hume, during January 10 through January 17, 1983, concerning the purchase of three or four ounces of cocaine (R 347,411,412).

On January 17, 1983, Detective Acevedo initially had a recorded telephone conversation with Hume wherein he was advised that the cocaine was available (R 348). The detective then informed the members of the Narcotics Unit of the details of the investigation and a briefing was held to assign the members their duties in the upcoming transaction (R 348). During the briefing it was agreed that "Tallahassee" would be the code word to indicate that the cocaine was in the apartment and that the arrest team was to move into place outside the front door of the residence (R 354,355).

Detective Acevedo, wearing a body bug and accompanied by the other members of the team proceeded to Hume's residence. Prior to arrival at the residence, the detective telephoned Hume (recorded) to advise him that he was on his way over

(R 349). During the conversation, Detective Acevedo and Hume discussed the price of the cocaine (R 350).

On November 23, 1983, the trial judge, concluding that the State had incorrectly relied upon United States v. White, infra, and the recent amendment to Article I, Section 12 of the Florida Constitution, suppressed the surreptitiously transmitted and recorded oral communications from Hume's residence on the authority of State v. Sarmiento, infra (R 127-132).

The lower court held that the trial judge erred in relying upon Sarmiento to suppress the subject conversations. This holding was predicated upon the court's conclusions that Sarmiento did not survive the amendment to Article I, Section 12 of the Florida Constitution because interception of said conversations was not violative of the Fourth Amendment to the United States Constitution on the authority of United States v. White, infra. State v. Hume, 463 So.2d 499,500 (Fla. 1st DCA 1985).

SUMMARY OF ARGUMENT

Concerning Case No. 66,691, Hume advances the same distinction relied upon by the lower court to circumvent several decisions wherein the respective courts either affirmed the admission of evidence seized or reversed orders suppressing such evidence notwithstanding the presence of police conduct similar to that complained of sub judice. The State reasserts that said distinction is invalid and the lower court's affirmance of the suppression of evidence was erroneous. The State also notes that absence of any of the judicially recognized exceptions to the "knock and announce" law is of no consequence since the law is inapplicable on the facts and circumstances of this case. In suppport of his position Hume cites Bibby v. State, infra. The State contends that Bibby is readily distinguishable from and therefore inapposite to the case at bar. The State further argues that the undercover agent's motives in attempting to purchase a trafficking amount of cocaine from Hume have absolutely no bearing upon the issue before this Court. Finally, the State contends that Fourth Amendment privacy considerations are relevant to construction of the knock and announce statute and mandate reversal of the lower court's decision on this issue.

With respect to Case No. 66,704, Hume, in essence, claims that the lower court erred in concluding that State v. Sarmiento, infra, did not survive the amendment to Article I Section 12

of the Florida Constitution since United States v. White, infra, constituted controlling authority that the interception of the conversations complained of was not violative of the Fourth Amendment. The crux of Hume's argument is that White did not provide binding precedent on the substantive Fourth Amendment question. The State argues that the opinion clearly indicates that five of the Justices concluded that the conduct complained of was not violative of the Fourth Amendment. Additionally, the States cites to decisions of the United States Supreme Court, this Court, and other district courts of appeal which recognize White as authoritative precedent on the substantive Fourth Amendment issue. Hume alternatively argues that Article I, Section 23, of the Florida Constitution operates synergistically with Article I, Section 12, to afford broader protection, along Sarmiento lines, than the penumbral right inferred from the United States Constitution. The State argues that the "except as otherwise provided" language of Article I, Section 23 dispels any notion that it operates to impose a more restrictive interpretation of rights against the State than that called for in Article I, Section 12. The State also argues to the extent that Article I, Section 23 is inconsistent with Article I, Section 12, the latter must prevail as the latest expression of the will of the people. Lastly, the State argues that Hume's reliance on State v. Glass, infra, and Shevin v. Sunbeam Television Corporation, infra, is misplaced because both cases are readily distinguishable from the case at bar.

PETITIONER'S REPLY BRIEF

CASE NO. 66,691

ISSUE

THE FIRST DISTRICT COURT OF APPEAL ERRED IN AFFIRMING THE TRIAL COURT'S SUPPRESSION OF EVIDENCE PREDICATED UPON POLICE NONCOMPLIANCE WITH FLORIDA STATUTES § 109.19(1).

Hume suggests that the real question before this Court is "whether or not the unanimous panel of judges below was wrong in deciding, in accordance with the trial court, that the police conduct contravened the intent, and spirit, of Florida's 'knock and announce' requirement." (HB 11). He then proceeds to hang his hat on the same dubious distinction relied upon by the lower court to circumvent the principles established in Griffin v. State, 419 So.2d 320 (Fla. 1982), Koptyra v. State, 175 So.2d 628 (Fla. 2d DCA 1965), State v. Cantrell, 426 So.2d 1035 (Fla. 2d DCA 1983), pet. for rev. den., 434 So.2d 886 (Fla. 1983), U.S. Cert. den., 79 L.Ed.2d 182 (1984), U.S. reh. den., 80 L.Ed.2d 191 (1984), State v. Steffani, 398 So.2d 475 (Fla. 3d DCA 1981), approved, 419 So.2d 323 (Fla. 1982), State v. Schwartz, 398 So.2d 460 (Fla. 4th DCA 1981), and State v. Perry, 398 So.2d 959 (Fla. 4th DCA 1981). Inasmuch as the utter unsoundness of such reasoning has been fully addressed in the State's initial brief on the

merits (see pp.11,12), it will not be revisited here.

Hume finds it noteworthy that the lower court observed that none of the four judicially recognized exceptions to Florida Statutes § 901.19(1) were shown to apply sub judice (HB 11 n.10). This observation is of no moment since the above-cited cases recognized that under circumstances similar to those herein Florida Statutes § 901.19(1) is inapplicable. If the statute is inapplicable, then the judicially recognized exceptions thereto need not be considered.

Hume cites Bibby v. State, 423 So.2d 970 (Fla. 1st DCA 1982) evidently as authority for affirmance of the lower court (HB 12-15). In Bibby, the defendant was arrested in his house by officers who entered, without a warrant or consent, upon a signal that the undercover agent within the home had made the sale that put the defendant in possession of the marijuana then to be seized. The State, for reasons not apparent from reading the opinion, entered into a stipulation that no exigent circumstances existed, thereby stipulating to all the facts necessary for reversal. Id. at 971. The instant case is readily distinguishable for a number of reasons.

First, the back-up officers had a warrant for Hume's arrest (R 63,345). Second, the consensually present undercover agent (R 350,351), a business invitee of Hume, opened the front door of the residence whereupon the arrest team entered (R 356). Clearly, the arrest team performed no act

to gain entry to the residence. Third, the record indicates that the arrest team verbally and visually announced (R 357). Finally, the State's stipulation in Bibby clearly limits the scope of the ruling and any attempt to give it wider application is unsupported by the case. This state of affairs was evidently recognized by the court in State v. Cantrell, supra, which is factually closer to the Bibby decision than the instant case, since the court took note of Bibby and chose not to apply it. Indeed, the lower court must have shared the same viewpoint since Bibby is not even mentioned in its opinion.

At this point, the State notes that Hume attaches some significance to his exhaustive attempt to impute scurrilous motives to Detective Acevedo's efforts to effect the purchase of a trafficking amount of cocaine (HB 13 n.11). The State submits that the detective's motives have absolutely no bearing upon or relevance to the propriety of the arrest team's entry into Hume's residence after Detective Acevedo opened the door for them.

Finally, contrary to Hume's assertion (HB 10,11), Fourth Amendment privacy considerations are relevant in construing the knock and announce statute and those very considerations mandate reversal of the lower court's decision affirming the trial court's suppression of evidence predicated upon police noncompliance with Florida Statutes § 901.19(1). State v. Schwartz, supra at 461,462.

RESPONDENT'S BRIEF ON THE MERITS

CASE NO. 66,704

ISSUE

THE LOWER COURT CORRECTLY HELD THAT THE TRIAL COURT ERRED IN RELYING UPON STATE V. SARMIENTO, 397 So.2d 643 (Fla. 1981), TO SUPPRESS THE CONVERSATIONS BETWEEN HUME AND THE UNDERCOVER OFFICER IN THIS CASE. (Restated by Respondent.)

The foregoing issue presents this Court with a rather narrow, straightforward question. Did this Court's decision in State v. Sarmiento, 397 So.2d 643 (Fla. 1981), prohibiting the interception of conversations within a defendant's home and simultaneous transmission of said conversations to arresting officers outside the home, survive the recent amendment to Article I, Section 12 of the Florida Constitution? The lower court concluded that it did not. State v. Hume, supra at 500. The Third District Court of Appeal has reached the same conclusion. State v. Ridenour, 453 So.2d 193 (Fla. 3d DCA 1984); State v. Roman, 472 So.2d 886 (Fla. 3d DCA 1985).

Nevertheless, Hume argues that Sarmiento is still viable because no decision of the United States Supreme Court, including United States v. White, 401 U.S. 745, 91 S.Ct. 1122, 28 L.Ed.2d 453 (1971), reh. den., 402 U.S. 990 (1971), has addressed much less ruled definitively upon the "Sarmiento problem" (HB 19,20), to-wit: the uninvited third-party ear

intercepting conversations occurring within the sanctity of the home. Contrary to Hume's assertion, in United States v. White, supra, Justice White announced the opinion of the Court stating:

> The issue before us is whether the Fourth Amendment bars from evidence the testimony of governmental agents who related certain conversations which had occurred between defendant White and a government informant Harvey Jackson, and which the agents overheard by monitoring the frequency of a radio transmitter carried by Jackson and concealed on his person. On four occasions the conversations took place in Jackson's home. . . . Four other conversations--one in respondent's home, one in a restaurant, and two in Jackson's car--were overheard by the use of radio equipment. . . . [Footnotes omitted.] [Emphasis added.]

Id. at 28 L.Ed.2d 456. Clearly, the Court was presented with the "Sarmiento problem".

Hume further asserts that "[t]he fragmented White Court could not muster a majority for any substantive consensus or legal statement" and that "[t]he White 'plurality' simply[1] ruled that the reasoning of Katz v. United States, 389 U.S. 347

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[1]To the extent one can equate simplicity with brevity, Hume is correct. The Court, in one paragraph, resolved the retroactivity issue. See 28 L.Ed.2d at 460. However, the remainder of the opinion addressed the substantive Fourth Amendment issue.

(1967), could not be applied retroactively to facts occurring before Katz was decided in 1967 . . ." (HB 20). To suggest that the United States Supreme Court's ruling "simply" addressed the retroactive application of the Katz opinion flies in the face of logic and ignores the thrust of the Court's opinion as reflected in the following excepts therefrom:

> The Court of Appeals read Katz v. United States, 389 U.S. 347, 19 L.Ed.2d 576, 88 S.Ct. 507 (1967), as overruling On Lee v. United States, 343 U.S. 747, 96 L.Ed. 1270, 72 S.Ct. 967 (1952), and interpreting the Fourth Amendment to forbid the introduction of the agent's testimony in the circumstances of this case. Accordingly, the court reversed but without adverting to the fact that the transactions at issue here had occurred before Katz was decided in this Court. In our view, the Court of Appeals misinterpreted both the Katz case and the Fourth Amendment and in any event erred in applying the Katz case to events that occurred before that decision was rendered by this Court.
>
> * * * * * * * *
>
> The Court of Appeals understood Katz to render inadmissible against White the agents' testimony concerning conversations that Jackson broadcast to them. We cannot agree. Katz involved no revelation to the Government by a party to conversations with the defendant nor did the Court indicate in any way that a defendant has a justifiable and constitutionally protected expectation that a person with whom he is conversing will not then or later

reveal the conversation to the police.

Concededly a police agent who conceals his police connections may write down for official use his conversations with a defendant and testify concerning them, without a warrant authorizing his encounters with the defendant and without otherwise violating the latter's Fourth Amendment rights. Hoffa v. United States, 385 U.S., at 300-303, 17 L.Ed.2d at 381, 382. For constitutional purposes, no different result is required if the agent instead of immediately reporting and transcribing his conversations with defendant, either (1) simultaneously records them with electronic equipment which he is carrying on his person, Lopez v. United States, supra; (2) or carries radio equipment which simultaneously transmits the conversations either to recording equipment located elsewhere or to other agents monitoring the transmitting frequency. On Lee v. United States, supra. If the conduct and revelations of an agent operating without electronic equipment do not invade the defendant's constitutionally justifiable expectations of privacy, neither does a simultaneous recording of the same conversations made by the agent or by others from transmissions received from the agent to whom the defendant is talking and whose trustworthiness the defendant necessarily risks.

* * * * * * * * *

. . . If the law gives no protection to the wrongdoer whose trusted accomplice is or becomes a police agent, neither should it protect him when that same agent has recorded or transmitted the conversations which are later offered in evidence to prove the State's case. See Lopez v. United States, 373 U.S. 427, 10 L.Ed.2d 462, 83 S.Ct. 1381 (1963).

* * * * * * * * *

Nor should we be too ready to erect

> constitutional barriers to relevant and probative evidence which is also accurate and reliable. An electronic recording will many times produce a more reliable rendition of what a defendant has said than will the unaided memory of a police agent. It may also be that with the recording in existence it is less likely that the informant will change his mind, less chance that threat or injury will suppress unfavorable evidence and less chance that cross-examination will confound the testimony. Considerations like these obviously do not favor the defendant, but we are not prepared to hold that a defendant who has no constitutional right to exclude the informer's unaided testimony nevertheless has a Fourth Amendment privilege against a more accurate version of the events in question.
>
> It is thus untenable to consider the activities and reports of the police agent himself, though acting without a warrant, to be a "reasonable" investigative effort and lawful under the Fourth Amendment but to view the same agent with a recorder or transmitter as conducting an "unreasonable" and unconstitutional search and seizure. [Footnotes omitted.] [Emphasis added.]

Id. at 28 L.Ed.2d 457-460. Justice White was joined in his opinion by Chief Justice Berger and Justices Stewart and Blackman. Justice Black at 28 L.Ed.2d 460, concurred in the result for reasons set forth in his dissent in Katz v. United States, 389 U.S. 347,364 (1967), wherein he held that eavesdropping carried on by electronic means does not constitute a search or seizure, and thus the Fourth Amendment does not apply to eavesdropping. In sum, five Justices agreed that

the conduct complained of sub judice was not violative of the Fourth Amendment to the United States Constitution.

In United States v. Carceres, 440 U.S. 741, 99 S.Ct. 1465, 59 L.Ed.2d 733 (1979), a seven to two majority opinion, United States v. White, supra, was cited for the proposition that:

> If the conduct and revelations of an agent operating without electronic equipment do not invade the defendant's constitutionally justifiable expectations of privacy, neither does a simultaneous recording of the same conversations made by the agent or by others from transmissions received from the agent to whom the defendant is talking and whose trustworthiness the defendant necessarily risks.

Id. at 59 L.Ed.2d 743. Since White did address a Sarmiento type intercept, it is readily apparent that a majority of the United States Supreme Court has concluded that such an intercept is not violative of the Fourth Amendment.

Thus, the White and Caceres decisions unquestionably establish binding precedent that the surreptitious interception, transmission, and recording of conversations between a defendant and an agent in the defendant's home is not violative of the Fourth Amendment to the United States Constitution and is therefore not violative of Article I, Section 12, as amended, of the Florida Constitution.

The binding federal precedent was clearly recognized by this Court in Odom v. State, 403 So.2d 936 (Fla. 1981), where

the Court, in finding no Fourth Amendment prohibition against the type of conduct complained of in the case sub judice,[2] stated, at 939:

> Having heard the appellant voluntarily make statements of an incriminating nature concerning his participation in the crime, Jones clearly could have testified from memory about the content of the statements. The Fourth Amendment does not protect a person from the possibility that one in whom he confides will violate the confidence. Hoffa v. United States, 385 U.S. 293, 87 S.Ct. 408, 17 L.Ed.2d 374 (1966). If this is so, then there is no bar under the United States Constitution to the introduction of more reliable and perhaps more credible evidence--recordings made by the informer or agent to whom the statements are made. United States v. Caceres, 440 U.S. 741, 99 S.Ct. 1465, 59 L.Ed.2d 733 (1979); United States v. White, 401 U.S. 745, 91 S.Ct. 1122, 28 L.Ed.2d 453 (1971); Lopez v. United States, 373 U.s. 427, 83 S.Ct. 1381, 10 L.Ed.2d 462 (1963).

Moreover, the lower court in Powe v. State, 443 So.2d 154,156,157 (Fla. 1st DCA 1983), found that the United States Supreme Court had definitively addressed the instant issue in

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[2]Hume, in footnote 18 at page 9 of his answer brief filed below, asserted that "nowhere in Odom does it suggest, or even mention, that the intercepted conversation took place inside the four walls of Odom's house." If that were the case, this Court would have had no basis for relying on Sarmiento to find that the tapes were inadmissible under Article I §12, Florida Constitution. See also Powe v. State, 443 So.2d 154 (Fla. 1st DCA 1983), where the lower court stated that "we note Odom v. State, 403 So.2d 936 (Fla. 1981), is also distinguishable from our holding in the instant case because that interception was in the home." [Emphasis added.]

a Fourth Amendment context as the following excerpt from the opinion demonstrates:

> It is one thing to hold, as in Sarmiento, that the Article I Section 12, right of privacy is violated where a "bugged" police informant conversing with a suspect inside the latter's residence transmits their conversation to nearby surveilling law enforcement officers.[2]
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>
> [2]Even this "intrusion" is not deemed a violation of a person's Fourth Amendment reasonable expectation of privacy. See United States v. White, 401 U.S. 745, 91 S.Ct. 1122, 28 L.Ed.2d 453 (1970); United States v. Caceres, 440 U.S. 741, 99 S.Ct. 1465, 59 L.Ed.2d 733 (1979). The rationale, in part, is that the Fourth Amendment does not protect a person from the possibility that one in whom he confides will violate that confidence. Hoffa v. United States, 385 U.S. 293, 87 S.Ct. 408, 17 L.Ed.2d 374 (1966); Lewis v. United States, 385 U.S. 206, 87 S.Ct. 424, 17 L.Ed.2d 312 (1966); Odom v. State, 403 So.2d 936,939 (Fla. 1981). [Emphasis original.]

See also Palmer v. State, 448 So.2d 55 (Fla. 5th DCA 1984), where the court, in distinguishing Tollet v. State, 272 So.2d 490 (Fla. 1973) held:

> Moreover, unlike the instant case, it (Tollet) dealt with the construction of the Florida Constitution rather than the Fourth Amendment to the United States Constitution. Lastly, the questionable viability of Tollet in regard to its interpretation of the search and seizure provisions of the Florida Constitution was terminated by the recent constitutional

amendments adopting federal standards. See Article I § 12 Florida Constitution, as amended in 1982.[1]

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[1]Given this constitutional amendment, a different result in Tollet would be mandated today by United States v. White, 401 U.S. 745 (1971).

Id. at 56.

In sum, the United States Supreme Court, this Court, and the district courts of appeal addressing the issue, have recognized the binding precedent established in the White decision. As a result, Sarmiento unquestionably is no longer viable.

At this point, the State notes that Hume, at page 23 of his brief, contends that the State relied upon Lewis v. United States, 385 U.S. 206 (1966) and Hoffa v. United States, 385 U.S. 293 (1966) in the lower court as support for its position that Sarmiento was overruled. At pages twelve and thirteen of the State's initial brief filed below, those case citations were contained in quoted excerpts from opinions of this Court and the lower court. Both Courts cited the cases for the proposition that the Fourth Amendment does not protect a person from the possibility that one in whom he confides will violate the confidence.

Hume alternatively advances a privacy argument asserting that Article I, Section 23 of the Florida Constitution

"operates synergistically" with Article I, Section 12, to afford broader protection, along Sarmiento lines, than the penumbral right inferred from the United States Constitution.

Article I, Section 23, approved by the voters in the November 4, 1980 general election, provides in pertinent part:

> Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein . . . [Emphasis added.]

The voters, in the November 2, 1982 general elction, amended Article I, Section 12 of the Florida Constitution, to provide that the right of the people to be secure in their persons, houses, papers, and effects against, inter alia the unreasonable interception of private communications, shall be construed in conformity with the Fourth Amendment to the United States Constitution, as interpreted by the United States Supreme Court. The State therefore maintains that the "except as otherwise provided" language of Article I, Section 23, precludes reliance upon the Section as support for the proposition that Sarmiento should be adhered to as a basis for imposing a more restrictive interpretation, of rights, against the State than that called for in Article I, Section 12.

Hume nonetheless maintains that his position is supported

by this Court's opinion is Sylvester v. Tindall, 18 So.2d 892,900 (Fla. 1944) where the Court held:

> A general rule is that no one provision of the constitution is to be separated from all the others, to be considered alone, but that all provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Thus a constitutional amendment becomes a part of the constitution and must be construed in pari materia with all of those portions of the constitution which have a bearing on the same subject.

However, where Hume concluded his quote the Court further held:

> But a somewhat different rule prevails if a constitutional amendment conflicts with pre-existing provisions. In 11 Am.Jur., Sec. 54, p. 663, it is well said:
>
> > "A new constitutional provision adopted by a people already having well-defined institutions and systems of law should not be construed as intended to abolish the former system, except in so far as the old order is in manifest repugnance to the new Constitution, but such a provision should be read in the light of the former law and existing system. Amendments, however, are usually adopted by the express purpose of making changes in the existing system. Hence, it is very likely that conflict

> may arise between an amendment and portions of a Constitution adopted at an earlier time. In such a case the rule is firmly established that an amendment duly adopted is a part of the Constitution and is to be construed accordingly. It cannot be questioned on the ground that it conflicts with pre-existing provisions. If there is a real inconsistency, the amendment must prevail because it is the latest expression of the will of the people." [Emphasis added.]

Id. at 900,901. See also Wilson v. Crews, 34 So.2d 114 (Fla. 1948); State v. Division of Bond Finance of the Department of General Services, 278 So.2d 614 (Fla. 1973). The electorate has mandated construction of Article I, Section 12 in conformity with the Fourth Amendment of the United States Constitution as interpreted by the United States Supreme Court, and were that not the case, there would have been no need to amend the Constitution. Consequently, Hume's argument, on its face, establishes a real inconsistency between Article I, Section 23 and Article I, Section 12 as amended, necessarily demonstrating that the amendment must prevail as the latest expression of the will of the people. Sylvester v. Tindall, supra.

Finally, Hume's reliance on State v. Glass, 583 P.2d 872 (Alaska 1978) offers him little support since it appears that the people of Alaska had not imposed a constitutionally

mandated interpretation of search and seizure issues, as is the case in Article I, Section 12 of the Florida Constitution, thereby affording the Glass court the option of resolving the issue in terms of "right to privacy" rather than in terms of federal precedent established by the United States Supreme Court's interpretation of the Fourth Amendment. Similarly, Shevin v. Sunbeam Television Corporation, 351 So.2d 723 (Fla. 1977), leaves Hume equally wanting of support inasmuch as the issue in that case centered upon the First Amendment rights of the media vis a vis the prohibitions of Florida Statutes § 934.03(2)(d).

Accordingly, the State submits that the lower court's decision reversing the trial court's suppression of the intercepted conversations complained of herein was correct and should be affirmed.

CONCLUSION

Based upon the foregoing arguments and the authority cited herein, the portion of the lower court's decision upholding the trial court's suppression of evidence based upon police non-compliance with the knock and announce law should be quashed and the remainder of said decision reversing the trial court's suppression of intercepted conversations should be affirmed.

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