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IN THE SUPREME COURT OF FLORIDA

CASE NO. 72,272

FILED
SID J. WHITE

OCT 18 1988

BERNARD SHAKTMAN, et al.

CLERK, SUPREME COURT

Petitioners

[Signature]
Deputy Clerk

vs .

THE STATE OF FLORIDA

Respondent

* * * * *

ON PETITION FOR DISCRETIONARY REVIEW

* * * * *

REPLY BRIEF OF PETITIONERS

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TABLE OF AUTHORITIES

Holly v. Auld, 450 So.2d 217 (Fla. 1984)

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ARGUMENT

Issue I

THIS COURT SHOULD NOT DECLINE TO REVIEW QUESTIONS CERTIFIED BY THE DISTRICT COURT OF APPEAL AS BEING OF GREAT PUBLIC IMPORTANCE, WHERE THE ISSUES HAVE BEEN MOOTED BY THE PASSAGE OF RECENT STATE AND FEDERAL LEGISLATION

The State focuses its argument on the basic premise that since this Court's decision will only effect pen registers occurring prior to October 1, 1988, that it is obviously not of great public importance. If the State's theory is correct, then the legislature could moot any appeal by simply changing the law. Thus, any certified question would not be of great public importance. The State argues in its brief:

"Respondent suggests, however, that the issues certified below are not likely to recur, and accordingly they were improvidently characterized as being of great public importance. (Br. of Respondent at 5)

....

While the questions presented are of obvious importance to the petitioners in this case, their resolution will have applicability limited to pre-October 1, 1988 pen register applications. Issues of great public importance are no longer implicated. (Br. of Respondent at 7)

In contrast to the State's position that "the issues certified below are not likely to recur (Br. of Respondent at 5), the Petitioners submit that this issue will be present in every one of the numerous pen registers utilized by law enforcement prior to October 1, 1988. The defendants in those many cases deserve to have this issue addressed by this Court. The peti-

tioners do agree with the Respondent that "the questions presented are of obvious importance to the petitioners"

As this Court stated in a footnote in Holly v. Auld, 450 So.2d 217 (Fla. 1984):

...It is well settled that mootness does not destroy an appellate court's jurisdiction, however, when the questions raised are of great public importance or are likely to recur. Pace v. King, 38 So.2d 823 (Fla.1949); Tau Alpha Holding Corp. v. Board of Adjustments, 126 Fla. 858, 171 So. 819 (1937). This case meets these requirements. The district court properly certified its question as being one of great public importance, and this situation will occur again. Moreover, the district court's incorrect resolution of the question will only cause more problems in the future.

Issues 11, IIIII and IV

The arguments advanced by the respondent do not merit the necessity of a response by the petitioners. The petitioners will readopt and rely on the arguments and authorities contained in their initial brief.

CONCLUSION

Based upon the foregoing, the Appellants request this Court to answer Question Number (1) certified by the District Court of Appeals in the affirmative and Question Number (2) in the negative and to quash the decision of the Court of Appeal of Florida, Third District, affirming the decision of the trial court and to remand with directions to suppress the evidence seized from either the pen register or the "Mart" wiretap, or in the alternative, to dismiss the prosecution because of the unconstitutionality of the Statute.

Respectfully submitted,



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Certificate of Service

I Hereby Certify that a copy of the foregoing was mailed to Joel Rosenblatt, State Attorney's Office, 9th Floor, 1351 N.W. 12th Street, Miami, Florida 33125; and to Michele Crawford, Esq., Attorney General's Office, 401 N.W. Second Avenue, Miami, Florida 33128, on this the 12th day of October, 1988.



MEL BLACK