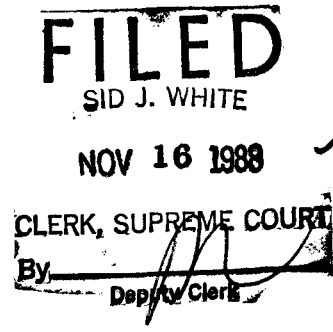
IN THE
SUPREME COURT OF FLORIDA

CASE NUMBER: 72,929



THE STATE OF FLORIDA,
Petitioner,

vs.

ARSENIO GARCIA,
Respondent,

****
ON CERTIFIED QUESTION FROM THE DISTRICT
COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT
****

ANSWER BRIEF OF RESPONDENT GARCIA

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STATEMENT OF THE CASE AND THE FACTS[1]

This case comes to this Court upon a certified question, which was certified to this Court in Garcia v. State, ___ So.2d ___, 13 F.L.W. 1884 (Fla. 4th DCA August 10, 1988). This Court consolidated this case with its review of Davis v. State, 529 So.2d 732 (Fla. 4th DCA 1988), which is before this Court on certification of the same certified question involved in this case and which has been given case number 73,048.

The issues in this case is a narrow legal one. Defendant Garcia entered a nolo contendere plea, reserving the right to appeal. In this plea agreement, both parties stipulated "to the findings of facts and conclusions of law", which had been entered in the previously mentioned Davis case. (R. 175-178). Consequently, neither the State nor Defendant Garcia may go behind those findings in this appellate litigation.

The trial court order, which is the subject of appellate review, is contained in Petitioner's brief as Exhibit A[2]. That order found numerous violations of Chapter 934, Florida Statutes. Indeed, as to one sub-area of the overall statutory violations, the trial judge found so many violations that trial judge chose not to list all of them. "Numerous misstatements and omissions

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[1] The symbol "R" will be used to refer to the record on appeal, which was filed in the lower appellate court.

[2] That order is not contained in the lower appellate court record, based on the fact that this case was tied into the Davis case by the plea agreement and the fact that the Davis case was appealed first. The order, which the State appends to its brief, is an accurate copy of the trial court order involved in this case.

were made by affiant Detective Robataille, including but not limited to [five named matters.]" Ultimately, the trial judge made a legal ruling that the so-called good faith exception, which was established in United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405 (1984), applied to Chapter 934, Florida's Security of Communications Act. Based on that legal ruling and a finding of "good faith", the trial judge denied the motion to suppress. However, the trial judge made an alternative ruling. If his ruling as to the applicability of the "good faith" exception to Chapter 934 was legally erroneous, the trial judge ruled that he would grant the motion to suppress. That order stated, "Were Leon's good faith exception not to apply to wiretap cases, then under the totality of the circumstances the Court would suppress all taped conversations."

Because Defendant Garcia must abide by the nature of his plea agreement, Defendant Garcia accepts the Statement Of The Case And Facts contained in The State of Florida's Initial Brief.

SUMMARY OF ARGUMENT

In 1978, the State sought to prevent the exclusion of illegally intercepted communications, which had been excluded based on the sanctions provided in Chapter 934. Then, the State attacked the constitutionality of that Chapter's provision for statutory exclusion of illegally intercepted communications. This Court rejected that effort in State v. Walls, 356 So.2d 294 (Fla. 1978). In this case, the State tries another approach to thwart the effect of that statutory exclusionary rule, i.e. § 934.06, Fla. Stat. (1987).

The State argues that the legal holding in United States v. Leon, 468 U.S. 987, 104 S.Ct. 3405 (1984), which exclusively concerned the Fourth Amendment to the United States Constitution, can be read into those statutory provisions of Chapter 934, which require exclusion as a sanction for statutory violations of that Chapter.

Legal history establishes beyond dispute that wiretapping in Florida is controlled by statutes promulgated by both the Congress of the United States and the legislature of the State of Florida. It is within the power of those legislative bodies to decide what, if any, sanction should be imposed for violations of their respective statutory limitations on the right of anyone to wiretap. The sanctions, which have been chosen by Congress and the Florida legislature, do not violate any provision of the Constitutions of the United States or Florida.

Pursuant to the Supremacy Clause of the Constitution of the United States, Congress has preempted the field of wiretapping. In 1968, Congress chose not to preempt this field in its entirety and permitted the States to also legislate in this field, provided that no State enacted legislation which was less restrictive than Congress's statutes concerning wiretapping. Prior to 1986, Congress did not enact a statutory "good faith" exception to its federal statutory scheme for wiretapping. Following the Leon decision and as one minor part of its Electronic Communications Privacy Act Of 1986, which Act expanded the scope of its statutes to new technological advances in communications, Congress altered the statutory sanctions governing the admissibility of evidence in its prior wiretap scheme. In that act, Congress provided for a limited adoption of the "good faith" exception to violations of its statutory scheme, which were constitutional in nature. Congress did not adopt a "good faith" exception for non-constitutional violations of that statutory scheme.

Because Florida's Chapter 934 could not be less restrictive than Congress's statutory scheme, the Florida legislature responded to this new federal statute by enacting Chapter 88-184, Laws of Florida. The Florida legislature adopted much of this new federal statute as the law in Florida. However, the Florida legislature expressly chose not to adopt that portion of the new federal act, which provided for a limited adoption of the Leon principle. Because this legislative decision resulted in Florida having a more restrictive sanctions provision in its wiretapping statutory scheme, this aspect of Florida's wiretapping statutes

is not illegal, as violative of the principle of federal preemption involved in the field of wiretapping.

The separation of powers doctrine of the Florida Constitution vests the Florida legislature with exclusive authority to legislate in the area of wiretapping. Consequently, this Court will not overrule the Florida legislature's policy decision not to engraft the same "good faith" exception onto its wiretap statutes that Congress did. Because the Florida legislature's decision to reject a "good faith" exception is unambiguous, this Court will not legislatively enact that principle onto Chapter 934 under the guise of statutory construction.

Even assuming that the new federal statutory "good faith" exception has been adopted in Florida, the same federal act that created it also established that this new provision could have no legal effect on the conduct of the law enforcement officers, who intercepted communications pursuant to the authorization order involved in this case.

ARGUMENT

BECAUSE THE FLORIDA LEGISLATURE EXPRESSLY REJECTED ENACTMENT OF A "GOOD FAITH" EXCEPTION TO THE INADMISSIBILITY OF ILLEGALLY INTERCEPTED COMMUNICATIONS PROVIDED FOR IN CHAPTER 934, FLORIDA STATUTES, THE SUPREME COURT OF FLORIDA WILL NOT ENACT THAT EXCEPTION UNDER THE GUISE OF STATUTORY CONSTRUCTION.

A. Congress Has Exercised Its Power To Control Wiretapping[3] And Has Exclusive Control Of What, If Any, Sanctions Are To Be Imposed For Violations Of Those Federal Statutes Which Regulate Wiretapping.

1. Inadmissibility of wiretap evidence prior to the enactment of the 1968 federal statutes regulating wiretapping.

Olmstead v. United States, 277 U.S. 438, 48 S.Ct. 564 (1928) held that wiretapping by federal law enforcement officers did not violate the Fourth Amendment. However, that Court also stated:

> Congress may, of course, protect the secrecy of telephone messages by making them, when intercepted, inadmissible in federal criminal trials, by direct legislation, and thus depart from the common law of evidence. But the courts may not adopt such a policy by attributing an enlarged and unusual meaning to the Fourth Amendment. ***
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> Id. 277 U.S. at 465-466, 48 S.Ct. at 568.

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[3] Federal legislation covers all forms of electronic surveillance. This case only involves wiretapping. For the purpose of simplicity and clarity, this legislation will be referred to as if it only addressed wiretapping.

This Court has itself held that the United States Constitution grants to Congress the authority to regulate wiretapping. State v. Daniels, 389 So.2d 631 (Fla. 1980).

In response to the Olmstead decision, Congress enacted Section 605 of the Communications Act of 1934. Act of June 19, 1934, Ch. 652, 48 Stat. 1064, 1103; 47 U.S.C. § 605. That statute provided in pertinent part that "no person not being authorized by the sender shall intercept any communication and divulge [it] to any person." Exclusively based on statutory construction, the Supreme Court held that this statute absolutely barred admissibility of wiretap-derived testimony in a federal criminal trial. That Court held that the decision to prevent the use of wiretapping by federal law enforcement officers was a policy decision for Congress to make. Nardone v. United States, 302 U.S. 379, 58 S.Ct. 275 (1937).

Again based only on statutory construction[4], the Supreme Court in Benanti v. United States, 355 U.S. 96, 78 S.Ct. 155 (1957) reaffirmed its prior holdings that the federal statute contained an absolute prohibition against the divulgence of communications intercepted by wiretapping and that this statute applied both to intrastate and to interstate communications. The

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[4] "Petitioner, [the defendant,] ... claims that the admission of the evidence was barred by the Federal Constitution and Section 605. We do not reach the constitutional questions as this case can be determined under the statute." Benanti v. United States, 355 U.S. at 99, 78 S.Ct. 157 (1957).

Supreme Court then expanded the scope of its prior rulings and held that wiretap evidence, which had been obtained by state law enforcement officers by means of a state warrant in accordance with state law, was inadmissible in a federal criminal trial.

> [H]ad Congress intended to allow the States to make exceptions to Section 605, it would have said so. *** [K]eeping in mind this comprehensive scheme of interstate regulation and the public policy underlying Section 605, as part of that scheme, we find that Congress, setting out a prohibition in plain terms, did not mean to allow state legislation which would contradict that section and that policy.
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> Id. 355 U.S. at 105-106, 78 S.Ct. at 160.

The federal statutory prohibition on the admissibility of wiretap evidence became truly absolute throughout the United States, when the Supreme Court handed down its decision in Lee v. Florida, 392 U.S. 378, 88 S.Ct. 2096 (1968). Predicated only on principles of statutory construction[5], the Supreme Court held that § 605 of the federal statute barred the admissibility of wiretap evidence in the state courts, even though Florida police officers wiretapped without violating any State of Florida law.[6]

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[5] "Issues under the Fourth and Fourteenth Amendments were also presented in the petition for certiorari. We do not reach those issues." Id. 379 U.S. at 379 n.1, 88 S.Ct. at 2097 n.1.

[6] Prior of 1969, no Florida statute either authorized Florida law enforcement officers to conduct wiretaps or barred the admissibility of wiretap evidence in Florida. Perez v. State, 81 So.2d 201 (Fla. 1955). Consequently, the decision in Berger v. New York, 388 U.S. 41, 87 S.Ct. 1873 (1967), which held a New York wiretapping statute violative of the Fourth Amendment, was irrelevant to Florida. It was not until 1969 that Florida enacted a state statute to regulate wiretapping and the admission of wiretap-derived evidence. Ch. 69-17, Laws of Fla.

> *** There clearly is a federal statute, applicable in Florida and every other State, that made illegal the conduct of the Orlando authorities in this case. And that statute, we hold today, also made the recordings of the petitioner's telephone conversations inadmissible as evidence in the Florida court.
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> Id. 392 U.S. at 380, 88 S.Ct. at 2098.

As of June 17, 1968 when Lee was decided, the admissibility of wiretap evidence in a State of Florida court was controlled by a federal statute and the principle of statutory construction.[7]

The law of wiretapping in Florida was to change two days later with the enactment into law of new federal statutory wiretap law. Again, the admissibility of wiretap evidence in a Florida court would depend entirely on statutes and statutory construction.

2. Conditional admissibility of wiretap evidence in Florida from 1968 until the enactment of the Electronic Communications Privacy Act of 1986.

Congress decided to alter its existing policy decision regarding the lawfulness of wiretapping by federal and state law enforcement officers. Congress switched from absolutely barring

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[7] Because this federal statute, 47 U.S.C. § 605, was construed by the Supreme Court to absolutely bar both wiretapping and the admissibility of wiretap evidence, this federal statute would never violate the Fourth Amendment. Consequently, Berger v. New York, 388 U.S. 41, 87 S.Ct. 1873 (1967), which invalidated a statute that permitted wiretapping, was irrelevant to the constitutional validity of this federal statute.

wiretapping to allowing it, if certain federal statutory conditions were satisfied. This was accomplished by the enactment of Title III of the Omnibus Crime Control and Sate Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 211, which was codified as 18 U.S.C. §§ 2510-2520.[8]

Because Congress was now going to permit both wiretapping and its admissibility as evidence in court, Congress drafted this legislation to make it satisfy the Fourth Amendment, as construed in Berger v. New York, 388 U.S. 41 (1967).[9] Senate Report No. 1097, 90th Cong., 2d Sess. (1968) reprinted in 1968 U.S. CODE CONG. & AD. NEWS 2112 at 2153.

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[8] In its original enactment of Title III, Congress created 18 U.S.C. § 2520, which expressly provided: "A good faith reliance on a court order or legislative authorization shall constitute a complete defense to any civil or criminal action brought under this chapter or under any other law." Pub. L. No. 90-351, Title III, § 802, 82 Stat. 223. However, the words "good faith" do not appear anywhere in either the newly enacted 18 U.S.C. §§ 2515 and 2518(10), the federal statutory sections at issue in this case regarding the admissibility of wiretap evidence in a court.

Obviously, Congress knew the two words "good faith" in 1968, years before those two words entered the lexicon of the Supreme Court of the United States regarding the exclusionary rule that was associated with the Fourth Amendment. This omission from 18 U.S.C. §§ 2515 and 2518(10) obviously enhances Defendant Garcia's analysis of those two statutory provisions.

[9] As will be discussed subsequently, Congress chose to make a statutory change in its statutory rule of exclusion and partially tie the construction of its statutory law on the admissibility of wiretap evidence to decisions of the United States Supreme Court regarding the exclusionary rule that applies to the Fourth Amendment. What is important to this litigation is the fact that, absent a statute, the Fourth Amendment and the exclusionary rule tied to the Fourth Amendment have never affected the admissibility of wiretap evidence as a result of a decision of the Supreme Court of the United States construing the Fourth Amendment. Eg. Gelbard v. United States, 408 U.S. 41 at n.1, 92 S.Ct. 2357 at 2360 n.1 (1972).

Because there was no uniformity in state statutory wiretap law, Congress decided to preempt the field by national legislation, but only partially. Congress decided to let the States enact their own wiretap statutes, as long as those state statutes were as restrictive or more restrictive than these federal statutes. Congress forbid the states from enacting less restrictive state wiretap statutes. Senate Report No. 1097, 90th Cong., 2d Sess. (1968) reprinted in 1968 U.S. CODE CONG. & AD. NEWS 2112 at 2156, 2187; State v. Aurilio, 366 So.2d 71 (Fla. 4th DCA 1978); State v. McGillicuddy, 342 So.2d 567 (Fla. 2d DCA 1977). This action of partial preemption was constitutional. Federal Energy Regulatory Comm'n v. Mississippi, 456 U.S. 742, 102 S.Ct. 2126 (1982). Simply stated, Congress permitted the States to provide only greater protection to the right to privacy than this federal statutory scheme for wiretapping.

Under these federal statutes, all wiretapping is flatly prohibited, except as expressly authorized. Evidence obtained in violation of this statute is inadmissible in a court, and this statutory prohibition is enforced by means of a statutory motion to suppress. Gelbard v. United States, 408 U.S. 41, 92 S.Ct. 2357 (1972); 18 U.S.C. §§ 2515, 2518. "[T]he congressional findings articulate clearly the intent to utilize the evidentiary prohibition of [18 U.S.C.] § 2515 to enforce the limitations imposed by Title III upon wiretapping ...." Gelbard v. United States, 408 U.S. 41 at 48-49, 92 S.Ct. 2357 at 2361 (1972). "Section 2515 is thus central to the legislative scheme." Id. 408

U.S. at 50, 92 S.Ct. at 2362.

United States v. Giordano, 416 U.S. 505, 94 S.Ct. 1820 (1974) held that a non-constitutional purely-statutory violation of Title III could result in suppression of wiretap evidence. Giordano is also significant to this litigation for the following statement:

> We also reject the Government's contention that even if the approval ... did not comply with the statutory requirements, the evidence obtained from the interceptions should not have been suppressed. The issue does not turn on the judicially fashioned exclusionary rule aimed at deterring violations of Fourth Amendment rights, but upon the provisions of Title III; and, in our view, the Court of appeals correctly suppressed the challenged wiretap evidence.
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> Id. 416 U.S. at 524, 94 S.Ct. at 1931.

Giordano found that legislative history established that Congress did not intend to expand statutory suppression beyond then-existing search and seizure law, but that "it would not extend existing search-and-seizure law for Congress to provide for the suppression of evidence obtained in violation of explicit statutory prohibitions." Id. 416 U.S. at 528-529, 94 S.Ct. at 1933.

Finally, the Supreme Court held that it was the conduct of law enforcement officers which determined whether their actions violated the statutes making up Title III. The subjective good faith of those officers was legally irrelevant to a determination of whether their conduct violated Title III's statutory

provisions.[10] Scott v. United States, 436 U.S. 128 at 138-139, 98 S.Ct. 1717 at 1724 (1978).

The Florida legislature enacted a Florida wiretap statute in 1969, one year after the federal wiretap legislation went into effect. Ch. 69-17, Laws of Fla. What is most important is the fact that Florida's exclusionary rule, §934.06, Fla. Stat., was enacted word-for-word as it was written in 18 U.S.C. § 2515. Ch. 69-17, § 6, Laws of Fla. Indeed, to date the Florida legislature has never amended this particular statue. Ch. 88-184, Laws of Fla. Likewise, the Florida legislature adopted 18 U.S.C. § 2518(10)(a) in every material particular, when it enacted §934.09(9)(a). Ch. 69-17, § 9, Laws of Fla. As will be discussed below, this Florida statute was not amended until 1988.

Because of Congress' preemption of the field, Congress's forbidding of less restrictive State legislation, and the fact that Florida's statutory exclusionary rule was word-for-word identical to the Federal statutory exclusionary rule, the previously discussed United States Supreme Court constructions of that Federal statute, in terms of the Federal statutory rule of exclusion, are binding in Florida, not merely persuasive. Federal Energy Regulatory Comm'n v. Mississippi, 456 U.S. 742,

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[10] Scott did note that the motive of officers "may" have some relevance in determining the propriety of applying the exclusionary rule, but deemed this matter irrelevant to the statutory analysis of the federal wiretap statutes at issue in that case. Id. 436 U.S. at 139 n.13., 98 S.Ct. at 1724 n.13. For present purposes, Scott did not establish a "good faith" statutory exception to the then-existing federal wiretap scheme.

102 S.Ct. 2126 (1982); Chesapeake & Ohio R. Co. v. Martin, 283 U.S. 209, 51 S.Ct. 453 (1931).

Simply stated, the statutory rule of exclusion in Florida's wiretap statutes was independent of the Fourth Amendment up to the enactment of federal legislation in 1986 and corresponding Florida statutory changes in 1988.

B. Although Congress Amended Its Federal Statutory Rule Of Exclusion For Wiretap Evidence To Permit A "Good Faith" Exception For Constitutional Violations Of Its Federal Wiretap Statutes, The Florida Legislature Retained Its More Restrictive Statutory Sanction Of No "Good Faith" Exception To The Inadmissibility Of Illegally Intercepted Communications.

Because of the technological advancements in communications, Congress made major changes to Title III in the Electronics Communications Privacy Act of 1986, which took effect on October 21, 1986. Pub. L. No. 99-508, 100 Stat. 1848. For present purposes, the only material part of that Act is its amendment of 18 U.S.C. § 2518(10). Pub. L. No. 99-508 §101(e), 100 Stat.1848, 1853 added the following new sub-section to 18 U.S.C. § 2518(10):

> (c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.

It is clear that this statutory change was made to apply the "good faith" exception described in United States v. Leon, 468 U.S 897, 104 S.Ct. 3405 (1984) to violations of a constitutional

nature as part of the federal wiretap statutory rule of exclusion. H.R. Rep. No. 647, 99th Cong. 2d Sess. (1986) at page 48, which is contained in Respondent's Appendix to this brief as Exhibit 1.

As required by Title III, the Florida legislature enacted legislation to not make Chapter 934 less restrictive than the new federal amendments to Title III. Ch. 88-184, Laws of Florida. Florida also added a new sub-section (c) to 934.09(9), the Florida equivalent of 18 U.S.C. § 2518(10). Ch 88-184, § 7, Laws of Fla. This Florida statutory amendment states:

> (c) The remedies and sanctions described in ss. 934.03-934.10 with respect to the interception of electronic communications are the only judicial remedies and sanctions for violations of those sections involving such communications.

The Florida legislature omitted the crucial word "unconstitutional" from Florida's enactment of the new federal provision 18 U.S.C. 2518(10)(c). As a matter of statutory construction, this omission means that the Florida legislature has retained its prior more-restrictive sanctions and not adopted a "good faith" exception to Florida's statutory wiretap scheme. Mayo v. American Agricultural Chemical Co., 101 Fla. 279, 133 So. 885 (1931); State. Dept. of Ins. v. Insurance Services Office, 434 So.2d 908 at 911 (Fla. 1st DCA 1983); 49 Fla. Jur. 2d Statutes §§ 134, 161.

Defendant Garcia's construction of this new Florida statutory provision is rendered irrefutable by the fact that at the same time it omitted the key word "unconstitutional", the Florida legislature did adopt the "good faith" defense to a civil action,

which was added to Title III by the new federal act. Pub. L. No. 99-508 § 201, 100 Stat. 1860; Ch. 88-184 § 9, Laws of Fla.[amending § 934.27(4)].

The fact that Florida's wiretap statutes are more restrictive in this regard than the federal wiretap statutes is nothing new. State v. Tsavaris, 394 So.2d 418 at 422 (Fla. 1981).

C. The Florida Courts Will Not Create A "Good Faith" Statutory Exception To Florida's Wiretap Statute When The Florida Legislature Has Chosen Not To Do So.

The State requests this Court to create a "good faith" exception to Florida's statutory exclusionary rule, when the Florida legislature has chosen not to do so. The Florida courts have no authority to do that and will not do that. Hamilton v. State, 366 So.2d 8 (Fla 1978); State v. Walls, 356 So.2d 294 (Fla. 1978); State v. Rush, 399 So.2d 527 (Fla. 2d DCA 1981).

D. Article 1, § 12 Of The Florida Constitution Does Not Effect The Florida Statutory Rule of Exclusion In Florida's Wiretap legislation.

The State argues that Article 1, § 12 of the Florida Constitution controls construction of Florida's wiretap statutes. That provision states that "information obtained in violation of this right" will be admissible, if admissible under decisions of the United States Supreme Court construing the Fourth Amendment.

Exclusion of wiretap evidence is compelled not by this Florida constitutional right, but by Florida's statutory wiretap law. The Florida Constitution no where has a provision that ties the relevant Florida wiretap statutes to decisions of the United States Supreme Court regarding the exclusion vel non of evidence for Fourth Amendment violations. Indeed, it should be obvious that any such Florida Constitution provision would violate the Supremacy Clause of the United States Constitution to the extent that it conflicted with the federal wiretap statutes, given federal statutory preemption over wiretapping. This would certainly be the situation regarding nonconsitutional violations of the federal wiretap statutes.

Consequently, Article 1, § 12 of the Florida Constitution is legally irrelevant to the issue before this Court.

E. Assuming That The Florida Legislature Adopted The New Federal "Good Faith" Statutory Change In Federal Statutory Wiretap Law, The Same Federal Act That Created This Statutory Exception Precluded The Application Of That Exception To This Case.

Assuming for the sake of argument that Florida did adopt the federal statutory "good faith" exception contained in this new federal act, this adoption would not save the wiretap interceptions involved in this case. The same federal act, which enacted the federal statutory "good faith" exception, Pub. Law 99-508 § 101(e), also provided that this particular amendment and other amendments "shall take effect 90 days after the date of the

enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect." Pub. Law No. 99-508 § 111, 100 Stat. 1859. This new federal Act was approved on October 21, 1986 and, therefore, does not apply to interceptions based on orders entered prior to January of 1987.

The wiretap authorization order, which is involved in this case was signed on July 3, 1986. A copy of that order is contained in Respondent's Appendix to this brief as Exhibit 2.[11]

Consequently, as a matter of federal statutory law, the new federal "good faith" exception can not save the wiretap interceptions made in this case. To ignore this federal restriction in the new federal act would violate Congress' prohibition that no State's wiretap law can be less restrictive than federal wiretap statutes.

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[11] That order is not contained in the lower appellate court record, based on the fact that this case was tied into the Davis case by the plea agreement and the fact that the Davis case was appealed first.

CONCLUSION

Based upon the above arguments, Respondent Garcia respectfully requests this Court to answer the certified question in the affirmative and to hold that there is no "good faith" exception to Florida's statutory scheme governing the admissibility of wiretap evidence.

In the alternative, Respondent Garcia respectfully requests this Court to affirm the decision of the lower court on the basis that federal statutory law provides that the newly created federal statutory "good faith" exception to the admissibility of illegally intercepted wiretap evidence can have no applicability to this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a correct copy of this Answer Brief of Respondent Garcia was mailed to (1) counsel for Petitioner, Deborah Guller and Celia Terenzio, Assistant Attorneys General, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida 33401 and (2) counsel for Respondent in case number 73,048, Gary Caldwell, Assistant Public Defender, 9th Floor, 301 North Olive Avenue, West Palm Beach, Florida 33401 on this 14th day of November, 1988.

Arthur Joel Berger

ARTHUR JOEL BERGER