IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs. Case No. 73,249

ALPHONSO MCCRAY,

Respondent.

REPLY BRIEF OF PETITIONER

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ARGUMENT

The one issue presented to this Court is the question certified by the District Court of Appeals, First District, which involves the application of the doctrine enunciated in Carawan v. State, 515 So.2d 161 (Fla. 1987), after corrective legislation set forth in Chapter 88-131(7), Laws of Florida. Specifically, that Appellate Court has asked ". . . whether the Florida Legislature intended to punish, as two separate offenses, the single act of sale of a controlled substance in a container. . .?" Thus, the argument of Respondent that he did not intend to deliver drug paraphernalia (plastic baggies), but only to sell cocaine, is not appropriate. This argument, intended to circumvent the provisions of § 893.147, Fla. Stat.,,was rejected below with the court concluding that the plastic baggies were indeed drug paraphernalia within the statutory definition. McCray v. State, 531 So.2d 408, 409 (Fla. 1st DCA 1988). Respondent's argument that there was insufficient proof of the "requisite intent" (Brief, p. 4) to sell the bagies as opposed to cocaine and his further argument that an inference was required on the part of the jury that he knew or should have known that the undercover officer would use the baggies for illicit purposes (Brief, p. 7) are not persuasive. By one of the very authorities cited by Respondent, Baldwin v, State, 498 So.2d 1385 (Fla. 5th

DCA 1986), it can be seen that the intent at issue in the statute is that of a seller, not that of a buyer. Neither the inference of an intent on the part of the undercover agent in buying the cocaine nor proof of an independent sale of baggies are required. The baggies, at the time of sale, were intended by Respondent to contain the cocaine, which they did, and this § 893.147(1) forbids.

Finally, Respondent's attempt to avoid the statutory construction mandated by the legislature by analogies with cases dealing with sentencing guideline changes completely misses the mark. The recent statutory construction amendment passed by the legislature does not change substantive law. As pointed out in the concurring opinion of Mr. Justice Shaw in State v. Barritt, 13 F.L.W. 591 (Fla. 1988, Case No. 71,624)(a case which Respondent has either overlooked or ignored) and Clark v. State, 530 So.2d 519 (Fla. 5th DCA 1988), Chapter 88-131(7), Laws of Florida, merely spells out what the legislature now and in the past meant in construing its statutes with respect to multiple offenses.

CONCLUSION

It is respectfully submitted that the certified question before this Court be answered in the affirmative for reasons set forth in this Reply Brief and the Initial Brief previously submitted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **P. DOUGLAS BRINKMEYER, ESQUIRE,** Assistant Public Defender, Post Office Box 671, Tallahassee, Florida 32302, this 27th day of December, 1988.

WALTER M. MEGINNISS