047

IN THE SUPREME COURT OF FLORIDA

CASE NO. 78,535

PETER BRUNETTI,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

****

RESPONDENT'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the appellant in the Fourth District Court of Appeal and the defendant in a criminal prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida. Respondent, the State of Florida, was the appellee and the prosecution, respectively, in the lower court.

In the brief, the parties will be referred to as they appear before this Honorable Court, except that Respondent may also be referred to as the State or the prosecution.

The following symbols will be used.

"R" Record on Appeal

Unless otherwise indicated, all emphasis has been supplied by Respondent.

STATEMENT OF THE CASE AND FACTS

The State accepts Petitioner's "Statement of the Case" and "Statement of the Facts," to the limited extent that they are nonargumentative, as reasonably accurate synopses of the legal occurrences and the evidence adduced below, subject to the corrections, additions and clarifications contained in the argument portion of the brief.

SUMMARY OF THE ARGUMENT

Point I

Since this issue was properly decided in Gonzalez v. State, 571 So.2d 1346 (Fla. 3d DCA 1990), rev. denied, _____ So.2d ____, (Fla. Case No. 77,459 June 27, 1991), relied upon by the District Court in the instant case, this Court should decline to exercise its discretionary jurisdiction to answer the certified question. Should the Court, however, decide to accept jurisdiction of the case, the State submits that the certified question must be answered in the negative for the following reasons.

Florida Standard Jury Instruction 3.04(c)(2), in allocating the burden of proving entrapment to the defendant, does not violate a defendant's constitutional rights since it does not relieve the State of its burden of proving beyond every reasonable doubt all the elements of the offenses charged. In proving an affirmative defense in a criminal case, such as entrapment, the burden of persuasion rests with the defendant, and the State is not obligated to prove the defendant's explanation untrue. Proof of the nonexistence of all affirmative defenses has never been constitutionally required.

Point II

The trial court did not abuse its discretion in imposing a time limit on voir dire examination where, in light of the particular facts in the instant case, no abuse of discretion has been shown, where the limitation was necessary to control

unreasonably repetitious voir dire and where the court's general voir dire questions and jury charge afforded the protection sought by counsel.

ARGUMENT

POINT I

INSTRUCTION 3.04(c)(2), FLORIDA STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES, AND SECTION 777.201(2), FLORIDA STATUTES (1989), BOTH APPLICABLE TO OFFENSES AFTER 1987, DO NOT UNCONSTITUTIONALLY SHIFT THE BURDEN TO THE DEFENSE TO PROVE ENTRAPMENT.

As he did below, Petitioner argues that the standard jury instruction on entrapment, Fla. Std. Jury Instr. (Crim.) 3.04(c)(2), and §777.201, Fla. Stat. (1987), the statute on which the instruction is based, violate the Due Process Clause of the state and federal constitutions by placing on Petitioner the burden of proving entrapment by a preponderance of the evidence. The State disagrees, and points out that this precise issue was recently decided by the Third District in Gonzalez v. State, 571 So.2d 1346 (Fla. 3d DCA 1990), rev. denied ___ So.2d ___ (Fla. No. 77,459 June 27, 1991), relied upon by the Fourth District in the instant case, and of which this Court declined to accept discretionary review. See also Krajewski v. State, 16 FLW D692, D693 (Fla. 4th DCA March 13, 1991), review granted, Case No. 77,685 (Fla. 1991), Herrera v. State, 580 So.2d 653 (Fla. 4th DCA 1991) review granted, Case No. 78,290 (Fla. 1991) and Deleon v. State, 16 FLW 1390, (Fla. 4th DCA May 22, 1991), review granted, Case No. 79,299 (Fla. 1991), wherein the Fourth District "aligned" itself with the view expressed by the Third District in Gonzalez.

In Gonzalez, supra, contrary to the argument advanced by Petitioner herein, the Third District Court of Appeal specifically held that the standard jury instruction tracking the language of the entrapment statute does not unconstitutionally relieve the State of the burden of proving beyond reasonable doubt all elements of offenses charged. Citing Patterson v. New York, 432 U.S. 197, 211, 97 S.Ct. 2319, 2327, 53 L.Ed.2d 281 (1977), the Court pointed out that proof of the nonexistence of all affirmative defenses has never been constitutionally required. Further, the Gonzalez court reiterated this Court's observation in Cruz v. State, 465 So.2d 516, 518 (Fla. 1985) that the defense of entrapment is not of constitutional dimension. Consequently, the Gonzalez court opined that it saw "no reason not to treat entrapment like any other affirmative defense in Florida by placing the burden of proving that defense on the defendant." This reasoning is in accord with State v. Cohen, 568 So.2d 49 (Fla. 1990), wherein this Court held that "[a]n 'affirmative defense' is any defense that assumes the complaint or charges to be correct but raises other facts that, if true, would establish a valid excuse or justification or a right to engage in the conduct in question. **An affirmative defense does not concern itself with the elements of the offense [which must always be proven by the State] but it concedes them.**" The State submits that the District Court below was correct in following the thoughtful, well-reasoned and legally sound opinion of the Third District in Gonzalez, supra,

and, as such, the District Court's decision herein adopting the reasoning in Gonzalez should be approved by this Court.

Section 777.201, Florida Statutes (1987), states as follows:

> (1) A law enforcement officer, a person engaged in cooperation with a law enforcement officer, or a person acting as an agent of a law enforcement officer perpetrates an entrapment if for the purpose of obtaining evidence of the commission of a crime, he induces or encourages and, as a direct result, causes another person to engage in conduct constituting such crime by employing methods of persuasion or inducement which create a substantial risk that such crime will be committed by a person other than one who is ready to commit it.
>
> (2) A person prosecuted for a crime shall be acquitted if he proves by a preponderance of the evidence that his criminal conduct occurred as a result of an entrapment. The issue of entrapment shall be tried by the trier of fact.

The above notwithstanding, because a defendant is entitled to have the jury instructed on his theory of defense, the trial court complied with Petitioner's request for instructions on the affirmative defense of entrapment. During the charge conference, defense counsel asked the trial court to read a special jury instruction on entrapment which "...tracks the entire changed entrapment defense after October 1, 1987, except for the last paragraph." (R 2408-2409). In response the trial court stated he would read the entrapment instruction as **currently** promulgated by the Florida Supreme Court. (R 2405-

2408; 2409-2410). The State submits that the trial court was correct in reading the standard instruction on entrapment as recently amended by this Court. It is settled law that a trial judge should use the standard jury instructions where they are appropriate. Kelley v. State, 486 So.2d 578 (Fla. 1986); State v. Bryan, 290 So.2d 482 (Fla. 1974). And as recently stated in Hurtado v. State, 546 So.2d 1176-1177 (Fla. 2d DCA 1989), unnecessary departures from the standard jury instructions may undermine the unquestionably beneficial effect of those forms on the Florida trial system as a whole. See also, Smith v. Mogelvang, 432 So.2d 119, 125 (Fla. 2d DCA 1983).

In addition to instructing the jury on reasonable doubt, the trial court in the instant case charged the jury on the issue of entrapment following Standard Jury Instruction 3.04(c)(2) as follows:

> Entrapment: The definition of entrapment has been raised.
>
> The Defendant Peter Brunetti was entrapped if, number one: He was, for the purpose of obtaining evidence of the commission of a crime, induced or encouraged to engage in conduct constituting the crime of trafficking in cocaine and/or conspiracy to traffic in cocaine.
>
> And number two: He engaged in such conduct as the direct result of such inducement or encouragement.
>
> And number three: The person who induced or encouraged him was a law enforcement officer or a person engaged in cooperating with, or acting as, an agent of a law enforcement officer.

And number four: The person who induced or encouraged him employed methods of persuasion or inducement which created a substantial risk that the crime would be committed by a person other than one who is ready to commit it.

And number five: The Defendant, Peter Brunetti, was not a person who was ready to commit the crime.

It is not entrapment if the Defendant, Peter Brunetti, had the predisposition to commit the crime of trafficking in cocaine and/or conspiracy to traffic in cocaine.

The Defendant, Peter Brunetti, had the predisposition if, (before any law enforcement officer or person acting for the officer persuaded, induced or lured Peter Brunetti), he had a readiness or willingness to commit trafficking in cocaine and/or conspiracy to traffic in cocaine if the opportunity presented itself.

It is also not entrapment merely because a law enforcement officer, in a good faith attempt to detect a crime:

A. Provided the Defendant, Peter Brunetti, the opportunity, means and facility to commit the offense which the Defendant, Peter Brunetti intended to commit and would have committed otherwise.

B. Used tricks, decoys or subterfuge to expose the Defendant, Peter Brunetti, to criminal acts, or

C. Was present and pretending to aid or assist in the commission of the offense.

On the issue of entrapment, the Defendant must prove to you by a preponderance of the evidence that his

criminal conduct occurred as a result of entrapment (R 2652-2654).

Petitioner submits that the burden to prove predisposition must remain on the State where entrapment is raised in defense to a crime which has intent or state of mind as an element. The Petitioner, however, is mixing apples and oranges. The defendant in raising an affirmative defense never has a burden of proof but rather a burden of persuasion.

Petitioner in the instant case chose as an affirmative defense entrapment. Petitioner therefore had the burden of persuasion. "Burden of proof" actually encompasses two separate burdens. One burden is that of going forward with evidence. If the party who has the burden of producing evidence does not meet that burden, the consequence is an adverse ruling on the matter at issue. The other burden is the burden of persuasion, which becomes crucial only if the parties have sustained their respective burdens of producing evidence and only when all the evidence has been introduced. It becomes significant if the trier of fact is in doubt; if he is, then the matter must be resolved against the party with the burden of persuasion. See McCormick, Evidence § 337 (3d Ed. 1984). Rose v. Clark, 478 U.S. 570, 106 S.Ct. 3101, 92 L.Ed.2d 460 (1986); Cf. Walton v. Arizona, 497 U.S. ___, 110 S.Ct. ___, 111 L.Ed.2d 511 (1990). "It is well within the power of the State to regulate procedures under which its laws are carried out, including the burden of producing evidence and the burden of persuasion." See Patterson

v. New York, 432 U.S. 197, 97 S.Ct. 319, 53 L.Ed.2d 287 (1977). Florida's allocation to the defendant of proving by a preponderance of the evidence that his criminal conduct occurred as a result on an entrapment is consistent with due process given the law in Florida concerning the burden of proving affirmative defenses.

The decisions of federal courts, even those of the United States Supreme Court, are not controlling or even necessarily persuasive in regard to the subject of entrapment in state courts. Bauer v. State, 528 So.2d 6 (Fla. 2d DCA 1988). Entrapment, whether it is recognized as a defense and, if so, how it is pleaded and the burden of proof in regard thereto, has so far remained exclusively within the rule-making and precedent-establishing authority of the particular jurisdiction that recognizes the defense. See Bauer v. State, 528 So.2d 6 (Fla. 2d DCA 1988). The Bauer court, citing Moody v. State, 359 So.2d 557 (Fla. 4th DCA 1978), stated as follows:

> The federal view of the burden of proof on entrapment is not binding on the States because it is not based on any constitutional requirement. State v. Brown, 287 A.2d 400 (Del.Super. 1972). Thus, California requires by statute that the defendant prove entrapment by a preponderance of the evidence. See, People v. Moran, 1 Cal.3d 755, 83 Cal. Rptr. 411, 463 P.2d 763 (1970). Many states require the defendant to prove entrapment by a preponderance of the evidence before requiring the state to disprove entrapment beyond a reasonable doubt. State v. Grilli, 304 Minn. 80, 230 N.W.2d 445 (1975); State v. Amundson, 69 Wis.2d 394 (1972). Others

> adhere to the typical view that a defendant has the burden of proving all affirmative defenses such as self-defense and entrapment by a preponderance of the evidence without placing any burden at all upon the state. Commonwealth v. Wilkes, 414 Pa.246. 199 A.2d 411 (1964), cert. den., 379 U.S. 939, 85 S.Ct. 344, 13 L.Ed.2d 349 (1969); State v. Rogers, 43 Ohio St.2d 28, 330 N.E.2d 674 (1975). The freedom of the states in this regard is illustrated in Patterson v. New York, 432 U.S. 197, 210, 97 S.Ct. 2319, 2327, 53 L.Ed.2d 281 (1977) where the Court said:
> **"We thus decline to adopt as a constitutional imperative operative country-wide, that a State must disprove beyond a reasonable doubt every fact constituting any and all affirmative defenses related to the culpability of an accused.... Proof of the nonexistence of all affirmative defenses has never been constitutionally required...."** 359 So.2d at 560.

528 So.2d at 6.

As the United States Supreme Court stated in Patterson v. New York, supra:

> It is normally within the power of the State to regulate procedures under which its laws are carried out, including the burden of producing evidence and the burden of persuasion, 'and its decision in this regard is not subject to proscription under the Due Process Clause unless' it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.

53 L.Ed.2d at 287.

In determining whether Florida's allocation to the defendant of proving by a preponderance of the evidence that his criminal conduct occurred as a result of an entrapment is

consistent with due process, this court must look to Florida case law with respect to the burden of proving affirmative defenses.

At common law the burden of proving affirmative defenses, indeed "all ... circumstances of justification, excuse or alleviation," rested on the defendant. 4 W. Blackstone Commentaries, Commentaries 201; M. Foster, Crown Law 255 (1762). Mullaney v. Wilbur, 421 U.S. 684, 693-694, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975). This was the rule when the Fifth Amendment was adopted, and it was the American rule when the Fourteenth Amendment was ratified. Commonwealth v. York, 50 Mass. 93 (1845), as cited in Patterson v. New York, supra, 53 L.Ed.2d at 287.

In Florida, the burden of persuasion in proving an affirmative defense in a criminal case also rests with the defendant. 23 Fla. Jur. 2d Evidence and Witnesses, § 75 Affirmative Defenses; 29 Am.Jur.2d, Evidence § 156; Priestly v. State, 450 So.2d 289 (Fla. 4th DCA 1984); Evenson v. State, 277 So.2d 587 (Fla. 4th DCA 1973); Koptyra v. State, 172 So.2d 628 (Fla. 2d DCA 1965).

As the Court in Koptyra v. State held:

> While the State always has the burden of proving the guilt of the accused beyond a reasonable doubt and the accused never has the burden of proving his innocence, nevertheless, the burden of adducing evidence on the defense of entrapment is on the accused unless the facts relied on otherwise appear in evidence to such an extent as to raise in the minds of the jury a reasonable doubt of guilt.

172 So.2d at 632.

For an interesting analysis, see Martin v. Ohio, 480 U.S. 228, 107 S.Ct. 1098, 94 L.Ed.2d 267 (1986), which held that under the Ohio Revised Code, the burden of proving the elements of a criminal offense is upon the prosecution, but for an affirmative defense, the burden of proof by a preponderance of the evidence is placed on the accused. Self defense is an affirmative defense under Ohio law and therefore must be proved by the defendant.

In State v. Wheeler, 468 So.2d 978 (Fla. 1985), the State argued that when this Court adopted instruction 3.04(c) (former instruction - not the instruction involved in the instant cause), the Court altered the substantive law regarding entrapment. In rewriting the earlier jury instruction, 2.11(e), this Court deleted a statement of the burden of proof: "The State must prove beyond a reasonable doubt that the defendant was not the victim of entrapment by law enforcement officers, and unless it has done so, you should find the defendant not guilty."[1] The State argued that the deletion altered the burden of proof, so that the defendant bore the burden of establishing entrapment as with other affirmative defenses. The Court in Wheeler held this was not the case, as when it adopted the current standard jury instructions in In Re Use by the Trial Courts of the Standard Jury Instructions in Criminal Cases and

[1] The full text of both versions of the instruction can be found in Rotenberry v. State, 468 So.2d 971 (Fla. 1985).

the Standard Jury Instructions in Misdemeanor Cases, 431 So.2d 594, 595-99 (Fla. 1981). The Court discussed those areas where substantive changes were made. No mention, according to this Court, was made of the entrapment instruction, indicating that it did not intend to alter the status quo. This, however, is not the situation now. In Florida Statute §777.201 (1987), and the new Standard Jury Instruction 3.04(c), the intent was very much to change the status quo and to place the burden of establishing entrapment on the defendant as with any other affirmative defense. The case law cited prior to the enactment of the new statute clearly is inapplicable.

Indeed, the applicable statute and jury instruction on entrapment adequately and correctly charged the jury on the substantive law in Florida on this issue. The present entrapment statute and standard jury instruction clearly are not unconstitutional beyond a reasonable doubt. See State v. Kinner, 398 So.2d 1360, 1363 (Fla. 1981). Proof of the nonexistence of all affirmative defenses has never been constitutionally required. As no constitutional violation occurred in giving Florida Standard Jury Instruction 3.04(c)(2) to the jury in the instant case, the certified question of the District Court below must be answered in the negative.

ARGUMENT

POINT II

THE COURT DID NOT ABUSE ITS DISCRETION IN IMPOSING A TIME LIMIT ON VOIR DIRE EXAMINATION

Petitioner contends that the court erred in imposing a thirty minute time limitation upon the prosecutor and each of three defense attorneys in their voir dire examination of seventeen potential jurors because he was unable to question several prospective jurors about his defense of entrapment. In light of the particular facts in the instant case, Respondent disagrees.

While Fla.R.Crim.P. 3.300(b) provides for a reasonable voir dire examination of prospective jurors by counsel, it is well settled that the method of conducting voir dire is left to the sound discretion of the trial court and will be upheld unless an abuse of discretion is found. Kalinsky v. State, 414 So.2d 234 (Fla. 1982); U.S. v. Vera, 701 F.2d 1349 (11 Cir. 1983). In exercising that discretion, it is the judge who controls the time and extent of the voir dire in the interest of orderliness and in the dispatch of trials. Peri v. State, 426 So.2d 1021 (Fla. 1st DCA 1983); Barker v. Randolph, 239 So.2d 110, (Fla. 1st DCA 1970). Moreover, it is the court's responsibility to control unreasonably repetitious and argumentative voir dire. Stano v. State, 473 So.2d 1282 (Fla. 1985); Baker v. State, 517 So.2d 753 (Fla. 2nd DCA 1987). Rulings of the court restricting the examination of jurors and voir dire will not be invalidated by a

claim of prejudice grounded solely upon speculation or conjecture. Mizell v. New Kingsley Beach, Inc., 122 So.2d 225 (Fla. 1st DCA 1960).

In reviewing the transcript of the voir dire examination, which spans over 650 pages (R 81-744), the State maintains that the court did not abuse its discretion in limiting the attorneys' voir dire of the second group of veniremen to thirty minutes a piece.[2] After devoting two to three days to voir dire examination, only four potential jurors remained from the twenty-one veniremen that were originally questioned (R 573-577, 594-605). Consequently, in order to prevent undue delay in picking the jury, the court informed the prosecutor and the defense attorney that the voir dire examination of the second group of jurors would proceed differently (R 585). According to this court:

> THE COURT: First of all, I have received quite a lesson last week from the four of you. Thank you. So what I am going to do today when we proceed, I'm going to ask all the preliminary questions, and I am going to ask

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[2] The voir dire examination of the first group of 21 venirement (excluding the actual selection process from this group) is listed at R 81-554. After the court's preliminary examination (R 81-128), each attorney's voir dire examination appeared as follows: The State (R 128-277); Petitioner's counsel (R 281-430); Codefendant, Terry Kennerknecht's counsel (R 430-510); Codefendant Michael Bocchino's counsel (R 510-553). Most of the State's voir dire examination consisted of the typical background questions that the court did not go into. Much of Petitioner's voir dire questions was repetitious of the court's and the State's examination.

questions about their background, initially.

I would start with juror number seven right on through twenty-one, then I will turn it over, and I will give each of the four of you one-half hour to follow up with whatever you think is appropriate.

Now, what I am saying is I am going to ask the detail questions so that your half hour does not have to be expended for asking our customary questions about how many kids do you have. Are you married. Are you working.

Considering the fact that these people are from the same pool, to listen to four different law lectures, I think a half hour for each of you will be sufficient to cover anything that you consider important that I might have missed, like another total of two hours to question the perspective members of the jury.

PETITIONER'S TRIAL COUNSEL: Let me note my standing objection. There are six people to question and a half hour isn't enough time with this magnitude of scenario behind the punishment.

THE COURT: My view is you are not going to have to waste any of that precious half hour asking all of the routine questions, and this is a situation where the record is replete.

These people were in the pool who had listened to you ad nauseam go over and over questions of law, talking about reasonable doubt, discussions about all kinds of questions of law. It is not a new panel.

(emphasis added) (R 585-587).

Preceding the trial counsel's voir dire of the second group of potential jurors (R 751-897), the court inquired for approximately two hours (R 745) as to preliminary matters and background questions (R 609-744). During the course of the trial judge's examination, the veniremen were asked whether they could follow the court's instructions on the law, both as a group (R 610) and, in several instances where warranted (R 745), individually (R 632, 641, 644, 698). In each instance, the record reveals that the court received an affirmation from the veniremen that they would be able to follow the court's instructions.

After Petitioner's counsel conducted a general voir dire of the veniremen (R 789-806), in which many questions merely repeated the court's examination of the potential jurors, counsel's inquiry of each individual veniremen on the issue of entrapment delved no deeper to uncover bias than what was elicited by the court's inquiry.[3] (See R 807-08, 811-14, 817-18; 820; 823; 825-7; 829; 830-31; 833). Petitioner can not argue that this was due to the thirty minute time constraint imposed by the court, since the extent of counsel's inquiry on entrapment,

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[3] Hence, Petitioner's reliance on William v. State, 424 So.2d 148 (Fla. 5th DCA 1982) is misplaced where, unlike sub judice, "defense counsel was prevented from asking pertinent questions not covered by the State or the court, by a very short time limit imposed without apparent warning".

as to the second group of veniremen, did not vary from what he asked of the first group.[4]

In Jones v. State, 378 So.2d 797 (Fla. 1st DCA 1979) the court held that counsel must be permitted to inquire of prospective jurors concerning their willingness and ability to accept the court's charges in a criminal case, subject to the trial court's control of unreasonably repetitious voir dire questioning and if the court has not first thoroughly examined the prospective jurors on those subjects. See also Underwood v. State, 388 So.2d 1333 (Fla. 2nd DCA 1990) where the court held that the defense counsel was not denied the right to inquire when he stated the he had no specific questions to ask of the jury, except one which was then asked by the court. Sub judice, defense counsel did not specify to the court any questions that he sought to ask the veniremen that they had not previously responded to (R 834-836).[5] While a defendant is entitled to a voir dire that fairly and adequately probes a juror's qualifications, he is not necessarily entitled to test jurors on their capacity to accept his theory of the case. U.S. v. Toomey, 764 F.2d 678 (9th Cir. 1985). The trial court does not abuse its

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[4] To compare defense counsel's voir dire questions of the first group of veniremen on the issue of entrapment, see R 307, 313, 319, 323, 326, 331, 343, 352, 356, 360, 366, 377, 383, 390,; 415-17, 424, 428.

[5] Defense counsel only told the court that he had "[o]ther questions, not the one of the entrapment defense in this case." (emphasis added). However, he never specified what the other questions were.

discretion in precluding voir dire examination of the prospective jurors' understanding of the law, provided that the court's general voir dire questions and jury charge afford the protection sought by counsel. U.S. v. Vera, 701 F.2d 1349 (11th Cir. 1983); U.S. v. Miller, 758 F.2d 570 (11th Cir. 1985). The State maintains that the court's general voir dire examination and the jury charge given at the close of the case on rules for deliberation (R 2660-2662), for entrapment (R 2652-2654), burden of proof (R 2654-55), presumption of innocence (R 2654) and reasonable doubt (R 2655-56) adequately protected Petitioner's right to be tried by a fair and impartial jury.

Furthermore, Petitioner has demonstrated no prejudice from not having addressed five veniremen of the second group on the issue of entrapment. Since Petitioner's counsel had voir dired five of the six veniremen ultimately selected to be jurors on the issue of entrapment, and since no objection was made at the time these jurors were sworn in, any possible error should be deemed harmless or waived.

Accordingly, Petitioner's convictions must be affirmed.

CONCLUSION

Wherefore, based upon the foregoing argument and authorities cited herein, Respondent respectfully requests that this Honorable Court **AFFIRM** the decision of the district court in all respects.

Respectfully submitted,

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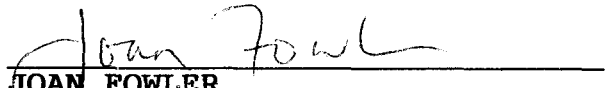

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by courier to: **ALLEN J. DeWEESE, ESQUIRE**, Assistant Public Defender, The Governmental Center, 301 N. Olive Avenue, 9th Floor, West Palm Beach, Florida 33401 this 9 day of October, 1991.

Jacqueline Donakal

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/mmc