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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

MANUEL MUNOZ,
Petitioner,

v.

Case No. 78,900
DCA Case No: 91-00008

STATE OF FLORIDA,
Respondent.

_____ /

RESPONDENT'S JURISDICTIONAL BRIEF

APPEAL FROM THE DISTRICT COURT OF APPEAL FOR THE
FIRST DISTRICT, STATE OF FLORIDA

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FLORIDA BAR NO. 613959 ✓

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MANUEL MUNOZ,

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CASE NO. 78,900
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STATE OF FLORIDA,

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JURISDICTIONAL BRIEF OF RESPONDENT

PRELIMINARY STATEMENT

Petitioner, Manuel Munoz, appellant and defendant in the courts below, will be referred to herein as "petitioner." Respondent, the State of Florida, appellee and prosecuting authority in the courts below, will be referred to herein as "the State." References to the record on appeal will be by the use of the symbol "R" followed by the appropriate page number(s). References to the transcript of proceedings will be by the use of the symbol "T" followed by the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

Respondent agrees with petitioner's statement of the case and facts.

SUMMARY OF ARGUMENT

Respondent agrees to exercise of the Florida Supreme Court's jurisdiction in this case to resolve conflict among the district courts as to whether section 777.201, Florida Statutes (1987) abolished the objective entrapment test set forth in Cruz v. State, infra.

ARGUMENT

ISSUE

THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL, HOLDING THAT SECTION 777.201, FLORIDA STATUTES, ABOLISHED THE OBJECTIVE ENTRAPMENT TEST UNDER CRUZ V. STATE, 465 So.2d 516 (Fla.), cert. denied, 473 U.S. 905 (1985), IS IN CONFLICT WITH DECISIONS OF THE SECOND, FOURTH AND FIFTH DISTRICT COURTS OF APPEAL.

Respondent agrees that the decision of the First District Court of Appeal, holding on authority of Gonzalez v. State, 571 So.2d 1346 (Fla. 3d DCA 1990), cert. denied, 584 So.2d 998 (Fla. 1991) and Krajewski v. State, 16 F.L.W. D692 (Fla. 4th DCA March 13, 1991), quashed on other grounds, 16 F.L.W. S682 (Fla. October 17, 1991) that section 777.201, Florida Statutes (1987) abolished the objective entrapment test set forth in Cruz v. State, 465 So.2d 516 (Fla.), cert. denied, 473 U.S. 905 (1985), is in conflict with decisions of the Second, Fourth and Fifth District Courts of Appeal. Bowser v. State, 555 So.2d 879 (Fla. 2d DCA 1989); State v. Purvis, 560 So.2d 1296 (Fla. 5th DCA 1990); Strickland v. State, 16 F.L.W. D2671 (Fla. 4th DCA October 16, 1991).¹

¹ In that the decision in State v. Hernandez, 16 F.L.W. D2627 (Fla. 4th DCA October 9, 1991) does not indicate whether the crime occurred after the October 1, 1987 effective date of section 777.201, Florida Statutes, a determination cannot be made as to whether that decision is in conflict with the decision issued in this case.

CONCLUSION

Respondent agrees to exercise of the Florida Supreme Court's jurisdiction in this case on grounds of conflict among the district courts of appeal.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



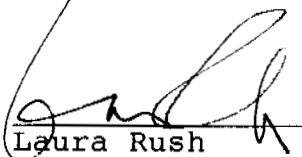
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing jurisdictional brief has been furnished by U.S. Mail to Alvin L. Peters, 36 Oak Avenue, Panama City, FL 32401 this 25th day of November, 1991.



Laura Rush
Assistant Attorney General