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SID J. WHITE
SEP 11 1992
CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,910

STATE OF FLORIDA,

Petitioner,

vs.

MICHAEL ANTHONY RHODES,

Respondent.

****

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT
OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

****

PETITIONER'S REPLY BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, was the Appellee in the Fourth District Court of Appeal and the prosecution in the trial court. The Respondent was the appellant and the defendant, respectively, in the lower courts. In this brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "R" will be used to reference the record on appeal. All emphasis has been added by Petitioner.

STATEMENT OF THE CASE AND FACTS

Petitioner relies on the statement of the case and facts set forth in its initial brief.

SUMMARY OF THE ARGUMENT

The opinion of the Fourth District Court of Appeal should be quashed, and this case remanded with directions that Respondent's conviction be reinstated. The District Court was incorrect in holding that the practice of the Broward Sheriff's office of reconstituting powder cocaine seized as contraband into the crack rock form of cocaine was illegal. Further, even if the actions of the sheriff's office were illegal, this illegality would not insulate Respondent from criminal liability as his right to due process of law was not violated. Respondent would have purchased the crack cocaine, no matter what the source, so there was no prejudice.

ARGUMENT

THE FOURTH DISTRICT COURT OF APPEAL WAS WRONG WHEN IT HELD THAT THE USE OF "CRACK" ROCKS RECONSTITUTED FROM POWDER COCAINE IN A REVERSE STING VIOLATED A DEFENDANT'S RIGHT TO DUE PROCESS OF LAW. ANY ILLEGALITY IN THE MANUFACTURE OF THE ROCKS SHOULD NOT SHIELD THE DEFENDANT FROM CRIMINAL LIABILITY.

Petitioner relies on its initial brief, with the following additional argument in response to Respondent's brief on the merits.

The actions of the Broward County Sheriff's Office were not so outrageous as to bar further prosecution. The holding in Greene v. United States, 454 F.2d 783 (9th Cir. 1971) is based on a unique factual scenario which is unlike that in the present case. That court held:

> However, the facts presented by this unique record do reveal circumstances which, in combination, require reversal of these convictions. First it was Courtney [government agent] who, after the 1962 raid and arrest, re-initiated telephone contact with Becker [defendant]. This re-establishment of contact occurred at a time when Courtney would ordinarily have had no reason to re-contact the defendants, because his earlier undercover work had been successfully completed.
>
> Second, the course of events which led to the 1966 arrests was of extremely long duration, lasting approximately two and one-half years if measured from the defendants' 1963 release from jail, or three and one-half years if measured from Courtney's reinitiation of contact.
>
> Third, Courtney's involvement in the bootlegging activities was not only extended in duration, but also substantial in nature. He treated Thomas [defendant] and Becker as partners. He offered to provide a still, a still site, still equipment, and an operator. He actually provided two thousand pounds of sugar at wholesale.

> Fourth, Courtney applied pressure to prod Becker and Thomas into production of bootleg alcohol. The Government concedes that Courtney made the statement, "the boss is on my back." And we believe that in the context of criminal "syndicate" operations, of which Courtney was ostensibly a part, this statement could only be construed as a veiled threat.
>
> Fifth, the Government, through its agent Courtney, did not simply attach itself to an on-going bootlegging operation for the purpose of closing it down and prosecuting the operators. Any continuing operation had been terminated with the 1962 raid and arrest. We think, rather, that the procedure followed by Courtney in this case helped first to re-establish, and then to sustain, criminal operations which had ceased with the first convictions.
>
> Finally, throughout the entire period involved, the government agent was the only customer of the illegal operation he had helped to create. It is undisputed that the only alcohol sold went to Courtney, who paid for it with government funds. (footnote omitted)

Id., 454 F.2d at 786-787. The reversal was based upon the combination of factors. Id., 454 F.2d at 787. The extensive nature of government involvement present in Greene is not present in the case at bar. As such, Respondent is mixing apples with oranges, and there was no bar to prosecution.

The arguments made by Respondent also miss the point of Petitioner's argument. Even if the Sheriff's Office was illegally "manufacturing" crack cocaine, the remedy would be to penalize those persons involved. However, the actions of the Sheriff's Office in no way negates the illegality of Respondent's contact in purchasing the cocaine from the government agents. State v. Bass, 451 So.2d 986 (Fla. 2d DCA 1984). Respondent's

self-serving assertions that he had no intention of purchasing cocaine that night were obviously found to be incredible by the jury, and were belied by the evidence produced below. Bass controls.

The state asserts that this court should reverse the opinion of the District Court of Appeal, and remand this cause with directives that the charge against Respondent be reinstated.

CONCLUSION

WHEREFORE, based on the foregoing reasons and authorities cited therein, Petitioner respectfully requests this Honorable Court **ACCEPT** discretionary jurisdiction in the instant case, **QUASH** the opinion of the District Court, and **REVERSE** this cause with directions that the charge against Respondent be reinstated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief has been furnished by courier to: TANJA OSTAPOFF, Assistant Public Defender, 421 3rd Street, West Palm Beach, Florida 33401 this 8 day of September, 1992.

Joan Fowler
Of Counsel