

FILED

SID J. WHITE

JUL 22 1992

CLERK SUPREME COURT.

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 80,087

(4TH DCA NO. ~~90-3174~~
90-0703)

MARIO KRAJEWSKI

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FROM THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA, FOURTH DISTRICT

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Respondent was the prosecution and Petitioner was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida. Respondent was the Appellant and Petitioner was the Appellee in the Fourth District Court of Appeal.

In the brief, the parties will be referred to as they appear before this Honorable Court.

The following symbols will be used:

"AB" Petitioner's Brief on Jurisdiction.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts as presented in Petitioner's Brief on Jurisdiction (AB 1-3)

SUMMARY OF THE ARGUMENT

The decision of the Fourth District Court of Appeal is neither in conflict with the decision of any other district court nor any decision of this Court.

ARGUMENT

THIS COURT SHOULD NOT GRANT
DISCRETIONARY REVIEW OVER THE DECISION
BELOW BECAUSE THERE IS NO CONFLICT

Petitioner seeks discretionary review of the case at bar based on the opinion which the Fourth District Court of Appeals rendered following the remand of this Court. In that opinion, Judge Hersey, speaking for the Court, said:

The objective entrapment defense is explained in Cruz v. State, 465 So.2d 515 (Fla.), cert. denied, 473 U.S. 905, 105 S.Ct. 3527, 87 L.Ed.2d 652 (1985). That defense still viable. (citations omitted).

* * *

[In the case at bar] there are conflicts in the evidence, and the credibility of witnesses was key element in making a determination as to whether entrapment, as measured by the objective test, was a viable defense on the facts of this case.

It is not part of the appellate function to re-weigh the evidence or to second guess the fact-finder on credibility issues. There is sufficient evidence to support the trial court's conclusion that no entrapment occurred as measured by the objective criteria, and we find no error in that regard.

In order for two decisions to be in express and direct conflict for the purpose of invoking this Court's discretionary jurisdiction under Fla.R.App.P. 9.030(a)(2)(A)(iv), the decisions should speak to the same point of law, in factual contexts of sufficient similarity to permit the inference that the result in

each case would have been different had the deciding court employed the reasoning of its sister court. As this Court noted in Mancini v. State, 312 So.2d 732 (Fla. 1975):

Our jurisdiction cannot be invoked merely because we might disagree with the decision of the district court nor because we might have made a factual determination if we had been the tried of fact. (citation omitted).

* * *

[O]ur jurisdiction to review decisions of courts of appeal because of alleged conflicts is invoked by (1) the announcement of a rule of law which conflicts with a rule previously announced by this court or another district, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same facts as a prior case. In this second situation, the facts of the case are of the utmost importance.

Mancini, id., at 733, emphasis added.

Generally, an appellate court is limited in its review to the correction of errors of law. It is not authorized to review questions of fact. Manufacturers National Bank v. Canmont International, Inc., 322 So.2d 565 (Fla. 3rd DCA 1975). The question in the appellate court, therefore, is whether there was any evidence to support the decision of the trial court. It cannot be disputed that in challenging factual determinations, a defendant admits all facts in the evidence adduced and every conclusion favorable to the prosecution which the finder of fact might reasonably draw from the evidence. Cf., Lynch v. State, 293 So.2d 44 (Fla. 1974).

At bar, the Fourth District Court of appeal did not announce a rule of law in conflict with a decision of this Court, nor did it rule on a case in which the facts were to similar to a case previously decided by this Court that a identical result would be mandated. Indeed, the Court noted that the facts were in conflict, and that based on the facts which were favorable to the State, the objective entrapment test announced by this Court in Cruz v. State, 465 So.2d 516 (Fla. 1985), was not met.

In short, the decision over which Petition seeks certiorari review is a factual one. Accordingly, it is inappropriate for further review, and certiorari should not be granted.

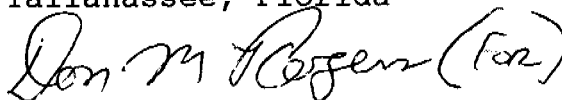
CONCLUSION

The decision of the Fourth District Court of Appeal is not reviewable by this Court in that it does not conflict with the decision of any other district court of appeal, nor a decision of this Court.

Accordingly, this Court should decline to exercise discretionary jurisdiction in this matter.

Respectfully submitted,

ROBERT A. BUTTERWORTH
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Tallahassee, Florida

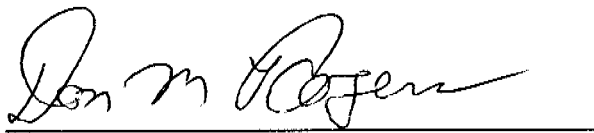


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to: TANJA OSTAPOFF, Assistant Public Defender, 301 North Olive Avenue/9th Floor, West Palm Beach, Florida 33401, this 20th day of July, 1992.



Of Counsel

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