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CLERK, SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

MICHAEL ALLEN ADAMS,
Petitioner,

v.

CASE NO. 80,239

STATE OF FLORIDA,
Respondent.

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On October 24, 1990, Petitioner was charged by Information with Trafficking in Methamphetamine and Possession of Cocaine on September 24, 1990. (Appendix I -- Information). Petitioner filed a Motion to Dismiss in the trial court grounded on a claim of objective entrapment. (Appendix II -- Motion to Dismiss). That motion was granted by the trial court. (Appendix III -- Order). Respondent timely appealed that order of dismissal to the Fifth District Court of Appeal which reversed and remanded the cause for trial in its opinion filed in State v. Adams, 17 FLW D1564 (Fla. 5th DCA June 26, 1992). (Appendix IV -- Opinion).

STATEMENT OF THE FACTS

On July 20, 1990, Kelly Jo Easterling was arrested by the Kissimmee Police Department and charged with Trafficking in Cocaine. In order to obtain a reduced sentence in that case, she agreed to provide substantial assistance to the police in making three narcotics trafficking arrests. Ms. Easterling enlisted the assistance of her boyfriend, Danny Sly, and his friend, Mark Hollecker, in locating a drug supplier. Hollecker represented to her that he knew that the Petitioner, Michael Adams, was a drug trafficker. Easterling did not inform Hollecker about her agreement with the police. (Appendix V, p. 35-38). Hollecker negotiated with Adams for the purchase of an ounce of crank (methamphetamine) and, during the sale, Adams was arrested. Since a middleman, Hollecker, not a State agent, induced Adams to sell the methamphetamine, the Fifth District Court of Appeal found that entrapment was not an available defense.

SUMMARY OF ARGUMENT

The decision of the Fifth District Court of Appeal in the case sub judice is based upon this Court's decision in State v. Hunter, 586 So.2d 319 (Fla. 1991). Petitioner was induced to sell methamphetamine by a middleman, not a State agent, just as Hunter had been induced by Conklin to obtain drugs for the informant Diamond in the Hunter case. The 5th DCA found that Petitioner's participation in the sale of illegal narcotics was wholly voluntary and that he could not claim entrapment as a matter of law. Its decision is in complete accord with Hunter and not in express and direct conflict as Petitioner contends.

ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN THE CASE SUB JUDICE IS NOT IN EXPRESS AND DIRECT CONFLICT WITH THIS COURT'S DECISION IN STATE V. HUNTER, 586 SO.2D 319 (FLA. 1991).

Under Article V, Section 3(b)(3), of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(4), this Court may review any decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law. In Reaves v. State, 485 So.2d 829 (Fla. 1986), this Court held that the conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. In Department of HRS v. National Adoption Counseling Service, Inc., 498 So.2d 888 (Fla. 1986), this Court said that inferential or implied conflict no longer may serve as the basis for jurisdiction. In Department of Revenue v. Johnston, 442 So.2d 950 (Fla. 1983), this Court initially accepted jurisdiction, but discharged jurisdiction because the case was distinguishable on its facts from those cited as being in conflict with it. Given these bases for determining jurisdiction based on conflict, it cannot be said that the opinion of the Fifth District Court of Appeal in the case sub judice is in express and direct conflict with State v. Hunter, 586 So.2d 319 (Fla. 1991), cited by Petitioner.

In Hunter, Ron Diamond sought to get his drug trafficking sentence reduced by providing substantial assistance in arresting other drug dealers. He asked Conklin to sell him some drugs. Conklin then induced his employer, Hunter, to help him find drugs to sell to Diamond. This Court found that, while the defense of entrapment as a matter of law was available to Conklin, it was not available to Hunter. There was no specific ongoing criminal activity involving Conklin. Therefore, he was entrapped as a matter of law by the State agent, Diamond. However, that defense was not available to Hunter, because no State agent had induced him to assist in the purchase.

In the instant case, Kelley Jo Easterling was in the same situation as Mr. Diamond in the Hunter case, attempting to assist in the arrest of other drug dealers to get leniency for herself. Petitioner Adams was induced to sell methamphetamine by Mark Hollecker, a friend of Easterling's boyfriend, not a State agent. Hollecker knew Adams to be a drug addict and trafficker. He and Adams had purchased and used marijuana and cocaine together in the past. As in Hunter, the defendant was induced to sell drugs by a middleman, not a State agent. However, unlike the situation in Hunter, Petitioner Adams admitted to his ongoing drug activity. In Hunter, this Court pointed out that Conklin had no prior criminal record and there was no indication that he was involved in any ongoing criminal activity. In the instant case, there was an ongoing drug connection between Hollecker and Adams.

It should also be noted that Petitioner's argument ignores the effect of the enactment of Section 777.201, Florida Statutes

(1987) on the doctrine of "objective entrapment" as set forth in Cruz v. State, 465 So.2d 516, 522 (Fla. 1985). This Court's decision in Hunter does not mention Section 777.201, perhaps because that case involved offenses which were committed back in 1982, five years prior to the enactment of the entrapment statute.

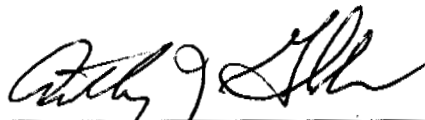
It cannot be said that the decision of the Fifth District Court of Appeal in the case sub judice is in express and direct conflict with this Court's decision in Hunter. The 5th DCA relied on Hunter in determining that the defense of entrapment as a matter of law was not available to the Petitioner. Although this Court has not made its position clear on whether or not the Cruz test for objective entrapment should still be applied to cases arising after the effective date of Section 777.201, it should be noted that Petitioner's offenses were committed in September, 1990, long after the effective date of the entrapment statute. While all of the circuit and appellate courts would appreciate clarification on this issue, the instant case is not in conflict with Hunter and is not an appropriate vehicle for such clarification. This Court should decline to exercise discretionary review.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent would suggest that this Court should decline to exercise its discretion to review the decision of the Fifth District Court of Appeal in the case sub judice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Jurisdictional Brief of Respondent has been furnished to Anne Moorman Reeves, Esquire, Office of the Public Defender, 112 Orange avenue, Suite A, Daytona Beach, Florida 32114, this 20th day of August, 1992.



Anthony J. Golden
Assistant Attorney General

IN THE SUPREME COURT OF FLORIDA

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RESPONDENT'S APPENDIX TO JURISDICTIONAL BRIEF

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