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FILED
SID J. WHITE
MAR 23 1993
CLERK, SUPREME COURT
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IN THE SUPREME COURT
IN THE STATE OF FLORIDA
TALLAHASSEE, FLORIDA

MARVIN V. TAYLOR,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.
_____/

DOCKET # 81,446

APPELLANT'S BRIEF ON JURISDICTION

WRIT OF CERTIORARI FROM THE
FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

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ISSUE: THE FLORIDA SUPREME COURT SHOULD INVOKE ITS JURISDICTION PURSUANT TO ARTICLE V, SECTION 3 AND RULE 9.030(a)(2)(A)(iv) IN THAT THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FLORIDA SUPREME COURT ON THE SAME QUESTION OF LAW.

The First District Court of Appeal filed its opinion in this case on January 11, 1993. Appellant filed a Motion for rehearing or for clarification of Decision on January 19, 1993. Said Motion was denied on February 19, 1993 and the First District Court of appeal entered its Mandate on March 9, 1993. The Notice for this Court to invoke its discretionary jurisdiction was filed March 17, 1993.

Appellant's argument below for which he is now seeking review concerns the due process violation of paying confidential informants for their trial testimony based upon a contingency arrangement where such testimony by the confidential informant is necessary for a criminal prosecution.

Briefly, the Appellant was convicted on one of two alleged control buys made by a confidential informant who was paid for each control buy based upon the quantity of drugs purchased, usually $20.00. In Appellant's case, it became necessary for the confidential informant to testify at trial, where he was the only witness to the drug transactions involving Appellant. The confidential informant was promised payment for court appearances and depositions. As to the amount of pay the confidential informant was to be paid for his trial testimony by the State, the confidential informant testified at trial that he did not know how much he was to be paid, although he was sure that he would be "treated right."

The confidential informant was paid by the Clay County Sheriff's Office. They controlled the amount of money the confidential informant was to be paid, including his trial testimony. If the confidential informant did not testify, there would be no conviction. No one in the courtroom, including the confidential informant knew how much the confidential informant was going to be paid or was paid. Attempts through discovery to learn the amounts of payment to this confidential informant for drug transactions and other involvement in the various cases were precluded by the trial court. The First District Court of Appeals upheld the trial court on these discovery issues raised on appeal.

The First District Court of Appeal ruled this manner of paying a confidential informant was not a Due Process Violation. The First District Court of Appeal reasoned that confidential informants could be paid for their court testimony because in State v. Glosson, 462 So.2d 1082 (Fla. 1985), the Florida Supreme Court; a) was dealing with a case where the testimony in a criminal trial by a confidential informant would result in a financial gain to the confidential informant through civil forfeitures if they gained a criminal conviction, b) held that the proper raising of the due process violation was before trial, not during a motion for a new trial, and c) held that each defendant asserted an entrapment defense where there was an enormous financial incentive to testify falsely in order for there to be a successful prosecution.

Appellant argues the opinion of the First District Court of Appeals expressly and directly conflicts with this Court's decision in State v. Glosson, 462 So.2d 1082 (Fla. 1985). The jurisdiction

of the Florida Supreme Court may be invoked in this case pursuant to Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure.

The Florida Supreme Court held in Glosson, supra: "a trial court may properly dismiss criminal charges for constitutional due process violations where an informant stands to gain a contingent fee conditioned on cooperation and testimony in the criminal prosecution when the testimony is critical to a successful prosecution." In addressing the first issue of the First District Court's opinion, the Supreme Court did not say where the money to be paid the confidential informant was to originate, only that it be contingent upon cooperation and testimony in the criminal prosecution.

As to the second issue, the fact that the confidential informant was to be paid for court trial testimony was not learned until trial by the Appellant. Regardless, a due process violation can occur at trial as it did in this case and Glosson does not say otherwise.

The Florida Supreme Court in Glosson very clearly states that the predisposition of the defendant is not a consideration when this due process violation is raised, that it is a matter of law to be decided by the court, not a jury question as in the case of entrapment and thus eliminates the entrapment issue.

Appellant argues the Florida Supreme Court should invoke its jurisdiction in this case because of the serious ramifications if the state is allowed to pay its confidential informants a contingent fee for trial testimony. Especially when the defendant, jury and judge know only the amount to be paid is contingent upon

the testimony by the confidential informant and that the person testifying will be "treated right". No defendant can defend against such governmental action and this clearly falls within the concerns of the Florida Supreme Court in Glosson, supra.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that the original and five copies of the foregoing APPELLANT'S BRIEF ON JURISDICTION has been furnished by U.S. MAIL DELIVERY to the UNITED STATES SUPREME COURT, Tallahassee, Florida and a true and correct copy of same has been furnished by U.S. MAIL to JAMES ROGERS, ESQUIRE, Assistant Attorney General, Department of Legal Affairs, Appeals Division, The Capitol Building, Tallahassee, Florida 32301 on this 23rd day of March, 1993.

JAMES R. THIES, SR., ESQUIRE