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O.A. 11-5-93

IN THE SUPREME COURT OF FLORIDA

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MARVIN V. TAYLOR,

Petitioner,

v. CASE NO. 81,446

STATE OF FLORIDA,

Respondent.
_____/

MERITS BRIEF OF RESPONDENT

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

CAROLYN J. MOSLEY, #593280
ASSISTANT ATTORNEY GENERAL

JAMES W. ROGERS, #325791
BUREAU CHIEF-CRIMINAL APPEALS

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR RESPONDENT

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PRELIMINARY STATEMENT

Petitioner, Marvin V. Taylor, was the defendant in the trial court, appellant in the appellate court, and will be referred to here by his last name. Respondent, State of Florida, was the prosecuting authority in the trial court, appellee in the appellate court, and will be referred to here as "State."

The record on appeal, consisting of three volumes, will be referred to by the symbol, "R," followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

The State rejects Taylor's summary of the trial testimony. He has plucked certain facts out of the record on appeal without putting them in context and has omitted other important facts. Taylor does not summarize any of the testimony of the State's witnesses elicited on direct examination. He has selected his facts solely from the answers given on cross examination. (I.B. 3-8)

Three law enforcement agencies joined forces in 1991 to conduct a comprehensive ongoing operation to combat drug use in Green Cove Springs and throughout Clay County. (R. 114-115, 120) They made "controlled buys, or undercover buys, of any kind of drugs being sold on the streets," and to the extent possible, these transactions were videotaped. (R. 115) They used both undercover policemen and confidential informants. (Id.) They used confidential informants "because a lot of times the people on the street that's dealing won't deal with a stranger at all, or they'll know the [undercover] policemen that works this area." (R. 116) Gerald Jefferson was a confidential informant who participated in controlled buys of crack cocaine from street vendors. (R. 116-119, 124-126)

Confidential informants will not risk their lives to assist the police without being compensated in some manner. (R. 151) Jefferson was "working strictly for the money, and [the police] would pay him $20 a purchase for every time he made a purchase of crack cocaine, or an average of $20." (R. 124, 128) He usually

made more than one purchase in a day. (Id.) On the two dates in question, Jefferson made at least a total of ten controlled buys of cocaine. (R. 143, 148) The most he ever made in one day was approximately $200 to $250, but he has not made that amount often. (R. 179)

When the police first encountered Jefferson, "[h]e was told that he would be paid for undercover buys," the amount to be based "on how big the case was" and "how involved he wanted to get." (R. 131-132) Jefferson knew that he would be paid $20 for each drug transaction. (R. 181) He was also promised payment for court appearances. (R. 134) Jefferson commenced working for the police in April, May, or June 1991, and since that time, he has participated in approximately 40 to 60 cases, each one of which involved the minimal amount of $20. (R. 133, 176) All of the controlled buys occurred in the Green Cove Springs area. (R. 185) On the date of the trial, November 5, 1991, it had "been a while" since Jefferson had worked for Detective Jett. (R. 177) The week before the trial, he was paid $40 for appearing for a deposition. (R. 178) Jefferson expected to be paid for testifying at Taylor's trial. The amount was unknown, but he was "sure [Detective Jett would] probably treat [him] right." (R. 178)

With respect to the events on which the charges were based, Detective Jett testified to the following facts: On June 7, 1991 at approximately 2:00 p.m. Gerald Jefferson was provided with an undercover vehicle to use to buy controlled substances from street vendors. He and the vehicle were searched for money,

drugs, and anything else that might be hidden. A video camera was installed in the vehicle and a body bug on Jefferson. Jefferson was given $60.00 in cash. Jett monitored Jefferson's actions through a listening device. He heard what was said until Jefferson exited the vehicle and after he returned to the vehicle. The body bug failed to pick up the conversation outside the vehicle. He heard Jefferson ask for "60," and a voice, later identified as Taylor's respond, "60?" to which Jefferson said, "Yeah, 60," which is street slang for "$60 worth of crack cocaine." Part of what transpired was captured on videotape. Jett followed Jefferson to the area where the drug transaction occurred. After the drug transaction was completed, Jefferson met with Jett at a predetermined location. "No more than ten minutes" had elapsed. Jett retrieved three rocks of cocaine from Jefferson. He and the vehicle were again searched for drugs and money, and none was found. Jefferson and Jett reviewed the videotape, and Jefferson described what had transpired and identified Marvin Taylor as a participant in the transaction. Jett prepared a written report based on Jefferson's representations. Taylor was not immediately arrested because the undercover operations were still ongoing. On June 21, 1991 at approximately 4:00 p.m. the same procedure was followed for a second controlled buy. Jefferson may have been wearing a body bug. Everything was monitored that was associated with the video camera, which ran from the time Jefferson left until he returned. Jefferson was given $40.00, and when he returned from completing

the transaction, Jett retrieved two rocks of crack cocaine from him. Jefferson again identified Taylor as participating in the drug deal. Taylor was arrested one to two months later when the undercover operations ended. (R. 116-130, 136-140, 145-148, 152)

In addition to corroborating the above facts testified to by Detective Jett, Jefferson testified to the following facts: In the first transaction, Jefferson saw Taylor parking his vehicle. Jefferson pulled up beside him and asked for "60." Taylor exited his vehicle, said "60?" and motioned Jefferson to come over to his vehicle. Robert Tisdale joined them, and all three walked to the back of Taylor's vehicle. Taylor retrieved something from his right-hand pocket, handed it to Tisdale, and Tisdale handed it to Jefferson, which turned out to be crack cocaine. Jefferson returned to his vehicle and said, "I didn't get him on video but I got 'T,'" referring to Taylor. In the second transaction, Jefferson drove to the same area as before and saw Tisdale. He asked him, "You got 4-0?," to which Tisdale responded, "Hold on," and walked over to where Taylor was sitting in his vehicle. Taylor handed Tisdale something, and when Tisdale entered Jefferson's vehicle, he had a black pill bottle with a gray lid on it. He opened it and poured out some crack cocaine in his hand and gave some to Jefferson in exchange for $40. (R. 165-163)

The videotape of the first transaction shows Taylor exiting his vehicle and briefly shows Tisdale. (R. 165-166) The second videotape shows Tisdale. (R. 167)

Jefferson has one felony conviction. (R. 170) He no longer uses drugs. (R. 206) No drug tests were performed on Jefferson because Detective Jett believed that Jefferson was not using drugs. (R. 135)

On cross-examination, defense counsel attempted to impeach Jefferson's testimony with statements previously made in deposition. Jefferson was deposed on October 9, 1991, and at that time, he had not reviewed the videotapes or written reports. (R. 171) Prior to testifying at trial, he reviewed the videotape and the written reports but not his deposition. (R. 174-175) He stated, "I did not have a chance to review the video and now that I have it all come back to me clearly." (R. 175)

The following colloquy took place during Jefferson's cross examination:

> Q. Mr. Jefferson, on October 9th, 1991 at the time I questioned you about the June 7th incident, did you not say you wanted a $20 hit or a 20?
>
> A.. Well, at that time I had--like I said, I hadn't reviewed the videos and the report. I had made a buy prior to that to Robert Tisdale for a 20.
>
> Q. Uh-huh.
>
> A. And that's probably where I got mixed up.
>
> Q. And also didn't you say on that day that Robert came back to you and sold you one rock for $20? (R. 188) *****
>
> A. I could have said it. I don't remember, but I know that--
>
> Q. Well, there's Page 26 starting on Line 14. You said: **"What I saw was: He went to**

Marvin, come back to me with dope, sold me $20 worth of dope, and I left." Do you recall saying that?

A. I don't recall but I could have said it. (R. 189) *****

Q. ... [D]o you remember this question ... start[ing] with Line 10 [on page 30]: **"Q. He had just pulled up? A. He had just pulled up. And Robert said, "Hold it. I'll get you something." Q. Okay. Now, was that after you had asked Robert for the $20 rock? A. That's right. He said--no. After--after, yeah. Okay. When Robert came up to the car, I asked for a 20. Q. And then Marvin drove up? A. Yeah."**

A. At that time I didn't review the video, like I told you. Now, what I really did was like on what that video said, I asked Robert Tisdale for a 4-0.

Q. Uh-huh.

A. And then Marvin and some other guy just pulled into the place.

Q. Now there's two other people?

A. And he was sitting in the car. You never did ask me about anything with him, period. (R. 192-193) *****

Q. Okay. Going to Page 31, Line 13. Do you remember me asking you this question, starting on Line 12: **Q. How was it packaged? A. It was open. It was just a rock in his hand. Q. Just a rock in his hand? A. Right."**

A. Right.

Q. Do you remember saying that?

A. Yes, I do.

Q. But that wasn't correct?

A. I had them backwards.

Q. You had them backwards?

A. That's right, because I didn't review the tape. (R. 194-195) *****

Q. ... Do you recall on Page 39, Line 22 ....: **Q. ... Did you hear him say anything that day about money, about drugs, about how much cocaine, anything like that? Did you, yourself? A. No."** When discussing whether Marvin Taylor had said anything to you or discussed anything concerning drugs. ... June 21st, the second transaction.

A. That Marvin had said anything about drugs? I didn't never--I didn't never talk to him first. I talked to Robert Tisdale on the second transaction.

Q. Well, today you're saying it's the first transaction. You're saying it happened on June 7th today.

A. Right.

Q. Right?

A. The first transaction was me and him. I asked him for 60, and he said "60?" I said, "Yeah, 60." And he said, "Come over here," like that. (R. 202-203) *****

Q. On October 9th, on Page 40, starting on Line 2, do you remember this question: **Q. Now, what you saw was a pill bottle. Did Robert Tisdale say something to Marvin Taylor, like, "Hey, man, give me some cocaine," or, "Give me a pill bottle"? Did you hear anything like that? A. No. Robert Tisdale got the pill bottle, and he come to me and gave me"--**

A. That was--that's what--see, I hadn't reviewed the video because I had that one particular incident mixed up with the last buy, see?

Q. Uh-huh.

A. First buy he had scraped drugs in his hand. Three rocks. ... I believe if I said

it [on deposition], it was to the best of my knowledge at that time, at that time, but now that I have reviewed the video I know it clearly. (R. 204-206) *****

Q. ... Do you recall on Page 42, Line 23: **Q. So Marvin Taylor wasn't even present? A. No. He handed him the pill bottle and took off around the front of the car."** Do you remember that question and that answer?

A. No, I don't remember. You got to say it.

Q. You got that confused, too?

A. Yes. (R. 206)

(R. 188-206)

SUMMARY OF ARGUMENT

No due process violation occurred in the instant case. The facts demonstrate that the informer was paid an insignificant amount of money for purchasing crack cocaine from a street vendor and testifying against him at trial. While there was no evidence of improper inducement, there was plenty of evidence of Taylor's predisposition to commit the crime. A mere offer to buy cocaine, which is what happened here, hardly creates a serious risk of causing a law-abiding citizen to commit a crime. On the other hand, Taylor's immediate compliance with the informer's request on a public street indicates that he was ready and willing to commit this crime at the first available opportunity. Had he not sold the cocaine to the informer, he would have sold it to someone else.

To ensure that the informer would not use improper inducements or pressure or later misrepresent the facts, the police closely supervised his conduct, including the use of audio and video equipment. Their extensive involvement in the drug deal diminished, if not eliminated, the risk of ensnaring an innocent person.

The informer was paid for his time in court. Compensation agreements to obtain trial testimony are a common occurrence. Experts are paid a fee, policemen are paid a salary, and codefendants are given leniency, if not outright immunity from prosecution, in exchange for their truthful testimony. Notwithstanding their bias, however weak or strong, these persons

are all permitted to testify simply because their testimony is critical to a successful prosecution. Their compensation is not contingent on a certain result (conviction) but rather on the performance of a certain act (testifying). Defendants too are permitted to testify even though they have the strongest motive of all to lie. The opportunity for rigorous cross-examination and the giving of standard jury instructions on weighing the witnesses' credibility provide adequate safeguards for both parties against possible abuses.

The State respectfully declines to address on the merits the other issues raised by Taylor, unless directed to do so, inasmuch as this Court accepted conflict jurisdiction on an entirely different issue, the one discussed above. These other issues are either completely lacking in merit or, at the very least, involve harmless error.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ERRED IN RULING THAT NO DUE PROCESS VIOLATION OCCURRED WHEN THE POLICE AGREED TO PAY AN INFORMER TO PARTICIPATE IN CONTROLLED DRUG BUYS AND TO TESTIFY IN DEPOSITION AND IN COURT.

The police hired Gerald Jefferson on a part-time basis to engage in undercover investigations. They paid him $20 for purchasing crack cocaine from Taylor, $40 for testifying at deposition, and a reasonable sum for testifying in court. The police took every precaution to ensure that Jefferson would not use improper inducements or pressure or later misrepresent the facts. They closely supervised his initiation and participation in the drug deal involving Taylor. They provided him with an undercover vehicle and $60 in cash to purchase drugs, searched him and the vehicle immediately before and after the drug deal, installed a video camera in the vehicle and a body bug on Jefferson, and retrieved three rocks of crack cocaine from him immediately after completion of the drug deal. Detective Jett heard Jefferson ask for "60," and a voice, later identified as Taylor's respond, "60?' to which Jefferson said, "Yeah, 60," which is street slang for "$60 worth of crack cocaine." The videotape showed Taylor exiting his vehicle. The police used Jefferson on a part-time basis to conduct controlled buys of crack cocaine from other unsuspecting street vendors. No testimony was elicited at trial to even remotely suggest that Jefferson's fee for testifying at trial was contingent on a

conviction, only that it was contingent on his testifying. No doubt the police postponed paying Jefferson until after he had done his work to diminish the risk of Jefferson being influenced to change his mind about testifying.

Based on the above facts, Taylor asks this Court to discharge him from custody on the ground that the State violated his due process rights. Taylor asserts that anytime the police pay an informer to engage in undercover investigations and to testify in court, due process is violated. The State respectfully disagrees.

An informer is a citizen who contracts with the police to engage in undercover work in exchange for some type of compensation, such as cash or promises of leniency (forego filing charges for illegal activities, reduce or drop pending charges, recommend a lighter sentence, or recommend a reduction in sentence). Informers are used by the police the world over, in particular to enforce the laws proscribing such behavior as gambling, prostitution, bribery, extortion, loan-sharking, labor racketeering, and drug trafficking. Informers are a vital component of law enforcement, for undercover investigation is sometimes the only effective means of detecting, investigating, and successfully prosecuting criminals, particularly those who engage in consensual criminal activity.

Hoffa v. United States, 385 U. S. 293 (1966) is instructive. Jimmy Hoffa was tried in federal court in Nashville, Tennessee for violating the Taft-Hartley Act. During the course of his

trial, known as the Test Fleet trial, Edward Partin, a Louisiana Teamsters Union official who was under state and federal indictments himself, contacted Hoffa and asked if he could come to Nashville to discuss some union matters with him. Partin visited Hoffa in his hotel suite and after several visits became Hoffa's confidant. This relationship made it possible for Partin to overhear conversations between Hoffa and his attorneys concerning the bribing of certain jurors. Partin relayed this information to federal agents. The Test Fleet trial resulted in a hung jury. Hoffa was then indicted and convicted for jury tampering on the basis of Partin's testimony.

After the Test Fleet trial was completed, Partin's wife was paid $1,200 over a four-month period from government funds, and the state and federal charges against Partin were either dropped or not actively pursued. Notwithstanding this evidence, the existence of a prearranged agreement between Partin and the government was in dispute, but for the sake of argument, the supreme court accepted the defense position that such agreement existed. Hoffa's argument that the government's conduct violated his due process rights was soundly rejected by the court:

> The argument boils down to a general attack upon the use of a government informer as "a shabby thing in any case," and to the claim that in the circumstances of this particular case the risk that Partin's testimony might be perjurious was very high. Insofar as the general attack upon the use of informers is based upon historic "notions" of "English-speaking peoples," it is without historical foundation. In the words of Judge Learned Hand, "Courts have countenanced the use of

> informers from time immemorial; in cases of conspiracy, or in other cases when the crime consists of preparing for another crime, it is usually necessary to rely upon them or upon accomplices because the criminals will almost certainly proceed covertly.
>
> This is not to say that a secret government informer is to the slightest degree more free from all relevant constitutional restrictions than is any other government agent. It is to say that the use of secret informers is not per se unconstitutional.
>
> The petitioner is quite correct in the contention that Partin, perhaps even more than most informers, may have had motives to lie. But it does not follow that his testimony was untrue, nor does it follow that his testimony was constitutionally inadmissible. The established safeguards of the Anglo-American legal system leave the veracity of a witness to be tested by cross-examination, and the credibility of his testimony to be determined by a properly instructed jury. At the trial of this case, Partin was subjected to rigorous cross-examination, and the extent and nature of his dealings with federal and state authorities were insistently explored. The trial judge instructed the jury, both specifically and generally, with regard to assessing Partin's credibility. The Constitution does not require us to upset the jury's verdict. [citations omitted]

Id., at 311-312.

This Court has also approved the government's use of contingent compensation for the purpose of hiring informers to engage in undercover investigation and testify at trial. See, e.g., Ingram v. Prescott, 149 So. 369 (1933) (trial testimony); Henderson v. State, 185 So. 625, 628 (1939) (trial testimony); State v. Hunter, 586 So. 2d 319, 321 (Fla. 1991) (undercover investigation).

In Ingram, this court stated:

> From the earliest times, it has been found necessary, for the detection and punishment of crime, for the state to resort to the criminals themselves for testimony with which to convict their confederates in crime. While such a course offers a premium to treachery, and sometimes permits the more guilty to escape, it tends to prevent and break up combinations, by making criminals suspicious of each other, and it often leads to the punishment of guilty persons who would otherwise escape. Therefore, **on the ground of public policy, it has been uniformly held that a state may contract with a criminal for his exemption from prosecution if he shall honestly and fairly make a full disclosure of the crime, whether the party testified against is convicted or not.**

Id., at 369 (e. s.).

The Florida Legislature and Congress also encourage the use of informers by providing rewards for information leading to the conviction of violators of various state and federal laws. See, e.g., § 790.164(2)(a), Fla. Stat. ($5,000 reward); § 893.135(4), Fla. Stat. (sentence reduction); 18 U.S.C. § 3553(e) (sentence reduction); Tariff Act of 1930, 19 U.S.C. § 1619; Food and Drugs Act, 21 U.S.C. § 886(a); and Int. Rev. Code of 1954, § 7623.

The possibility that a paid informer will tell the police what they want to hear and testify to such facts in court was the primary concern of this Court in State v. Glosson, 462 So. 2d 1082 (Fla. 1985). There, the Sheriff of Levy County hired Norwood Wilson as an undercover investigator. His duties included initiating drug deals, participating in drug deals, and testifying in court. He was to be paid ten percent of the

proceeds received from civil forfeiture actions resulting from the criminal investigations. Payment was contingent on successful prosecutions and forfeiture actions. This court described the terms of the agreement as follows:

> These [dismissal] motions relied primarily upon the agreement between the sheriff and Wilson whereby Wilson would receive ten percent of all civil forfeitures arising out of successful criminal investigations he completed in Levy County. * * *
>
> The parties stipulated ... that Wilson had an oral agreement with the sheriff ...; that Wilson would receive ten percent of all civil forfeiture proceedings resulting from the criminal investigations initiated and participated in by him; that the contingent fee would be paid out of civil forfeitures received by the sheriff; that Wilson must testify and cooperate in criminal prosecutions resulting from his investigations in order to collect the contingent fee; ....

Id., at 1083.

Wilson traveled from Levy County to Dade County where he made a deal to sell several hundred pounds of marijuana to six persons. These six persons came to Levy County, took possession of the marijuana that was unknowingly controlled by the Sheriff, and soon afterwards were arrested. The Sheriff seized several vehicles and over $80,000 in cash that were subject to civil forfeiture. Wilson's testimony was critical to a successful prosecution of the six defendants. The defendants' theory of defense was entrapment. Wilson's fee for his work in this case would have been $8,000 plus 10% of the value of the several automobiles that were seized, assuming, of course, that the sheriff prevailed in the forfeiture action.

Based on the above facts, this Court held that the defendants' due process rights were violated:

> We ... hold that the agreement in this case to pay an informant a contingent fee conditioned on his cooperation and testimony in criminal prosecutions violates constitutional due process. Id., at 1084.
>
> Our examination of this case convinces us that the contingent fee agreement with the informant and vital state witness, Wilson, violated the respondents' due process right under our state constitution. According to the stipulated facts, the state attorney's office knew about Wilson's contingent fee agreement and supervised his criminal investigations. Wilson had to testify and cooperate in criminal prosecutions in order to receive his contingent fee from the connected civil forfeitures, and criminal convictions could not be obtained in this case without his testimony. We can imagine few situations with more potential for abuse of a defendant's due process right. The informant here had an enormous financial incentive not only to make criminal cases, but also to color his testimony or even commit perjury in pursuit of the contingent fee. The due process rights of all citizens require us to forbid criminal prosecutions based upon the testimony of vital state witnesses who have what amounts to a financial stake in criminal convictions.
>
> Accordingly, we hold that a trial court may properly dismiss criminal charges for constitutional due process violations in cases where an informant stands to gain a contingent fee conditioned on cooperation and testimony in the criminal prosecution when that testimony is critical to a successful prosecution. Id., at 1085.

Glosson was further explained by this Court in State v. Hunter, supra:

> Glosson is very fact specific .... [T]he informant would be paid only if he testified

> and the state won a conviction. The possibility, perhaps even probability, of perjury present in Glosson was much greater than in the instant case.

Id., 586 So. 2d at 321. This Court went on to state:

> We reiterate that an agreement giving someone a direct financial stake in a successful criminal prosecution and requiring the person to testify in order to produce a successful prosecution is so fraught with the danger of corrupting the criminal justice system through perjured testimony that it cannot be tolerated.

Id.

To summarize, the concern of the Glosson court was that the contingent compensation posed too great of a danger that an innocent person might be convicted. To be compensated, Wilson had to (1) create an opportunity for the defendants to commit a crime, (2) participate in the crime with the defendants by supplying the contraband, and (3) testify in court that the defendants committed the crime. In addition, Wilson's compensation was contingent on a successful prosecution and forfeiture action. Finally, except for a generalized statement that the prosecutor supervised the investigation, there was no evidence that the State took any action to ensure that Wilson would not use improper inducements or pressure or later misrepresent the facts. Since Wilson was to be paid only in those cases wherein his efforts were successful and for which apparently his livelihood was dependent, he had every motive to

induce the commission of the drug offenses with which the defendants were charged and to testify falsely at trial.[1]

The instant case is distinguishable from Glosson in two significant ways. First, the defendants in Glosson raised an entrapment defense, but Taylor did not. The informer in Glosson, acting alone, initiated contact with the defendants and supplied them with contraband. The only persons who knew if any impermissible tactics had been used were the parties to the drug deal, and they all had strong motives to lie. By contrast, entrapment was not a defense in the case at bar for the obvious reason that Taylor was a street vendor of crack cocaine. Not only did he supply the contraband, but he supplied it in an environment indicating his readiness and willingness to commit the crime at the first available opportunity. Beyond dispute, had Taylor not sold the crack cocaine to Jefferson, he would have

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[1] The Glosson court rejected the "narrow application of the due process defense found in the federal cases." Id., at 1085. At least two reasons explain the United States Supreme Court's position on this issue. First, the societal cost of applying the entrapment or due process defenses is enormous. The remedy is not merely the exclusion of evidence but discharge from prosecution. If the State's evidence proves the defendant's predisposition, then dismissal of the prosecution is an enormous price to pay for enforcing a rule that may prevent innocent persons from being asked to commit a crime. Second, courts lack the understanding of the practical problems of police investigation that is necessary to provide realistic guidelines for using informers. The ultimate impact of decisions like Glosson is to shift responsibility for law enforcement in this state to the federal government, to the extent it is willing to accept the burden.

sold it to someone else. In Jacobson v. U. S., 112 S. Ct. 1535 (1992), the supreme court stated:

> [A]n agent deployed to stop the traffic in illegal drugs may offer the opportunity to buy or sell drugs, and, if the offer is accepted, make an arrest on the spot or later. In such a typical case, or in a more elaborate "sting" operation involving government-sponsored fencing where the defendant is simply provided with the opportunity to commit a crime, the entrapment defense is of little use because the ready commission of the criminal act amply demonstrates the defendant's predisposition.

Id., at 1541. In addition, the informer in the instant case did not act alone but was closely supervised by the police, which diminished, if not eliminated, the risk of ensnaring an innocent person. The police did their best to capture the drug transaction on videotape, thereby negating any suggestion of impropriety on their part. See, e.g., Moore v. State, 498 So. 2d 612, 613 (Fla. 5th DCA 1986) (controlled purchases of illegal drugs eliminated opportunity for fabrication).

Second, the informer's compensation in Glosson was contingent on a certain result (conviction), whereas in the instant case, the compensation was conditioned on the performance of certain acts (purchasing crack cocaine, testifying at deposition, and testifying at trial). Compensation agreements to obtain trial testimony are a common occurrence. Experts are paid a fee, policemen are paid a salary, and codefendants are given leniency, if not outright immunity from prosecution, in exchange for their testimony. Notwithstanding their bias, however weak or

strong, these persons are all permitted to testify simply because their testimony is critical to a successful prosecution. The defendant, as well, is permitted to testify at trial, even though he has the strongest motive of all to lie.

The opportunity for rigorous cross-examination and the giving of standard jury instructions provide adequate safeguards for both parties against possible abuses. Florida Standard Jury Instruction 2.04 informs the jury of factors to consider in weighing the credibility of witnesses, including whether the witnesses were offered or received any money, preferred treatment or other benefit in exchange for their testimony. Such an instruction was given in the instant case. (R. 269) It is certainly possible that the existence of a contingent compensation agreement will undermine the informer's credibility, irrespective of whether it has affected his work. This may have happened in the instant case, for the jury acquitted Taylor of the offense on which the State had the least amount of corroborative evidence.

* * * * *

Taylor has merged two independent issues under this point on appeal. First, he argues that his due process rights were violated because the police hired an informer to work for them. This was the issue on which this court's discretionary jurisdiction was invoked, and the State has addressed that issue in the above paragraphs. Second, Taylor argues that his due process rights were violated because the prosecutor knowingly

presented false testimony at trial. This issue was not the basis for this court's acceptance of jurisdiction, and the State respectfully declines to thoroughly address the merits of the issue, but will offer a few comments.

This second issue is completely bogus. The instant case involved a controlled buy of crack cocaine. The police gave the informer $60, and he came back with three pieces of crack cocaine. He was searched before and after the drug deal. The police heard the informer ask for $60 work of crack cocaine and another male repeat the question. The informer identified this voice as being Taylor's, and Taylor was depicted on the videotape. The informer testified at trial consistent with the events he had reported to the detective immediately after the drug buy. He explained the discrepancies between his deposition and trial testimony. He was confused at deposition due to the number of drug deals he had participated in, but before testifying at trial, he reviewed the police report and videotape, which clarified his confusion. Detective Jett's testimony and the videotape prove that the informer was confused as opposed to fabricating the incidents.

A person commits perjury in Florida when he willfully makes contradictory material statements in official proceedings. Under this offense, the State has no duty to prove which statement was false. The accused may defend by claiming he believed both statements were true when he made them. Section 837.021, Florida Statutes (1991). This statute has no relevance to the due

process issue raised here. A defendant is denied due process only if the material trial testimony was false, and he has the burden of proof.

ISSUE II

WHETHER THE APPELLATE COURT ERRED IN FINDING THERE WAS NO DISCOVERY VIOLATION COMMITTED BY THE STATE AND TRIAL COURT UNDER FLORIDA DISCOVERY RULES.

Taylor has challenged a ruling of the First District Court of Appeal independent of the one which formed the basis for this Court's acceptance of jurisdiction. The State, therefore, respectfully declines to address it on the merits unless directed to do so by this Court.

Three good reasons immediately come to mind as to why this issue should not be reviewed:

First, this Court has limited resources which should be spent on addressing the legal issue on which it accepted jurisdiction. This Court cannot do as good of a job as it should if it spreads itself too thin by reviewing multiple issues.

Second, there is no reason to assume that a second review by this Court will be more accurate than the first review by the District Court. This Court, like the United States Supreme Court, is not final because it is infallible, but it is infallible only because it is final. Brown v. Allen, 344 U. S. 443, 540 (1953).

Third, it would give Taylor indirectly the appellate review denied him directly by the Florida Constitution. Art. V, § 3(b)(3), Fla. Const.; Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), cited with approval in Jenkins v. State, 385 So. 2d 1356, 1357 (Fla. 1980).

This Court has recently declined to review issues beyond the scope of the conflict or the certified questions. See, e.g., State v. Hodges, 616 So. 2d 994 (Fla. 1993); Burks v. State, 613 So. 2d 441 (Fla. 1993); State v. Gibson, 585 So. 2d 285 (Fla. 1991); and Stephens v. State, 572 So. 2d 387 (Fla. 1991). The State would ask the Court to do likewise here.

* * * *

As previously stated, the State respectfully declines to address the merits of Taylor's issue, except to comment that any error that may have occurred was surely harmless beyond a reasonable doubt for several reasons. First, when a witness admits the facts giving rise to his interest or bias, extrinsic evidence to prove the bias or interest is inadmissible. Davis v. Ivey, 112 So. 264 (1927); McCormick, Evidence § 41 (3rd ed. 1984); Ehrhardt, Florida Evidence § 608.5 (1992 ed.). Second, this type of evidence cuts both ways and thus is not necessarily impeachment material. A reasonable jury could conclude that a paid informant must be a reliable witness or the police would not continue to work with him over an extended period of time. Hopkins v. State, 524 So. 2d 1136, 1137 (Fla. 1st DCA 1988). Indeed, on occasion the government has sought admission of just such evidence only to be met with opposition from the defense that the government was attempting to bolster its witness' testimony. U.S. v. Lochmondy, 890 F. 2d 817, 820-822 (6th Cir. 1989) (government elicited evidence that its witness had cooperated on other cases resulting in convictions). Third, in

the case at bar, the jury was provided sufficient information on this subject, irrespective of whether it was viewed as showing Jefferson's bias or his trustworthiness. The jury knew the approximate time period, approximate number of transactions, and approximate amount of money paid. Additional details would not have made this evidence any more significant. Antone v. State, 382 So.2d 1205, 1215 (Fla. 1980) (evidence tending to impeach witness was already before jury and omitted evidence would have added little to defense efforts to show witness as being unworthy of belief).

CONCLUSION

Based on the foregoing discussion, the State respectfully requests this Honorable Court to affirm Taylor's judgment and sentence.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

CAROLYN J. MOSLEY, #593280
ASSISTANT ATTORNEY GENERAL

JAMES W. ROGERS, #325791
BUREAU CHIEF-CRIMINAL APPEALS

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing merits brief has been furnished by U.S. Mail to James R. Thies, Sr., attorney for appellant, Post Office Box 815, Orange Park, Florida, 32067-0815 this 30th day of August, 1993.

Carolyn J. Mosley
Assistant Attorney General