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IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 81,616

DARRYL CRAIG RANSAW,

Petitioner,

vs.

STATE OF FLORIDA

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH

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PRELIMINARY STATEMENT

The Petitioner was the Appellant in the Fourth District court of appeal and the defendant a criminal prosecution from the Seventeenth Judicial Circuit, in and for Broward County. The Respondent, the State of Florida, was the Appellee and the prosecution, respectively, in the lower courts. In this brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "A" will be used to refer to Respondent's Appendix, which is a conformed copy of the District Court's opinion, Ransaw v. State, 614 So.2d 687 (Fla. 4th DCA 1993), review granted, Case No. 81, 616 (Fla. September 10, 1993)

All emphasis has been added by Respondent unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts of purposes of this appeal.

SUMMARY OF ARGUMENT

Although this Court has ruled that police manufacture of cocaine violates due process, the fact that police manufactured cocaine was present in this case does not bar Petitioner's prosecution for solicitation to purchase as cocaine is not an element of that offense, thus any due process violation does not taint Petitioner's conviction.

ARGUMENT

IT IS NOT A DUE PROCESS VIOLATION TO CONVICT A DEFENDANT FOR SOLICITATION TO PURCHASE COCAINE WHERE THE COCAINE WAS MANUFACTURED BY THE GOVERNMENT (Restated).

The question presented in the instant case is whether, in light of this Court's decision in State v. Williams, 18 Fla. L. Weekly S 371 (Fla. July 1, 1993), condemning the manufacture of crack cocaine by law enforcement as violative of due process, a defendant should be discharged from prosecution for solicitation to purchase illegally manufactured crack cocaine in that the cocaine was neither the instrumentality nor an element of the crime charged. The State submits that the trial court and the Fourth District Court of Appeal properly determined that Petitioner should not be discharged from prosecution for this charge.

There is no question that this Court has approved the use of reverse sting operations in which undercover officers offer to sell illegal drugs. Williams at S372; State v. Burch, 545 So. 2d 279 (Fla. 4th DCA 1989), approved, 558 So. 2d 1 (Fla. 1990). It is equally clear that the crime of solicitation is completed when a defendant entices or encourages another to commit a crime, the crime itself need not be completed. State v. Johnson, 561 So. 2d 1321 (Fla. 4th DCA 1990); State v. Milbro, 586 So. 2d 1303 2nd DCA 1991); see also: Louissaint v. State, 576 So. 2d 316 (Fla. 5th DCA 1990) (the crime of "attempt" does not require proof that the substance involved was actually cocaine). As pointed out by the Fourth District in Johnson, "The crime of solicitation

focuses on the culpability of the solicitor. It is irrelevant that the other cannot or will not follow through." Id. at 1322. Similarly, in Milbro, the Second District held that "...the crime solicited need not be committed." Id. at 1304. Clearly, the crime of solicitation with which Petitioner was charged was committed when Petitioner approached the undercover officer and requested to purchase cocaine. The fact that the cocaine in the officer's possession was manufactured by the police is irrelevant, just as it would be irrelevant that the officer did not have cocaine at all or had a counterfeit substance.

Petitioner contends the Fourth District's reliance on this Court's decision in State v. Hunter, 586 So. 2d 319 (Fla. 1991), in Metcalf v. State[1], is misplaced, arguing that here, unlike there was no intervening conduct by a non-state agent which removed tent taint of the due process violation. Respondent submits Petitioner has misinterpreted this Court's decision in Hunter. In Hunter, an informant used what this Court found to be outrageous misconduct to entrap one Conklin. Conklin then persuaded Hunter to participate in the crime. This Court held that although Hunter's motive may have been benevolent, his conduct was wholly voluntary, regardless of the fact that Conklin's conduct was motivated by regardless of the fact that Conklin's conduct was motivated by improper police misconduct. Thus in Hunter, this Court made it clear that while a defendant whose due process rights have been violated by police misconduct

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[1] Petitioners's conviction was **per curiam** affirmed on authority on Metcalf v. State, 614 So. 2d 548 (Fla. 4th DCA 1993).

is entitled to discharge, the fact that police misconduct has occurred does **not** in and of itself require discharge of a defendant whose due process rights have **not** been violated. There, as here, a due process violation occurred; however, there, this Court rejected the notion that such violation tainted every prosecution which flowed from it. Instead, this Court found a logical cut-off; the point at which the due process violation no longer affected the prosecution. In Hunter, the point came when the improper police conduct had minimal conduct with the defendant; Respondent submits that here, the point came when the illegally manufactured crack became irrelevant to prosecution of the crime charge. See also: Luzarraga v. State, 575 So. 2d 731 (Fla. 3rd DCA 1991), (the intent or motives of the person solicited are irrelevant to solicitation charge).

Petitioner's argument that his solicitation would not have occurred but for the desire of the police to use that illegally manufactured crack to make a case against buyer in a reverse sting operation misses the point. In fact, if the police below had not manufactured the crack, they could still have set up the **same** reverse sting, in the **same** location, using any substance resembling crack cocaine or even no substance at all. The result for Petitioner would have been the same because the offense charged was solicitation, not purchase or even attempted purchase -- and the crime of solicitation was completed at the instant Petitioner offered to buy cocaine from the officer.

Finally, Petitioner's arguments that the use of another, substantially similar, charge to avoid the limitations of

Williams would defeat justice and that this Court's affirmance of the Fourth District's decision in Metcalf would somehow allow manufactured crack to escape into the community are likewise without merit.

Solicitation to deliver cocaine is in no way substantially similar to the crime of actual delivery. The former is a third degree felony which carries no mandatory minimum prison term; the latter is a first degree felony which carries a three year mandatory minimum sentence with no possibility of probation Section 893.13(1)(3)1, Florida Statutes (1990). Further, the risk of cocaine escaping into the community is no greater when the police use cocaine they have manufactured that when they use cocaine they have previously seized. Additionally because they crime of solicitation to deliver cocaine does not require the use of actual cocaine, there is little chance of the drug escaping into the community. Clearly Petitioner's policy arguments do not survive careful scrutiny.

Respondent respectfully submits that the trial court did not err in denying Petitioner's motion to dismiss, and that the Fourth District correctly held that the fact that the cocaine was manufactured was irrelevant to the solicitation charge. This Court accomplished what it set out to do in Williams; the conduct condemned by this Court has ceased. There is no reason to extend Williams; the conduct condemned by this Court has ceased. There is no reason to extend Williams. The decisions of the lower courts should be affirmed.

CONCLUSION

Wherefore, based upon the foregoing argument and authorities cited herein, Respondent respectfully requests this Court AFFIRMED the decision of the Fourth District below.

Respectfully submitted,

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Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing "Respondent's Brief on the Merits" has been furnished by Courier to: ALLEN DeWEESE, Assistant Public Defender, Criminal Justice Building/6th Floor, 421 Third Street, West Palm Beach, Florida 33401 this 24th day of September, 1993.

John Tiedemann
Of Counsel

APPENDIX

receiver in Florida. Thus, we ap- Florida statute of limitations. *See* 1. Fla.Stat. (1985).

n, we embrace the view expressed jurisdictions that the allowance of nt claims unduly prolongs the dis- of an insolvent insurer's assets to ment of other claimants and preju- right of the guaranty association recovery in any subsequent liqui- *See Satellite Bowl, Inc. v. Michi- berty & Casualty Guaranty Asso-* 165 Mich.App. 768, 419 N.W.2d 460 App.1988); *Kinder v. Pacific Pub- iers Co–Op, Inc.*, 105 Cal.App.3d Cal.Rptr. 567 (Cal. 1st DCA 1980). ed.

)NOVER, A.C.J., and PARKER, r.

o A. ROSARIO, Appellant,

v.

SCHECTER and Angela Schecter, Appellees.

No. 92–1689.

Court of Appeal of Florida Third District.

March 9, 1993.

aring Denied April 6, 1993.

eal from the Circuit Court of nty; Sidney B. Shapiro, Judge.

Schwedock, Miami, for appel-

Hunter, McClure, Lynch & nd Christopher Lynch, Miami, es.

HUBBART, NESBITT and H, JJ.

PER CURIAM.

Affirmed. *See Riverview Condominium Corp. v. Campagna Constr. Co.*, 406 So.2d 101 (Fla. 3d DCA 1981).

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NCNB NATIONAL BANK OF FLORIDA, Appellant,

v.

Leo F. JAROSZEWSKI and Roseanne Jaroszewski, Appellees.

No. 92–1561.

District Court of Appeal of Florida, Third District.

March 9, 1993.

An Appeal from the Circuit Court for Dade County; Harold Solomon, Judge.

Wicker, Smith, Tutan, O'Hara, McCoy, Graham & Lane, Shelley H. Leinicke and Ila J. Klion, Fort Lauderdale, for appellant.

Rash & Katzen and Jerry B. Katzen; Paul, Landy, Beiley & Harper and Patrice A. Talisman, Miami, for appellees.

Before BARKDULL, HUBBART and LEVY, JJ.

PER CURIAM.

We find no error in a trial court dismissing a third party complaint seeking contribution or indemnification against an unknown third party alleged tort-feasor, one John Doe, particularly when the plaintiff seeks no relief against John Doe. The final order under review be and the same is hereby affirmed.

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Darryl Craig RANSAW, Appellant,

v.

STATE of Florida, Appellee.

No. 92–1386.

District Court of Appeal of Florida, Fourth District.

March 10, 1993.

Rehearing, Rehearing En Banc and Certification Denied March 31, 1993.

Appeal from the Circuit Court for Broward County; Sheldon Mark Shapiro, Judge.

Richard L. Jorandby, Public Defender, and Allen J. DeWeese, Asst. Public Defender, West Palm Beach, for appellant.

Robert A. Butterworth, Atty. Gen., Tallahassee, and John Tiedemann, Asst. Atty. Gen., West Palm Beach, for appellee.

PER CURIAM.

Affirmed. *See Metcalf v. State*, 614 So.2d 548 (Fla. 4th DCA 1993).

ANSTEAD and POLEN, JJ., concur.

FARMER, J., concurs specially with opinion.

FARMER, Judge, concurring specially.

I concur only for the reason I expressed in *Metcalf v. State*, 614 So.2d 548 (Fla. 4th DCA 1993).