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CLERK, SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

ROBERT BURATY,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

CASE NO. 81,864
 FOURTH DCA CASE NO. 92-2205

PETITIONER'S REPLY BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

The Petitioner was the Defendant in the Circuit Court, Seventeenth Judicial Circuit in and for Broward County and the Appellant before the District Court of Appeal, Fourth District. The Respondent was the Plaintiff in circuit court and Appellee in district court. In this brief, the parties will be referred to as Mr. Buraty and the State.

The following symbol will be used:

"R" Record on appeal before the Fourth District Court of Appeal.

ARGUMENT
CONVICTING A DEFENDANT FOR SOLICITATION TO
DELIVER COCAINE WHEN THE CONVICTION WAS THE
INTENDED RESULT OF A REVERSE STING OPERATION
USING MANUFACTURED COCAINE VIOLATES THE DUE
PROCESS OF LAW GUARANTEED BY ARTICLE I, §9 OF
THE FLORIDA CONSTITUTION.

It is true that this Court has approved of reverse sting operations in which police offer to sell drugs. Mr. Buraty does not argue that all reverse sting operations are illegal, but rather only those in which the State uses police manufactured cocaine. This Court more specifically held that manufacturing cocaine for use in a reverse sting operation violates due process. In Williams v. State, 18 Fla.L. Weekly S371 (Fla. July 1, 1993) this Court reformulated the certified question to:

Whether the manufacture of crack cocaine by law enforcement officials for use in a reverse-sting operation constitutes governmental misconduct which violates the due process clause of the Florida Constitution?

This Court answered the question in the affirmative. Ibid. The police in this case did precisely that. Williams controls and requires this Court to reverse, not because there was a reverse sting operation but because the police manufactured the drugs used in that operation.

The State also argues that if the police had not used a manufactured drug, the crime would have occurred anyway. This argument asks this Court to ignore what happened in this case, to turn a blind eye to the misconduct of the police. To accept this argument would be to overrule Williams in effect and condone police misconduct which is a felony and which endangers the community.

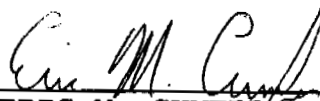
In conjunction with this argument, the State points out that solicitation to deliver cocaine is complete upon the solicitation. However, that definition of the offense does not take into account what actually occurred: the police did sell Mr. Buraty the cocaine in question. The same risk to the community decried in Williams was present. The same police misconduct - manufacture of cocaine - declared illegal in Williams occurred. Of course, if the police had not used the manufactured cocaine, there would be nothing standing in the way of a conviction for solicitation to deliver, not to mention a conviction of purchase of cocaine. However, the police did use manufactured cocaine to arrest Mr. Buraty. As in Williams, that misconduct requires this Court to reverse.

CONCLUSION

For the foregoing reasons, Mr. Buraty respectfully requests this Court to vacate the decision of the Fourth District Court of Appeal and reverse Mr. Buraty's conviction for solicitation to deliver cocaine and order him discharged.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Sarah Mayer, Assistant Attorney General, Third Floor, 1655 Palm Beach Lakes Blvd., West Palm Beach, Florida, 33401-2299 by courier this 17th day of September, 1993.



Attorney for Robert Buraty