

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

NOV 8 1995

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

HAROLD LINFORD GREEN,)

Petitioner,)

vs.)

STATE OF FLORIDA,)

Respondent.)

CASE NO. 81,977

FOURTH DCA CASE NO. 92-2523

PETITIONER'S REPLY BRIEF ON THE MERITS

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit
421 Third Street, 6th Floor
West Palm Beach, Florida 33401
(407) 355-7600

ERIC M. CUMPER,
Assistant Public Defender

Attorney for Robert Buraty

TABLE OF CONTENTS

<u>CONTENTS</u>	<u>PAGE</u>
AUTHORITIES CITED	ii
PRELIMINARY STATEMENT	1

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.	2
CONCLUSION	4
CERTIFICATE OF SERVICE	4

AUTHORITIES CITED

CASES

PAGE

<u>Williams v. State, 18 Fla.L. Weekly S491</u> (Fla. September 16, 1993)	2
--	---

PRELIMINARY STATEMENT

The Petitioner was the Defendant in the Circuit Court, Seventeenth Judicial Circuit in and for Broward County and the Appellee before the District Court of Appeal, Fourth District. The Respondent was the Plaintiff in circuit court and Appellant in district court. In this brief, the parties will be referred to as Mr. Green 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. Green 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 S491 (Fla. September 16, 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. Green 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. Green. As in Williams, that misconduct requires this Court to reverse.

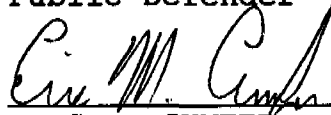
The State argues that police will be deterred because delivery of cocaine is a first degree felony with a three year minimum mandatory, citing §893.13(1)(e)(1), Florida Statutes (1991). Respondent's Brief on the Merits at 7. Actually, delivery of cocaine is a second degree felony with no minimum mandatory penalty. §893.13(1)(a)(1), Fla.Stat. (1991)(it is second degree felony to deliver various controlled substances, including cocaine listed in 893.03(2)(a), Fla.Stat. (1991)). The offense is enhanced to a first degree felony with a three year minimum mandatory only if delivered within 1000 feet of a school. §893.13(10)(e)(1), Fla.Stat. (1991). The difference in deterrence value between prohibiting a second and third degree felony, neither of which carry a minimum mandatory penalty, is slight.

CONCLUSION

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

Respectfully submitted,

RICHARD L. JORANDBY
Public Defender

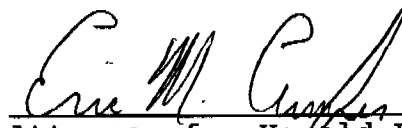


ERIC M. CUMFER
Assistant Public Defender
Florida Bar # 0764663
15th Judicial Circuit of Florida
The Criminal Justice Building
421 Third Street, 6th Floor
West Palm Beach, Florida 33401
(407) 355-7600

Attorney for Harold Linford Green

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to JAMES J. CARNEY, Esq., Assistant Attorney General, Third Floor, 1655 Palm Beach Lakes Blvd., West Palm Beach, Florida, 33401-2299 by courier this 5th day of November, 1993.



Attorney for Harold Linford Green