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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE
SUPREME COURT OF FLORIDA

ANNETTE HUNTER,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 82,458

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 Appellee before the District Court of Appeal, Fourth District. The Respondent was the Plaintiff in circuit court and Appellant in the district court. In this brief, the parties will be referred to as Annette Hunter and the State.

The following symbols will be used:

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

"SR" Supplemental Record on Appeal before the Fourth District Court of Appeal.

STATEMENT OF THE CASE AND FACTS

Ms. Hunter will rely on the Statement of the Case and Facts as found in her Initial Brief.

ARGUMENT

POINT I

CONVICTING A DEFENDANT FOR SOLICITATION TO PURCHASE
COCAINE WHEN THE CONVICTION WAS THE INTENDED RESULT OF
A REVERSE STING OPERATION USING MANUFACTURED COCAINE
VIOLATES 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. Ms. Hunter 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 State v. Williams, 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 sold Ms. Hunter the cocaine in question (and then allowed her to taste it). 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 Ms. Hunter. As in Williams, that misconduct requires this Court to reverse.

POINT II

THE FOURTH DISTRICT COURT OF APPEAL ERRED IN NOT DISMISSING THE STATE'S APPEAL BECAUSE THE STATE DID NOT TIMELY APPEAL THE TRIAL COURT'S ORDER ENTERED JUNE 4, 1992

Ms. Hunter will rely on her Initial Brief for argument under this Point.

CONCLUSION

For the foregoing reasons, Ms. Hunter respectfully requests this Court to vacate the decision of the Fourth District Court of Appeal and affirm the trial court's order dismissing Ms. Hunter's solicitation to purchase cocaine charge.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Michelle Konig, Assistant Attorney General, 1655 Palm Beach Lakes Blvd, Suite 300, West Palm Beach, Florida 33401 by courier this 12th day of November, 1993.

Paul E. Petillo

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