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**IN THE SUPREME COURT OF FLORIDA**

**STATE OF FLORIDA,**

Petitioner

FSC. NO. 91,541

v.

**RAUL VAZQUEZ,**

Respondent.

**DISCRETIONARY REVIEW OF A DECISION OF  
THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT**

**PETITIONER'S REPLY BRIEF**

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PRELIMINARY STATEMENT

Petitioner shall be referred to as the Petitioner or State and Respondent shall be referred to as Respondent or defendant.

STATEMENT OF THE FACTS AND CASE

Petitioner would rely upon the initial Statement Of The Facts and Case as set forth in its Initial Brief On The Merits filed herein.

## SUMMARY OF THE ARGUMENT

The certified question is not moot. In the alternative, the certified question is of great public importance or likely to recur unless addressed by this Honorable Court. Therefore, the question should be heard even if it is determined to be moot as to the Respondent.

## ARGUMENT

DOES THE INACCURACY OR INCOMPLETENESS OF THE CURRENT STANDARD JURY INSTRUCTION FOR THE DEFENSE OF ENTRAPMENT REFLECT A FUNDAMENTAL CHANGE IN THE LAW REQUIRING RETROACTIVE APPLICATION TO ALL CASES AFTER MUNOZ, OR IS IT INSTEAD AN EVOLUTIONARY CHANGE IN THE LAW REQUIRING ONLY PROSPECTIVE APPLICATION?

Petitioner would rely upon its arguments made in its Initial Brief filed herein and would in addition thereto reply to the Respondent's Answer Brief On The Merits as follows:

The certified question is not moot. The fourth district court of appeal determined that the standard jury instruction for entrapment was insufficient. Therefore, if Respondent's case is remanded to the trial court for further proceedings, the trial court is without proper direction as to the proper form and application of an appropriate jury instruction when the defense of entrapment is raised on remand. *See: Martinez v. Singletary, 691 So.2d 537 (Fla. 1st DCA 1997).*

Further, the question was certified by the fourth district court of appeal as one of great public importance. "It is well settled that mootness does not destroy an appellate court's jurisdiction . . . when the questions raised are of great public importance or are likely to recur." Holly v. Auld, 450 So.2d 217, 218 n. 1 (Fla.

1984), *Also See: Godwin v. State*, 593 So.2d 211 (Fla. 1992). Not only is this issue of great public importance, as certified by the fourth district court of appeal, it is also likely to recur each time a defendant raises a defense of entrapment. For purposes of judicial economy and uniformity of application to all defendants raising such a claim, this Court must set forth the proper guidelines for a standard jury instruction on entrapment.

Although the fourth district court failed to certify a complete question of sufficiency regarding the jury instruction at issue, this in no way precludes this Honorable Court from reviewing the entire case to assure that a complete and proper determination is reached when addressing the issues raised herein. Rather, it is imperative to a proper review of the certified question to address the underlying premise arrived at by the fourth district court of appeal, that being the question of sufficiency of the standard jury instruction itself.

By ruling that the standard jury instruction, as adopted by this Honorable Court, is insufficient, the fourth district court of appeal has called into question not only the application of their ruling but also the foundational issue of whether or not the standard jury instruction is sufficient. This Honorable Court is in no way bound to accept a flawed premise when making its determination and therefore must review the entire issue as presented in Petitioner's Initial Brief On The Merits.

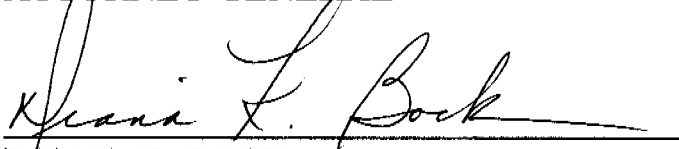


## CONCLUSION

Based on the foregoing arguments and authorities, as well as those set forth in Petitioner's Initial Brief On The Merits, the current standard jury instruction on entrapment should be upheld by this Honorable Court and the decision of the fourth district court of appeal's finding that the standard jury instruction is inaccurate or incomplete should be completely reviewed and reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY That a true and correct copy of the foregoing Reply Brief of Petitioner has been furnished to Stephen Malone, Assistant Public Defender, Attorney for Respondent, Office of The Public Defender, 15th Judicial Circuit of Florida, Criminal Justice Building, 421 Third Street/6th Floor, West Palm Beach, Florida, 33401, this 19<sup>th</sup> day of December, 1997, by ordinary U.S. Mail/Courier.

  
OF COUNSEL