

IN THE SUPREME COURT OF FLORIDA

CASE NO. 03-2093

EDDIE SIMMONS,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY JURISDICTION FROM
THE DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

BRIEF OF RESPONDENT ON THE MERITS

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TABLE OF CONTENTS

	<u>Pages</u>
TABLE OF CITATIONS	ii
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS	1
QUESTION PRESENTED	7
SUMMARY OF ARGUMENT	8
ARGUMENT	9
<p>THE THIRD DISTRICT COURT OF APPEAL CORRECTLY HELD WHERE A DEFENDANT ASSERTS THE DEFENSE OF MISIDENTIFICATION, THE PRESENCE OF A CONFIDENTIAL INFORMANT, WITHOUT MORE, DOES NOT REQUIRE AUTOMATIC DISCLOSURE OF THE INFORMANT. (RESTATED).</p>	
CONCLUSION	22
CERTIFICATE OF SERVICE	23
CERTIFICATE OF FONT AND TYPE SIZE	23

TABLE OF CITATIONS

CASES

PAGES

FEDERAL CASES

Arizona v. Youngblood, 488 U.S. 51 (1988) 20

Journet v. Coombe, 649 F. Supp. 522 (S.D.N.Y. 1986) . . . 11

Roviaro v. United States, 353 U.S. 53 (1957) 9,10,18

United States v. Morales, 908 F.2d 565 (10th Cir. 1990) . 11

United States v. Ortiz, 804 So. 2d 1161 (10th Cir. 1986) . 11

United States v. Parikh, 858 F.2d 688 (11th Cir. 1988) . . 10

United States v. Varella, 692 F.2d 1352 (11th Cir. 1982) . 11

United States v. Zamora, 784 F.2d 1025 (10th Cir. 1986) . 11

STATE CASES

Baker v. State, 150 So. 2d 729 (Fla. 3d DCA 1963) . . . 10,16

Foster v. State, 816 So. 2d 1177 (Fla. 2d DCA 2002) . . . 17,18,19

Hassberger v. State, 350 So. 2d 1 (Fla. 1977) 10,12

McCray v. State, 730 So. 2d 817 (Fla. 2d DCA 1999) . . . 6,9,17,19

McCulley v. State, 272 N.E.2d 613 (Ind. 1971) 11

Miller v. State, 729 So. 2d 417 (Fla. 4th DCA 1999)
. 5, 10, 15, 16, 19, 20

Monserrate v. State, 232 So. 2d 444 (Fla. 3d DCA 1970) . . 10

Smith v. State, 801 So. 2d 198 (Fla. 4th DCA 2001) 21

State v. Banks, 656 So. 2d 590 (Fla. 2d DCA 1995) 20

<u>State v. Carnegie</u> , 472 So. 2d 1329 (Fla. 2d DCA 1985)	14,17
<u>State v. Devoid</u> , 706 So. 2d 924 (Fla. 2d DCA 1998) 17
<u>State v. Diaz</u> , 678 So. 2d 1341 (Fla. 3d DCA 1996)	. . . 13,14
<u>State v. Moose, Jr.</u> , 398 S.E.2d 898 (N.C. Ct. App. 1990)	. . . 11
<u>State v. Sanchez</u> , 806 P.2d 782 (Wash. Ct. App. 1991)	. . . 11
<u>State v. Zamora</u> , 534 So. 2d 864 (Fla. 3d DCA 1988)	
.	5, 9, 10, 11, 12, 16

DOCKETED CASES

<u>State v. Simmons</u> , Case Nos. 3D02-3120	
(Fla. 3d DCA Nov. 12, 2002) 25
<u>State v. Simmons</u> , 28 Fla. L. Weekly D2603	
(Fla. 3d DCA Nov. 12, 2003) 9, 19

INTRODUCTION

Respondent, THE STATE OF FLORIDA, was the prosecution in the trial court and Appellant in the District Court of Appeal of Florida, Third District. Petitioner, Eddie Simmons, was the Defendant in the trial court and the Appellee in the District Court of Appeal. The parties shall be referred to as they stand before this Court, except that, consistent with Petitioner's brief, Petitioner may also be referred to as "Defendant" and Respondent may be referred to as the "State".

The symbol "R" denotes the original record on appeal. Because these cases were consolidated there are two records on appeal, one for lower case number 02-9991 and one for lower case number 02-9992. The pleadings in each case are largely identical, therefore Respondent will refer to the record on appeal in case number 02-9992 in its citations to the record (R92). Citation to the record in case number 02-9991 will be made when necessary (R91).

STATEMENT OF THE CASE AND FACTS

Defendant was charged by Information in circuit court case number 02-9992 with the sale, manufacture, delivery and/or possession of cocaine in violation of section 893.13(1)(a)1., Florida Statute (2002). The date of the offense was April 4, 2002. It was specifically alleged Petitioner sold cocaine to Officer A. Pacheco. (R92:2).

In lower case number 02-9991 Defendant was charged by Information with possession with the intent to sell, manufacture or deliver cocaine in violation of section 893.13(1)(a)1., Florida Statute (2002), Count I; and unlawful possession of a firearm or weapon by a convicted felon/delinquent in violation of sections 790.23(1)(a) and 775.087, Count II. The date of the offenses was April 5, 2002. (R91:1-4).

Defendant filed identical motions to disclose confidential informant in both cases. (R92:8-10). As for Case No. 02-9992, Defendant stated a confidential informant claimed to have witnessed him selling cocaine to Detective Pacheco. Defendant said Detective Pacheco did not know him, and he was not present. (R92:8). As for Case No. 02-9991, Defendant stated he was present inside the home when the search warrant was executed, and although cocaine was found in various locations in the house and a firearm was found under the bed in the master bedroom, he was not found in actual possession of any cocaine. Defendant

admitted he had attended a party and slept over, but said he had no ownership or possessory interest in the home. (R92:8). Defendant claimed disclosure of the informant would assist him in establishing a defense of misidentification as to the sale of April 4, and buttress his assertion he was present in the home merely as an overnight guest but had no dominion or control over the seized items. (R92:9).

The State filed a memorandum of law in opposition to the motion. (R92:11-14). The State asserted the cocaine purchase was made by an undercover Metro-Dade County Police Detective. Defendant was the seller and the sale and purchase was made on the porch of a residence. The State said the confidential source was also present. (R92:11). On the day following this transaction the police executed a search warrant at the same residence, and additional cocaine as well as a firearm were recovered from the residence. (R92:11). Defendant was recorded saying he owned the firearm; he also spontaneously said he owned and had control of the firearm. (R92:11). The State said they had no knowledge as to the identity or current whereabouts of the confidential source (R92:11), and argued Defendant was entitled to neither disclosure nor dismissal of the charges (R92:13).

A hearing on said motions was held on November 1, 2002.

(R92:20-30). Defense counsel argued the police knew the CI was an important witness and they should have at least gotten his name, and thus dismissal was warranted. (R92:24). The prosecutor argued dismissal was not warranted because the CI was used merely to get Defendant out on the porch, and the officer was the one who actually made the purchase, not the CI. (R92:25-26).

The trial court commented because the CI was the agent who facilitated the transaction, Defendant had a good argument in saying he would bring in the CI to show Defendant was not involved. (R92:26). The court denied the motion to dismiss as to the "second" case (Case No. 02-9991). (R92:27). On November 14, 2002, the court entered an order as follows:

Case No. 02-9992 - found the confidential informant was integral to Defendant's defense of misidentification and granted the motion to disclose confidential informant. Because the police failed to obtain information as to the CI's identity or location, the trial court dismissed the charge. (R92:15).

Case No. 02-9991 - found the failure to produce the CI had no bearing on the viability of this case as the charges arose from a separate date and time, and thus dismissal was not warranted for the State's failure to disclose the confidential informant. (R92:15).

The State appealed the trial court's order as it related to Case No. 02-9992, 3dDCA Case No. 02-3120. (R92:19).

Thereafter, on January 23, 2003, the trial court held a hearing regarding Case No. 02-9991. (R91:23-27). The court announced that solely for purposes of having this matter adjudicated one time only, it had decided to also grant Defendant's motion as to Case No. 02-9991. (R91:26). The State appealed, 3dDCA Case No. 03-376.

The appellate court granted the State's motion to consolidate and this matter proceeded as a consolidated appeal. The State's verbatim point on appeal was:

WHETHER THE TRIAL COURT ERRED IN GRANTING DEFENDANT'S MOTION TO DISCLOSE CONFIDENTIAL INFORMANT, AND FURTHER ERRED IN DISMISSING THE CHARGES AGAINST DEFENDANT WHEN THE STATE WAS NOT ABLE TO PRODUCE THE CONFIDENTIAL INFORMANT.

Defendant's argument was where the defense was misidentification the State was required to identify the informant who participated in the sale of cocaine, and the State's inability to do so required dismissal.

The Third District Court found the undisputed record evidence revealed the police utilized the informant **solely** to lure Defendant onto the front porch for a direct drug transaction with Detective Pacheco, and therefore the informant

witnessed rather than participated in the actual drug sale on the porch. (Opinion p.7, emphasis added). The Court cited Miller v. State, 729 So. 2d 417, 420 (Fla. 4th DCA 1999) and Zamora v. State, 534 So. 2d 864, 870 (Fla. 3d DCA 1988) for the proposition that the mere presence of an informant to relevant events in a criminal case did not, **without more**, require the automatic disclosure of the confidential informant. (Opinion p.7, emphasis added).

The Court found Defendant's "self-serving general speculation or supposition that the informant could or would testify favorably on his behalf in case number 02-9992, **without more**, to be insufficient to carry this burden." (Opinion p.7, emphasis added). The Court noted the State correctly pointed out Defendant would not be prejudiced at trial since the State would not be calling the informant as a witness, and Defendant would have ample opportunity to confront and cross examine his accuser, Detective Pacheco. (Opinion p.8). The Third District thus concluded the trial court's order compelling disclosure of the informant and dismissing the charge in case number 02-9992 was error. (Opinion p.8).

With regard to case number 02-9991, the Court held it was error to compel the disclosure of the informant's identity where the informant did not execute the search warrant affidavit

against Defendant, was not present, and otherwise had no involvement in the search of the residence. (Opinion p.9-10). The Court further determined misidentification would not be a defense to the possession of the contraband and firearm discovered at a different time in a different place. (Opinion p.10).

The Third District thus rejected Defendant's arguments, reversed for reinstatement of the charges, and certified conflict with McCray v. State, 730 So. 2d 817 (Fla. 2d DCA 1999).

Defendant's petition for discretionary review followed.

QUESTION PRESENTED

WHETHER THE THIRD DISTRICT COURT OF APPEAL CORRECTLY HELD WHERE A DEFENDANT ASSERTS THE DEFENSE OF MISIDENTIFICATION, THE PRESENCE OF A CONFIDENTIAL INFORMANT, WITHOUT MORE, DOES NOT REQUIRE AUTOMATIC DISCLOSURE OF THE INFORMANT. (RESTATED).

SUMMARY OF THE ARGUMENT

The Third District Court of Appeal found the undisputed record evidence revealed the police utilized the informant solely to lure Petitioner onto the front porch of the residence for a direct drug transaction with Detective Pacheco, and that the informant witnessed rather than participated in the actual drug sale on the porch. Accordingly, The Third District correctly held where a defendant asserts the defense of misidentification, the presence of a confidential informant, without more, does not require automatic disclosure of the informant.

ARGUMENT

THE THIRD DISTRICT COURT OF APPEAL CORRECTLY HELD WHERE A DEFENDANT ASSERTS THE DEFENSE OF MISIDENTIFICATION, THE PRESENCE OF A CONFIDENTIAL INFORMANT, WITHOUT MORE, DOES NOT REQUIRE AUTOMATIC DISCLOSURE OF THE INFORMANT. (RESTATED).

This case is before the Court for review of the question certified by the Third District Court of Appeal regarding whether it's opinion in State v. Simmons, 28 Fla. L. Weekly D2603 (Fla. 3d DCA Nov. 12, 2003) directly conflicts with the opinion of the Second District in McCray v. State, 730 So. 2d 817 (Fla. 2d DCA 1999) on the issue of whether the identity of an informant who is a witness to but a non-participant in a criminal episode, must be disclosed when a defendant raises the defense of misidentification.

It is well settled in Florida that the state "has a limited privilege to withhold the identity of a confidential informant." State v. Zamora, 534 So. 2d 864, 867 (Fla. 3d DCA 1988) (citations omitted). This limited privilege must give way where the disclosure of an informer's identity or of the contents of his communication 1) is relevant and helpful to the defense of an accused, or 2) is essential to a fair determination of a cause. Roviaro v. United States, 353 U.S. 53, 60-61 (1957). Whether a proper balance renders nondisclosure erroneous must

depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors. Id.

The burden is upon the defendant claiming the exception to the rule of nondisclosure to show why an exception should be invoked. State v. Zamora, 534 So. 2d 868; Miller v. State, 729 So. 2d 417, 419-20 (Fla. 4th DCA 1999). It has been held disclosure of the confidential informant is absolutely required where the defendant is charged with selling or delivering illegal drugs to the informant Roviaro v. U.S.; Monserate v. State, 232 So. 2d 444 (Fla. 3d DCA 1970), where the state calls the informant as a witness at trial, Hassberger v. State, 350 So. 2d 1 (Fla. 1977), or where the informant executes the affidavit upon which a search warrant is issued for the search of the defendant's home, Baker v. State, 150 So. 2d 729 (Fla. 3d DCA 1963).

On the other hand, Florida courts have consistently denied disclosure under the second prong of the Roviaro exception where the sole showing for disclosure was that the informant was merely present during the illegal drug transaction with which the defendant was charged and was a witness thereto, or acted as a tipster. State v. Zamora, 534 So. 2d 870 (citations omitted);

Miller v. State, 729 So. 2d 420.

Federal courts are in accord with this holding in Zamora and Miller. See United States v. Parikh, 858 F. 2d 688, 696 (11th Cir. 1988) (When the confidential informant is not an active participant in the criminal activity, but only a tipster, disclosure of the identity is not required. Thus, even though an informant is present during a critical transaction, the fact that he does not actively participate favors nondisclosure.); United States v. Varella, 692 F. 2d 1352, 1355-56 (11th Cir. 1982); United States v. Morales, 908 F. 2d 565, 568 (10th Cir. 1990); United States v. Zamora, 784 F. 2d 1025, 1030 (10th Cir. 1986); United States v. Ortiz, 804 So. 2d 1161, 1167 (10th Cir. 1986) (The government is not required to supply information about an informer to a defendant when the informer merely provides the initial introduction.), and Journet v. Coombe, 649 F. Supp. 522, 526 (S.D.N.Y. 1986).

Other state courts are also in accord with this holding in Zamora and Miller. See State v. Sanchez, 806 P. 2d 782, 785 (Wash. Ct. App. 1991) (mere tipster's identity need not be disclosed); State v. Moose, Jr., 398 S.E. 2d 898, 901 (N.C. Ct. App. 1990) (Nondisclosure is permissible where the informant is neither a participant in the offense, nor helps arrange its commission, but is a mere tipster who only supplies a lead to

law enforcement officers.); and McCulley v. State, 272 N.E. 2d 613, 616 (Ind. 1971) (The testimony concerning the informer merely revealed the surveillance of the premises was undertaken by reason of an informer's tip. It did not in any manner bolster the prosecution's case; it merely served to alert the police to a possible crime yet to be perpetrated. The crime was then committed in the presence of the police officers. Knowledge of the identity of the informer could serve no purpose useful to the defendant's defense. The testimony implicating the defendant would have been the same, had it been mere chance the police witnessed the defendant's participation in the crime).

Case No. 02-9992

In Case No. 02-9992 Petitioner was specifically charged with selling cocaine to Officer Pacheco. (R92:2). Petitioner moved for disclosure of the confidential informant, claiming he was not present and the CI who witnessed the transaction could corroborate his defense. However, the mere fact the CI was a witness to the transaction does not require disclosure where a defendant is not charged with selling or delivering drugs to the informant. State v. Zamora, *supra*. Nor is disclosure warranted where the informant will not be called as a witness at trial.

Hassberger v. State, *supra*. Since law enforcement here had no knowledge as to the identity or current whereabouts of the confidential source, the informant could not be called to testify at trial. (R92:11).

Petitioner's motion to disclose confidential informant alleged only that the sale was "witnessed" by the confidential informant. (R92:8). Petitioner states that in the State's memorandum of law in opposition to the motion to disclose, the State submitted the informant had taken an active role in setting up or brokering the deal. (Petitioner's Brief at p.14, n.3). Petitioner misreads the State's memorandum. The memorandum states:

The transaction took place on the porch of the residence. Also present during this transaction was a confidential source. The authorities utilized the confidential source for the **sole purpose** of gaining access to the front door of the residence.

(R92:11, emphasis added). The State did not, as Petitioner represents, say the informant took an active role in setting up or brokering the deal. The Third District Court specifically found the undisputed record evidence revealed the police utilized the informant **solely** to lure Petitioner onto the front porch for a direct drug transaction with Detective Pacheco, and that the informant witnessed rather than participated in the

actual drug sale on the porch. (Opinion p.7, emphasis added).

In State v. Diaz, 678 So. 2d 1341 (Fla. 3d DCA 1996), a tipster told a documented CI the tipster knew someone who wanted to sell 15 kilos of cocaine. The CI relayed the information to police and the police devised a plan for the purchase of the cocaine in the front yard of a particular home. Diaz never negotiated or spoke with the detective about the transaction, he wasn't an occupant in the car which transported the cocaine to the meeting site with the undercover officers, and he was not present at the scene when the transaction was consummated and the cocaine was seized and the co-defendants were arrested. Rodas, one of the co-defendants, pled guilty and became a witness for the state and was the only witness to point to Diaz as the source of the cocaine. The trial court found the deposition testimony of two other co-defendants contradicted that of Rodas in that neither claimed to have received cocaine from Diaz, and neither claimed to have met Diaz for the purpose of orchestrating or discussing the proposed drug transaction.

Diaz argued the tipster's identity was necessary because of the conflicting testimony among the state's witnesses. When the state refused to produce the tipster for an *in camera* inquiry by the court, the court dismissed the case. On appeal, the Third District held in a close case such as presented where Diaz set

forth a viable defense of mere presence and demonstrated the tipster had relevant and material evidence which may have supported the defense and rebutted the state's evidence, the trial court correctly ordered an *in camera* inquiry of the tipster, and correctly dismissed the charges against Diaz.

Here, in contrast to State v. Diaz, there is no conflicting co-defendant witness testimony. Petitioner was charged with selling cocaine to Officer Pacheco, not to the informant. Petitioner claims he was not present. By asserting such a defense Petitioner attempts to avoid the application of the principle that a confidential informant's identity need not be disclosed when the informant was a witness to the transaction but not a participant.

In State v. Carnegie, 472 So. 2d 1329 (Fla. 2d DCA 1985) the appellate court quashed the trial court's order compelling disclosure of the CI's identity. That court found where the informant was never alone with the defendant because the detective was always present, it could not be said the informant was the sole material witness to the events without whose testimony Carnegie would be denied the right to examine his accuser. Defendant here, too, will not be denied the right to examine his accuser as his accuser is Officer Pacheco, not the informant.

The court in Miller v. State, 729 So. 2d 417 (Fla. 4th DCA 1999) held disclosure of the confidential informant was necessary to a specific defense of misidentification where the defendant claimed he was not present during the alleged drug transaction. The facts in Miller, however, were that the CI, while behind the wheel of a car, purchased one cocaine rock from Miller. Miller claimed he was misidentified as the suspect in light of the two-month delay between the alleged transaction and his arrest, the lack of any "buy" money being recovered, and the frequency of narcotic transactions at the location of the buy. The probable cause affidavit stated the officer was concealed in the car with the CI and recognized the seller of the cocaine from previous contacts. The trial court questioned whether Miller had satisfied his burden to produce based on his defense of misidentification since the officer was an eyewitness to the alleged offense, and denied the motion to disclose. The Fourth District Court held the trial court's failure to hold an *in camera* hearing required reversal and a new trial.

The facts here are distinguishable from the facts in Miller in that the sale here was made directly to the officer and not the informant. In addition, the officer was not hidden in a passing car. Petitioner opened the door of a residence and the transaction took place on the porch of that residence.

Moreover, the Informations here were filed several days after the offenses, not two months later as in Miller.

Case No. 02-9991

As for Case No. 02-9991 Petitioner was charged with possession with the intent to sell, manufacture or deliver cocaine, and unlawful possession of a firearm or weapon by a convicted felon/delinquent. (R91:1-4). On the day following the above transaction the police executed a search warrant at the same residence and additional cocaine and a firearm were recovered from the residence. (R92:11).

Disclosure of a confidential informant is not required where the informant does not execute a search warrant affidavit against the defendant. State v. Zamora, 534 So. 2d 872; Baker v. State, 150 So. 2d 729 (Fla. 3d DCA 1963). Moreover, the defense Petitioner advanced in his motion--that he was not the person who sold the cocaine--is not a defense to the possession of contraband discovered at a different time in a different place (the day after the sale and in the residence rather than outside), and it does not warrant disclosure of the informant. State v. Devoid, 706 So. 2d 924 (Fla. 2d DCA 1998).

The Second District Court, in McCray v. State, 730 So. 2d 817 (Fla. 2d DCA 1999), found McCray's sworn motion demonstrated

a sound factual basis for concluding the confidential informant was an essential witness for McCray's specific defense of misidentification. That Court specifically wrote, "Rather than speculating, as in *Carnegie* [State v. Carnegie, 472 So. 2d 1329 (Fla. 2d DCA 1985)], Mr. McCray has demonstrated a sound factual basis for concluding that the confidential informant is an essential witness for a specific defense."

As previously argued, in State v. Carnegie, 472 So. 2d 1329 (Fla. 2d DCA 1985) the appellate court quashed the trial court's order compelling disclosure of the CI's identity. That court found where the informant was never alone with the defendant because the detective was always present, it could not be said the informant was the sole material witness to the events without whose testimony Carnegie would be denied the right to examine his accuser. Defendant here, too, will not be denied the right to examine his accuser as his accuser is Officer Pacheco, not the informant.

In Foster v. State, 816 So. 2d 1177 (Fla. 2d DCA 2002), the Second District again found disclosure of the confidential informant was required. Foster, like McCray, claimed misidentification. The facts in Foster were that the CI first purchased cocaine with police funds and thereafter the CI and the officer returned to the same residence and both the CI and

the officer purchased cocaine. Based on the officer's identification of Foster as the seller, Foster was arrested nine months later. Foster filed a motion to compel disclosure of the CI, asserting he was incorrectly identified and he did not sell cocaine to anyone on that date. That Court held because Foster was also charged with selling cocaine to the CI, his right to confront the witness against him required disclosure of the CI. Respondent submits perhaps the nine month delay in effecting Foster's arrest may have caused the Court there to think Foster may have been misidentified.

Here, the Third District concluded:

[W]e disagree that the identity of an informant who is a mere witness to, but a non-participant in a criminal episode must be disclosed for purposes of the Roviaro exceptions merely because the defense raises a misidentification defense. Were that the case, the police would necessarily also be obligated to ascertain the identities of all passersby or observers who happen onto the scene of criminal activity or run the risk of the dismissal of the state's charges.

(Opinion p.9). The case *sub judice* quite vividly illustrates the Court's concern. Petitioner raised the misidentification defense as to the cocaine sale that occurred on the porch on April 4th, and claims if he was misidentified, it bolsters his claim he was at the residence only as an overnight guest when the police returned with a search warrant the next day. The

problem with this argument is that the officer's identification of Petitioner as the person who sold cocaine on April 4th is actually reinforced because he was identified as being at the same residence the next day. There was no break in time here as there was in Miller v. State, 729 So. 2d 417 (Fla. 4th DCA 1999) (two months), and in Foster v. State, 816 So. 2d 1177 (Fla. 2d DCA 2002) (nine months). Nor was Officer Pacheco concealed in a passing car. Miller v. State, *supra*.

Here, disclosure was not necessary because Officer Pacheco is Petitioner's accuser and Petitioner will not be prejudiced because he will be entitled to cross-examine Officer Pacheco at trial. As previously argued, by asserting the defense of misidentification Petitioner attempted to avoid the application of the principle that a confidential informant's identity need not be disclosed when the informant was a witness to the transaction but not a participant.

Respondent submits Petitioner's assertion of misidentification under the facts here, illustrates the Third District Court's concern that the Second District Court's opinion in McCray could lead to the undermining of law enforcement's efforts in the fight against drugs and other crimes.

Accordingly, Respondent respectfully asks this Court to find

that the Third District Court of Appeal opinion in State v. Simmons, 28 Fla. L. Weekly D2603 (Fla. 3d DCA Nov. 12, 2003), correctly determined where a defendant asserts the defense of misidentification, the presence of a confidential informant, without more, does not require automatic disclosure of the informant.

Petitioner further asserts because the State was not able to produce the informant he is entitled to dismissal of the charges. Failure of the state to disclose the identity of a confidential informant, even when court ordered, does not automatically entitle a defendant to dismissal of charges. Miller v. State, 729 So. 2d 417, 420 (Fla. 4th DCA 1999); State v. Banks, 656 So. 2d 590 (Fla. 2d DCA 1995). There must be a determination as to the necessity for disclosure, government misconduct, and prejudice to the accused. Id. See Arizona v. Youngblood, 488 U.S. 51 (1988) which held unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.

Here, disclosure was not necessary because Officer Pacheco is Defendant's accuser and Defendant will not be prejudiced because he will be entitled to cross-examine Officer Pacheco at trial. As previously argued, by asserting the defense of

misidentification Defendant attempts to avoid the application of the principle that a confidential informant's identity need not be disclosed when the informant was a witness to the transaction but not a participant.

This Court may believe law enforcement was remiss for not knowing the identity of the informant or his or her whereabouts, but such does not rise to the level of misconduct. Accordingly, the Third District correct found the trial court erred in dismissing the charges against Defendant.

Should this Honorable Court believe disclosure was necessary, Respondent submits the trial court, in lieu of dismissal, should have utilized other sanctions such as a limitation on testimony. See Smith v. State, 801 So. 2d 198, 200 n.1 (Fla. 4th DCA 2001).

CONCLUSION

WHEREFORE, based upon the foregoing, the decision of the Third District Court of Appeal should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing **BRIEF OF Respondent ON THE MERITS** was furnished by mail to Roy A. Heimlich, *Esquire*, Assistant Public Defender, OFFICE OF THE PUBLIC DEFENDER, Eleventh Judicial Circuit Court, 1320 N.W. 14th Street, Miami, Florida 33125 on this ____ day of January 2004.

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CERTIFICATE OF FONT AND TYPE SIZE

Counsel for Respondent, the State of Florida, hereby certifies this brief is printed in 12 point Courier New font as required by this Court's administrative order of July 13, 1998.

BARBARA A. ZAPPI
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IN THE SUPREME COURT OF FLORIDA

CASE NO. 03-2093

EDDIE SIMMONS,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM
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APPENDIX TO
BRIEF OF RESPONDENT ON THE MERITS

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INDEX TO APPENDIX

<u>APPENDIX</u>	<u>DESCRIPTION</u>
App. A (Slip	<u>State v. Simmons</u> , Case Nos. 3D02-3120 & 3D03-376 (Fla. 3d DCA Nov. 12, 2002) opinion).

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing **APPENDIX TO BRIEF OF Respondent ON THE MERITS** was furnished by mail to Roy A. Heimlich, *Esquire*, Assistant Public Defender, OFFICE OF THE PUBLIC DEFENDER, Eleventh Judicial Circuit Court, 1320 N.W. 14th Street, Miami, Florida 33125 on this ____ day of January 2004.

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