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**FILED**

SID J. WHITE

SEP 19 1991

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

**IN THE SUPREME COURT OF FLORIDA**

CARLOS DELEON, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent, )  
 \_\_\_\_\_ )

Case No. 78,299

**PETITIONER'S REPLY BRIEF ON THE MERITS**

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PRELIMINARY STATEMENT

Petitioner was the defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, In and For Broward County, Florida. Petitioner was the appellant and Respondent was the appellee in the Fourth District Court of Appeal.

In the brief the parties will be referred to as Petitioner and Respondent.

ARGUMENT

INSTRUCTION 3.04(c)(2), FLORIDA STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES, AND SECTION 777.021(2), FLORIDA STATUTES (1989), BOTH APPLICABLE TO OFFENSES AFTER 1987, UNCONSTITUTIONALLY SHIFT THE BURDEN TO THE DEFENSE TO PROVE ENTRAPMENT.

The state urges this Court not to exercise the jurisdiction conferred by the certified question, stating that the District Court did not specify in its order granting certification what question was being certified. Petitioner, however, attached to his initial brief a copy of the motion for certification which was granted. The motion plainly set forth the same question certified in Herrera v. State, now pending in this Court under Case No. 78,290. Plainly this was the question certified.

There is presently no particular format required for certification of questions. If this Court wishes to take up the matter of format, it will be needlessly expending judicial labor over a technicality which does not affect the substance of this Court's jurisdiction, and needlessly burdening the district courts with formalities. If this Court does find the certification here defective, it must remand to the District Court for correction, since the law in effect at the time of the certification required no particular formality.

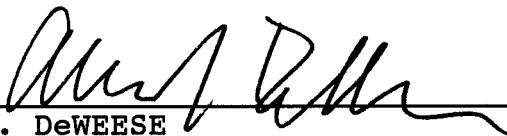
This Court must exercise its jurisdiction here in order to give Petitioner the benefit of its pending decisions in Herrera and in State v. Krajewski, Supreme Court Case No. 77,685.

CONCLUSION

Based on the foregoing arguments and the authorities cited therein, Petitioner respectfully requests this Court to reverse the decision of the District Court and to remand this cause with proper directions.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Georgina Jimenez-Orosa, Assistant Attorney General, Elisha Newton Dimick Building, Room 240, 111 Georgia Avenue, West Palm Beach, Florida 33401 this 17<sup>th</sup> day of September, 1991.

  
\_\_\_\_\_  
Counsel for Petitioner