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SEP 6 - 1974
RICHARD P. BRINKER
CLERK

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR DADE COUNTY SPRING TERM,

CASE NO. 74-6113

STATE OF FLORIDA

vs.

LUIS CRESPO, ET AL

DEFENDANTS.

STATE'S REQUESTED JURY

INSTRUCTION NO. 2

Ladies and Gentlemen of the Jury, I charge you that possession of explosives without a permit as required by Chapter 552 of the Florida Statutes shall be prima facie evidence of an intent to use the same for destruction of life, limb or property.

Chapter 552.22 Florida Statutes

GIVEN: _____

DENIED: _____

A. M. Fitzgerald

CIRCUIT COURT JUDGE

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR DADE COUNTY SPRING TERM, 1974

CASE NO. 74-6113

STATE OF FLORIDA

STATE'S REQUESTED JURY

vs.

INSTRUCTION NO. 3

LUIS CRESPO, ET AL

DEFENDANTS.

It is not the duty of the State Attorney to produce every person who might seem likely to have some knowledge about this case, and to have them testify on the witness stand. Such an undertaking would involve useless expense and waste of time in most instances. It is the State Attorney's duty to investigate and discover who actually has knowledge which is material to the determination of the issues and to produce at trial only such as are necessary and material, and any omission to produce other witnesses does not raise any presumption that they would, if produced, testify adversely to the prosecution.

It is not the duty of the prosecution nor of the defense to call as its own witnesses any and all persons who might appear to have some knowledge of the matters concerned in this case.

Selph v. State, 22 Fla. 537

Brown v. State, 180 So. 842

GIVEN: _____

DENIED: _____

A. J. [Signature]

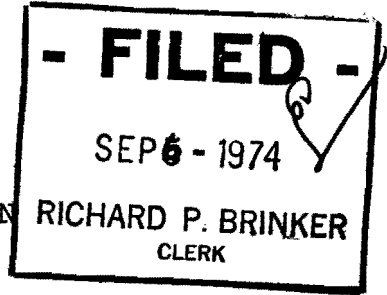
CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR DADE
COUNTY, FLORIDA

SPRING TERM 1974

CASE NO: 74-6113

CRIMINAL DIVISION



STATE OF FLORIDA,

Plaintiff,

-vs-

LUIS ALBERTO CRESPO, HUMBERTO
LOPEZ and JUAQUIN MIRANDA,

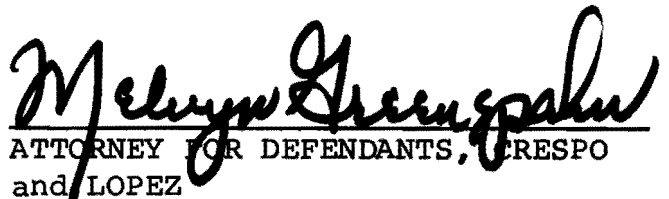
Defendants,

)
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DEFENDANTS; LUIS ALBERTO
CRESPO and HUMBERTO LOPEZ, PRO-
POSED AND REQUESTED SPECIAL JURY
INSTRUCTIONS

The Defendants, LUIS ALBERTO CRESPO and HUMBERTO LOPEZ,
pursuant to the Florida Rules of Criminal Procedure, respectfully
move the Court to give to the jury the requested instructions
hereto annexed, and further requests that the Court indicate at
the close of the evidence and prior to the argument which of the
tendered instructions or parts thereof it will give and which it
will refuse.

MELVYN GREENSPAHN, P.A.
Suite 210-1150 Building
1150 S.W. 1st Street
Miami, Florida 33130


ATTORNEY FOR DEFENDANTS, CRESPO
and LOPEZ

DEFENDANTS' REQUEST GIVEN OF THE FOLLOWING NUMBERED INSTRUCTIONS AS MORE PARTICULARLY SET FORTH IN FLORIDA STANDARD JURY INSTRUCTIONS CRIMINAL CASES:

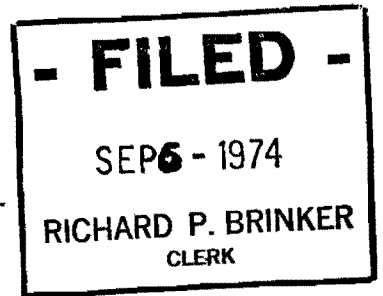
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- 2.01 - Opening Statement
- 2.02 - Statement of Charges
- 2.03 - Plea of Not guilty - Burden of Proof
- 2.05 - Read the Statutes pursuant to which the offenses are charged.
- 2.06 - Essential Elements
*Possession defined
explosive*
- ~~2.08~~ - Date of Crime - Proof (Paragraph 1)
possession w/o permit prima facie
- ~~2.09~~ - Venue
- 2.11(a) - Presumption of Innocence
- 2.11(b) - Reasonable Doubt.
- 2.12 - Weighing the evidence
 - (a) - Conflicts
 - (b) - Credibility of Witnesses
 - e expect but* ~~(d) - accomplice~~
 - (e) - Impeachment
- 2.12(h) - Defendants not testifying
- 2.13 - Circumstantial Evidence
- 2.14 - Matters to be disregarded (a) (c)
- 2.15 - Verdict
- 2.16 - Cautionary Conclusions
- 2.17 - Deliberations

GRANTED _____

DENIED _____

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 1



You are instructed that it is a crime for any person to possess an explosive for which he has not obtained a permit.

The essential elements of this offense which must be proved beyond a reasonable doubt before the Defendant can be found guilty are:

1. That the Defendants, LUIS ALBERTO CRESPO AND HUMBERTO LOPEZ, did willfully and knowingly possess an explosive as is hereafter further defined.

2. Which said destructive devise was not the subject of a lawful permit.

GRANTED _____

DENIED _____

*withdrawn
A. M. J. [signature]*

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 2

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ILLEGAL POSSESSION OF FIREARM-PROOF OF NO REGISTRATION

The State has introduced in evidence State's Exhibit No _____, which is a certificate of the custodian of the _____ to the effect that he has made a diligent search and has found no record of any explosive substance being registered to the defendants. He makes up this certificate as evidence that the explosive substance was not registered to the Defendants, but you are not obliged to do so. It is up to you to determine what evidence you will accept. Lack of permit is an essential element which must be proved. Otherwise, the State's case fails. U.S. vs. Collier, 281 F2d 616 (6th Cir., 1967).

GRANTED _____

DENIED _____

A. J. [Signature]

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

3

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ESSENTIAL ELEMENTS

The essential elements of this offense which must be proved beyond a reasonable doubt before there can be a conviction in this case are that:

1. The Defendants did possess an explosive.
2. That the Defendants at the time of the alleged offense did not hold a license or permit for possession of such explosive.
3. That the Defendants were not under the immediate personal supervision or control of a person holding a blasters permit.
4. That the Defendants were not engaged in preparation for and in the detonating or otherwise effecting the explosion of an explosive. F.S. 552.101

An explosive is defined as "any chemical compound or mixture that has the property of yielding readily to combustion or oxidation upon the application of heat, flame or shock including but not limited to dynamite, nitroglycerin, trinitrotoluene, ammonium nitrate when combined with other ingredients to form an explosive mixture, blasting caps and detonators; but not including cartridges for firearms and not including fireworks" F.S. 552.081(1).

Withdrawn

GRANTED _____

DENIED _____

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DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 4

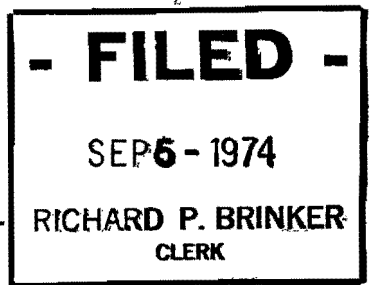
You are instructed that a defendant has the absolute right not to testify, and the jury must not draw a presumption of guilt or any inference against the defendant because he did not testify.

with drawn

GRANTED _____

DENIED _____

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 5



You are instructed that the indictment is not evidence of any kind against the defendant and does not create any presumption or permit any inference of guilt. It is merely the formal manner by which the government accuses a person of crime in order to bring him to trial. The defendant has answered the charges by pleading "not guilty," thus denying that he committed the crime charged. You must not be prejudiced against a defendant because an indictment has been returned against him.

Statements and arguments of counsel are not evidence. They are only intended to assist the jury in understanding the evidence and the contentions of the parties. During the course of the trial it often becomes the duty of counsel to make objections, and for the court to rule on them in accordance with the law. The jury should not consider or be influenced by the fact that such objections have been made by either side.

Testimony and exhibits to which the court has sustained an objection, or which the court has ordered stricken from the record, do not constitute evidence, and must not be considered by the jury.

GRANTED

DENIED

A. [Signature]

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DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 6

You are instructed that evidence that an act was done at one time, or on one occasion, is not any evidence or proof whatever that a similar act was done at another time, or on another occasion. That is to say, evidence that a defendant may have committed an earlier act of a like nature may not be considered by the jury, in determining whether the accused committed any act charged in the indictment.

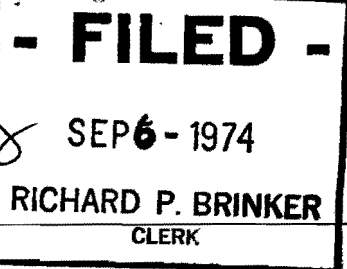
Nor may evidence of an alleged earlier act of a like nature be considered for any other purpose whatever, unless the jury first find that the other evidence in the case, standing alone, establishes beyond a reasonable doubt that the accused did the particular act charged in the particular county of the indictment then under deliberation.

If the jury should find beyond a reasonable doubt from other evidence in the case that the accused did the act charged in the particular count under deliberation, then the jury may consider evidence as to an alleged earlier act of a like nature, in determining the state of mind or intent with which the accused did the act charged in the particular count. And where proof of an alleged earlier act of a like nature is established by evidence which is clear and conclusive, the jury may, but is not obliged to, draw the inference and find that, in doing the act charged in the particular count under deliberation, the accused acted willfully and with specific intent, and not because of mistake or accident or other innocent reason.

GRANTED _____
DENIED _____

withdrown

State v. Croso & Lopez
74-6113



Where premises are not in the exclusive possession of one charged with possession of a prohibited substance, the State, in order to prove knowledge of the presence of the ~~substance~~ ^{prohibited substance}, must present other evidence which forms a reasonable basis for an inference that the Defendant knew of the presence of the ~~substance~~ prohibited substance. By "other evidence" is meant evidence other than evidence of the Defendant's non-exclusive possession of the premises.

MEDLIN V. STATE 279 So.2d 41 (1973)

Δ's proposed instruction: -

Granted:

A. H. Fitzgerald