OA 9-1-87

IN THE SUPREME COURT OF FLORIDA

RAYMOND TINGLEY,

Petitioner,

vs

STATE OF FLORIDA,

Respondent.

CASE NO. 69,651

PETITIONER'S BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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PETITIONER'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner sought discretionary review based on a reasoned belief that the decision of the Fifth District Court of Appeal sub judice expressly and directly conflicts with prior decisions issued by this Court. Petitioner respectfully submits that jurisdiction also exists for this Court to review the other points of law presented in this brief.

> [O]nce we accept jurisdiction over a cause in order to resolve a legal issue in conflict, we may, in our discretion, consider other issues properly raised and argued before this Court.

Savoie V. State, 422 So.2d **308, 310** (Fla. 1982).

The symbol (R) refers to the record on appeal in the instant cause, Fifth DCA Case No. **85-1003,** Sup. Ct. Case No. 69,651.

STATEMENT OF THE CASE

On June 13, 1984, the state filed an information (Case No. 84-1681-CF-A) charging Petitioner, Raymond Harold Tingley, with two counts of sexual battery on a child under eleven, in violation of Section 794.011(2), Florida Statutes (1983). (R1081) On October 8, 1984, th grand jury of Brevard County returned an indictment (Case No. 84-3275-CF-A) charging Petitioner with four counts of sexual battery on a child under eleven, in violation of Section 794.011(2), Florida Statutes (1983). (R1082-1083,1093) On February 22, 1985, the state filed a notice of intent to present similar fact evidence. (R1103) On March 21, 1985, Petitioner filed a motion to dismiss the indictment on four grounds: 1) the charges are vague and uncertain, appear on their face to be duplicitous, and prevent Appellant from adequately preparing a defense; 2) the state, in effect, unlawfully amended the grand jury indictment by filing a statement of particulars outside the time frame considered by the grand jury; 3) the indictment was invalidated when it was altered by changing the identifying case number to that of the original information which was subsequently nolle prossed; and 4) the indictment is based on insufficient evidence. (R1107-1109) On March 29, 1985, a hearing on the motion to dismiss was held before the Honorable John Antoon, Circuit Judge. (R1004-1080) The motion was denied. (R1070-1071,13) Petitioner proceeded to jury trial on the charges on April 3-6, 1985, with the Honorable

John Antoon, Circuit Judge presiding. (R18-936) Following deliberations, the jury returned verdicts of guilty as charged. (R925-926,1113-1116) Judge Antoon adjudged Petitioner guilty and sentenced him to concurrent sentences of life imprisonment with a minimum of 25 years without parole. (R1137-1143) Petitioner filed a timely notice of appeal on June 27, 1985. (R1147) Petitioner was adjudged insolvent for purposes of appeal and the Office of the Public Defender was appointed to represent him. (R1136) On appeal to the Fifth District Court of Appeal, Petitioner raised five issues: three dealing with the propriety of the trial court's ruling on the motion to dismiss, one concerning alleged improper cross-examination of Petitioner, and one concerning the admission of evidence of a prior unreported sexual battery alleged to have been committed by Petitioner. The Fifth District Court of Appeal affirmed Petitioner's judgments and sentences specifically rejecting the argument regarding the propriety of allowing the state to file a statement of particulars alleging the crime occurred during a time period outside the perimeters set forth in the indictment. Tingley v. State, 495 So.2d 1131 (Fla. 5th DCA 1986). Petitioner filed a timely motion for rehearing which was denied on October 14, 1986. Petitioner filed a notice to invoke discretionary review on November 14, 1986, which was dismissed as untimely. On December 4, 1986, Petitioner filed a motion to reinstate the petition which was granted on January 23, 1987. On April 13, 1987, this Court accepted jurisdiction and set the cause for oral argument on September 1, 1987.

STATEMENT OF THE FACTS

Petitioner, Raymond Harold Tingley, and Linda and Gary Hackett have been friends for nearly 15 years. (R73,458,608) Near Christmas, 1973, the Hacketts called Petitioner, who was living in Florida, and asked if there was work to be found for Mr. Hackett in Florida. (R609) The Hacketts moved down to Florida in 1974 and lived with Appellant for a year and a half. (R76,459,609) Petitioner then moved out and bought himself another trailer in the same trailer park while the Hacketts lived in the trailer until 1977 when they bought a new one. (R611,75) Petitioner remained very good friends with the Hacketts, including their three daughters. (R77,460,612) The children called Petitioner Uncle Ray. (R460,77) The children would often spend the weekends at Petitioner's home. (R78,461,613) Eventually the Hacketts started a carpentry business and employed Petitioner. (R81,461,613) Originally Petitioner was to be paid $240.00 a week but due to financial problems Petitioner received only $100.00 a week, with the promise that the rest would be made up later. (R614,81,462) Eventually Hackett had to let Petitioner go because he could no longer afford him. (R82,465,615) At the time he stopped working, Petitioner was owed approximately $1,200.00. (R615) Petitioner inquired about the money several times and eventually was told that Hackett did not intend to pay him that much but would pay him $500.00 (R615-616,465,83) The Hackett's relationship with Petitioner deteriorated at that point. (R84,468) However the children were

still allowed to see Petitioner and occasionally spent the night. (R469) The last time that the children stayed with Petitioner was Labor Day weekend in 1982. (R88) Petitioner had never been paid. (R618,98) In May, 1984, Mrs. Hackett was given a letter by the day care manager with whom the children stayed. (R470) The letter contained some graphic references to sexual activities and Mrs. Hackett confronted Debbie with it. (R470) Debbie's initial reaction when confronted with the letter was to ask her mother if she (the mother) had told her father about the incident with Freddie, her cousin. (R499) She immediately corrected herself and said the incident with David, her cousin. (R488,499) Debbie was quite upset and eventually told her mother that Petitioner had sexually molested her. (R471) Debbie told her mother that the same thing happened to her younger sister Jennifer, and when Mrs. Hackett confronted Jennifer she too told her mother that Petitioner had molested her. (R471) Originally both girls told their parents and the police that these assaults occurred during the summer of 1983. (R232A,371,372) However, Debra now remembers that the assaults occurred near Thanksgiving in 1981 and near Christmas in 1981. (R2323A,235) Debra claims that the assaults occurred before November 1981, although she does not remember when. (R235) She admits that when she gave a deposition three months prior to the trial she stated that the first time that the abuses occurred was Christmas 1981. (R236) She admits that she was lying at the time when she gave the deposition. (R240) She also admitted that she lied when she

told the police and her parents that is occurred in the summer of 1983. (R243-244) Jennifer Hackett recalled that Petitioner attacked her two days after her sixth birthday which was October 1, 1981. (R313-316) Both girls testified that when these attacks occurred, they were spending the night at Petitioner's house. (R314,222) Petitioner would come into the bedroom wake them up, take them to his room where he would take their clothes off and lay on top of them and insert his penis in their vaginas. (R316,224) Afterwards Petitioner would tell them to put their clothes on and go back to bed. (R227,321) Petitioner would tell them not to tell anyone because he would get in trouble is they did. (R231,325) Debbie Hackett told her friend Christie Brooks about this sometime shortly after it happened. (R224A) Christie Brooks remembers Debbie telling her although she can't remember exactly when it was other than it was when they were in third grade. (R289-290) She also does not recall if Debbie told her when these attacks were to have occurred. (R290) Petitioner denied ever sexually assaulting either of the girls. (R631) The weekend of Thanksgiving when the attack is to have occurred Petitioner was not even in the town. (R633) Petitioner spent that weekend in Miami visiting with his niece and her husband and family. (R633) Petitioner admits that the children did spend the night with him following Jennifer's sixth birthday. (R631) He denied ever sexually molesting either of them that weekend. (R631) During Labor Day weekend in 1982, Petitioner babysat both of the girls as well as two of their cousins. (R635) Debra was

10 or 11 years old at the time and Jennifer was 6 or 7. (R636) The boys were 13 or 14 and 9 or 10. (R636) Early in the morning after the children had spent the night, Petitioner found all four of the children in one bedroom and they were all naked. (R640-653) The children were very afraid that Petitioner would tell their parents but he did not. (R655-656) This was the last time that any of the children stayed over night with him. (R657) Medical examinations of the two children revealed trauma to the vaginal area and neither of the girls had intact hymens. (R133,158) The examinations revealed that the girls had been sexually abused by an adult male performing sexual intercourse. (R134,159) Petitioner's niece Laurie Moran testified that in 1979 she spent the summer with Petitioner. (R767-768) On the night she arrived, as she prepared for bed, Petitioner came into her bedroom, began fondling her and eventually forced her onto the bed where he then proceeded to have sexual intercourse with her. (R769-771) She never told anyone about this. (R772) She stayed three months with Petitioner after this occurred. (R774) Petitioner's nephew Leston Tingley testified that during the time that he stayed with Petitioner in 1984, Petitioner discussed several teenaged girls with him. (R745-749) Petitioner's comments concerning these girls were of a sexual nature. (R745-749) Leston also saw magazines in Petitioner's house which portrayed naked children. (R750) These magazines were just nudist magazines and had nothing sexual in them. (R752) Leston admitted that Petitioner was just bragging when he said these

things and that he did not believe they were true. (R762) Petitioner denied saying these things to Leston. (R799) Leston admitted that he does not like Petitioner. (R755) Petitioner also denied ever having sexual intercourse with his niece. (R795-796)

SUMMARY OF ARGUMENT

POINT I: Any action by the state which effectively amends a charge set forth in an indictment renders the entire indictment a nullity. Thus when the state files a statement of particulars alleging that the offense occurred outside the time perameters set forth in the charge in the indictment, this constitutes an impermissible amendment.

POINT 11: Where the offenses charged are couched in terms so vague and indefinite so as to embarrass a defendant in preparation of his defense and which have the effect of exposing him after either conviction or acquittal to new prosecution for the same offenses a trial court must grant the defendant's motion to dismiss the indictment.

POINT 111: Although wide latitude is permitted in cross-examination, it is error to permit cross-examination on wholly collateral issues that have no bearing on a person's bias or motive and serve only to point out the bad character of the witness or his propensity toward crime.

POINT I

IT IS REVERSIBLE ERROR TO PERMIT THE STATE TO FILE A STATEMENT OF PARTICULARS AND PROCEED TO PROVE A CRIME WAS COMMITTED AT A TIME THAT IS CLEARLY OUTSIDE THE TIME FRAME SET FORTH IN THE INDICTMENT, WHERE SUCH STATEMENT OF PARTICULARS IN EFFECT CONSTITUTES AN IMPERMISSIBLE AMENDMENT OF THE INDICTMENT.

The grand jury of Brevard County returned an indictment charging Petitioner with four counts of capital sexual battery. (R1082-1083) In each count, Petitioner was charged with committing the crime

> ... on or between April 1, 1982 and September 30, 1982 ...

(R1082) In response to the defense counsel's repeated motions for a bill or particulars, the state at first claimed the crimes took place on or between June 1, 1983 and August 1983. In a later amendment following defense counsel's motion to dismiss the indictment for vagueness, the state claimed the crimes took place between April 1, 1982 and September 20, 1982, the same time span as set forth in the indictment. However, this was again amended to between September 1, 1981 and September 20, 1982, expanding the time backward six months from the indictment dates. And in a final amendment to the bill of particulars, after being ordered by the trial court to be more specific, the state claimed the crimes took place between September 1, 1981 and March 1, 1982, the six-month span previous to the time span alleged in the indictment. (R4) Inasmuch as this statement of particulars covered some six months beyond the time set forth in the

indictment, Petitioner filed a motion to dismiss on the ground, inter alia, that this constituted an impermissible amendment of the indictment. (R1107-1109) This was denied. At trial, the victims testified that these offenses occurred in October, 1981, (R314-316), November, 1981, (R228,321) and Christmas, 1981. (R222)

On appeal, the Fifth District Court of Appeal found no error in the denial of the motion to dismiss holding that the statement of particulars alleging the date of the offenses, although outside the time span set forth in the indictment, did not constitute an amendment of the indictment. Tingley v. State, 495 So.2d 1181,1183 (Fla. 5th DCA 1986). The court further held:

> The better-reasoned rule appears to us to be that unless time is a specific element of a certain crime, it is not a substantive, essential part of the indictment. A conviction may be obtained for a crime even though there is a variance between the dates proved at trial and those alleged in the indictment, so long as the indictment and proofs show the crime was committed before the return date of the indictment and within any applicable statute of limitations time period. That unquestionably was the case in this proceeding.

Id. As Judge Dauksch pointed out in his dissent, however:

> A statement of particulars restricts the state to proof of particular times, or within particular time periods. State v. Beamon, 298 So.2d 376 (Fla. 1974). It is not a vehicle by which the state can change the times alleged in the indictment. I would reverse the affected convictions.

In Florida, a court has no authority to permit the

state to amend an indictment. See 15 Fla.Jur.2d, Criminal Law §654. This rule is embodied implicitly in Fla.R.Crim.P., 3.140(j) which specifically provides for the amendment of an information but makes no mention of indictments. This silence is intentional. State v. Black, 385 So.2d 1372, 1376 n.5 (Fla. 1980) (England, J. concurring specially)

In Pickeron v. State, 94 So.2d 268, 113 So. 707 (1927) and Dickson v. State, 20 Fla. 800 (1884) this Court held that the allegation of the time or date of the commission of an offense is one of substance and not of form. Without question, in Florida, amendments of an indictment as to matters of substance may only be accomplished by returning the matter to the original grand jury. Pickerson, supra; State v. Black, 385 So.2d 1371 (Fla. 1980).

In Straughter v. State, 83 Fla. 683, 92 So. 569 (1922), an indictment charged the defendant with committing an offense on September 31, 1916. The Supreme Court found that since the indictment alleged a non-existent date, a judgment thereon could not stand. In so ruling, the majority rejected the suggestion by the dissenters that the error was technical and thus harmless especially since the proof at trial supported the conviction and the defendant was not embarrassed in his defense. Petitioner asserts that the error in Straughter, supra, is far less egregious than in the instant case since Petitioner stands convicted of offenses not charged and apparently from the indictment were not even considered by the grand jury. The bill

of particulars cannot be used as a vehicle to amend an indictment but rather it traditionally is used solely as a limiting device for a defendant whereby the state narrows the time set forth in the charging document and is restricted to proof of the offenses within the particular times alleged.

The decision of the Fifth District Court of Appeal sub judice is in direct conflict with the prior decisions of this Court cited above. Petitioner asserts that this Court must quash the decision of the Fifth District Court of Appeal and reverse his convictions and sentences.

POINT II

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO DISMISS THE INDICTMENT WHERE THE OFFENSES CHARGED WERE SO VAGUE AND INDEFINITE SO AS TO EMBARRASS APPELLANT IN PREPARATION OF HIS DEFENSE AND EXPOSED HIM AFTER CONVICTION OR ACQUITTAL TO NEW PROSECUTION.

The indictment charged Appellant with four counts of sexual battery. (R1082) Counts 1 and 2 charge, in identical terms, that Appellant:

> ...on or between April 1, 1982 and September 30, 1982, in The County of Brevard, and State of Florida, being then eighteen (18) years of age or older, did then and there unlawfully commit a sexual battery upon DEBRA HACKETT, a person eleven (11) years or younger, to wit: 10 years of age, by PLACING HIS PENIS IN HER VAGINA, contrary to Section 794.011(2), Florida Statutes, ... (R1081)

Counts 3 and 4 charge, in identical terms, that Appellant:

> ...on or between April 1, 1982 and September 30, 1982, RAYMOND HAROLD TINGLEY, being then eighteen (18) years of age or older, did then and there unlawfully commit a sexual battery upon JENNIFER HACKETT, a person eleven (11) years or younger, to wit: 7 years of age, by PLACING HIS PENIS IN HER VAGINA, contrary to Section 794.011(2), Florida Statutes, ... (R1082)

In his motion to dismiss, Petitioner argued that the charges were vague and indefinite, Counts 1 and 2 and Counts 3 and 4 were duplicitous in that they charged Appellant twice for the same exact offense, that he was hindered in his ability to prepare a defense and that he was subject to possible double jeopardy.

(R1107-1109)

In discussing the sufficiency of an indictment, the Supreme Court in State v. Black, 385 So.2d 1372 (Fla. 1980) stated:

> ...an indictment must apprise a person of the charges in a manner which enables the accused to prepare a defense; second, the allegations must be specific enough to protect the accused from twice being placed in jeopardy for the same offense.

As the Court noted, these principles are embodied in Fla.R.Crim.P., 3.140(o).

In the instant case, the indictment is insufficient on both of these grounds. Given the broad time limits during which the offenses were alleged to have been committed, it was absolutely impossible for Petitioner to even attempt to construct a defense. He was forced to sit and wait until he actually heard the victims give actual dates and then attempt to counter these with mere denials. Despite all attempts to learn prior to trial what the specific dates of the alleged crimes were, Petitioner did not actually learn of these until the victims testified at trial. [1/] The inability to prepare for trial was underscored when Petitioner testified that he was not even in the county when one of the alleged offenses was to have been committed. (R633)

In Collins v. State, 489 So.2d 188 (Fla. 5th DCA 1986)

1/ At the hearing on the motion for new trial, the prosecutor admitted that she knew before the trial began that the victims were going to testify as to exact dates yet she did not disclose this information to defense counsel. (R1025-1026)

(~~en banc~~), the defendant challenged his dual convictions for trafficking in stolen property on double jeopardy grounds inasmuch as both counts were couched in identical language thus making it impossible to differentiate between the two. The Fifth District Court of Appeal, ~~en banc~~, rejected the contention holding:

> We find that there was no double jeopardy. Although the state failed in its information to factually differentiate two separate, discrete incidents of trafficking which occurred on the same date at different locations, that failure was waived by the defendant's failure to file either a motion to dismiss or motion for more definite statement. Id. at 188-189.

In the instant case, Counts 1 and 2 of the indictment are couched in identical language as are Counts 3 and 4. Petitioner did file a motion to dismiss and on several occasions filed motions for more definite statement although in each case the state's response failed to differentiate between the counts. Therefore, applying the Collins, supra rationale to the instant case results in the inescapable conclusion that Petitioner's motion to dismiss should have been granted. Further, Petitioner states that the Fifth District Court of Appeal in the case ~~sub judice~~ ignored its own precedent by ruling that this issue had no merit. Not only does the issue have merit, but on the clear authority of Collins, supra, reversal is mandated.

POINT III

THE TRIAL COURT ERRED IN PERMITTING THE STATE TO CROSS-EXAMINE PETITIONER CONCERNING STATEMENTS ALLEGEDLY MADE BY HIM CONCERNING POSSIBLE SEXUAL ATTRACTION TO OTHER YOUNG GIRLS.

During cross-examination of Petitioner, the state was permitted to question him regarding his sexual attraction to several young females. (R699-711) Defense counsel objected on the grounds that the questions were irrelevant and immaterial and designed only to imply that Petitioner was a child molester. (R695-696) Defense counsel further argued that the questions exceeded the scope of direct examination. (R697)

Petitioner was charged with violations of Section 794.011(2), Florida Statutes (1983) which provides:

> 2) A person 18 years of age or older who commits sexual battery upon, or injures the sexual organs of, a person 11 years of age or younger in an attempt to commit sexual battery upon said person commits a capital felony.

The state was permitted to question Petitioner concerning statements he made concerning certain other young females as well as having had sexual intercourse with his 16 year old niece. These were all denied by Petitioner. (R703-711) The questions concerning Petitioner's alleged sexual attraction for the girls in question were improper for several reasons. Initially, the questions were beyond the scope of direct examination. The only remotely possible direct testimony to which these questions could be linked was Petitioner's testimony that since his divorce in 1970 he has had two or three steady dating relationships with

women his own age and that he usually dated woman close to his own age. (R707-708) At no time did Petitioner ever testify as to his sexual attraction. In fact, the questions on direct were concerned only with Petitioner's dating practices and had nothing to do with his sexual attractions.

Admittedly, the state's questions were designed to convey to the jury that Petitioner had unnatural sexual attractions toward young girls. Such evidence is totally irrelevant for two reasons. First, sexual gratification is not an element of the offense of sexual battery. State v. Smith, 401 So.2d 1126 (Fla. 5th DCA 1981); Aiken v. State, 390 So.2d 1186 (Fla. 1980). Sexual battery is a crime of violence and therefore the question of whether Petitioner had a sexual attraction to young girls is irrelevant. Second, the other girls that were referred to by the prosecutor were all over the age of 15. Whether Petitioner was attracted sexually to these girls has absolutely no bearing on whether he raped a child under 11. The trial court specifically ruled that the evidence concerning the alleged rape of Laurie Moran was inadmissible in that it did not meet the test of admissibility of similar fact evidence. (R528)

Evidence of criminal activity not charged is inadmissible if its sole purpose is to show bad character or propensity to crime. Williams v. State, 110 So.2d 654 (Fla. 1959). In Straight v. State, 397 So.2d 903 (Fla. 1981) this Court held that if irrelevant, the admission of collateral criminal activity is presumed harmful error because of the danger

that a jury will take the bad character or propensity to crime thus demonstrated as evidence of guilt of the crime charged. In Dixon v. State, 191 So.2d 94 (Fla. 2d DCA 1966), the defendant was charged with handling and fondling a 9 year old girl. The prosecutor was permitted to present the testimony of another 9 year old girl in rebuttal. The court found it reversible error, since the rebuttal witness' testimony had no relation to the victim's testimony:

> The trial court should not have permitted the testimony of Donna Gaskin. In the first place, Donna was not a proper rebuttal witness and her testimony, if it were permissible at all, should have been adduced only as part of the state's case in chief. But aside from this, which alone might not have been reversible, although erroneous, her testimony on the face of it should not have been permitted to go to the jury for the reason that there was not affirmative connection between in incident testified about by Donna and in the incident relied upon by the state in and by Brenda's testimony. Donna was brought in as a corroborating witness and her testimony must of necessity had related to the same identical incident as related by Brenda.

Id. at 97. In Harris v. State, 183 So.2d 291 (Fla. 2d DCA 1966), the defendant was charged with a crime against nature for attacking another man. The prosecutor was permitted to present testimony that the defendant had told a minister that he, the defendant, was a homosexual and had relations with 20 men in the minister's church. The court reversed:

> The evidence admitted by the trial court in this case bore with deadly effect upon the character and propensities of the defendant. This is in violation of

> well-established precedent. It would be difficult to find a factual setting where the evidence was more clearly inadmissible due to a lack of relevance and its sole purpose being to show bad character propensity, thereby creating in the minds of the jurors more heat than reflecting light.
>
> While we are not in sympathy with the alleged conduct of the defendant, he has the constitutional right, like every citizen, to a fair and impartial trial. In consideration of our societal attitudes regarding such alleged conduct it is necessary that all available safeguards be employed to ensure such a trial. It is without question that the testimony in this case severely prejudiced the defendant and he was convicted not solely upon the acts for being a homosexual and having committed numerous homosexual acts, for which he was not being tried.

Id. at 294 [emphasis in original]. In Banks v. State, 298 So.2d 543 (Fla. 1st DCA 1974), the court found prosecutorial overkill where the defendant was charged with fondling a male child. The 10 year old victim and an 11 year old friend both testified. The state, however, also introduced testimony of a 14 year old boy who said that he participated in homosexual acts with the defendant. The Court reversed:

> A review of this record leads us to the inescapable conclusion that the singular purpose of injecting this collateral crime into the trial by the state was to prove the bad character of defendant and his propensity to commit a homosexual act.

Id. at 544 [footnote omitted]. In Braen v. State, 302 So.2d 485 (Fla. 2d DCA 1974), the defendant was charged with anal intercourse with an 18 year old female. The state introduced

evidence that the defendant had committed oral and anal sex upon a 14 year old boy three years earlier. The court found the testimony to be irrelevant and inadmissible. See also Clingan v. State, 317 So.2d 863 (Fla. 2d DCA 1975), in which the testimony of a homosexual encounter with an adult male was irrelevant to the charge of lewd assault on a 12 year old boy.

In Phillips v. State, 350 So.2d 837 (Fla. 1st DCA 1977), a 13 year old boy testified that the defendant had oral sex with him. The defendant denied it. The state also produced the testimony of a 15 year old boy who said that the defendant grabbed him between the legs 10 or 15 times. The court found the latter's testimony only showed the defendant's propensity to commit homosexual acts, and was prejudicial error.

In summary, Petitioner contends that the cross-examination of Petitioner by the state with reference to Petitioner's sexual attraction to teenage girls was totally irrelevant and should not have been permitted. This Court must reverse.

CONCLUSION

Based upon the foregoing reasons and authorities the Respondent respectfully requests that this Honorable Court quash the decision of the district court of appeal and remand the case with instructions to reverse Petitioner's convictions and sentences.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the Honorable Robert A. Butterworth, Attorney General, 125 N. Ridgewood Ave., 4th Floor, Daytona Beach, FL 32014, and to Raymond Tingley, #097331, Cross City Correctional Institution, P.O. Box 1500, Cross City, FL 32628, on this 8th day of May, 1987.

Michael S. Becker
MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER