IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	)	
	)	
Petitioner,	)	
	)	
v.	)	CASE NO. 70,853
	)	
LINFORD FLETCHER,	)	
	)	
Respondent.	)	
	)	

INITIAL BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

Petitioner was the prosecution and Respondent the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida.

In the brief, the parties will be referred to as they appear before this Honorable Court of Appeal except that Petitioner may also be referred to as the State.

The following symbol will be used:

"R" Record on Appeal

All emphasis has been added by Petitioner unless otherwise indicated.

STATEMENT OF THE CASE

Respondent, Linford Fletcher was charged, with co-defendants Norris Rolle and Lement Harrison, by two-count Information filed February 7, 1985, with Trafficking in Cannabis and Conspiracy to Traffick in Cannabis. Trial before Jury was held June 10, 1985, through June 13, 1985. At the close of all evidence, Respondent moved for and renewed motions for judgment of acquittal. Those motions were denied. The jury returned verdicts finding Respondent guilty of both counts as charged in the Information. Respondent was so adjudicated.

The trial court departed from sentencing guidelines and sentenced Respondent on each count to ten (10) years imprisonment, to run concurrently. The trial court also assessed a Twenty Five Thousand ($25,000.00) Dollar fine, and a One Thousand Two Hundred Fifty Dollar ($1,250.00) surcharge, on each count.

Notice of Appeal was timely filed. The Fourth District Court of Appeal affirmed Respondent's conviction, but remanded the case for resentencing. See Fletcher v. State, 508 So.2d 506 (Fla. 4th DCA 1987). The Fourth District certified the following question to this Court: Will Calculated Planning and Premeditation in a major trafficking, and conspiracy to traffic, drug case permit a departure from the guidelines or are such calculated plans and premeditation inherent in such offenses so that they are necessarily embodied within the guidelines?

Petitioner filed notice to invoke the discretionary jurisdiction of this Court.

STATEMENT OF THE FACTS

The incident giving rise to the cause-at-bar occurred on October 8, 1984. A small fishing boat washed ashore in Broward County, Florida. The occupants, Norris Rolle and Lement Harrison, summoned the Coast Guard. A search of the vessel yielded marijuana under a false deck. Norris Rolle and Respondent, who owned the boat, were charged with trafficking in marijuana and conspiracy to traffick in marijuana.

Broward County forensic chemist Randy Hillard testified that the seized substance weighed one hundred eighty eight (188) pounds and that he found cannabis in each of the eight samples he tested (R.39-40).

A number of law enforcement officers testified about the condition of the vessel. Coast Guard officer Steven Bailey and Deputy Sheriff Russell O. Craycraft stated that they investigated the disabled vessel. The occupants stated that they had been out fishing (R.62,128,525). Deputy Craycraft stated that Mr. Harrison said he as the operator of the boat (R.617-618). A raised deck area concealed a compartment containing the seized marijuana (R.63-64,70-71,592,607).

Robert Richter and Edwin Heitschmidt, Special Agents from the U.S. Customs Service, assisted in the Coast Guard search of the vessel (R.107-108,168). A false deck on the boat concealed the marijuana (R.148,175,180,184). The two men were arrested (R.150-151). Additional items taken into evidence

included photographs of the vessel (R.64-73), Mr. Rolle's passport (R.78,122); airplance tickets issued to Lement Harrison and Mr. Rolle (R.134-138), and the marijuana (R.201-202).

Eighteen (18) year old Leon Fletcher, the son of Respondent, testified that he and Mr. Harrison went to Bimini from October 3, 1984 - October 6, 1984 (R.253-254,259-260). He returned with Respondent by plane (R.258). He did not know how Respondent's boat would get back to the U.S. (R.258).

Through Patricia Fruen, an employee of Gull Air, airline tickets from Bimini to Fort Lauderdale were introduced into evidence. Tickets dated September 19 and 29-30 and October 2 were issued to Respondent. A ticket to "L. Harrison" was issued September 30, 1984, with an "open" return (R.294-299).

Joan Brown, an employee of Chalks International testified that a one-way plane ticket was issued to Mr. Rolle from Fort Lauderdale to Bimini on September 29, 1984 (R.312-314). A ticket dated October 6, 1984 from Bimini to Fort Lauderdale was issued to Respondent (R.316).

Lement Harrison testified that he had known Respondent for ten (10) years and Mr. Rolle for nine (9) to ten (10) months (R.340-343). Respondent worked with a fiber glass company (R.343). He once replaced the flooring on Mr. Harrison's fishing boat (R.344). Mr. Harrison stated that in September, 1984, Respondent's boat was gone from its storage spot for several days (R.347,355). When it returned, the cabin was raised and the door

was cut (R.356,367-368). When Mr. Harrison subsequently did some mechanical work on Respondent's boat, he found a trap door (R.376-377). He did not see anything in it (R.377-378). In September, Mr. Harrison, Respondent and another man took the vesel to Bimini. The transmission slipped and Mr. Harrison was unable to fix it (R.383-384). Mr. Harrison and Respondent flew back to Fort Lauderdale on different airplanes (R.384-385). At the beginning of October, Mr. Harrison and Respondent's son flew to Bimini. Mr. Harrison did not pay for his ticket or hotel or food (R.388-390). When Mr. Harrison did some work on the boat, he noticed tha the trap door had been sealed (R.394,396). Respondent asked Mr. Harrison to accompany Mr. Rolle back to Fort Lauderdale on the boat (R.401). Respondent flew back to Florida (R.402). Respondent instructed Mr. Harrison to say they had been fishing if the boat was stopped (R.401-402).

On the way back, the engine blew up and the boat drifted to the Florida coast (R.405-406). He asked someone on shore to call the Coast Guard (R.406). Mr. Harrison stated that every thing he did was pursuant to Respondent's instructions. He stated that before he took the boat to Bimini there was no marijuana in the boat.

Jules Klein, president of World Spa, Inc., a fiberglass manufacturing company, testified that Respondent worked for him from eight (8) to ten (10) years (R.441).

Rupert Amert testified that he sold the boat to

Respondent (R.527). Respondent told him that the deck would be raised and that he could carry at least six hundred (600) pounds of marijuana (R.531).

SUMMARY OF THE ARGUMENT

In answering the certified question, this Court should hold that calculated planning and premeditation is a valid reason for departure in a trafficking and conspiracy to traffick case. To settle the law on this issue, this Court should further hold that a factor must relate to a statutory element of an offense for that factor to be an inherent component of a crime.

ARGUMENT

CALCULATED PLANNING AND PREMEDITATION IS A VALID REASON FOR DEPARTING FROM THE PRESUMPTIVE GUIDELINES SENTENCE IN A TRAFFICKING AND CONSPIRACY TO TRAFFIC CASE.

This Court should answer the certified question in the affirmative, and hold that calculated planning and premeditation is a valid reason for departure in a trafficking and conspiracy to traffic case. At present, the law is in a confusing and unsettled status as to whether calculated planning and premeditation can support a guidelines departure.

This confusion is manifest in the following decisions. In Knowlton v. State, 466 So.2d 278 (Fla. 4th DCA 1985), the Fourth District held that planning and premeditation was not a valid reason for a guidelines departure in a robbery case. Yet, in Gitman v. State, 482 So.2d 367 (Fla. 4th DCA 1986), the Fourth District suggested that planning and premeditation may be a valid reason for departure. In its decision in the present case, the Fourth District recognized the conflict that exists between its decisions in Knowlton and Gitman. See also Steiner v. State, 469 So.2d 179 (Fla. 3rd DCA 1985).

In its decision on this issue, this Court has suggested that premeditation or calculation can be a valid reason for departure in any offense in which premeditation is not an inherent component of the crime. See Scurry v. State, 489 So.2d

25 (Fla. 1986); Lerma v. State, 497 So.2d 736 (Fla. 1986). However, this Court has not provided a working definition of the phrase, "inherent component of the crime."

Petitioner submits that this Court should define the phrase "inherent component of a crime" as those facts which are essential to prove a statutory element of the crime. This definition is suggested when this Court's decisions in Scurry v. State, supra, and Lerma v. State, supra are compared. In Scurry, this court noted that premeditation was an inherent factor in first-degree murder, but not second-degree murder. In Lerma, this Court held that premeditation and calculation may support a departure sentence in a sexual battery case, since premeditation was not an inherent component of the crime of sexual battery. These two cases suggest that the trial court could consider the facts as they relate to the statutory elements of a offense in deciding whether a basis for departure is an inherent component of the crime.

In the present case, the Fourth District rejected planning and premeditation as a reason supporting a departure sentence without considering the statutory elements of trafficking and conspiracy to traffic. Neither of these offenses has premeditation or planning as a statutory element. Section 893.135(1)(a), Florida Statutes, (1985) defines trafficking as follows:

> (1) Except authorized in this chapter or in chapter 499 and notwithstanding the

> provisions of s.893.13:
> (a) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possesion of, in excess of 100 pounds of cannabis is guilty of a felony of the first degree, which felony shall be known as "trafficking in cannabis."

Section 893.135, Florida Statutes (1985) defines conspiracy to traffic as follows:

> (4) Any person who agrees, conspires, combines or confederates with another person to commit any act prohibited by subsection (1) is guilty of a felony of the first degree and is punishable as if he had actually committed such prohibited act. Nothing in this subsection shall be construed to prohibit separate convictions and sentences for a violation of this subsection and any violation of subsection (1).

Thus, to convict a person of trafficking and conspiracy to traffic, the State is not required to prove premeditation or calculated planning. Therefore, if the evidence of planning or premeditation is clear and convincing, as in the present case, the trial court should be allowed to depart for this reason.

By limiting the phrase "inherent component of the crime" to facts necessary to prove an essential statutory element of an offense, this Court can clear up the confusion that persuaded the Fourth District to certify the question at issue in this case. Except in regards to planning and premeditation, Florida courts appear to be adhering to this restricted definition of the phrase in determining whether certain factors

are inherent components of a crime. See Gibson v. State, 12 F.L.W. 1706 (Fla. 3rd DCA July 14, 1986); Baker v. State, 466 So.2d 1144 (Fla. 3rd DCA 1985), aff'd. 483 So.2d 423 (Fla. 1986).

In addition to planning and premeditation, the trial court provided two other reasons for departure: (1) Respondent's status as being "Mr. Big," and (1) Respondent had asked other witnesses to prejure themselves at the trial. The Fourth District determined that Respondent's status as being "Mr. Big" was a valid reason for departure. Fletcher v. State, 508 So.2d 506 (Fla. 4th DCA 1987). However, the Fourth determined that the fact that Respondent asked other witnesses to prejure themselves was not a valid reason for departure.

Thus, if this Court determines that the Fourth District was incorrect in determining that planning and premeditation did not support a departure in this case, this Court should then remand the case back to the Fourth District for it to determine whether the case should be still remanded to the trial court for resentencing under the rationale of Albritton v. State, 476 So.2d 158 (Fla. 1985).

CONCLUSION

Respondent, based on the foregoing reasons and authorities cited, request that this Court hold that planning or premeditation can support a departure sentence where proven by clear and convincing evidence, and where planning or premeditation do not relate to a statutory element of the offense.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail to PATRICK J. CURRY, ESQUIRE, 200 Southeast Sixth Street, Suite 200, Fort Lauderdale, Florida 33301, this 11th day of September, 1987.

OF COUNSEL