IN THE SUPREME COURT OF FLORIDA

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STATE OF FLORIDA,

PETITIONER,

vs.

Case No. 74,251

ROBERT L. JOHNSON,

RESPONDENT.

DISCRETIONARY REVIEW OF THE DECISION OF
THE SECOND DISTRICT COURT OF APPEAL

BRIEF OF RESPONDENT ON MERITS

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IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA?	.	
Petitioner,	.	
vs.	.	Case No. 74,251
ROBERT L. JOHNSON?	.	
Respondent.	.	

DISCRETIONARY REVIEW OF THE DECISION OF
THE DISTRICT COURT OF APPEAL
SECOND DISTRICT OF FLORIDA

BRIEF OF RESPONDENT ON THE MERITS

STATEMENT OF THE CASE AND FACTS

The Respondent, Robert L. Johnson, accepts the Petitioner's rendition of Case and Facts, except as may be noted in the argument portion of Respondent's brief.

SUMMARY OF ARGUMENT

The Legislature has *never* clearly articulated an intention to impose dual punishments for sale and possession of the same illicit drug. Nor has the Legislature clearly articulated an intent to require possession to prove possession-with-intent-to-sell, but *not* require possession to prove the actual and completed sale arising directly out of the initial possession-with-intent-to-sell.

Put another way, the Legislature has never said, as Petitioner now does, that a person can sell or possess with intent to sell something over which he has **no** possession, whether actual or constructive. One cannot sell what one does not possess.

As to Petitioner's asserting there is no ex post facto violation because, *inter alia*, there is no **"change"** in punishments, Petitioner's brief, page 2: that assertion raises the question, what is Petitioner **"appealing?"** If the prosecuting officers of this State cannot obtain greater punishments by seeking dual convictions for sale and possession of the same cocaine, Petitioner is arguing a meaningless, useless point from which the State will gain nothing, even if it **"wins."** But clearly the reverse is true: because Petitioner's requested change in the law will result in greater punishments, that change has ex post facto implications if it is retroactively applied, as Petitioner requests.

ISSUE:

WHETHER THE DOUBLE JEOPARDY CLAUSE PRECLUDES THE RESPONDENT'S CONVICTION OF SALE AND SIMPLE POSSESSION OF COCAINE.

Initially, Petitioner fails to show why this case is not controlled by this Honorable Court's recent decision in State v. Smith, 547 So.2d 613 (Fla. 1989). In Smith, this Court ruled that prior to the effective date of Chapter 88-131, the rationale expressed in Carawan v. State, 515 So.2d 161 (Fla. 1987) controls in questions regarding legislative intent. Petitioner similarly fails to show why Gordon v. State, 528 So.2d 910 (Fla. 2d DCA 1988) is also not controlling. This Court approved the Gordon analysis in Smith, supra, and Gordon specifically held:

> the first element of the crime of sale of contraband as well as the crime of possession-with-intent-to-sell contraband is possession.

528 So.2d, at 912, emphasis in original.

In Smith, according to Petitioner, this Honorable Court expressly held that "the legislature intended that convictions and sentences for the crimes of sale and possession with intent to sale [sic] cocaine does not violate double jeopardy." Petitioner's brief, page 3. That seems a a bit too expansive an interpretation. This Court did phrase the issue presented in those terms, 547 So.2d at 614, but the Court's conclusion seemed more limited:

> In summary, we hold that *Carawan* has been overridden for offenses that occur after the effective date of chapter 88-131, section 7, but the override will not be retroactively applied. As qualified, we answer the certified question in the affirmative and approve the decisions below.

Id, at 617, emphasis added. Respondent suggests this Honorable

Court's ruling was more limited than Petitioner suggests: as to those cases presented, with dates of offense ***before*** the effective date of **88-131,** the Carawan analysis clearly applies to prohibit dual convictions for sale and possession with intent to sell cocaine. ***After*** **88-131,** the Carawan analysis no longer applies, but that is a far less-expansive holding than Petitioner suggests.

Petitioner concedes that Respondent's offense occurred well before the effective date of **88-131.** But Petitioner argues that because Respondent was not convicted of "sale and possession with intent to sell," as was defendant Smith, he can be convicted of dual convictions without regard to Carawan, still in effect at the time of Respondent's offense. Petitioner's brief, page **3.** But it takes more than Petitioner's "naked assertion" to show why Carawan applies to all cases involving double jeopardy questions before the effective date of **88-131,** ***except*** for one limited double-jeopardy question here, involving sale and possession of the same drug.

See, for example, Diaz v. State, 527 So.2d **300** (Fla. 2d DCA **1988),** where it was held a violation of double jeopardy where the defendant was convicted of both possession of a firearm during a felony and trafficking in cocaine, where the sentence for the latter was **"enhanced"** or reclassified to a higher felony based on the same firearm. Diaz was based on Carawan. Id. See also, Henderson v. State, 526 So.2d **743** (Fla. 3d DCA **1988),** where double jeopardy prohibited similar convictions for both possession of a firearm during a felony and second-degree murder by use of a firearm; Henderson was based on Carawan. See also McKinnon v.

State, 523 So.2d 1238 (Fla. 1st DCA 1988), where the defendant was convicted of both an enhanced manslaughter felony, based on the use of a weapon, and of a separate conviction of using the same firearm during a felony; McKinnon was based on Carawan. Finally, see Hall v. State, 517 So.2d 678 (Fla. 1988), in which this Honorable Court, using the Carawan analysis, held that the defendant could not be convicted of both armed robbery and of displaying or concealing the same firearm.

Why would Carawan apply to all these cases but not to the instant case? Petitioner's apparent argument, that Smith is absolutely limited to the facts of sale and possession with intent to sell, appears untenable in light of the foregoing cases, where Carawan double-jeopardy analysis applied to a host of scenarios aside from sale and possession with intent to sell.

Petitioner goes on to argue that Smith does not apply because sale and simple possession are prohibited by different statutory subsections, in contrast to Smith, which involved violations of the same subsection. Petitioner's brief, page 3. Petitioner's apparent argument is that any two crimes proscribed by different statutory subsections are per se separate crimes subject to dual punishments, without regard to Smith, the double jeopardy clause, or even the Legislature's own expressed intent in Chapter 88-131.

For this proposition, Petitioner cites Wheeler v. State, 14 F.L.W. 1946 (Fla. 1st DCA August 16, 1989), to show that at least one District Court has held that simple possession is a wholly separate offense than sale of the same controlled substance.

Petitioner's brief, pp. 3-4. But Petitioner fails to cite the holdings of three *other* District Courts of Appeal, which have expressly ruled that dual convictions for sale and possession of a single quantum of cocaine violates double jeopardy, including the Second District's holding in the instant case.

See, e.g., Malzone v. State, 14 F.L.W. 1403 (Fla. 2d DCA June 9, 1989); Blanca v. State, 532 So.2d 1327 (Fla. 3d DCA 1988); Brazell v. State, 532 So.2d 50 (Fla. 4th DCA 1988). See also, Psihogios v. State, 544 So.2d 283 (Fla. 4th DCA 1989): while a defendant cannot be convicted of both sale and possession of the same cocaine, he can be convicted of the *purchase* and the separate possession of the same cocaine. In other words, of the five District Courts of Appeal, at least three have expressly disagreed with both the First District and the Petitioner, by holding that convictions for sale and possession of the same controlled substance violates double jeopardy.

Petitioner goes on to say that in Wheeler the First District indicated simple possession is a separate offense from sale. Petitioner's brief, page 4. This "holding" appears to be, instead, *obiter dictum:* comment on a issue not before the court and thus, not subject to briefs and submissions by adverse counsel. Wheeler's true holding seems to be that, as to dual convictions for sale and possession-with-intent-to-sell, the First District achieves the same result as the Second District in Gordon v. State, 528 So.2d 910 (Fla. 2d DCA 1988), but by travelling a different road. 14 F.L.W., at 1946. The *results* were the same, but the First

District **"rejected"** the <u>Gordon</u> analysis, while using another rationale to achieve that same result.

Against that backdrop, the First District simply commented in passing that sale and possession seem far different than sale and **possession-with-intent-to-sell.** The First District noted that the latter two are merely "alternative ways of violating this particular subsection of the statute," and that the legislature intended to punish either sale or possession-with-intent-to-sell, but not both. Id, at **1946.** **"It** is logical to assume that if a contrary result would have been intended, the legislature would have proscribed each offense in separate subsections of the statute, as it did with simple **possession."** Id.

In other words, the First District seemed to be saying that any crime proscribed by a separate statutory subsection is, per se, a separate offense even though, for example, the offenses require identical elements of proof, or are degrees of the same offense as provided by statute, or the elements of the lesser offense are subsumed by the greater offense. But *that* interpretation of the plain language of this paragraph by the First District flies in the face of the Legislature's own restriction of the rule of lenity. See Chapter **88-131,** section 7.

In addition, simple possession and possession-with-intent-to sell are proscribed **"in** separate subsections of the **statute."** The First District does not explain why being proscribed in different sub-sections makes sale and possession two separate crimes, but that being proscribed in different sub-sections does *not* make

possession and possession-with-intent-to-sell similarly "separate."

Moreover, this same paragraph seems just as patently self-defeating when applied to the crimes of sale and possession of the same cocaine. "[S]ale and possession with intent to sell are alternative ways of violating this particular subsection of the statute . . . ."

What both the Petitioner and the First District are thereby saying is that simple possession is different than both sale and possession-with-intent-to-sell. The latter two are simply different ways of violating the same statutory subsection. But as will be seen, and as has been conceded in numerous judicial holdings, simple possession is a necessarily lesser-included offense of possession with intent to sell. See, e.g., Milhouse v. State, 521 So.2d 380 (Fla. 1st DCA 1988). If sale and possession with intent to sell are, as the First District has expressly held, simply alternative ways of violating the same subsection, what is a necessarily lesser-included offense to one "alternative" should also be a necessarily lesser-included offense to the other "alternatives" as well.

Under the statute which Petitioner concedes was "in effect when appellant [sic] committed the crimes of sale and possession of cocaine," offenses are separate "if *each* offense requires proof of an element that *the other* does not." Petitioner's brief, page 4, emphasis added. In other words, if the state must first prove possession to also prove sale, these two offenses are not "separate" and cannot be punished as such. Since the First

District agrees that **"sale"** is the same thing, statutorily speaking, as possession-with-intent-to-sell, if possession is a separate offense from sale, it must also be a separate offense from possession-with-intent-to-sell.

In other words, under both Petitioner's and the First District's analysis, simple possession requires proof of an element that possession-with-intent-to-sell does not. But even at first glance, it appears to be an absurdity to argue that one may possess-with-intent-to-sell something that one has no actual or constructive possession over. That inference of absurdity is supported by Florida's standard jury instructions which, according to both Petitioner and the First District, hold that the "definition of sale does not require proof of possession." Petitioner's brief, page **4; 14** F.L.W., at **1948,** footnote **9:**

> While it is clear that simple possession under subsection (1)(e) is a necessarily lesser included offense of possession with intent to sell under subsection (1)(a), it is also clear that possession under either subsection is *not* a necessarily lesser included offense of sale because the definition of sale does not require proof of possession.

Emphasis in original. In other words, the First District was holding that one must "possess" in order to possess; and must possess in order to possess-with-intent-to-sell (which is the intended, inchoate crime necessarily preceding the actual and completed sale); but need ***not*** possess in order to ***complete*** the actual sale which was the result of the initial possession-with-intent-to-sell, which then led to the completed sale. But, also in Wheeler, the First District had just finished writing:

> sale and possession with intent to sell are alternative ways of violating this particular subsection of the statute and that the legislature intended by this subsection to punish *either* the completed sale, manufacture or delivery of an illegal drug, or the frustrated sale, manufacture or delivery of the drug (by charging possession of the drug with the intent to sell, manufacture or deliver it), *but not both* when the same drug and the same transaction are involved.

Id, at 1946, emphasis in original. In other words, the First District seemed to be saying that, even though sale and possession-with-intent-to-sell are the same thing, statutorily speaking, yet they are **"different."** It violates double jeopardy to convict for possession and possession-with-intent-to-sell, but *not* to convict for possession and sale. Even though one must have possession to possess a drug with the intent to sell it, one need not have possession to *complete* the otherwise "frustrated sale" which follows, as night follows day, the possession which had accompanied the original intention to sell. With all due respect, both Petitioner's and the First District's analysis seems fatally flawed, if not patently self-contradictory. That assertion is supported by a review of the same Standard Jury Instruction cited by the First District and Petitioner.

The Standard Jury Instructions hold that both possession and sale (or alternatively, possession with intent to sell), have three elements. Of these three elements, numbers 2 and 3 are identical: **"The** substance was *(specific substance alleged)*," and "*(Defendant)* had knowledge of the presence of the **substance."** Similarly, element 1 of both offenses has a noun, a verb, and an object. Of these "sub-elements," both noun and object in both offenses are

also identical: "(Defendant)" and "a certain substance."

The ***verb*** sub-element of possession requires, obviously, possession. The verb sub-element of "Sale, Manufacture, Delivery, or Possession with Intent," has six alternative means of being proven, three of which expressly require possession: possessed with intent to sell, possessed with intent to manufacture, possessed with intent to deliver. From this the First District and Petitioner both conclude that because the first three alternatives of proving the verb sub-element of the latter crime do not ***expressly*** mention possession, the State need not prove possession to prove the completed sale, as opposed to proving the intended, inchoate, incomplete or **"frustrated"** sale.

The First District and the Petitioner both deduce that one may sell, manufacture or deliver a drug without ever having either actual or constructive possession of that drug, even though one must have possession of that same drug in order to possess-with-intent-to-sell, or possess-with-intent-to-manufacture, or possess-with-intent-to-deliver. But at least three other District Courts have held otherwise: one cannot sell what one does not possess.

Furthermore, it would seem to follow that where both possession and sale (etc.) have identical elements 2 and 3, and identical noun and object sub-elements of element 1, and where possession is ***expressly*** required to prove the verb sub-element of simple possession, and where possession is ***expressly*** required to prove three of the six alternative means of proving the verb sub-element of element 1 of sale (etc.), that possession is also

implicitly required to prove the ***first*** three of the six alternative means of proving the verb sub-element of element 1 of sale (etc.), which are, after all, simply "alternative ways of violating this particular subsection of the **statute."** Wheeler, supra.

Possession with intent to sell must precede the actual and completed sale. Possession with intent to sell is simply the intended sale ***before*** that sale is actually carried through, and the Legislature mandated that a defendant may not avoid being charged with that more-serious crime in this subsection simply by showing that the intended sale was not carried through to completion. The Legislature has clearly shown its belief that possessing a drug with the intent to carry through an actual and completed sale is just as bad has having actually completed that intended sale.

One act is just as bad as the other. Accordingly, the legislature made possessing a drug with the intent to carry through an actual sale an "alternative way" of violating the verb sub-element of element 1. Since all other elements and sub-elements of this more-serious crime are ***identical*** to the elements and sub-elements of simple possession, and since three of the six "verb-alternatives" of this more-serious crime expressly require possession, as does simple possession, it cannot be said, without arguing an absurdity, that the first three "verb-alternatives" do *not* require possession. While the Legislature may, of course, ***expressly*** render such an absurdity, that absurdity cannot be inferred from an ambiguity, as Petitioner asks this Court to do.

If nothing else some reasonable persons, including but not

limited to judges from at least three of five District Courts of Appeal, believe that the explicit requirement of possession in the last three verb sub-elements is clearly implied in the first three **"alternatives"** as well. Because of this split in opinion, not least of all between one District Court on the one hand and three District Courts on the other, the best Petitioner can hope for is that this Honorable Court will ***find*** that the Legislature intended the absurd distinction: that this Court will find an absurdity based on an ambiguity to punish this particular defendant.

But see, Florida Statute **775.021(1):** where statutory language is susceptible of differing constructions, it shall be construed most favorably to the accused. The language of the standard jury instruction--which expressly requires possession in three alternatives but not in the other three--is clearly **"susceptible** of differing **constructions,"** since three of the five district courts have held the possession is required to prove all six **"alternatives."** Respondent would request, at the very least, that this Honorable Court apply the **"more** favorable!' construction found by three of the five district courts in this particular case. But the Respondent also requests that this Honorable Court not find an absurdity based on an ambiguity, as Petitioner requests.

The Petitioner would require that the Standard Jury Instructions expressly hold that in order to prove sale, the state must prove that the defendant "possessed and sold," or **"possessed** and manufactured,**"** or "possessed and delivered,**"** the drug in question, just as the instructions expressly require that the

defendant possessed with the intent to sell, possessed with the intent to manufacture, or possessed with the intent to deliver. In the absence of such an express requirement, says the Petitioner, the state need ***not*** prove possession to prove sale, even though it must prove possession to prove the inchoate possession with intent to carry through an actual and completed sale.

In arguing that absurdity, the Petitioner goes on to write that in Carawan, supra, this Honorable Court "recognized that the '. . . sale of drugs can constitute a separate crime from possession. . .' " Petitioner's brief, page 4, ellipses in brief. As in Wheeler, this passage comments in passing on an issue not before the Court: Carawan dealt with dual convictions for attempted manslaughter and aggravated battery. Moreover, Petitioner's ellipses leave much to be desired.

The complete sentence cited by Petitioner reads: "While we agree that sale of drugs can constitute a separate crime from possession, our analysis in this opinion compels us to conclude that a defendant cannot simultaneously be convicted of both sale and possession ***in addition to*** trafficking." 515 So.2d, at 170, emphasis in original. For one thing, this Court went on to clarify that comment on the same page:

> Thus, although a defendant may be convicted of both sale and possession ***under the appropriate circumstances,*** a defendant cannot be convicted of trafficking as well as sale ***and/or*** possession.

Id, emphasis added. In a footnote this Court distinguished an act from a transaction: "an act is a discrete event arising from a single criminal intent, whereas a transaction is a related series

of **acts."** Id, at footnote **8.** Since the Court took pains to write, "under the appropriate circumstances," "sale *and/or* possession," and to distinguish and act from a transaction, the logical conclusion is that this Court was not holding that in all instances possession is separately-punishable from sale. Rather, this Court seemed to comment that in certain circumstances, as where the possession is a separate act in the same transaction, dual convictions might be appropriate. One might, for example, possess ten quanta of cocaine but sell only nine. In that circumstance, "sale of drugs **can** constitute a separate crime from possession."

For another thing, in making this comment passing on an issue not before it, the Court did not have the benefit of briefs and submissions prepared by adverse counsel, as did the Second District in Gordon v. State, **528** So.2d **910** (Fla. 2d DCA **1988).** This Court approved Gordon in Smith, supra, and Petitioner cites (parts of) Gordon as support for the argument on review. Specifically, Petitioner writes that in Gordon the Second District "stated that it is not necessary to actually possess a controlled substance in order to sell it." Petitioner's brief, page 7. As in the previous quote from Carawan, Petitioner's use of isolated words taken out of context leaves much to be desired.

What the Second District actually wrote was:

> We begin our discussion with the possession element of these two crimes. A defendant cannot be convicted of either crime unless he is deemed, at law, to have ***some*** *sort* of *possession* of the contraband. As to the crime of sale, a defendant need not be the *actual* possessor of the contraband although such *actual* possession will naturally result in criminal sanctions as in the instant case. The possessory element can be shared by others

legally responsible for the crime.

528 So.2d, at 912, emphasis added. From the Second District's distinction of actual possession from both constuctive possession and possession by way of being a principal pursuant to Florida Statute 777, Petitioner makes the sweeping conclusion that **"it** is not necessary to actually possess a controlled substance in order to sell **it."** But the Second District made clear that even though actual possession is not required, **"some** sort of possession" *is* required to prove both possession-with-intent-to-sell and sale.

The Second District said as much, Petitioner's liberal re-interpretation notwithstanding. The court first stated, **"As** to the crime of possession-with-intent-to-sell, we need not elaborate on the obvious, to wit, possession is an element of this crime." 528 So.2d at 912. The court went on to say that **"in** a case involving a single act with a single defendant, we conclude that *the first element **of** the crime* of *sale* of contraband as well as the crime of possession-with-intent-to-sell" is possession. Id, emphasis added.

This last sentence appears to directly contradict Petitioner's assertion that Gordon stands for the proposition that **"it** is not necessary to actually possess a controlled substance in order to sell it. Gordon at 912." Petitioner's brief, page 7. See also, Petitioner's brief, page 8: "having possession of cocaine is not necessary in order to sell it, Gordon supra at **912."**

Because Petitioner makes this assertion in arguing that possession is not subsumed by sale under 88-131's new analysis, and because Gordon appears to have a holding diametrically opposed to

that proposed by Petitioner, and finally because Petitioner correctly asserts that Gordon is binding, Respondent suggests that dual convictions for sale and possession of the same cocaine are unlawful under both Carawan and under the new analysis of **88-131.** Since Gordon expressly holds that having possession of cocaine ***is*** necessary in order to sell it (the Petitioner notwithstanding), and since this Honorable Court expressly approved the Gordon analysis in Smith, supra, dual convictions for sale and possession of the same cocaine violate double jeopardy both before and after **88-131** because, under Gordon, possession is **"subsumed"** by the sale.

Petitioner also contends that the changes in the language of **775.021,** by **88-131,** mean the Legislature always intended that possession and sale be separate offenses. Petitioner writes that **88-131** "clarifies the prior law - articulating the legislative intent that there be separate convictions and sentences for both possession and sale of a controlled **substance."** Petitioner's brief, page **5.** What Petitioner seems to be arguing is that because the language of **88-131** is ***different*** than previous renditions of **775.021,** the Legislature was "rejecting Carawan's interpretation of the rule of lenity," Petitioner's brief, page **5,** by virtue of that different language. See also Petitioner's brief, page **7:** "the legislature merely clarified what its intent was all **along."**

But on at least one prior occasion this Honorable Court has found a different presumption by holding that it is:

> presumed that when the legislature amends a statute, it intends to accord the statute a meaning ***different*** from that accorded it before the amendment.

Seddon v. Harpster, 403 So.2d 409 (Fla. 1981), emphasis added.

The language of 88-131 is clearly different than the statute it amended. If, as Petitioner contends, the Legislature *now* intends to punish sale and possession, the presumption is that it did not so intend dual punishments prior to 88-131, when the instant offenses occurred. If, on the other hand, Petitioner contends that the Legislature intended to impose these dual punishments *before* 88-131, Seddon presumes that by that different language the Legislature intended to change the law so that *after* July 1, 1988, dual punishments for sale and possession are clearly inappropriate.

But the Legislature rejected, if anything, only "Carawan's interpretation of the rule of lenity." Petitioner's brief, page 5. By clearly providing that dual punishments are inappropriate for "Offenses which are lesser offenses the elements of which are subsumed by the greater offenses," the Legislature may well have intended to *assure* that such dual convictions cannot be lawfully obtained. At any rate, the Legislature did not clearly articulate a desire to render an absurdity by requiring possession to prove possession-with-intent-to-sell but *not* requiring possession to prove the sale which must have necessarily been preceded by "some sort of possession," along with a concomitant intention to transfer those possessory rights to another.

Finally, Respondent must agree with Petitioner on one point:

> The rule of lenity still would apply, as always, where the statutes in question are susceptible of differing constructions.

Petitioner's brief, page 6. As has been seen, the statutory

language is question is clearly susceptible of differing constructions. The Petitioner and the First District in Wheeler, supra, have concluded that, under the statute, separate convictions for sale and possession of the same drug may be obtained without violating the Double Jeopardy clause. On the other hand the Respondent, the Second District Court of Appeals, the Third District Court of Appeals, and the Fourth District Court of Appeals are of a "differing" opinion: that the statutory language prohibits such dual convictions. See Malzone v. State, [14 F.L.W. 1403] (Fla. 2d DCA June 9, 1989); Blanca v. State, 532 So.2d 1327 (Fla. 3d DCA 1988); Brazell v. State, 532 So.2d 50 (Fla. 4th DCA 1988).

Because the statute is thus clearly "susceptible of differing constructions," by Petitioner's own admission the rule of lenity applies. Since the rule of lenity applies, the statute must, by Petitioner's own admission, be interpreted in the way more favorable to the Respondent: dual convictions for sale and possession of the same cocaine violate double jeopardy.

Because the Legislature did not clearly articulate an intent to render an absurd distinction between sale and possession-with-intent-to-sell, requiring proof of possession for the latter but not for the former; because the rules of construction also militate against that absurd distinction; and because of the differing amendatory language, it must be presumed that, at least prior to 88-131, the Legislature did not intend to allow dual punishments for the sale and possession of the same cocaine. Accordingly, the holding of the Second District Court of Appeals should be affirmed.

CONCLUSION

In light of the foregoing reasons, arguments and authorities, Respondent respectfully requests that this Honorable Court affirm the order of the Second District Court of Appeals.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to **BRENDA S. TAYLOR,** Attorney General, Park Trammel Building, 8th Floor, 1313 Tampa Street, Tampa, Florida 33602, November 6, 1989.

Respectfully submitted,

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