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IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,487

CHARLES HENRY WILLIAMS

Petitioner,

vs.

STATE OF FLORIDA

Respondent.

****

ON PETITION FOR DISCRETIONARY REVIEW

****

BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

The Petitioner, CHARLES HENRY WILLIAMS, was the defendant in the trial court and the Appellant in the District Court of Appeal. Respondent was the prosecution in the trial court and the Appellee in the Third District Court of Appeal.

The parties will be referred to both as they appeared in the trial court and as they appear before this Honorable Court.

The symbol "R" will be used to refer to the record on appeal. The symbol "T" will be used to refer to the trial transcript.

STATEMENT OF THE CASE

On May 12, 1989 the State filed a five count information charging the Petitioner with sexual battery of CC (over 11 years of age); kidnapping of CC; robbery with a weapon (a sharp metallic object) of cocaine from CC; tampering with a witness, to wit: CC; and possession of cocaine, all allegedly occurring on March 18, 1989. (R. 1-6a). On April 27, 1990 the State filed an amended information. (R. 7-11, 19). The Petitioner was acquitted on the tampering with a witness charge. (R. 31).

The State filed a Notice of Intent to Rely on Evidence of Other Crimes, Wrongs or Acts, on August 11, 1989. (R. 36). Included in that notice was case no. 89-12937 wherein Petitioner was charged with sexual battery and kidnapping of LC. (R. 36, 75). Also, prior to trial, the State filed a Motion for Material Witness Bond requesting that LC, an alleged victim of an allegedly similar battery is a material witness under Williams rule against Petitioner. (R. 75). On December 22, 1989, the State filed another Williams rule notice naming BG, an alleged victim of an attempted murder and sexual battery. (R. 32-33). On December 23, 1989, the defense moved to strike this notice as untimely under Section 90.404(2)(b), Fla. Stat. (R.94-95). The State responded with an ore tenus Motion for Continuance of the trial scheduled for January 2, 1990 which was granted over defense objection. (R.99). The defense also filed a Motion in Limine to prevent the prosecution from introducing at trial, alleged "similar fact evidence." (R.103-112). The trial court denied the defense motions. (R. 203-207).

A Motion for Change of Venue was made and denied. (R. 82.91).

The State filed a Motion for Order in Limine to prevent the defense from eliciting reference to drug use by the state witnesses and prior sexual activities by the alleged victims, among other things. (R. 193.195).

After a jury trial the Petitioner was found guilty of kidnapping, sexual battery without a weapon, and possession of cocaine, as charged. (R. 256-260). He was found not guilty of witness tampering. (R. 259).

Appellant was adjudicated guilty on April 27, 1990. (R. 262-263). He was sentenced to 40 years on Counts 1 and 4; 15 years on Count 3; and 5 years on Count 5, all to run concurrently, with credit for time served. (R. 264-268).

Counsel was appointed for purposes of appeal. (R. 271). A timely Notice of Appeal was filed. (R. 282). On January 14, 1992 the Third District Court of Appeal affirmed the Petitioner's convictions and sentence. (R. 288-290). Rehearing was denied. (R. 291). A timely Notice to Invoke Discretionary Review was filed. This Honorable Court accepted jurisdiction on October 14, 1992. This appeal follows.

STATEMENT OF THE FACTS

On April 23, 1990 a jury trial commenced before the Honorable Sidney B. Shapiro in Dade County, Florida. CC testified that she is 30 years old, 5'7" tall and weighed 110 lbs. on March 18, 1989. (T. 653). At 9:00 p.m. CC went to her friend "Donald's" house to get high on crack cocaine. (T. 654). After getting high she fell asleep. (T. 655). When she awoke, she wanted more crack, but there wasn't any. (T. 655). She became angry and went to 44th Street and N.W. 17th Avenue to purchase crack cocaine. (T.656). When she was buying the crack, she noticed Petitioner, whom she identified in Court, across the street. (T. 660-661).

The Petitioner was wearing a uniform with a white shirt and I.D. badge. (T. 661). CC thought the Petitioner was a police officer and she continued to walk towards Donald's. (T. 661-663). She purchased a nickel bag of crushed rock cocaine for five dollars. (T. 6632).

Petitioner followed her and asked her where he could go to smoke crack. (T. 664). He said he would smoke in abandoned cars around the block. (T. 665). She said it was not a good idea because police patrol there. (T. 665-666).

There was more dialogue about where to smoke. (T.667). CC testified that at this time, she was punched behind her left ear, grabbed and choked. (T. 667-668). She screamed. (T.668). As she screamed, she testified, that Petitioner told her he would kill

her. (T. 669). She told him he could have anything he wanted but not to kill her, according to her testimony. (T. 671).

According to CC, Petitioner knelt over her with one knee on her rib cage and the other around her neck. (T. 672). She was going to scream, but testified she felt a sharp metal object at her neck. (T. 672). She testified that he told her to go under the hood of a car positioned nearby. (T. 673). He unbuttoned his pants and told her to give him the dope she just purchased. (T. 675-676). She dropped it on the ground and he put it in his pants pocket. (T. 676).

She pulled down her pants to her knees. (T. 677). He was over her, on his knees straddled over her. (T. 677). He pulled her pants off, masturbated himself with one hand and choked her with the other, according to her testimony. (T. 678). He got an erection and penetrated her. (T. 679). He left. (T. 681). She ran into the street screaming. (T. 681). She saw a friend, Demetrius, and told him what happened. (T. 684). She waived down a police car. (T.685). The police called Petitioner over. (T. 686). The police took the cocaine from the Petitioner and threw it into the street later retrieving it. (T. 688). The police did not believe CC initially as she had no cuts, no scratches, no bruises and no torn clothing. (T. 701-703). The people she knew just ignored her. (T. 704).

CC's mother is a L.P.N. (T. 696). Her mother spoke to her about the Rape Treatment Center. (T. 695). She went there. (T. 713).

At trial, Demetrius Stevens refused to testify and was held in contempt of court. (T. 730).

Officer Frank Motto was flagged down that evening. (T. 747). Petitioner told police that he and CC were going to have a good time with cocaine. (T. 753).

Office Mario Garcia took a clear blue plastic bag with suspect cocaine from Petitioner when Petitioner voluntarily gave it to him. (T. 782-783).

Detective Larry Jackson, the lead investigator, responded to the scene. (T. 788). The Petitioner told him he helped CC purchase cocaine and they had sex voluntarily. (T. 804). Petitioner told Jackson he was willing to go to jail for the cocaine but that he did not rape CC. (T. 804). Jackson further testified that a specimen was obtained from Petitioner at the Dade County Jail, over defense objection and Motion for Mistrial. (T. 805). He stated this a second time as well. (T. 808). He affirmed that CC's clothing was not torn, she had no cuts, scratches or bruises. (T. 815). CC had some dirt in her hair. (T. 814).

Dr. Alfred Abu Hamand, an expert witness in obstetrics and gynecology saw CC at the Rape Treatment Center at Jackson Memorial Hospital. (T. 816-818). He found sperm present but no bruises, lacerations or trauma. (T. 823-833).

Criminologist Victor Alpizar testified that the Petitioner's blood type was consistent with blood and saliva form CC's vaginal swabs. (T. 859).

Criminologist Sherrie Reynolds testified that the substance

taken from Petitioner was cocaine. (T. 873).

Over defense objection, LC testified that she is 28 years old, 5'5" tall and in March of 1989 weighed 140 lbs. (T. 888). She identified Petitioner in Court as a man she met at N.W. 27th Avenue and 46th Street in March of 1989. (T. 889). She had used crack that night but was not high when she allegedly saw Petitioner. (T. 889). He was in a blue work uniform according to her testimony. (T. 890). She stated Petitioner asked her if she smoked and she offered him sex for money and drugs. (T. 891). He offered her $10.00, two cocaine rocks and half a bag of marijuana. (T. 891). They went to a rooming house but before they rang the bell, Petitioner went to look for a can to smoke cocaine. (T. 896).

When she turned her back on him, she testified that she felt something around her neck; that Petitioner pulled her and choked her at the same time. (T. 896). The pressure around her neck prevented her from screaming. (T. 898). She lost control of herself, felt her eyes rolling, went "semi-out" and fell to the ground. (T. 899). She was lying on her back on the ground and she said Petitioner straddled her and had his hands around her neck. (T. 900). She testified he choked her with one hand and began to masturbate himself with the other. (T. 901). Eventually, he penetrated her, and ejaculated. (T. 902). He told her he was leaving and not to say a word or he would kill her, according to LC. (T. 903). She did not call police because no one would believe her. (T. 904). She is facing an armed robbery charge and a dependency action involving her son. (T. 908). The prosecutor

promised her they would win the case. (T. 909).

LC had pending cases which were dropped. (T. 923). She does not remember the date this occurred, she had had cocaine and beers. (T. 930). She stated she was "unemployed." (T. 931). The defense objected as it would have impeached her by showing she was a prostitute, but the court did not permit the defense to do so. (T. 934). LC identified a photo of Petitioner when police showed it to her. (T. 938).

Over defense objection, BG was called as a State witness. (T. 947). She is 31 years old, 5'1", and in October, 1989, she weighed 100 lbs. (T. 947).

On October 21, 1989 she testified that she was walking through a park at Acola Lake Elementary School near 79th Street and met Petitioner as she cut through the school yard. (T. 948-949). She identified Petitioner in Court. (T. 950). He wore a white shirt like a uniform, jeans and tennis shoes. (T. 951). He looked clean and neat. (T. 951). She told Petitioner in response to a question by him that she was going to the Tropicana Bar, approximately 1/2 blocks away. (T. 952). He asked her if she knew where he could get drugs. (T. 952). She told him "no" because she did not know if he was a cop. (T. 952).

When she arrived at the bar at 79th Street and N.W. 10th Avenue, she told Petitioner where he could buy drugs and she went into the bar. (T. 955). She was there almost an hour and had three to four beers. (T. 955). Petitioner asked her if she dates and she said no. (T. 955). Dating means having sex for money or drugs, and

she told Petitioner about a "date." (T. 957). She left to go to another lounge and introduced Petitioner to a woman who sold sex for drugs. (T. 958). She went to the Montego Lounge and consumed more beer and alcohol. (T. 958). She left that bar with her friend Kevin and they smoked $60.00 worth of crack with others. (T. 959). Kevin walked her back to Montego Lounge and they talked for an hour. (T. 959).

She left and walked down N.W. 7th Avenue and turned at 80th Street. (T.960). She heard someone say "Hey" and saw Petitioner. (T.961). She testified Petitioner put his arms around her neck and choked her, and picked her up off the ground. (T.963). He took her down the alley according to her testimony, where she does not remember anything that happened until she awoke and saw a light in her face and a man asking her if she was all right. (T. 963-964). Her pants and underwear were down. (T. 965). Police were called. (T.966). Later, she saw Petitioner at a friend's house and left to call police. (T.968). She has been convicted of a felony three times. (T.969).

Lester Haney testified for the State that on October 23, 1988 he woke up and heard noises and went outside of his house at 752 N.W. 81st Street with a flashlight and gun. (T.981-982). In a vacant lot across the street he observed a couple having sex, lying down in the weeds. (T.983). He shined his flashlight and told them to get up and leave. (T.983). The man got up and left. (T.983). The woman had her pants around her knees and told him the man tried to kill her and to call police. (T.986). He never saw the man's

face. (T. 987).

Detective Nicholas Degiudice testified that on October 28, 1988 he met BG who appeared to be hysterical. (T. 990). She told him that the person who attacked her on a previous occasion was inside a house one block away. (T.991). When he arrived he observed Petitioner whom he identified in court, ducking behind a wall. (T. 991-992). Both sides rested. This appeal follows.

SUMMARY OF THE ARGUMENT

Petitioner was tried for three sexual batteries at once rather than the one for which he was charged in the case at bar. The Third District Court of Appeal affirmed the trial court's admission of these alleged collateral crimes, as proof of "modus operandi," "common scheme or plan," and to rebut the defense of consent.

The First and Fifth District Courts of Appeal have held that where, as here, the only issue is consent, the admission of collateral crimes evidence requires reversal as it is not relevant to show "modus operandi" or "common scheme or plan," when the sole issue is consent, which is unique to the alleged victim. This conflicting reasoning creates inconsistencies and confusion in the application of the law.

Where, as here, the sole issue is whether the prosecutrix consented, collateral crimes evidence is inadmissible.

ARGUMENT

THE TRIAL COURT ERRED WHEN IT ADMITTED INTO EVIDENCE TESTIMONY REGARDING THE PETITIONER'S ALLEGED INVOLVEMENT IN TWO "SIMILAR" FACT SEXUAL BATTERY INCIDENTS, REVEALING THE COMMISSION OF TWO COLLATERAL CRIMINAL ACTS INVOLVING UNRELATED PERSONS; WHERE THE EVIDENCE BECAME THE SIGNIFICANT FEATURE OF THE PETITIONER'S TRIAL AND WAS NOT RELEVANT TO A MATERIAL ISSUE SINCE THE SOLE ISSUE AT TRIAL WAS CONSENT.

Jurisdiction in this cause was granted due to the distinct split of authority between Florida District Courts of Appeal on the admissibility of similar fact evidence to establish lack of consent in a sexual battery case. The conflict in Florida courts is indicative of the same problem encountered on this issue by courts nationwide. Admissibility in Rape Case, of Evidence that Accused Raped or Attempted to Rape Person other than Prosecutrix, 2 A.L.R. 4th 330 (1980 and Supp. 1992).

In 1959, this Court in Williams v. State, 110 So 2d 654, 661 (Fla 1959) reh. den. 1959, cert. den. 361 U.S. 847, 80 S.Ct.102, 4 L.Ed. 2d 86 (1959) (Williams I) noted that "any fact relevant to prove a fact in issue is admissible into evidence unless its admissibility is precluded by some specific rule of exclusion." id. at 658. The Williams I decision contains an in-depth history of the rule of admissibility of similar fact of evidence, noting the confusion throughout the years in judicial attempts to simplify the rule. id. at 658.

Section 90.404(2)(a) Fla. Stat. (1987) codified the decision rendered by this court in Williams I, supra. It provides:

> Similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.

In Williams I, Supra, this court repeatedly cautioned that "the relevancy of this type of evidence should be cautiously scrutinized before it is determined to be admissible." id at 662. The Supreme Court of the United States has expounded on the dangers posed by the admission of similar fact evidence.

In Williams I there was a factual dispute as to the events preceding the sexual acts. These acts occurred in an automobile parked outside of a department store. The prosecutrix claimed that Williams hid in the back seat of her car awaiting her return from shopping. After she returned to the car and had driven a short distance, Williams suddenly reached over from the back seat of the car, stabbed her with an ice pick, and forced her to engage in sexual acts. Williams testified at trial in his own behalf. He denied he was hiding in the backseat of the car. He stated that the ice pick wound was caused by his stopping the car suddenly, indicating that he, not she was the driver. He testified that he met the prosecutrix in the parking lot pursuant to prior arrangement, and that his sexual relations with her were accomplished with consent and without threat. He also testified that he and the prosecutrix had prior dates and had consensual sex

at those times as well. This Court noted at page 656, "According to his version, the gruesome details of the fatal night related by the prosecutrix did not occur."

A fact considered important by this Court in Williams I was that a deputy sheriff who arrested the Petitioner the following day, testified that Williams told him that "when he saw the automobile he thought it was his brother's and crawled in the back to take a nap." id. at 657. He did not tell the deputy sheriff he had had prior sexual relations with the prosecutrix. On the witness stand, Williams denied making that statement to the deputy sheriff.

As a result of all of these facts, the trial court in Williams I permitted the admission of testimony of a police officer and Judy Baker, age 16, who testified that approximately six weeks prior to the charged incident, she had parked her car at approximately the same hour and in the same parking lot as the prosecutrix in the charged incident. Baker testified that upon returning to her car, she opened the door and observed the head of a man on the floor in the backseat of the car. She screamed and two policemen came to her rescue. Williams was identified as the man in the back of the car. Later, at police headquarters, Williams told police that he had mistaken the car for his brother's automobile and had crawled into the backseat of it to take a nap.

A review of the Williams I decision as well as the codification found in Section 90.404(2)(a) reveals that Baker's testimony was relevant to show William's motive, opportunity,

intent, preparation, plan (hiding in backseat of car story) and absence of mistake or accident (ie. the ice pick), all of which was disputed by William's own testimony, and at issue as a result.

This Honorable Court, one year later, in Williams v. State, 117 So. 2d 473 (Fla. 1960) (Williams II) reversed a murder conviction and death sentence finding at page 475:

> In as much as evidence of the later crime was admissible only because of its relevancy to the identity of the accused and the murder weapon and the similarity of the pattern defined in the two incidents, the question then arises whether or not the state was permitted to go too far in introduction of testimony about the later crime so that the inquiry transcended the bounds of relevancy to the charge being tried, and made the later offense a feature instead of an incident. (emphasis, supplied)

Williams II stood for the proposition that not only must the evidence of other crimes be relevant but it also limited the introduction of such crimes when the later offense(s) become a feature of the trial.

This Honorable Court has now before it, Williams III, Williams v. State, 592 So 2d 350 (Fla. 3rd DCA, 1992) reh. den. 1992, cert., granted October 14, 1992 (case no. 79,487). Unlike Williams I, the Petitioner herein did not take the stand and place in issue any of the events leading up to the alleged sexual battery. He even admitted to police that he was possessing cocaine and that he and the prosecutrix had had sex. (T. 782-783,804). The only issue of contention in the case at bar was whether or not the prosecutrix consented. In fact, the lead investigator testified that the prosecutrix had no cuts, scratches, or bruises, and her clothing was not torn. (T. 814-815).

As a result, the testimony of B.G. complaining of an alleged incident some seven (7) months after the incident for which Petitioner was convicted herein, was totally irrelevant.

Additionally, L.C.'s testimony was that she offered the Petitioner sex for money and drugs. (T. 891). She consented to have sex with the Petitioner. The prosecutrix herein never testified as to any exchange of sex for drugs. The alleged situation was different.

In the case at bar, the evidence of two separate sexual batteries and an attempted murder was introduced to prove that Charles Williams committed the sexual battery of which he was convicted. The State contends that evidence of two sexual batteries is admissible under Section 90.404(2) Fla. Stat. to prove a common scheme or plan and to rebut the defense of consent. Williams III, at 350. The fundamental flaw in this premise is that neither common scheme or plan (nor for that matter intent, motive, modus operandi, nor absence of mistake) was a material fact in issue in this case, and therefore the similar fact evidence should not have been admitted. Identity was not an issue at trial. The defense did not dispute that the sexual acts alleged by the State were in fact committed by Charles Williams. As a result, the sole issue at trial was the mental state of the alleged victim, CC, at the time of the sexual acts. The defense contended that CC voluntarily engaged in the sexual acts, while the State's position was that she engaged in the acts only because she was in fear of Charles Williams.

With the issue as to the sexual battery charges having been narrowed in this fashion, the evidence of collateral sexual batteries which the trial court admitted into evidence, were simply not relevant because they did not tend to prove or disprove a material fact in issue. "The test of admissibility is relevancy. The test of inadmissibility is lack of relevancy. Williams I at 660."

Judge Cowart, in Hodges v. State, 403 So 2d 1375 (Fla 5th DCA, 1981) Pet. for Rev. Den. 413 So 2d 877 (Fla 1982) carried Williams I to its logical conclusion when applied to a sexual battery case where consent is the only issue. The decision of the Third District Court of Appeal in the case at bar, directly and expressly conflicts with Hodges and with the First District Court of Appeal case of Helton v. State, 365 So 2d 1101 (Fla 1st DCA, 1979). Judge Cowart's analysis of this issue may assist this Honorable Court.

Judge Cowart first frames the issue to be resolved as follows:

> The prime question as to the true significance of the testimony of the "similar fact" witness here, as always, is: what particular proposition was this testimony offered to prove?

403 So.2d at 1377. To answer this question, Judge Cowart quite logically looks first to the statue defining the offense of sexual battery:

> Appellant was accused of committing certain sexual acts described as "sexual battery" in section 794.011(1)(f), Florida Statutes (1979), but which are a crime as proscribed in section 794.011(4) only if committed on or with another "without that person's consent." Since the acts described in the statutory definition of "sexual battery" are not illegal per se and are, therefore, conduct essentially innocent, the crux, gist or gravamen of the offense of sexual battery, and,

> oddly, in criminal law, the one fact which characterizes the accused's acts as being, or not being, criminal, is not an act or intent of the accused but the mental assent of the "victim."

Id. at 1377-78.

Judge Cowart then notes the narrow scope of the disputed issue under the facts of the case before him, and finds that none of the issues which justify the admission of similar fact evidence is in dispute:

> In this case there is no question or issue but that the accused participated in one or more of the acts described as "sexual battery", in section 794.011(1)(f), Florida Statutes, of which the prosecutrix complains; therefore his "identity" as the perpetrator" is not an issue concerning which similar fact evidence might for this purpose be relevant in another case. Likewise, it does not appear that the accused's knowledge, designs, plans, motives or other mental intents or emotions are relevant to this case. Assuming the worst, that the accused was so vilely motivated that he fully intended to have sexual relations with the prosecutrix whether or not she consented, if she consented, he is not guilty of any crime which he planned or intended to commit, despite all of his evil intent and plans. The ultimate issue is the prosecutrix's consent.

Id. at 1378 (footnotes omitted).

Finally, Judge Cowart demonstrates that the similar fact evidence is not relevant to prove the issue that is disputed in the case:

> Certain it is that the similar fact evidence in question (the circumstances leading to the accused's sexual acts with another woman three years earlier) had no relevancy to whether or not the prosecutrix consented. Helton v. State, 365 So.2d 1101 (Fla. 1st DCA), cert. denied, 373 So.2d 461 (1979), is similar to this case and there the court said:
>
> > The issue of consent is unique to an individual, and the lack of consent of one person is not proof of the lack of consent of another. Evidence of the previous crime committed by Helton does not fit

> within the parameter of admissibility under the rule in Williams either as evidence of consent or identity because it was not relevant to either.
>
> 403 So.2d at 1378.

The opinion continues:

> Section 794.011(1)(h), Florida Statutes (1979), defines "consent" as intelligent, knowing, and voluntary consent and as not including coerced submission.
>
> This definition of "consent" and the prosecutrix's claim that she submitted as the result of the forceful acts of the accused leads to what was the penultimate issue in the trial and to the final and controlling legal point on appeal. The issue at trial was: did the accused direct such forceful acts toward the prosecutrix as to coerce her submission and deprive her of her right to make a voluntary decision? This is, of course, a question of fact for the jury... where, as here, the evidence is conflicting. However, the legal point on appeal is: is similar fact evidence in the form of particular prior acts of misconduct (such as the accused's prior act of force directed toward the similar fact witness) admissible to prove an accused's propensity, proclivity, or predisposition (bad character) when offered against him as evidence bearing on the question of whether he used force in his relationship with the prosecutrix? The answer is "no" because of the well established rule that evidence of the bad character of an accused cannot be offered against him as evidence of an act charged, reinforced by the rule that even when the State can properly show bad character, particular acts of misconduct cannot be used as evidence. The similar fact evidence in this case was relevant only to prove bad character or propensity, but was inadmissible for the purpose for all of the policy reasons discussed above, and because case law and the statute (sec. 90.404(2)(a), Fla. Stat. (1979)), expressly so state.

Id. at 1378-79 (footnotes omitted). 403 So.2d at 1378-1379.

In Helton v. State, supra, the State presented a previous crime as relevant to identity, but the trial court admitted it as relevant to consent. The First District Court of Appeal concisely stated at page 1102:

> The issue of consent is unique to an individual, and the lack of consent of one person is not proof of the lack of consent of another. Evidence of the previous crime committed by Helton does not fit within the parameter of admissibility under the rule in Williams either as evidence of consent or identity because it was not relevant to either.

In the case at bar, the disputed and non-disputed issues are the same as those in Hodges and Helton. Charles Williams' "identity" as the "perpetrator" was not in dispute. Neither were his "knowledge, designs, plans, motives or other mental intents or emotions" relevant, as there was no question but that he intended to have sexual relations with the prosecutrix. None of the facts admitted into evidence by way of L.C., B.G. and other witnesses regarding the two other alleged sexual batteries, was in any way relevant under the sexual battery statute and the facts of this case.

Using Judge Cowart's terms, even assuming that Charles Williams "was so vilely motivated that he fully intended to have sexual relations with the prosecutrix, whether or not she consented, if she consented, he is not guilty of any crime which he planned or intended to commit, despite all of his evil intent and plans." The sole issue in this case was whether Charles Williams and CC, who had admittedly consumed cocaine earlier in the evening, voluntarily engaged in the sexual acts alleged.

Since Hodges, the Fifth District Court of Appeal expressly recognized its prior holding in Hodges that "Williams rule evidence is not admissible when it is solely relevant to prove consent vel non on the part of a rape victim." 538 So.2d 535. See Jackson v.

State, 538 So.2d 533 (Fla 5th DCA, 1989). Jackson held that Williams rule evidence was admissible in that case, and that Helton does not constitute a ban on the admission of such evidence in all sexual battery cases. In Jackson, unlike all of the other cases cited herein, the defense conceded that the similar fact evidence was relevant to show modus operandi, plan or scheme. Jackson at 535. Additionally, Jackson contended that he had not had sexual relations with the prosecutrix in Hernando County. Id. at 535.

The crucial fact present in the Jackson case which allowed the court to hold the Williams rule evidence admissible is that consent was not the only disputed issue in the case. However, Judge Cowart dissented from the majority opinion on the basis that consent was in fact the only disputed issue, and therefore the Williams rule evidence should not have been admitted. A dispute also existed in Jackson as to the events leading up to the sexual acts, and the Williams rule evidence was relevant to a resolution of that dispute.

The prosecutrix in Jackson, V.B., testified that prior to the sexual acts, Jackson had driven her from Dade City and into Hernando County. Jackson, on the other hand, told the police that he had only driven V.B. to a rural area outside of Dade City where he and V.B. had consensual sex. Jackson denied ever being in Hernando County that night or have any knowledge of how V.B. got there. At trial, Jackson testified that his car had mechanical problems and could not be driven for twelve miles, the distance to the point in Hernando County where V.B. claimed she had been

sexually assaulted. S.M. testified that she had also been assaulted in that area. Thus, a material factual issue was raised by the defense in Jackson, and the Williams rule evidence admitted at trial was directly relevant to a resolution of that factual issue.

A similar situation was presented in Williams v. State, 110 So.2d 654 (Fla. 1959), the source of the Williams rule. In that case, there were factual disputes as to the events preceding the sexual acts. The sexual acts took place in an automobile parked outside of a department store. The prosecutrix claimed that Williams had hidden in the back seat of her car awaiting her return from shopping. After he had returned to the car and driven a short distance, Williams suddenly reached over from the back seat of the car and forced her to engage in sexual acts. Williams, on the other hand, in his testimony at trial, denied that he was hiding in the back seat of the car. Williams testified that he met the prosecutrix in the parking lot pursuant to prior arrangement and that his sexual relationships with her on that night were accomplished with consent and without threat.

The similar fact evidence held admissible in Williams consisted of the testimony of Judy Baker that approximately six weeks prior to the charged incident, she had parked her car at approximately the same hour and in the same parking lot as the prosecutrix in the charged incident. Baker testified that upon returning to her car sometime later, she opened the door and saw the head of a man on the floor in the back of the car. She

screamed and two policemen came to her rescue. The man in the back of her car was identified as Williams. Thus, as in Jackson, the defense raised a material factual issue concerning the events leading up to the sexual acts and the similar fact evidence was directly relevant to a resolution of that dispute. The similar fact evidence in both cases served to corroborate the prosecutrix's version of the events leading up to the sexual acts, and thereby served to corroborate her claim that she had not consented to the acts.

In the present case, unlike Jackson or Williams, the events leading up to the sexual acts are not in dispute. CC testified she got high on crack cocaine at a friend's house, fell asleep, awoke, and left to purchase more cocaine. When she was making the purchase, she noticed Charles Williams. They spoke, then had sexual relations under the hood of a nearby car. She stated she was punched, grabbed and choked, but the lead investigator's testimony was that she had no bruises, scratches or torn clothing. She waved down police who did not believe her story, and people she knew on the street ignored her. Charles Williams was on the scene when police arrived. He told police he possessed cocaine and was willing to go to jail for that, but that CC and he had had sex voluntarily. Medical testimony from Dr. Alfred Abu Hamand confirmed that sperm were present, but no bruises, lacerations or trauma to CC. Charles Williams did not testify at trial. Therefore, the only question of fact is whether the sexual acts were consensual. This being the case, the evidence of two other

alleged sexual batteries admitted into evidence, was simply not relevant to a material issue and was therefore inadmissible.

There are few other Florida cases directly on point. However, King v. State, 545 So.2d 375 (Fla. 4th DCA, 1989) reh. den. 1989, rev. den. 551 So.2d 462 (Fla. 1990) was an appeal from a second degree murder conviction. King was charged with first degree murder. At trial the court admitted evidence concerning King's relationship with his ex-wife and a previous argument King had with his girlfriend (the alleged murder victim) King's ex-wife was permitted to testify that whenever she and King had been drinking they would fight. She testified as to a particularly violent fight which was witnessed by her friend, who also testified. The State also introduced evidence of another fight King had with the victim.

The Fourth District Court of Appeal, citing Williams I and Section 90.404(2)(a) Fla. Stat. (1985) noted that such testimony is "inadmissible when the evidence is relevant solely to prove bad character or propensity for misconduct." 545 So.2d at 379. The Court found no error in the admission of testimony concerning the prior fight with the victim, but held the ex-wife's prior fight evidence inadmissible. In so doing, the Court cited Straight v. State, 397 So.2d 903 (Fla. 1981) for the proposition that "the admission of irrelevant evidence of prior misconduct is harmful error because there is the danger that the jury will consider the alleged bad character of the defendant in determining guilt." 545 So. 2d at 379.

In the Third District Court of Appeal, the State relied on

this Court's opinion in Duckett v. State, 568 So.2d 891 (Fla. 1990). Duckett was a police officer convicted of sexual battery and first degree murder of an 11 year old girl. The convictions were based on circumstantial evidence. 568 So.2d at 892. The state presented testimony of three young women who allegedly had sexual encounters with Duckett. The trial court instructed the jury that this evidence was for the limited purpose of showing motive, opportunity, plan and identification. 568 So.2d at 892. Duckett's statement to police denied he drove his car to the lake where the incident occurred that night and denied that the victim had been on the hood of his car. The physical evidence showed Duckett's and the victim's fingerprints on the hood of his car commingled, with the victim's prints indicating that she had been sitting backwards on the car hood and had scooted up the car. This Court found the Williams rule evidence relevant to establish identity as well as mode of operation, and common plan. This Court also found that evidence of one of the encounters should not have been admitted "since the encounter was admittedly consensual." 568 So.2d at 895. In summary, Duckett is distinguishable as all of the evidence was circumstantial and identity was in issue. Also there were factual disputes in the events leading up to the alleged crimes.

Admissibility in Rape Case, of Evidence that accused Raped or Attempted to Rape Person other than Prosecutrix, 2 A.L.R. 4th 330 (1980 and Supp. 1992) cited earlier herein is a collection of cases on both sides of the issue. As demonstrated by the cases collected

in the annotation, there is a fairly even split of authority as to the admissibility of similar fact evidence to establish lack of consent in a sexual battery case. The following cases hold such evidence to be inadmissible: People v. Bruce, 208 Cal. App. 3d 1099, Cal. Rptr. 647 (1st Dist. 1989) (held conviction for forcible rape reversed because of admission of evidence of other rape, where defendant stipulated he engaged in sexual intercourse with victim but raised defense of consent. Court found evidence of other rape with different victim irrelevant to whether victim consented.); State v. Bullock, 651 SW.2d 173 (Mo. App. 1983) (rape conviction reversed where defense was consent and court admitted allegations of rape from different victim one week earlier to prove defendant's intention); State v. Burgess, 780 SW.2d 688 (Mo. App. 1989) (error to admit evidence of prior rape, though state claimed evidence would demonstrate defendant's intent, where intent was not element of state's case); State v. Saltarelli, 98 Wash.2d 358, 655 P.2d 697 (Wash 1982) (where only issue in rape prosecution was consent, and defendant admitted sexual intercourse, evidence of prior alleged rape held inadmissible); Velez v. State, 762 P.2d 1297 (Alaska, 1988) (in sexual assault case, evidence of defendant's prior sexual assault on girlfriend not admissible to show modus operandi where identity not in issue. Further, use of evidence to rebut consent defense could not be reconciled with evidence rules barring evidence offered solely to show propensity and evidence with probative value outweighed by danger of prejudice, confusion or undue delay.); State v. Pace, 51 NC App. 79, 275 SE.2d 254 (N.C.

1981) (evidence of prior alleged rape with different woman inadmissible to prove with identity or modus operandi where defense was consent.); Jenkins v. State, 474 NE.2d 84 (Ind. 1985) (in rape prosecution where consent, not identity of defendant, was sole issue, trial court committed reversible error in admitting testimony regarding alleged subsequent rape to prove common scheme or plan, as said evidence is irrelevant to consent of victim.) See also Foster v. Commonwealth, 5 Va. App. 316, 362 SE.2d 745 (Va. 1987) (to the same effect as Jenkins, supra.) and People v. Key, 153 Cal. App. 3d 888, 203 Cal. Rptr. 144 (1984); People v. Barbour, 106 Ill.App.3d 993, 62 Ill. Dec 641, 436 NE.2d 667 (1982).

These cases finding similar fact evidence inadmissible rely upon reasoning similar to that employed by Judge Cowart in Hodges. The following excerpt from the decision of the Supreme Court of Washington State in State v. Salterelli is representative of that line of reasoning:

> It is by no means clear how an assault on a woman could be a motive or inducement for defendant's rape of a different woman almost 5 years later ... Even had the evidence of the 1975 assault been logically relevant to motive, its probative value in this case would be slight. The only issue was whether the victim consented to intercourse with defendant; in the present case, defendant's motive was irrelevant to this issue. On the other hand, the prejudicial effect of the evidence of a prior attempted rape is significant. The prejudicial effect of the evidence clearly outweighed whatever slight probative value it might have had on the issue of motive.
>
> Similar reasoning leads us to conclude that evidence of the 1975 assault should not have been admitted to show intent ... There is no issue of intent in the case before us. The defendant admitted having intercourse with the victim. He

> does not specifically raise an issue of intent. Therefore, intent was not an "essential point which the state was required to establish" in this case. State v. Goebel, 40 Wash.2d 18, 22, 240 P.2d 251 (1952). Evidence of the prior assault should not have been admitted for the purpose of showing intent.

655 P.2d at 700-701.

There are also cases cited in the annotation to the contrary. Suffice it to say there is a distinct split of authority in this country on the admissibility of similar fact evidence to establish lack of consent in a sexual battery case. There are numerous decisions on both sides of the issue. Respondent submits that the reasoning in those cases which side with the position taken by Judge Cowart in Hodges is more persuasive, and that this Court should align itself with those authorities.

In addition to all of the foregoing, there are other reasons that the testimony concerning two other alleged sexual battery incidents (one prior, one subsequent) should not have been admitted by the trial court. In Williams II, as discussed earlier, this Court noted that once the similarity of the pattern is defined in the incidents:

> The question then arises whether or not the state was permitted to go too far in introduction of testimony about the later crime so that the inquiry transcended the bounds of relevancy to the charge being tried, and made the latter offense a feature instead of an incident.

117 So.2d at 475.

This Court further noted in Williams II the prejudice which flows from this type of evidence:

> ... in a criminal prosecution such procedure devolves from development of facts pertinent to the main issue of

> guilt or innocence into an assault on the character of the defendant whose character is insulated from attack unless he introduces the subject. 117 So.2d at 475-476. See also Randolph v. State, 463 So.2d 186 (Fla. 1984) rev. den. 1984.

In the case at bar, the evidence of the other two incidents became the significant feature of the Appellant's trial and were inadmissible as a result of this as well. In the case at bar, the state called LC, BG, a police officer and a civilian witness to testify as to these alleged other incidents. This evidence, was not relevant to the issue of whether CC consented, and became a significant feature of the Petitioner's trial, turning the Petitioner into a serial rapist in the eyes of jurors. The evidence was totally out of proportion to the CC case, as a review of the transcripts demonstrates.

This case also requires reversal for a procedural reason. The Petitioner's trial was scheduled for January 2, 1990. (R.94). The State served its Second Notice of Intent to Rely on Evidence of Other Crimes, Wrongs or Acts on December 26, 1989, only three and one-half days prior to trial. (R. 94). The notice was filed on December 22, 1989 but was not furnished to the defense during the holiday season, until the 26th. (R.92, 96). The defense responded with a Motion to Strike the State's notice as the statutory time provided by Section 90.404(2)(b)(1) had not been followed and because his new motion contained different "similar" fact evidence than the prior notice. (T. 1137). Section 90.404(2)(b)(1) provides:

> When the state in a criminal action intends to offer evidence of other criminal offenses under paragraph (a),

> no fewer than 10 days before trial, the state shall furnish to the accused a written statement of the acts or offenses it intends to offer, describing them with the particularity required and indictment or information. No notice is required for evidence of offenses used for impeachment or in rebuttal.

In response to the Motion to Strike, the state moved ore tenus for a continuance which was granted over defense objection. (T. 1139-1140). Fla. R. Crim. P. 3.190(g) requires a Motion for Continuance be granted for good cause shown and it must be accompanied by a certificate of good faith. The trial court abused its discretion when it permitted the state to circumvent the notice requirement of Section 90.404(2)(b)(1), Fla. Stat.

Finally, the trial court compounded its error by prohibiting effective cross-examination of all three alleged victims with regard to matters they testified to on direct examination, and during the admission of the improperly admitted collateral crimes testimony.

Prior to trial the Court heard motions in limine. (T. 365). State witness's prior drug use testimony was discussed. (T. 367-370). The defense moved for an in camera hearing regarding prior sexual and drug related activities by CC the alleged victim in the cast at bar. (T. 371). The Court did not have an in camera hearing. The defense sought to show that CC earlier in the evening of the alleged sexual battery exchanged sexual favors for drugs or money to buy drugs. (T. 373-374). CC admitted in her deposition she exchanged sex for drugs on prior occasions and specifically earlier the evening of the alleged sexual battery, she exchanged sex for money to buy drugs. (T. 374-375). Additionally, CC

admitted during her deposition that she exchanged sex with two males at the same time for drugs. (T. 376). The Court refused to permit the defense to inquire along this line. (T. 377). Whether CC voluntarily exchanged sex for drugs and/or money to buy drugs was relevant to consent, the issue in the case at bar.

At trial, during CC's cross-examination by the defense there was an objection to the following question:

> Q: And you had gone to a friend's house to get money for the drugs, hadn't you? (T. 705)

The objection was followed by a sidebar wherein the prosecutor expressed concern that the defense attorney was getting into the area of sex for drugs or money that the court ruled upon in limine. (T. 706). The defense attorney told the court he would not get into that area:

> I had no intention of doing that. I was saving that for my motion for mistrials later knowing that you are not going to let me get into that. (T. 706).

Before the end of CC's cross-examination, defense counsel went sidebar where he stated the following:

> I don't have any, I have one other question. The only other issue I wanted to get into was the subject of Ms. Decovit's (sic) motion in limine.
>
> THE COURT: Okay. I am going to make the same ruling to you.
>
> MR. LANDAU: With all due respect, what I was going to ask her was the following question, that was whether or not on other occasions she did have sex in exchange for drugs in which she would have said yes, she would have designated at least two incidents. I was also going to ask her about her statement to Detective Rodriguez where she referred to herself as being high classed when she talked to Rodriguez about doing things like that before. That is all I was going to elicit from her. I understand the court's ruling. I respectfully object. I think it's

> within the scope of my proper examination and because you are not letting me do it I specifically move for a mistrial.
>
> THE COURT: I appreciate that you came over here to do this. The same ruling I made previously with regard to these issues I am going to deny your motion for a mistrial. Thank you. (T. 717-718).

Later, defense counsel renewed his motion adding:

> ...what I was going to bring up which you had ruled in limine I couldn't was the other drug use and what I was going to specifically ask her was the fact that she had been using drugs for a period of time immediately before and immediately thereafter. I think it is very relevant, also, the fact that she had used drugs a couple days prior to giving me a deposition when I took her deposition... (T. 770-771).

Prior to the testimony of LC and BG defense counsel requested permission of the court to delve into their prior chronic drug use, immediately before and after the incidents. Defense counsel noted that this would affect their ability to remember things. (T. 876). Defense counsel distinguished Edwards v. State, 548 So.2d 656 (Fla. 1989) by showing that the witnesses therein "had cleaned up their act," which was not the situation here. (T. 877). The court disagreed with counsel's reading of Edwards. (T. 877).

Defense counsel also requested permission to get into prior sexual acts of LC and BG particularly LC who conceded at her deposition that she is a "business woman." (T. 878). The court denied this request. (T. 878). Defense counsel complained of these restrictions on cross examination throughout the trial. (T. 933). Particularly where LC, an admitted prostitute according to her deposition, stated during her testimony at trial that she is "unemployed," defense counsel expressed his desire to impeach her,

which was denied. (T. 931,934). Another defense objection was made during BG's testimony on the limitation of cross examination. (T. 977-978). BG was asked during direct examination by the State:

Q: Were you high when you were walking on 80th Street?

A: Yes.

Q: How high were you?

A: I was high but

MR. LANDAU: Objection, it is a self serving statement. How are we supposed to make that determination.

THE COURT: Overruled. She can describe it, she is permitted to.

Q: How high were you?

A: I was high but I wasn't that high where I wouldn't remember his face.

Q: Okay. Are you a hundred percent sure that you remember his fact?

A: I am 100 percent sure.

Q: Okay. Did there come a time about a week later that you saw the defendant again?

A: Yes.

Q: Where were you?

A; I was visiting a friend's house.

Q: Okay. And how did you see him?

A: I was in the kitchen in her house.

Q: And what happened? You went in and what happened?

A: And I seen him and he didn't even remember who I was and I told her I wanted to use the bathroom in which I was going there to get high, but I didn't knew he is in there until I seen him in there-- (T. 967-968).

On cross examination the defense asked:

Q: Okay. And then you say a week later you say you saw my client Charles Williams again and you were going to your friend's house to get high again?

A: I was at another friend. I wasn't at the same friend's house.

Q: But you were going to that friend's house to get high?

A: Correct.

Q: Had you gotten high, and drunk the week also?

A: No.

MS. DECHOVITZ: Objection

THE COURT: Sustained

MR. LANDAU: May we have a sidebar?

THE COURT: I have already ruled on that. Go ahead please.

MR. LANDAU: Most respectfully, she opened the door.

THE COURT: Go ahead, please.

MR. LANDAU: I can't come sidebar and make a motion?

MR. LANDAU (sic): No.

MR. LANDAU: Can I reserve it and you will allow me to without giving anything up?

THE COURT: Without giving anything away. (T. 972).

Later, argument was heard.

MR. LANDAU: Before we go away, you were very generous in allowing me to preserve something which I want to bring up now. Ms. Gunder James clearly opened up the door on my inquiries into drug use that is when Ms. Decovitz objected, when I asked her about being high during the week. I was going to get into it in more detail. I realize you are standing by your earlier motion in limine ruling. Once again, I think it is critical and it is limiting my cross examination and once again I am moving for a mistrial. (T. 978).

The court denied the motion. (T. 978-979).

Article I, Section 16 of the Florida Constitution guarantees the right to an accused to "confront at trial adverse witnesses." This same right is guaranteed to the accused by the Sixth and 14th Amendments to the United States Constitution. The right of an accused to cross examine adverse witnesses is an absolute right to full and fair cross examination. Coco v. State, 62 So.2d 892 (Fla. 1953). The Third District Court of Appeal Court in Mantici v. State, 406 So.2d 99 (Fla. 3d DCA, 1981) held:

> Severe and prejudicial limitations imposed by the Court on defense counsel's efforts to question witnesses both direct and cross examination concerning testimony elicited by the State deprived defendant Mantici of a fair trial and mandate reversal of his convictions. id. at 99.

In Salter v. State, 382 So.2d 892, 893 (Fla. 4th DCA, 1980) reh. den. 1980, the Fourth District Court of Appeal noted that "curtailment of a defendant's right to cross examination is a power to be used sparingly." The right to cross examination extends:

> ... to all matter that may modify, supplement, contradict, rebut or make clearer the facts testified to in chief. id. at 893.

This right is an absolute and fundamental right." Coxwell v. State, 361 So.2d 148 (Fla. 1978). Rulings which limit this right are subject to "close appellate scrutiny." id. at 893., See also Holt v. State, 378 So.2d 106 (Fla. 5th DCA, 1980); Cowheard v. State, 365 So.2d 191 (Fla., 3d DCA, 1978).

With regard to an alleged victim's prior sexual activity, the trial court used the case of Marr v. State, 494 So.2d 1139 (Fla. 1986) as a guide in denying the defense request to delve into the alleged victim's prior exchanges of sex for drugs and money. The

trial court misapplied the Marr decision to the facts in the case at bar. In Marr the Supreme Court of Florida held at page 1142:

> Under section 794.022)(2) a victim's prior sexual activity with anyone other that the accused is generally not admissible evidence. Such evidence may be admissible only if, in an in camera proceeding, the evidence tends to show that it was not the accused who committed the act or if it goes to the issue of the victim's consent. We view this section as essentially an explicit statement of the rule of relevancy; a victim's prior sexual activity with one other than the accused is simply irrelevant for determining the guilt of the accused. The only time the victim's prior sexual activity with a third person is relevant is when such other evidence may show the accused was not the perpetrator of the crime or if the defense is consent by the victim. Marr at 1142. (emphasis ours)

Section 794.011(2) specifically provides that when consent by the victim is at issue, such evidence (of the victim's prior consensual activities) may be admitted if established to the court in camera that the evidence would tend to establish a pattern of conduct on the victim's part so similar to the conduct in the case that it is relevant to the issue of consent. There was no in camera hearing had by the trial judge in the case at bar, although the defense requested it.

In Marr, the defense was that the sexual battery did not occur and that the alleged victim fabricated the whole incident. In Marr the defense was not consent. In the case at bar, the sexual intercourse was admitted. The issue was consent. It was particularly prejudicial and harmful to limit cross examination in this case where the State paraded three alleged victims (only one being charged in the case at bar) before the jury then restricted Petitioner's ability to show consent by CC. Additionally, it should be noted that the court restricted Petitioner without even

conducting the in camera hearing requested by defense counsel and required by statute. (T. 3710.

Petitioner could not effectively contradict LC's assertion that she was "unemployed" when in fact she told defense counsel at deposition that she was a "business woman." (T. 878). He could not effectively rebut or contradict her lack of consent testimony without going into how she does and has consented to the same activity on other occasions.

Likewise, the trial court misapplied Edwards v. State, 548 So.2d 656 (Fla. 1989) to the facts of the case at bar. In Edwards this Court the trial court's ruling that the defendant was not entitled to cross examine an aggravated battery victim regarding her past drug use and treatment she underwent years prior to the incident. The alleged victim had not used drugs for several years, and was not using drugs at the time of the incident or at the time of the trial in Edwards. id at 656.

In the case at bar, the alleged victim and the two Williams rule alleged victims testified they used drugs (crack cocaine) and/or alcohol just prior to the incidents, and CC admitting to drug use just prior to her deposition given in the cause. (T. 770). In Edwards, this Court held that the introduction of evidence of drug use for the purpose of impeachment will not be permitted unless:

> (a) it can be shown that the witness had been using drugs at or about the time of the incident which is the subject of the witness's testimony; (b) it can be shown that the witness is using drugs at or about time of the testimony itself; or (c) it is expressly shown by other relevant evidence that the prior drug use affect the witness's

ability to observe, remember and recount. id. at 658.

In the case at bar, all three prongs were met. There is no question the alleged victim and the Williams rule victims used drugs at or about the time of the incidents. CC was shown to have used drugs near the time she gave her deposition testimony in the case, and defense counsel was not permitted to get into CC's ability to remember due to chronic drug use as the court strictly and unconditionally prohibited this from the start.

Stripping the defendant of his right to effectively cross examine the alleged victims who were improperly permitted to testify pursuant to the Williams rule, rendered Appellant's Article I, Section 16 rights meaningless. Due to the multitude of errors herein, the Petitioner's convictions and sentences should be vacated, the case remanded for a new trial, and the decision of the Third District Court of Appeal should be reversed.

CONCLUSION

Based upon the foregoing reasons and authorities, the Petitioner respectfully prays that this Honorable Court reverse the decision of the Third District Court of Appeal of the State of Florida, vacate the convictions and sentences of the trial court, and give direction to the Courts of this state which are so split on this issue of great public importance.

Respectfully submitted,

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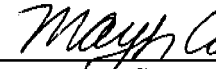
By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Petitioner on the Merits was mailed to the Office of the Attorney General, 401 N.W. 2nd Avenue, Suite N921, Miami, Florida 33128 and to Paul Mendelson, Esq. Assistant State Attorney, Metropolitan Justice Building, 1351 N.W. 12th Street, Miami, Florida 33125 this 9th day of November, 1992.


MAY L. CAIN