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**FILED**

SID J. WHITE

SEP 24 1992

**IN THE SUPREME COURT OF FLORIDA**

**CASE NO. 79,882**

**DCA CASE NO. 90-1522**

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

**RICARDO HERNANDEZ,**

**Petitioner,**

**-vs-**

**THE STATE OF FLORIDA**

**Respondent.**

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**ON APPEAL FROM THE THIRD DISTRICT COURT OF APPEAL**

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**PETITIONER'S REPLY BRIEF ON THE MERITS**

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**PETITIONER'S RELY BRIEF ON THE MERITS**

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**QUESTION PRESENTED**

WHETHER THE DISTRICT COURT ERRED IN UPHOLDING THE TRIAL COURT'S DECISION TO ALLOW TWO CHILD WITNESSES TO TESTIFY VIA CLOSED CIRCUIT TELEVISION IN A NON-SEXUAL ABUSE CASE AND, IN SO DOING, VIOLATED THE PETITIONER'S RIGHT TO CONFRONTATION UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 16 OF THE FLORIDA CONSTITUTION.

## ARUGMENT

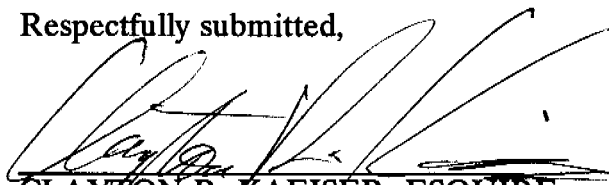
As the State points out in its answer brief, the legal issue presented by this case has been addressed by Appellate Courts in Texas and New Jersey. These courts have decided the issue in directly contrary manners. In *Gonzalez v. State*, 818 S.W. 2d 756 (Tex Cr. App. 1991), the Court of Criminal Appeals of Texas concluded that "we see no reason why an expression of this important public policy [the protection of child witnesses] must necessarily be in the form of an act or statute" and ruled that "we do not read *Coy* or *Craig* as mandating some sort of enabling statute for the trial court's actions." *Gonzalez vs. State*, 818 S.W. 2d at 765-66. On the other hand, a New Jersey Superior Court ruled that it would not expand closed circuit television procedures to child witnesses in the absence of a clear legislative intent to do so; the Court noted that it was "not free to engraft onto [the statute] our own vision of what public policy is, or should be." *State v. Nutter*, 609 A.2d 65, 74 (N.J. Super A.D. 1992).

As pointed out in the Appellant's initial brief, the unique Constitutional scheme in Florida invests this Court with sole authority to "adopt rules for the practice and procedure" in the trial courts. See Florida Constitution, Article V, Section 2(a). The legislature explicitly deferred to this Court's authority in Florida Statute, §92.55 (1989) by making the statute's implementation contingent upon this Court's adoption. This Court never adopted the statute and the trial court's approval of the close circuit television procedures in this case was, therefore, without authority.

**CONCLUSION**

Based on the foregoing argument and citations of authority, the District Court of Appeal's decision should be reversed and the cause remanded for trial.

Respectfully submitted,

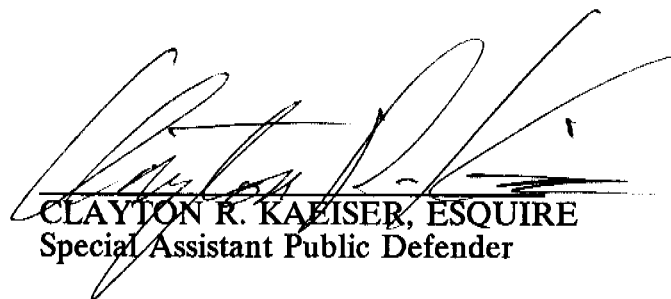


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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, 401 N.W. Second Avenue, Suite N-921, Miami, Florida 33128 this 22nd day of September, 1992.



**CLAYTON R. KAEISER, ESQUIRE**  
Special Assistant Public Defender