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CLERK, SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

DERRICK ACKERS,)
a/k/a DERICK ACRES,)
Petitioner/Appellant,)
versus)
STATE OF FLORIDA,)
Respondent.)

CASE NO. 80,037

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S REPLY BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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OTHER AUTHORITIES:

Rule 9.140, Florida Rule of Appellate Procedure

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SUMMARY OF THE ARGUMENT

Certiorari will lie where there has been a departure from the essential requirements of law for which there is no adequate remedy after final judgment. There was no such departure in the petitioner's case. To include admissions relative to another case as falling under Rule 9.140, so that orders suppressing them are reviewable, is to mistake the nature of the other admission and work confusion in the trial process.

ARGUMENT

THE DISTRICT COURT IMPROPERLY REVIEWED
A NONFINAL ORDER THAT DID NOT ADDRESS
SUPPRESSION OF EVIDENCE GAINED BY
CONFESSION, ADMISSIONS, OR SEARCH AND
SEIZURE, CONTRARY TO RULE OF APPELLATE
PROCEDURE 9.140 AND DECISIONS OF THIS
COURT AND OTHER DISTRICT COURTS.

The respondent claims that even if Rule 9.140(c)(1)(B), Florida Rules of Appellate Procedure, does not permit review of an **order** suppressing evidence of a prior crime, such an order is reviewable by certiorari. Certiorari will be granted where there is no adequate remedy available by appeal after final judgment **and** where the trial judge departed from the essential requirements of law. State v. Pettis, 520 So.2d 250, 254 (Fla. 1988).¹

In the case at bar, the same gun was used to **rob** a **KFC** and a Popeye's two weeks apart. Different numbers of men were involved each night, in different cars. One robbery **was** "terroristic" (Record-on-Appeal, pp. 113, 310), the other **was** not. In the **KFC** robbery, a man had a broomstick, which he used (Record-on-Appeal, p. 123). In the other, one man had a stick of some kind, which he did not use (Record-on-Appeal, pp.412, 416-421). The events characterizing these robberies are not "strikingly **similar**," share nothing that "**sets** them apart from other **offenses**," so **as** to escape the prohibition on admissibility. See Heuring v. State, 513 So.2d 122 (Fla. 1987).

¹ The petitioner notes that this is not the same as to **say** merely that the state will have no case without the excluded evidence.

The state's answer assumes that "admissions" are all of a piece, deserving equal treatment. Instead, some admissions belong in the category "evidence of other crimes" and must satisfy a different standard, balancing relevance against prejudice, before being admitted.

The trial court's order granting the motion in limine to exclude from the Popeye's trial evidence of the petitioner's conviction for the KFC robbery was correct. Thus, this court should not approve the district court's reversal as no more than what might have been gained through another route.

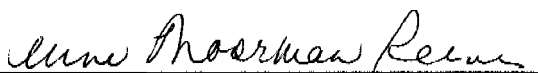
If the scope of Rule 9.140 should be broadened, let it be done through appropriate means. Let it be done by setting out the unifying principle that compels review of the suppression of admissions, confessions, and evidence gained through search and seizure, and then determining whether other orders share that principle. Finally, let it be done with a view toward advancing our law's ideals, not just the state's prosecution.

CONCLUSION

BASED UPON the argument made and authorities cited herein, and in Petitioner's Merit Brief, petitioner respectfully requests that this honorable court quash the decision of the district court and remand this cause for proceedings consistent with the decisions of this court and other district courts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Robert E. Butterworth, Attorney General, 210 N. Palmetto Avenue, Suite 447, Daytona Beach, Florida 32114, in his basket at the Fifth District Court of Appeal; and mailed to Derrick Ackers, Inmate No. A-334558, #F-217L, Jackson Corr. Inst., P.O. Box 4900, Malone, Florida 32245, on this 14th day of December, 1992.


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