SUPREME COURT OF FLORIDA

MICHAEL EARL DOBBINS,

Appellant,

v.

STATE OF FLORIDA,

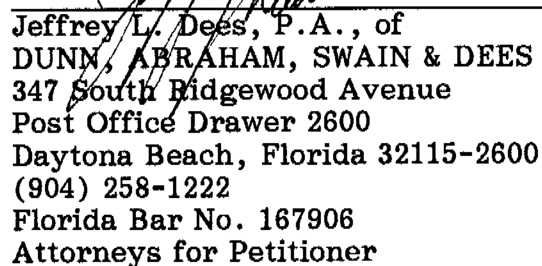
Appellee.

_____________________________/

CASE NO.: 80,580

DISTRICT COURT OF APPEAL,
FIFTH DISTRICT NO.: 91-1953

# APPELLANT'S AMENDED REPLY BRIEF



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### STATUTES

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## ARGUMENT

POINT I: F.S. 775.085 IS UNCONSTITUTIONAL BECAUSE IT IS VAGUE, OVERBROAD AND IMPOSES CRIMINAL PUNISHMENT UPON PROTECTED SPEECH.

(a) Overbreadth:

The State argues that section 775.085, Florida Statutes (1989) ["the Statute"] is constitutional because it requires proof that the reason for committing the crime was the fact that the victim was a member of protected class. (Answer Brief, page 6)

In fact, the Statute does neither, i.e., it neither requires proof of the reason for the commission of the crime nor that the victim was a member of a protected class. The State might be correct if the Statute made reference to proof of any particular intent or motive, or if it enhanced penalties for committing a crime against a Black, White, Jew, Asian, Aryan, Catholic, Puerto Rican or other defined class.

Instead, the Statute enhances the penalty if the commission of the felony or misdemeanor "evidences prejudice based on race, color, ancestry, ethnicity, religion or national origin of the victim." No proof is required that the victim was selected for the commission of the crime because of any characteristics or class membership. It is sufficient under the terms of the Statute for the jury to conclude only that the "commission of the crime evidences prejudice" based on race, color, religion, etc. Nothing is required to be shown as to a defendant's motive or reason or even that the defendant was personally prejudiced against the victim.[1]

The further point of the argument concerning the vagueness and overbreadth of the Statute (missed by the State and the lower court) is not that a limiting construction of the statute will save it (as attempted by the Fifth District

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[1]Even if the Statute were so written as the State and the lower court would prefer, it still would have to pass muster under the First Amendment, which as also argued in the Initial Brief and herein, it does not.

below, i.e., that the Statute despite its actual language, is properly interpreted to apply only to those cases where the State proves a proscribed motive or a class victim beyond a reasonable doubt). But rather, even if that were true, the Statute fails to advise the citizen of what conduct, opinion or motive qualifies as "evidence of prejudice". This result also lends the Statute to arbitrary enforcement by police, prosecutors and juries. See Richards v. State, 608 So.2d 917 (Fla. 3rd DCA 1992).

Many, many cases are subject to arbitrary prosecution, conviction and punishment under the Statute.[2] Only a few examples can be touched upon in the space of this Brief:

(1) Resisting an officer with violence or the commission of a battery during which a defendant calls the victim a "name". How is it clear what epithets or "names" demonstrate a basis for conviction for prejudice and which do not.[3]

(2) Cases involving crimes such as trespass, breach of the peace, battery, etc., committed during a public demonstration in support of some public or political issue. Which political issues would show evidence of religious, ethnic or racial "prejudice" sufficient to justify conviction under the statute? For example, does a pro-life demonstrator outside an abortion clinic who strikes an employee of the clinic exhibit religious "prejudice"? More importantly, could some juries conclude "yes" and others "no" on the same facts?

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[2]Most of these cases will entail serious violations of First Amendment protections as well, since if we must now assess and judge motive, we are therefore sorting and classifying the defendant's reasons (i.e., opinions) into offending or non-offending categories. It should be noted that these underlying reasons or motives are not equivalent to intent.

[3]Citizens are in fact now being arrested and charged under the Statute for hurling epithets in the heat of passion during criminal episodes. See Exhibit 1 attached and Richards v. State, supra.

(3) If a defendant burglarizes a church or slashes tires on a car with an NAACP sticker on it, does this qualify as the commission of a crime exhibiting "prejudice" under the Statute?

(4) If a Black throws a brick through the window of a storefront while demonstrating against a verdict returned in a courtroom by an all-White jury acquitting a White police officer of killing a Black, is the Black on the street committing a crime "evidencing prejudice" based on race? Does it matter if the store is owned by a White or a Black?

(5) If a Black intentionally strikes a White (or a Jew beats a German) would this be sufficient evidence of "prejudice" to justify conviction under the Statute?

The Statute does not regulate "nonprotected conduct" as argued by the State. (Answer Brief, page 16) The underlying criminal statutes do that. Instead, the Statute imposes enhanced punishment upon "prejudice", a broad and undefined term, argued by the State in the lower court to include reason or motive, but which is undefined by the Statute. Even at that, the Statute as it would be applied (based on the arguments presented by the State and lower court) would enhance punishment only upon unspecified prejudices disfavored by the State or jury.

The effect of the Statute is to require different punishment for the same crime, committed with the same criminal intent and with the same result, where in one case a prosecutor or jury determines the motive is disfavored "prejudice", but in another case, the motive is approved. By clear implication and force of law, pursuant to this Statute some motives will therefore be favored for lesser punishment than others. If the lower court's opinion stands, the government can now prescribe by statute which criminal motives are more blameworthy - or praiseworthy - than others. Jurors and prosecutors are also left free to pursue their own notions under standards that are totally vague and overbroad.

(b) Vagueness:

The careless arguments by the State in its Answer Brief makes reply to this issue more difficult. For example, the Statute does not deal with "hatred" or the "right to speak and spew hatred" as bandied about by the State in its Brief. (Answer Brief, page 32)

We deal with a Statute punishing us for exhibiting what is concluded to be "prejudice". That is vagueness. Richards v. State, supra.

The State admits the Statute does not require scienter and wishes this court to redraft that element into the Statute. The state also asks this court to add a "but for" requirement to the Statute.

But even if the court were to do this, the vagueness of the citizen being exposed to enhanced punishment for "prejudice" is not solved and is insurmountable.

The state recognizes this and then goes on to ask the court to revise the Statute even further to include a proposed definition of "prejudice", i.e., "an irrational attitude of hostility directed against an individual, a group, a race or their supposed characteristics - compare discrimination", as if that would provide any further notice to the citizen. (Answer Brief, page 34.) It does not.

The argument by the State only makes clear that opinions ("attitudes") are the subject of this punishment, i.e., opinions deemed "prejudice" by the prosecutor and trier of fact.

The litany of statutes and rules using the word "prejudice" is inapposite because first, no criminal punishment is imposed upon the holder of the alleged prejudice and second, the remedy is the restoration of a benefit or right to the complainant/victim to which he is entitled that is otherwise denied him.

Finally, the State fails to address the total lack of standards in the Statute to guide police, prosecutors and juries in its application. (See Appellant's Initial Brief, pages 13-14.)

In Richards v. State, supra, in a due process challenge, the Third District held that the Statute was unconstitutionally vague:

> ...we conclude that section 775.085(1), Florida Statutes (1991), is unconstitutionally void for vagueness because, simply stated, it does not define with sufficient due process particularity what additional criminal act is required in order to reclassify and thus enhance the punishment of a felony or misdemeanor. 608 So.2d at 921.

The analysis of the Third District regarding the vagueness and ambiguity of the Statute is equally applicable to a First Amendment analysis on the grounds of vagueness. In fact, the Third District indicated that the decision of RAV v. City of St. Paul, Minn., 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992), makes it "now doubtful that a statute such as this may be interpreted to punish, as here, a selected species of 'fighting words'." 608 So.2d 922 (emphasis added). The court concluded that made the Statute's application "entirely problematic." (Id.)

The Statute is unconstitutionally vague because (a) it fails to warn the citizen as to what speech or conduct is "evidence prejudice" and (b) it lends itself to arbitrary enforcement by police, prosecutors and juries due to lack of standards.

(c) Punishment of Opinion:

The State's attempt to distinguish RAV is not persuasive. (Answer Brief, pages 16, 28.) Contrary to its astonishing argument, RAV was in fact clearly a case involving a statute regulating conduct (i.e., placing a symbol or an object on property), which was held to apply to speech (fighting words). That is the case at hand as well. The Supreme Court in RAV concluded that under the St. Paul Statute, speech was impermissibly regulated based on its content in violation of the First Amendment.

The same principles apply to this case. The State's argument that the Statute punishes only conduct, not opinions or ideas, is clearly wrong. The conduct in question (i.e., the criminal act) is punished by a separate underlying statute. It can never be forgotten or emphasized too much that the express language of the Statute in question is the imposition of enhanced punishment for evidence of "prejudice."

The argument by the State (and by Amicus ADL) that the Statute is only an enhancement statute (and therefore is constitutional) does not survive analysis. First, the considerations required by the First Amendment for the protection of speech and opinion, as well as the considerations of vagueness and overbreadth, apply to any criminal statute regardless of its title. It would thus clearly violate the First Amendment if Florida enacted a statute enhancing the penalty for every crime if the defendant during its commission made any negative comment about the Governor or the Legislature. RAV. The attempt by the State and ADL to evade the issue by calling the statute simply an enhancement statute only relabels the issue without advancing the analysis.

Second, the Statute is truly unlike all of the statutes cited by the State (and the ADL) involving enhanced penalties for use of a firearm, wearing a mask or commission of a crime against the elderly, pregnant women and law enforcement officers. This Statute does not deal with the use of an object or with a class of persons as victims. It clearly imposes punishment for evidence of "prejudice" based on race, religion, etc., of the victim. Nothing more. (See Appellant's Initial Brief at page 17) The conduct of selecting a victim is encompassed in the criminal intent required for conviction of the underlying crime.

This Statute permits the imposition of punishment upon prejudice. Even if it applied only to motive, it is dangerous and a violation of the First Amendment to

go beneath the already requisite criminal intent for the commission of the crime in question to an evaluation of motive. The State would allow the Legislature the power to impose and mandate either lighter or stiffer punishments based upon an assessment of the substance of the motive of a defendant (and whether this is a favored or disfavored motive) where the criminal intent for the commission of the crime is nevertheless the same. This is content-based regulation of opinion or belief disapproved by the Supreme Court in RAV.

Third, the further argument by the State and Amicus ADL that trial courts in criminal cases have historically been granted leeway to evaluate motive prior to imposing sentence and that the Statute is therefore constitutional (because it is only an enhancement statute) is not persuasive. The cases cited by the State and ADL are capital sentencing cases dealing primarily with the Eighth Amendment: Dawson v. Delaware, 112 S.Ct. 1093, 117 L.Ed.2d 309 (1992); Barclay v. Florida, 463 U.S. 939 103 S.Ct. 3418, 77 L.Ed.2d 1134 (1983). None of these cases stand for the issue in question here, whether the Legislature may constitutionally increase the statutory punishment for the commission of any crime based upon disagreement with the content of prejudice evidenced by a defendant toward a victim's race, religion, etc. (even if a motive).

Barclay was not a First Amendment case, and no argument was raised involving the First Amendment. The case was decided under the Eighth Amendment and involved the propriety of the use of the defendant's motive (racial hatred and instigation of race warfare) as an aggravating factor for imposition of the death penalty under Florida law. The Supreme Court wrote that consideration of motive is not necessarily improper under the Eighth Amendment if relevant to any aggravating factors, such as heinous, atrocious or cruel, causing a great risk of death to many persons, or disrupting the lawful exercise of a governmental function

or enforcement of laws, all of the latter being issues permitted by the Eighth Amendment to justify imposition of the death penalty. The court held, however, in the Barclay case, that evidence of motive was irrelevant and improper, but affirmed the right of the Supreme Court of Florida to decide that the elimination of this improper aggravating factor under the Eighth Amendment did not alter the balance of the remaining valid factors in favor of the death penalty. It should be noted that the case does not stand for the proposition that the death penalty may be imposed because of improper motive, but only that motive may be allowed as evidence if relevant to other aggravating factors allowed by the Eighth Amendment.

The Dawson case was to the same effect. The use of racist beliefs and evidence during a capital sentencing phase was reversed. The defendant in this case did raise an issue concerning a violation of his First Amendment rights. While the Supreme Court disagreed with the breadth of the First Amendment argument asserted by the defendant,[4] the court nevertheless held that constitutional error was committed by the admission of evidence of the defendant's membership in a racist organization because (1) the evidence was vague and (2) it had no relevance to the sentencing proceeding (a capital sentencing proceeding) because it was neither tied into the alleged crime nor relevant to any aggravating factor. The Supreme Court affirmatively held that the defendant's First Amendment rights were in fact violated "because the evidence proved nothing more that Dawson's abstract beliefs". 117 L.Ed.2d at 318. **Significantly, the Supreme Court expressly affirmed that the states may not allow juries to draw adverse inferences based upon constitutionally protected conduct nor may such be Legislatively denominated as an aggravating**

[4]Because in a sentencing context, the court explained, courts have generally been free to consider a wide range of relevant material, including motive, in reaching a judgment as to length and type of sentence to be imposed.

**factor.** See Zant v. Stephens, 462 U.S. 862, 885, 77 L.Ed.2d 235, 255, 103 S.Ct. 2733 (1983).

Barclay and Dawson are capital sentencing cases where the Eighth Amendment plays a dominant role. They only establish it is constitutionally permissible in capital cases to use motive for certain limited purposes (within a pre-set statutory range) to assess intent and when relevant, to evaluate other aggravating factors allowed by the Eighth Amendment. But they are not cases authorizing convictions for possession of unpopular motives, and they clearly do not permit unpopular opinions or motives to be independent aggravating factors justifying enhanced punishment.

Even more importantly, they are not the case at hand. The Statute before the court punishes "prejudice". It is another thing entirely, as argued by the State and Amicus ADL, to separately penalize "evidence of prejudice" under a statute requiring enhanced sentences for disfavored prejudices (i.e., based on content) as in the case at hand. This would allow the Legislature power prohibited by the First Amendment to selectively punish certain prejudices (i.e., opinions) more severely (and others not at all) despite otherwise equal criminal intent.

In the end, Barclay and Dawson only reaffirm the historical sentencing discretion of courts under traditional criminal statutes to use evidence relevant to this discretion. These cases are not authority under the First Amendment for any constitutional power of the Legislature to enact statutes specifically enhancing criminal penalties for unpopular prejudices even when a motivating factor in the commission of ordinary crimes. The contrary is in fact true: while a defendant's words may be used to evaluate intent, the words may not form an independent basis for enhanced punishment based on government mandated disagreement with the ideas expressed.

(d) Response to Brief by Amicus ADL.

Many of the points argued by the ADL in its Amicus Brief have been dealt with previously. Other arguments raised by the ADL are addressed in this section.

(1) ADL Brief, pages 7-8. The ADL attempts to convince the court, by use of alleged statistical facts outside the Record, of some statistical urgency justifying the Statute.[5] The ADL argues that "these crimes are in fact increasing in number and severity" and that it has identified numerous incidents in its records nationwide.

The Appellant has been advised by the Florida Department of Law Enforcement [the "FDLE"] that statistics are not available on this issue. The FDLE does not keep statistics correlated to race, religion or ethnicity of victims and defendants. In fact, FDLE does not keep statistics that even correlate defendants with victims whatsoever.

The "Hate Crime" statistics that are available from FDLE do not suggest increases in the number and severity of crimes reported under the statute. See Exhibit 2 attached to this Brief. From 1990 to 1991, FDLE reports that offenses based on Religion declined from 58 to 46 and based on Race/Color stayed the same (220 and 221, respectively). Homicides declined from 2 to 1 (50%) and forcible sex offenses remained the same (3). Aggravated assault and simple assault rose only slightly. Total reported "Hate Crimes" rose only slightly from 306 to 309 (and actually declined for Race/Color, Religion and Ethnicity/National Origin, from 306 to 299).

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[5]The State in its Brief (page 26, note 8) admits that there is in fact "no accurate data on the number of bias crimes committed each year". Undaunted, the State goes on to assert that there has nevertheless been "a massive increase" of hate crimes. (Id.)

Over the same period (1990-1991), the overall crime rate in Florida rose 0.6 percent; murder declined by 8 percent; forcible sex offenses rose by 2.3 percent; and aggravated assault deceased 1.7 percent. See Exhibit 2.

Certainly no claim of massive increases in hate crimes is supported by these figures. In short, the statistics allegedly in the possession of the ADL have not been seen by the Appellant and at least for Florida, cannot be verified by the FDLE.[6]

(2) ADL Brief, page 18. The ADL (as the State) ignores the actual wording of the Statute and argues that it imposes punishment upon proof that the victim was selected for discriminatory reasons. This is clearly not what the Statute requires to be proven in order for its operation to apply to a defendant. Further, the ADL would convert epithets spoken in anger or in heat of passion into proof of prejudice and offending motive under the Statute, e.g., "dirty Jew" or a "Black mother." (Id.)[7] This argument only underscores the vagueness and overbreadth of the Statute. See Richards v. State, supra.

(3) The ADL continues this vein of argument in its analysis of the RAV case on page 20 of its Brief, where near the bottom of the page, the ADL again asserts that Florida's law is directed against conduct and does not merely look to words that communicate messages of intolerance. What the ADL clearly misses is the principle announced in RAV, i.e., that the State may not punish even conduct on the basis of disagreement with the ideas it expresses.

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[6]What available FDLE statistics do indicate is that Florida suffers from an extensive crime rate in general, but not necessarily rising in any given category yearly. See Exhibit 2 attached.

[7]See Exhibit 1 attached. Arrests on such bases are already occurring in Florida.

(4) Again, on page 21 of its Brief, the fundamental failure of the ADL to recognize how the Statute truly operates is shown in two sentences, one of which is true and the second of which is false:

> True: While bigots and racists are free to think and express themselves as they wish, they simply must not engage in criminal conduct in furtherance of their beliefs. (Emphasis added.)

> False: Thus, Florida's enhancement statute is not concerned with what a person thinks, but how a person acts when that person is engaged in the commission of a crime.

On the contrary, the Statute imposes punishment for "evidence of prejudice", not conduct. It is precisely the content of the defendant's "prejudice" with which the Statute is concerned and which triggers its operation. It is not at all concerned with how a person acts during the commission of a crime nor with whether the victim was intentionally selected as a result of prejudice, except as evidence of the content of an offending prejudice.

The ADL also wishes to revise the Statute to require proof that the victim was selected from a protected group based upon intentional prejudice by the defendant. That would only be true if the Statute made it a crime to, for example, batter a Jew or a Black (or a White or an Aryan). The Statute does not do that.

(5) Finally, the ADL reveals its fundamental disagreement with the First Amendment on page 25 of its Brief where it writes as follows: "When that conduct selects a crime victim for discriminatory or biased reasons, then society has a right to inflict greater punishment because of the greater societal harm." RAV clearly teaches that we may not punish conduct because of disagreement with the ideas it expresses. States are free to punish conduct, which Florida has done in its underlying criminal statutes. They are not, however, free to punish the ideas a conduct expresses.

The ADL in its zeal to uphold the Statute (which it apparently wrote) and to narrowly focus on its horror at perceived anti-Jewish bias, inadvertently empowers the Legislature to prosecute us all, including the Jewish people, for conduct that expresses opinions or beliefs with which the Government disagrees. Surely, of all people, the ADL would find this concept the most abhorrent.

POINT II: THE TRIAL COURT ERRED IN REFUSING TO INSTRUCT THE JURY THAT THEY MUST FIND THE APPELLANT EVIDENCED PREJUDICE AGAINST THE VICTIM.

The Appellant objected to the trial court's instructions to the jury on the ground that it did not require the jury to find the Appellant (personally) exhibited the alleged prejudice during the commission of the battery as charged.

In Richards v. State, supra, the Third District also found fault with the trial court's refusal to instruct the jury that it had to find the defendant possessed a "prejudicial intent". 608 So.2d at 922-923. The defendant contended at trial that he did not have any "intent" to be "prejudiced" against the victim. As in the case at hand, a fight occurred between the defendant and the victim, and it was the defendant's words (epithets) spoken during the incident that were argued by the State to evidence prejudice.

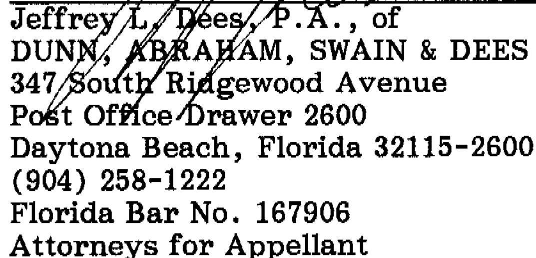
The Third District had great trouble with the jury instructions as well as the Statute. Noting that the Statute might require proof of a specific prejudicial intent on the part of the defendant, the court was troubled that "a person might just as easily be able to commit an act which 'evidences prejudice' without being conscious of any 'prejudice' at all, as people are at times obtuse to the feelings of others in this respect or in a fit of rage say things they do not later recall." 608 So.2d at 923. The could held:

> It is therefore entirely unclear whether the required "prejudice" under the statute must be conscious or unconscious. (Id.)

The Third District's holding that the Statute is unconstitutionally vague obviated the necessity to rule upon the jury instruction issue. But the clear implication of the court's analysis is that the defendant's objections to the instructions were well-taken.

The Appellant submits the reasoning of the Richards case applies to the case at hand and that, even if the Statute is upheld as constitutional, the instructions given below over objection require reversal of the conviction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by mail, to Michael J. Neimand, Assistant Attorney General, Department of Legal Affairs, 401 N.W. 2nd Avenue, Suite N921, Post Office Box 013241, Miami, Florida 33101; and, Kenneth W. Shapiro, Esquire, Attorney for Amicus Curiae, Anti-Defamation League of B'nai B'rith, this 19th day of April, 1993.

Jeffrey L. Dees

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# Appendix Part 1

# Man faces 'hate crime' charge after motel robbery

By STEVE MOORE

DAYTONA BEACH — Police filed a hate crime charge against a Kentucky man accused of jamming a pistol into the mouth of a vacationing black college student during a holdup and shouting racial slurs.

Officers arrested the suspect, David Dwight Armstrong, 26, of Fairdale, Ky., a short while after the robbery early Wednesday and had to use force to subdue him. No one was injured during the robbery or Armstrong's arrest.

Police charged Armstrong with armed burglary, carrying a concealed firearm, resisting arrest and aggravated assault. The hate crime count was added to the latter charge. People charged under Florida's hate crime act face stiffer penalties for crimes committed out of prejudice over race, religion or ethnic ancestry.

According to Daytona Beach police reports, the holdup occurred shortly before 12:30 a.m. Wednesday at the Whitehall Inn, 640 N. Atlantic Ave.

The victims, Derek Lott, Jackson, Mich., who is black, and four other students from Western Michigan University in Kalamazoo were in their room when there was a knock at the door.

Lott answered the door and a man later identified as Armstrong and three other unidentified white male suspects forced their way into the room.

Armstrong pulled a silver-colored semi-automatic pistol and pointed it at the students, telling them not to move, according to reports. He then walked up to Lott, slapped him on the head with his open hand and said "How's that, nigger?"

According to police, Armstrong then stuck the pistol in Lott's mouth and said, "How do you like a gun in your mouth, nigger? How about I just blow your . . . head off, nigger?"

The victims told police Armstrong then walked away and began rifling through their possessions, taking a wallet belonging to one of them. After telling the victims not to move again, Armstrong and the other suspects left.

One of the victims, Anthony Tiefenbach, Stevensville, Mich., went downstairs to report the attack and spotted Officer Andy Cospito, who was on foot patrol near the intersection of Glenview Boulevard and S.R. A1A. After explaining what happened, Tiefenbach spotted Armstrong and the other three suspects walking through the Whitehall parking lot, and Cospito began chasing them.

Three of the suspects escaped, but Cospito cornered Armstrong in a hallway at the nearby Windjammer Inn, 700 N. Atlantic Ave. Cospito drew his 9mm sidearm when Armstrong refused to put his hands up and obey other commands.

Officer Matthew Nasser, who had also joined the chase, caught up and also drew his gun, allowing Cospito to approach Armstrong and force him to the floor.

> Police charged Armstrong with armed burglary, carrying a concealed firearm, resisting arrest and aggravated assault. The hate crime count was added. People charged under Florida's hate crime act face stiffer penalties for crimes committed out of prejudice.

Cospito found the stolen wallet in Armstrong's right rear pants pocket and a Bryco Arms .380-caliber semi-automatic pistol in a front pants pocket. The gun was loaded with six cartridges, including one in the firing chamber.

Armstrong admitted the gun belonged to him but denied involvement in the attack on Lott and the other victims.

He was taken to the Volusia County Branch Jail, where he faced a first appearance hearing on the charges Thursday. County Judge Hubert Grimes set bond at $55,500, and Armstrong remained in jail Thursday night.

The victims, reached by telephone at their motel room Thursday, declined comment.

# APPENDIX PART 2

# Florida Hate Crime Data

## January 1, 1991 - December 31, 1991

### Offense Totals by Motivation Type

| Offenses | Race/Color | Religion | Ethnicity/ National Origin | Sexual* Orientation | Total |
|---|---|---|---|---|---|
| Homicide | 1 | | | | 1 |
| Forcible Sex Offenses | 3 | | | | 3 |
| Robbery | 8 | | | | 8 |
| Aggravated Assault | 96 | | 11 | 6 | 113 |
| Burglary | 3 | 4 | 2 | | 9 |
| Larceny | | 2 | | | 2 |
| Arson | | 1 | 1 | | 2 |
| Simple Assault | 44 | 1 | 6 | 1 | 52 |
| Intimidation | 29 | 15 | 3 | 1 | 48 |
| Destruction/ Vandalism | 34 | 23 | 7 | 2 | 66 |
| Trespassing | 2 | | 2 | | 4 |
| Other (liquor law violations) | 1 | | | | 1 |
| TOTAL | 221 | 46 | 32 | 10 | 309 |

*Collection of sexual orientation data began October 1, 1991



EXHIBIT 2

## Florida Hate Crime Data
### January 1, 1990 - December 31, 1990
### Offense Totals by Motivation Type

| Offenses | Race/Color | Religion | Ethnicity/ National Origin | Total |
|---|---|---|---|---|
| Homicide Offenses | 2 | | | 2 |
| Forcible Sex Offenses | 3 | | | 3 |
| Robbery | 4 | | | 4 |
| Aggravated Assault | 88 | 7 | 7 | 102 |
| Burglary | 3 | | 1 | 4 |
| Larceny | 3 | | | 3 |
| Arson | 1 | 1 | | 2 |
| Simple Assault | 41 | | 9 | 50 |
| Extortion/Blackmail | 1 | | | 1 |
| Intimidation | 36 | 9 | 5 | 50 |
| Destruction/Vandalism | 38 | 41 | 6 | 85 |
| TOTAL | 220 | 58 | 28 | *306 |

*There were 258 incidents reported which resulted in 306 offenses.
A single incident may involve one or more offenses.

Florida Department of Law Enforcement

# CRIME IN FLORIDA

## 1991 Annual Report

The statistics presented in this release are an indication of crime and criminal activities known to, and reported by, law enforcement agencies for 1991.

### Crime Volume

| | |
|---|---|
| Total Index | 1,129,704 |
| Total Violent | 158,181 |
| Total Nonviolent | 971,523 |
| Total Part II | 263,565 |
| Total For Florida | 1,393,269 |

### Property Values

Total Stolen
$1,292,627,951

Total Recovered
$436,929,713

### Victim Data

| | |
|---|---|
| Total | 1,437,370 |
| Person | 1,039,532 |
| Business | 319,517 |
| Govt/Pub | 14,571 |
| Church | 4,025 |
| Other | 59,725 |

### Arrest Data

| | |
|---|---|
| Total | 744,614 |
| Adult | 649,626 |
| Juvenile | 94,988 |
| Male | 613,198 |
| Female | 131,416 |

## FLORIDA OFFENSE TOTALS

| INDEX OFFENSES | JAN. - DEC. 1990 | JAN. - DEC. 1991 | PERCENT CHANGES |
|---|---|---|---|
| Murder | 1,387 | 1,276 | -8.0 |
| Handgun | 588 | 565 | -3.9 |
| Other Firearm | 285 | 241 | -15.4 |
| Knife/Cutting Instr. | 211 | 200 | -5.2 |
| Blunt Object | 59 | 67 | 13.6 |
| Hands/Fists/Feet | 71 | 61 | -14.1 |
| Other | 173 | 142 | -17.9 |
| Forcible Sex Offenses | 12,110 | 12,390 | 2.3 |
| Forcible Rape | 6,747 | 6,969 | 3.3 |
| Forcible Sodomy | 1,593 | 1,509 | -5.3 |
| Forcible Fondling | 3,770 | 3,912 | 3.8 |
| Robbery | 54,015 | 53,076 | -1.7 |
| Handgun | 17,018 | 17,124 | 0.6 |
| Other Firearm | 3,316 | 2,976 | -10.3 |
| Knife/Cutting Instr. | 4,182 | 3,904 | -6.6 |
| Hands/Fists/Feet | 23,087 | 22,956 | -0.6 |
| Other | 6,412 | 6,116 | -4.6 |
| Aggravated Assault | 93,042 | 91,439 | -1.7 |
| Handgun | 18,601 | 17,508 | -5.9 |
| Other Firearm | 7,969 | 7,223 | -9.4 |
| Knife/Cutting Instr. | 19,513 | 18,857 | -3.4 |
| Hands/Fists/Feet | 7,131 | 7,524 | 5.5 |
| Other | 39,828 | 40,327 | 1.3 |
| Burglary | 275,104 | 264,749 | -3.8 |
| Forced Entry | 199,590 | 195,513 | -2.0 |
| No Forced Entry | 54,238 | 49,087 | -9.5 |
| Attempted Entry | 21,276 | 20,149 | -5.3 |
| Larceny | 585,919 | 603,922 | 3.1 |
| Pocket Picking | 3,995 | 4,036 | 1.0 |
| Purse Snatching | 4,407 | 4,084 | -7.3 |
| Shoplifting | 102,507 | 107,430 | 4.8 |
| Theft From Coin Mach. | 3,628 | 4,040 | 11.4 |
| Theft From Building | 37,364 | 37,205 | -0.4 |
| Theft From Mot.Veh. | 128,962 | 124,444 | -3.5 |
| All Other | 305,056 | 322,683 | 5.8 |
| Motor Vehicle Theft | 101,358 | 102,852 | 1.5 |
| TOTAL INDEX OFFENSES | 1,122,935 | 1,129,704 | 0.6 |

| MANDATORY OFFENSES | JAN. - DEC. 1990 | JAN. - DEC. 1991 | PERCENT CHANGES |
|---|---|---|---|
| Manslaughter | 78 | 77 | -1.3 |
| Kidnap/Abduction | 3,061 | 3,307 | 8.0 |
| Arson | 3,511 | 3,374 | -3.9 |
| Simple Assault | 145,998 | 155,114 | 6.2 |
| Drugs: Sale | 16,279 | 18,064 | 11.0 |
| Cocaine | 11,887 | 13,233 | 11.3 |
| Marijuana | 2,915 | 3,914 | 34.3 |
| Paraphernalia | 317 | 53 | -83.3 |
| Other | 1,160 | 864 | -25.5 |
| Drugs:Possession | 46,380 | 42,577 | -8.2 |
| Cocaine | 23,918 | 22,945 | -4.1 |
| Marijuana | 16,057 | 14,411 | -10.3 |
| Paraphernalia | 4,880 | 3,887 | -20.3 |
| Other | 1,525 | 1,334 | -12.5 |
| Bribery | 43 | 29 | -32.6 |
| Embezzlement | 4,392 | 3,670 | -16.4 |
| Fraud | 37,084 | 37,353 | 0.7 |
| False Pretenses/Swindle/ Confidence Games | 33,203 | 32,873 | -1.0 |
| Credit Card/ATM | 3,135 | 3,644 | 16.2 |
| Impersonation | 711 | 775 | 9.0 |
| Welfare | 11 | 16 | 45.5 |
| Wire | 24 | 45 | 87.5 |
| TOTAL PART II | 256,826 | 263,565 | 2.6 |

| | 1990 | 1991 | PERCENT CHANGES |
|---|---|---|---|
| TOTAL VIOLENT | 160,554 | 158,181 | -1.5 |
| TOTAL NONVIOLENT | 962,381 | 971,523 | 0.9 |
| TOTAL CRIMES FOR FLORIDA | 1,379,761 | 1,393,269 | 1.0 |
| CRIME RATE | 8,539.4 | 8,561.0 | 0.3 |

# PROPERTY TYPE, VALUE STOLEN AND RECOVERED

## 1991

| PROPERTY TYPE | DOLLAR VALUE STOLEN | DOLLAR VALUE RECOVERED | PERCENT RECOVERED |
|---|---|---|---|
| Auto Accessory/Part | $34,364,063 | $1,833,713 | 5.3 |
| Bicycle | 11,007,781 | 1,159,006 | 10.5 |
| Camera/Photo Equip | 14,878,337 | 626,565 | 4.2 |
| Drug | 677,114 | 72,335 | 10.7 |
| Equipment/Tool | 54,857,738 | 3,633,798 | 6.6 |
| Food/Liquor/Consum | 12,078,880 | 1,031,269 | 8.5 |
| Gun | 9,987,135 | 1,122,170 | 11.2 |
| Household Appliance | 26,616,687 | 1,180,097 | 4.4 |
| Plants/Citrus | 1,407,266 | 82,489 | 5.9 |
| Jewelry/Precious Metal | 176,248,673 | 9,292,346 | 5.3 |
| Clothing/Fur | 29,625,473 | 3,211,942 | 10.8 |
| Livestock | 574,443 | 81,067 | 14.1 |
| Musical Instrument | 3,198,227 | 289,826 | 9.1 |
| Construction Mach | 7,948,526 | 3,532,523 | 44.4 |
| Office Equipment | 13,695,908 | 595,859 | 4.4 |
| Art/Collection | 14,278,526 | 572,110 | 4.0 |
| Computer Equipment | 20,933,395 | 934,120 | 4.5 |
| Radio/Stereo | 26,669,022 | 1,520,067 | 5.7 |

| PROPERTY TYPE | DOLLAR VALUE STOLEN | DOLLAR VALUE RECOVERED | PERCENT RECOVERED |
|---|---|---|---|
| Sports Equipment | $ 12,415,875 | $1,010,271 | 8.1 |
| TV/Video/VCR | 38,401,978 | 1,847,634 | 4.8 |
| Currency/Negotiable | 107,337,110 | 4,805,706 | 4.5 |
| Credit Card/Non-Negotiable | 7,017,696 | 167,182 | 2.4 |
| Boat Motor | 8,599,183 | 564,090 | 6.6 |
| Structure | 1,766,043 | 18,991 | 1.1 |
| Farm Equipment | 2,014,664 | 1,019,927 | 50.6 |
| Miscellaneous | 75,866,100 | 7,323,171 | 9.7 |
| Auto | 412,820,836 | 291,002,808 | 70.5 |
| Truck/Van | 120,158,040 | 78,606,900 | 65.4 |
| Motorcycle | 9,197,004 | 3,930,283 | 42.7 |
| Camper/RV | 1,308,464 | 785,988 | 60.1 |
| Bus | 787,529 | 237,852 | 30.2 |
| Trailer | 6,279,935 | 2,455,613 | 39.1 |
| Boat | 19,276,026 | 9,183,821 | 47.6 |
| Aircraft | 4,202,901 | 66,026 | 1.6 |
| Other Mobile | 6,131,373 | 3,132,148 | 51.1 |
| TOTAL For Florida | 1,292,627,951 | 436,929,713 | 33.8 |

# VICTIM TYPE BY OFFENSE

| | OFFENSES | JUVENILE | ADULT | BUSINESS | CHURCH | GOVERNMENT | OTHER | TOTAL |
|---|---|---|---|---|---|---|---|---|
| INDEX OFFENSES | Murder | 97 | 1,179 | | | | | 1,276 |
| | Forcible Sex Offenses | | | | | | | |
| | Forcible Rape | 3,051 | 3,921 | | | | | 6,972 |
| | Forcible Sodomy | 1,080 | 455 | | | | | 1,535 |
| | Forcible Fondling | 3,389 | 544 | | | | | 3,933 |
| | Robbery | 4,950 | 47,778 | 9,885 | 6 | 41 | | 62,660 |
| | Aggravated Assault | 14,931 | 77,837 | | | | | 92,768 |
| | **TOTAL VIOLENT** | **27,498** | **131,714** | **9,885** | **6** | **41** | | **169,144** |
| | Burglary | 3,231 | 199,956 | 64,352 | 3,084 | 5,999 | | 276,622 |
| | Larceny | 20,260 | 390,774 | 202,254 | 816 | 6,896 | | 621,000 |
| | Motor Vehicle Theft | 712 | 91,207 | 11,975 | 58 | 293 | | 104,245 |
| | **TOTAL NONVIOLENT** | **24,203** | **681,937** | **278,581** | **3,958** | **13,188** | | **1,001,867** |
| | TOTAL INDEX OFFENSES | 51,701 | 813,651 | 288,466 | 3,964 | 13,229 | | 1,171,011 |
| PART II MANDATORY | Manslaughter | 23 | 54 | | | | | 77 |
| | Kidnap/Abduction | 943 | 1,155 | | | | | 2,098 |
| | Arson | 37 | 1,984 | 708 | 38 | 309 | | 3,076 |
| | Simple Assault | 27,887 | 131,072 | | | | | 158,959 |
| | Drug/Narcotic: Sale/ Man./Poss. | | | | | | 54,998 | 54,998 |
| | Drug/Narcotic: Equipment | | | | | | 4,077 | 4,077 |
| | Bribery | 0 | 17 | 2 | 0 | 5 | 7 | 31 |
| | Embezzlement | 37 | 900 | 2,718 | 7 | 58 | 11 | 3,731 |
| | Fraud | 111 | 9,960 | 27,623 | 16 | 970 | 632 | 39,312 |
| | Total Part II Mandatory | 29,038 | 145,142 | 31,051 | 61 | 1,342 | 59,725 | 266,359 |
| | TOTAL FOR FLORIDA | 80,739 | 958,793 | 319,517 | 4,025 | 14,571 | 59,725 | 1,437,370 |

# ARREST TOTALS BY AGE AND SEX

## 1991

| OFFENSES | JUVENILE | | ADULT | | TOTAL | |
|---|---|---|---|---|---|---|
| | MALE | FEMALE | MALE | FEMALE | MALE | FEMALE |
| Murder | 174 | 14 | 1,032 | 117 | 1,206 | 131 |
| Forcible Sex Offenses | | | | | | |
| Forcible Rape | 423 | 0 | 2,189 | 2 | 2,612 | 2 |
| Forcible Sodomy | 124 | 4 | 311 | 16 | 435 | 20 |
| Forcible Fondling | 220 | 11 | 823 | 21 | 1,043 | 32 |
| Robbery | 3,051 | 177 | 9,446 | 785 | 12,497 | 962 |
| Aggravated Assault | 4,657 | 1,012 | 26,147 | 4,920 | 30,804 | 5,932 |
| Burglary | 11,622 | 847 | 20,123 | 1,396 | 31,745 | 2,243 |
| Larceny | 19,719 | 8,639 | 51,740 | 24,855 | 71,459 | 33,494 |
| Motor Vehicle Theft | 5,649 | 631 | 7,219 | 779 | 12,868 | 1,410 |
| **TOTAL INDEX** | **45,639** | **11,335** | **119,030** | **32,891** | **164,669** | **44,226** |
| Manslaughter | 11 | 3 | 118 | 27 | 129 | 30 |
| Kidnap/Abduction | 42 | 5 | 553 | 73 | 595 | 78 |
| Arson | 242 | 38 | 341 | 76 | 583 | 114 |
| Simple Assault | 4,378 | 1,141 | 25,030 | 3,698 | 29,408 | 4,839 |
| Drug/Narcotic: Sale/Man./Poss. | 4,320 | 401 | 52,740 | 10,266 | 57,060 | 10,667 |
| Drug/Narcotic: Equipment | 113 | 13 | 3,639 | 1,293 | 3,752 | 1,306 |
| Bribery | 0 | 1 | 46 | 11 | 46 | 12 |
| Embezzlement | 200 | 125 | 1,464 | 751 | 1,664 | 876 |
| Fraud | 402 | 131 | 5,462 | 2,215 | 5,864 | 2,346 |
| Counterfeit/Forgery | 175 | 99 | 3,328 | 1,243 | 3,503 | 1,342 |
| Extortion/Blackmail | 50 | 5 | 335 | 20 | 385 | 25 |
| Intimidation | 964 | 149 | 7,315 | 1,434 | 8,279 | 1,583 |
| Prostitution/Commercialized Sex | 44 | 67 | 4,329 | 4,048 | 4,373 | 4,115 |
| Non-Forcible Sex Offenses | 216 | 23 | 3,983 | 375 | 4,199 | 398 |
| Stolen Property: Buy/Receive/Possess | 937 | 103 | 4,617 | 678 | 5,554 | 781 |
| Driving Under Influence | 258 | 38 | 46,594 | 8,635 | 46,852 | 8,673 |
| Destruction/Damage/Vandalism | 2,351 | 250 | 2,818 | 402 | 5,169 | 652 |
| Gambling | 49 | 0 | 724 | 69 | 773 | 69 |
| Weapon Violations | 1,715 | 178 | 7,529 | 667 | 9,244 | 845 |
| Liquor Law Violations | 1,620 | 584 | 25,919 | 4,096 | 27,539 | 4,680 |
| Miscellaneous | 14,341 | 2,232 | 219,217 | 41,527 | 233,558 | 43,759 |
| **TOTAL PART II** | **32,428** | **5,586** | **416,101** | **81,604** | **448,529** | **87,190** |
| **TOTAL FOR FLORIDA** | **78,067** | **16,921** | **535,131** | **114,495** | **613,198** | **131,416** |

TOTAL ARRESTS FOR FLORIDA 744,614

# Florida Department of Law Enforcement

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