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**FILED**

SID J. WHITE

**JAN 3 1994**

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

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

STATE OF FLORIDA, :  
 :  
 Petitioner, :  
 :  
 v. :  
 :  
 AUGUSTUS RAWLS, :  
 :  
 Respondent. :

CASE NO. 82,793

JURISDICTIONAL BRIEF OF RESPONDENT

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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, :  
Petitioner, :  
v. : CASE NO. 82,793  
AUGUSTUS J. RAWLS, :  
Respondent. :  
\_\_\_\_\_ :

JURISDICTIONAL BRIEF OF RESPONDENT

PRELIMINARY STATEMENT

As the State concedes, intradistrict conflict is not a basis for conflict jurisdiction, and therefore Respondent respectfully asks the Court not to consider the State's reference in its preliminary statement to Saffor v. State, 18 Fla.L. Weekly D2046 (Sept. 15, 1993, Fla. 1st DCA). If the Court does consider Saffor, Respondent points out that the question certified in Saffor is not the same question of law that the State presents here. In Saffor, the First District certified this question:

WHAT IS THE CORRECT STANDARD TO BE  
UTILIZED IN DETERMINING THE  
ADMISSIBILITY OF COLLATERAL CRIME  
EVIDENCE IN CASES INVOLVING SEXUAL  
BATTERY WITHIN THE FAMILIAL CONTEXT?

18 Fla.L. Weekly at D2047. In contrast, the question the State suggests is in conflict here is whether the relationship between the defendant and victim could be classified as

familial or custodial. While related, these are two different questions.

## ARGUMENT

### ISSUE

THE DECISION OF THE DISTRICT COURT OF APPEAL IN THIS CASE DOES NOT EXPRESSLY OR DIRECTLY CONFLICT WITH THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN BIERER V. STATE, 582 SO. 2D 1230 (FLA. 3D DCA 1991) ON THE SAME QUESTION OF LAW.

The decision of the First District in this case does not expressly or directly conflict with the Third District decision in Bierer v. State, 592 So. 2d 1230 (Fla. 3d DCA 1991) for several reasons. First, there is no direct conflict because the facts of Bierer are distinguishable from the facts at bar. In Bierer the Third District stated without dispute that "the defendant exercised parental-type supervision of the neighborhood child on a daily basis at his home." Bierer at 1232 (emphasis added). Furthermore, other district court cases cited by Bierer all describe either care and control of the child by the defendant, responsibility for the child by the defendant or a close relationship between the child and the defendant. Bierer at 1232, citing Coleman v. State, 485 So. 2d 1342 (Fla. 1st DCA 1986); Stricklen v. State, 504 So. 2d 1248 (Fla. 1st DCA 1986) and Collins v. State, 496 So. 2d 997 (Fla. 5th DCA 1986, rev. denied, 506 So. 2d 1040 (Fla. 1987)).

In contrast, while the similar fact incidents here included situations in which Mr. Rawls lived with the families and bought the children things, there was no evidence or suggestion that he exercised any authority or responsibility for the children. The descriptions of his living arrangements with the

families were presented to demonstrate similarity of the situations, but did not establish a familial or custodial context. Since the facts here differ so markedly from the facts of Bierer, there is no direct conflict.


Furthermore, there is no express conflict on the same question of law. Petitioner suggests that the question of law in both cases was whether the relationship between the defendant and the victim could be classified as familial or custodial. Jurisdictional Brief of Petitioner at p.5. But the question of whether defendant was in a familial or custodial relationship was never really a disputed legal issue in this case. Petitioner has not suggested that the First District applied the wrong law. The state does not challenge the First District's statement of the law of Heuring, that "Heuring only authorizes use [of similar fact evidence] for corroboration in a familial or custodial situation. Slip op. at p.7. The State merely disagrees with the way the First District interpreted the facts here, its application of the law to the facts. Such is not an express conflict of law that this Court need address.

CONCLUSION

Respondent respectfully asks this Court not to exercise its discretionary jurisdiction to review the decision below, and asks the Court not to consider the merits of Petitioner's argument.

Respectfully submitted,

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