IN THE SUPREME COURT OF FLORIDA

ALFREDCO LETT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. 87,541

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Alfredco Lett, the Appellant in the First District Court of Appeal and the defendant in the trial court, will be referenced in this brief as Petitioner or his proper name.

The symbol "R" will refer to the record on appeal, and the symbol "T" will refer to the transcript of the trial court's proceedings; "IB" will designate the Initial Brief of Petitioner. Each symbol will be followed by the appropriate page number in parentheses.

All emphasis through bold lettering is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

The State accepts petitioner's statement with the following qualifiers and additions.

1. The motion for judgment of acquittal on the weight of the evidence reads as follows:

> First of all, I would like to move for judgement of acquittal based on the Court's capacity after all the evidence as being heard and my argument that the verdict was against the greater weight of the evidence. Judge, this was a clear-cut self-defense case that I have ever heard. A woman has a broken beer bottle and I could possibly understand if they found him guilty of the aggravated assault, but certainly not the aggravated battery. I feel it was against the greater weight of the evidence. At the same time and same motion move for a new trial on the same ground.

(T 176-177)

The record shows that there was conflicting evidence on which the jury could have based a guilty verdict, as it did, or on which it could have found self defense, which it did not. (T 58-99)

2. The record on appeal does not show that any objection was made by the petitioner or his counsel concerning the absence of petitioner, if he was absent, from the sidebar conferences on jury selection. (T 29-39)

SUMMARY OF ARGUMENT

ISSUE I.

This Court should decline review of this issue because the lower tribunal's decision was a routine application of settled principles to the facts of the case. The lower tribunal's

pronouncement does not misstate the law and contains no legal issue warranting review by this Court.

If, this Court accepts the case for review it should affirm the decision of the lower tribunal. The decision should be affirmed because in the trial court petitioner never asserted that the evidence was legally insufficient. Thus, the issue was not properly preserved.

Additionally, the victim's unrebutted testimony examined in a light favorable to the state (as required by the case law) provided sufficient evidence to submit the charges to the jury. Therefore, the decision should be affirmed.

ISSUE II.

The question certified by the district court has already been answered and does not rise to the level of a question of great public importance. Thus, discretionary review should be denied. The Court should also decline review because the petitioner is not a member of the pipeline class who could benefit from an affirmative answer to the certified question, as he did not raise the issue at trial.

Finally, the state urges that if this Court answers the question, that it answer the question in the negative. The

question should be answered in the negative because the issue has been decided, because this Court has the authority to make its decisions prospective, and because modifications of rules of procedure are appropriately prospective only.

ARGUMENT

ISSUE I

DID THE TRIAL COURT ERR BY DENYING PETITIONER'S MOTION FOR JUDGEMENT OF ACQUITTAL? (Restated)

Petitioner argues that the trial court erred in denying the motion for judgement of acquittal. Petitioner is wrong and this Court should reject his arguments.

Jurisdiction

Pursuant to Article V § 3(b)(4) Florida Constitution this Court "[m]ay review any decision of a district court of appeal that passes upon a question certified by it to be one of great public importance." When the Court obtains jurisdiction over a case, it obtains jurisdiction over all issues in the case. The District Court of Appeal of Florida, First District has certified a question, therefore, this Court has jurisdiction.

Exercise of Jurisdiction

While this Court has jurisdiction to answer this question, this Court has the discretion to decide whether it should exercise its jurisdiction and hear the case. State v. Burgess, 326 So.2d 441 (Fla. 1976), Stein v. Darby, 134 So.2d 232 (Fla. 1961) The state urges this Court to exercise its discretion and

decline to review this case. Coffin v. State, 374 So.2d 504, 508 (Fla. 1979)

This Court should decline review of this issue because the lower tribunal's decision was a routine application of settled principles to the facts of the case. The district court simply held without explanation that it agreed with the trial court that the victim's unrebutted testimony provided sufficient evidence to submit the charges to the jury. This pronouncement does not misstate the law and contains no legal issue warranting review by this Court.

Furthermore, the sufficiency of the evidence was not properly preserved by a specific objection in the trial court. Petitioner did not move for a judgement of acquittal on sufficiency grounds at the close of the state's case. (T 110) Petitioner in his initial brief acknowledges that the trial lawyer's motion made after the verdict was a motion for judgement of acquittal based on the **greater weight** of the evidence. I.B. 11, (T 176) Rule 3.380 F. R. Crim. P. provides for the making of a motion for judgement of acquittal during and after trial. The rule provides that such a motion may be granted when the evidence is insufficient. Rule 3.600 F.R.Crim.P. provides for a motion for new trial upon the ground of the weight of the evidence.

Appellant's motion which did not raise an issue relative to the sufficiency of the evidence did not properly preserve the issue for appellate review because motions for judgements of acquittal are not granted based on the weight of the evidence. This Court emphasized this rule in the case of Tibbs v. State, 397 So.2d 1120 (Fla. 1981). In Tibbs, this Court set the standard by stating:

> [T]he concern on appeal must be whether after all reasonable inferences therefrom have been resolved in favor of the verdict on appeal, there is substantial, competent evidence to support the verdict and judgment. Legal sufficiency alone, as opposed to evidentiary weight, is the appropriate concern of an appellate tribunal.

Id., at 1123.

This Court has reaffirmed this ruling many times. See Grossman v. State, 525 So.2d 833 (Fla. 1988). Only the sufficiency of the evidence and not its weight is reviewable on appeal.

Because the specific objection to the verdict was a motion for judgement of acquittal based on a ground which is not a basis for a judgement of acquittal, the motion did not preserve for appellate review the issue of whether the trial

court's denial of the motion for judgement of acquittal was error. State v. Barber, 301 So.2d 7 (Fla. 1974) Because the error raised was not properly preserved for review in the District Court, this Court should not exercise its discretion to review the District Court's denial of relief.

Merits

Even if this Court were to review the issue, petitioner would not be entitled to relief.

Certain rules also apply when an appellate court is reviewing the denial of a motion for judgment of acquittal based on the insufficiency of the evidence. When a defendant moves for a judgment of acquittal, he admits all facts in evidence and all reasonable inferences that may be drawn from those facts. Anderson v. State, 504 So.2d 1270 (Fla. 1st DCA 1986). Therefore, facts and inferences must be reviewed in the light most favorable to the state. Buenoano v. State, 478 So.2d 387 (Fla. 1st DCA 1985).

Florida courts have also repeatedly held the credibility of witnesses and weight of conflicting testimony should not be examined on a motion for judgment of acquittal. Busch v. State, 466 So.2d 1075, 1079 (Fla. 3d DCA 1984); Lynch v. State, 293

So.2d 44, 45 (Fla. 1974). These issues are for the jury to decide. Heiney v. State, 447 So.2d 210 (Fla. 1984).

What petitioner is asking this Court to do is to violate these rules which have been uniformly applied in every sufficiency of the evidence case since Tibbs and reweigh the evidence especially the credibility determination of the jury. This Court should reject such a request.

In evaluating the issue of the legal sufficiency of the evidence, this Court has repeatedly stated that the issue is whether the evidence viewed in a light most favorable to the State establishes a prima facie case of the charged offense. Lynch v. State, 293 So.2d 44 (Fla. 1974), State v. Law, 559 So.2d 187 (Fla. 1990). Moreover, even if the evidence is circumstantial and susceptible to more than one construction; when the issue is whether a prima facie case has been shown, such evidence is sufficient. Lynch As the Supreme Court said in State v. Allen, 335 So.2d 823 (Fla. 1976):

> Circumstantial evidence, by its very nature, is not free from alternate interpretations. The state is not obligated to rebut conclusively every possible construction in a way which is consistent only with the allegations against the defendant. Were those requirements placed on the state for these purposes, circumstantial evidence

> would always be inadequate to establish a preliminary showing of the necessary elements of a crime.

At trial the direct evidence established that the victim chased the petitioner from the front porch of her residence using a broken bottle. The victim testified that after petitioner went around the corner she dropped the bottle because the argument was over. She testified that after she dropped the bottle, petitioner took a tire iron and struck her on the arm. This blow broke the victim's arm. Petitioner then followed her back to the house and was going to strike her again. (T 58-74) If believed, this assertion establishes the elements of the crimes charged and is sufficient to send the case to the jury.

Petitioner cannot rely on alternative inferences because in making his motion appellant admits the facts in evidence and all reasonable inferences stemming from those facts. Thus, petitioner cannot rely on any self serving claim of self defense. He is bound by the state's facts which established that petitioner attacked the victim after she had ceased chasing him and had disarmed. Once she had disarmed and ceased any assault, petitioner has no basis to claim that self defense authorizes him

to employ deadly or non deadly force by striking the woman with a tire iron.

When the law is applied to the facts of this case, the only conclusion that can be drawn is the one that the trial court that the motion for judgement of acquittal was properly denied.

Summary

This Court should decline review of this issue because the decision of the lower tribunal was a routine application of settled principles to the facts of the case. The lower tribunal's pronouncement does not misstate the law and contains no legal issue warranting review by this Court.

If, this Court accepts the case for review it should affirm the decision of the lower tribunal. The decision should be affirmed because in the trial court petitioner never asserted that the evidence was legally insufficient. Thus, the issue was not preserved.

Additionally, the victim's unrebutted testimony examined in a light favorable to the state (as required by the case law) provided sufficient evidence to submit the charges to the jury. Therefore, the decision should be affirmed.

CERTIFIED QUESTION

DOES THE DECISION IN CONEY APPLY TO "PIPELINE CASES," THAT IS THOSE OF SIMILARLY SITUATED DEFENDANTS WHOSE CASES WERE PENDING ON DIRECT REVIEW OR NOT YET FINAL DURING THE TIME CONEY WAS UNDER CONSIDERATION BUT PRIOR TO THE ISSUANCE OF THE OPINION?

Jurisdiction

Pursuant to Article V § 3(b)(4) Florida Constitution this Court "[m]ay review any decision of a district court of appeal that passes upon a question certified by it to be one of great public importance." The District Court of Appeal of Florida, First District has certified the above stated question, therefore, this Court has jurisdiction.

Exercise of Jurisdiction

While this Court has jurisdiction to answer this question certified by the lower tribunal, it also has the discretion to decline to do so. State v. Burgess, 326 So.2d 441 (Fla. 1976), Stein v. Darby, 134 So.2d 232 (Fla. 1961) The state urges this Court to exercise its discretion and decline to review this case. Coffin v. State, 374 So.2d 504, 508 (Fla. 1979)

The District Court of Appeal, First District of Florida, granted rehearing of its original opinion in order to certify this question. The certified question improperly asks this Court

to conduct a rehearing of its decision in Coney v. State, 653 So.2d 1009, 1013 (Fla. 1995). In Coney, this Court interpreted rule 3.180(a) F. R. Crim. P. and stated that:

> Our ruling today clarifying this issue is prospective only.

Id. at 1013

In certifying its question, the district court acknowledged that it understood the meaning of the language used by this Court in Coney: prospective means the decision does not apply to cases tried prior to the decision. The decision below questioned how the Coney decision can be reconciled with Smith v. State, 598 So.2d 1063 (Fla. 1992). In order to resolve what it perceived as an unanswered issue, the district court certified the question.

The district court's perception that an issue remains to be resolved is erroneous. Subsequent to the Smith decision, this Court has answered the question of how decisions of this Court are to be applied by the courts of this state. The issue was specifically addressed in Wuornos v. State, 644 So.2d 1000 (Fla. 1994), where this Court addressed the proper reading of Smith and held that Smith means that new points of law established by this Court shall be deemed retrospective with respect to all non-final

cases unless this Court says otherwise. The issue was discussed in Domberg v. State, 661 So.2d 285 (Fla. 1995) a case dealing with retroactivity. In Domberg, this Court referred to Smith in the following way:

> Smith v. State, 598 So.2d 1063 (Fla. 1992), limited by Wuornos v. State, 644 So.2d 1000, 1008 n.4 (Fla. 1994)(Smith read to mean that new points of law established by this Court shall be deemed retrospective with respect to all non-final cases unless this Court says otherwise), cert. denied ___ U.S. ___, 115 S.Ct. 1705, 131 L.Ed.2d 566 (1995), State v. Jones, 485 So.2d 1283 (Fla. 1986)

Domberg at 287

Thus, the issue of how Smith is to be read has been decided.

Since the issue presented by the certified question has been put to rest by recent decisions of this Court, it cannot be said that the certified question is one of any public importance. Therefore, this Court should decline to exercise its jurisdiction to answer the already decided question presented by this case. See Stein.

There is a second reason why this Court should decline to exercise its jurisdiction in this case. As part of its reason to certify the issue, the district court noted that there were numerous Coney-type cases in the pipeline. This statement

misapplies the definition of a pipeline case entitled to obtain the benefit from a new decision. A pipeline case is one in which the issue is properly preserved in an appeal which is not final at the time the change in law occurs. In order to be a pipeline case, an appellant must establish that he is similarly situated and his issue is properly preserved. This was made clear by this Court's holding in Gibson v. State, 661 So.2d 288 (Fla. 1995). There this Court held that issues relating to a defendant's presence during jury voir dire (like other jury voir dire issues) must be preserved in the trial court by contemporaneous objection. The Gibson case presented this Court on appeal with the following issue:

> Gibson claims error in two respects. First, he argues that the trial court violated his right to be present with counsel during the challenging of jurors by conducting the challenges in a bench conference. Second, he argues that the trial court violated his right to the assistance of counsel by denying defense counsel's request to consult with Gibson before exercising peremptory challenges.

This Court specifically held that:

> In Steinhorst v. State, 412 So.2d 332 (Fla. 1982), we said that, "in order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below." In this case, we find that Gibson's lawyer did not raise the issue that is now being asserted on appeal. If counsel wanted to consult with his client over which jurors to exclude and to admit, he did not

> convey this to the trial court. On the record, he asked for an afternoon recess for the general purpose of meeting with his client. Further, there is no indication in this record that Gibson was prevented or limited in any way from consulting with his counsel concerning the exercise of juror challenges. On this record, no objection to the court's procedure was ever made. In short, Gibson has demonstrated neither error nor prejudice on the record before this Court. Cf. Coney v. State, 653 So.2d 1009, 1013 (Fla. 1995)

Gibson at 290-291

Thus, Gibson's attempt to raise for the first time on appeal a Coney issue was rejected because it was not properly preserved. This rule of law operates independently of Coney and applies even to cases where the trial takes place after Coney issued. Likewise, petitioner did not object in the trial court and his case is indistinguishable from Gibson. Indeed, as the district court commented, it cannot even be shown that petitioner was not physically present at the sidebars.

This Court should discourage the promiscuous certification of irrelevant questions by declining to exercise its discretionary jurisdiction and by instructing the district courts that unpreserved claims cannot be the basis for "an issue of great public importance." Misapplication of the designation "this is an issue of great public importance" when the issue

certified could not provide the defendant with relief is all too common. In fact, this "Coney" issue has been repeatedly certified by the lower tribunal in cases which do not contain any objection to the trial court procedure. See Branch v. State, no 87,717, Bell v. State, No. 87,716, Gainer v. State, No. 87,720, Lee No. 87,715, Horn No. 87,789 Continuation of this practice should be discouraged.

Merits

This Court, if it exercises discretionary review, should answer the certified question in the negative.

This Court specifically answered the question of how its decisions are to be applied in, e.g., Wuornos v. State, 644 So.2d 1000 (Fla. 1994), where this Court addressed the proper reading of Smith and held that Smith means that new points of law established by this Court shall be deemed retrospective with respect to all non-final cases unless this Court says otherwise. The Court noted that it had repeatedly held that it had the authority to make new rules prospective and cited a series of cases in which it had dictated that the new rule was to be prospective only.

The issue was again addressed in Domberg v. State, 661 So.2d 285 (Fla. 1995) a case dealing with retroactivity. In Domberg, this Court referred to Smith in the following way:

> Smith v. State, 598 So.2d 1063 (Fla. 1992), limited by Wuornos v. State, 644 So.2d 1000, 1008 n.4 (Fla. 1994)(Smith read to mean that new points of law established by this Court shall be deemed retrospective with respect to all non-final cases unless this Court says otherwise), cert. denied ___ U.S. ___, 115 S.Ct. 1705, 131 L.Ed.2d 566 (1995), State v. Jones, 485 So.2d 1283 (Fla. 1986)

Domberg at 287

Petitioner's arguments are based on a fundamental misunderstanding of the nature and scope of this Court's authority. Unlike the United States Supreme Court, this Court has the authority to promulgate procedural rules and modify them when necessary. For obvious reasons, changes to procedural rules are almost always prospective. Tucker v. State, 357 So.2d 719 (Fla. 1978) Thus, there will be many occasions for this Court's rulings to be prospective only. Adopting a rule akin to the United States Supreme Court rule in Griffin v. Kentucky, 479 U.S. 314 (1987) would be inappropriate given this Court's rulemaking authority and unduly restrict the Courts ability to modify the rules.

This approach is also appropriate given the subject of this litigation. Like the decision in R.J.A v. Foster, 603 So.2d 1167 (Fla. 1992) where the Court found the procedural rule superseded the statutory juvenile speedy trial provision, rule 3.180 superseded the provisions of § 914.01 Fla. Statutes. see Thomas v. State, 65 So.2d 866, 868(Fla. 1953) Thus, the rule is a procedural mechanism to implement a substantive right.

It must also be recognized that the rights provided in the rule and the rights mandated by the constitution are not synonymous. In Shriner v. State, 452 So.2d 929 (Fla. 1984) this Court held that it was not fundamental error when a defendant was absent from bench conferences because he was present in the courtroom. Likewise, in Jones v. State, 569 So.2d 1234, (Fla. 1990), this Court found no error when Jones was not at the sidebar during selection of the jury even though the record did not reflect an affirmative waiver.

Thus, the Coney interpretation of the term present is not constitutionally mandated but a modification of a rule of procedure setting out the manner in which the constitutional right should be implemented. See R.J.A.

Reading the rule in this fashion is in accord with federal practice. The United States law regarding this issue was

summarized in United States v. McCoy, 8 F.3d 495, 496 (7th Cir. 1993):

> [2] A defendant's right to be present at trial derives from several sources. First, the defendant has a sixth amendment right to confront witnesses or evidence against him. See United States v. Gagnon, 470 U.S. 522, 526, 105 S.Ct. 1482, 1484, 84 L.Ed.2d 486 (1985) (per curiam); Verdin v. O'Leary, 972 F.2d 1467, 1481 (7th Cir.1992); United States v. Shukitis, 877 F.2d 1322, 1329 (7th Cir.1989). That right is not implicated here, because no witness or evidence against McCoy was presented at any of the conferences. See Verdin, 972 F.2d at 1481-82.
>
> [3] The defendant also has a due process right to be present " 'whenever his presence has a relation, reasonably substantial, to the fulness of his opportunity to defend against the charge.' " Gagnon, 470 U.S. at 526, 105 S.Ct. at 1484 (quoting Snyder v. Massachusetts, 291 U.S. 97, 105-06, 54 S.Ct. 330, 332, 78 L.Ed. 674 (1934)). But " 'the presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only.' " Id. (quoting Snyder, 291 U.S. at 107-08, 54 S.Ct. at 333); see also Verdin, 972 F.2d at 1481-82; United States v. Moore, 936 F.2d 1508, 1523 (7th Cir.), cert. denied, --- U.S. ----, 112 S.Ct. 607, 116 L.Ed.2d 630 (1991); Shukitis, 877 F.2d at 1329-30. That determination is made in light of the record as a whole. Gagnon, 470 U.S. at 526-27, 105 S.Ct. at 1484.
>
> In Gagnon, the Supreme Court found that defendants' due process rights were not violated when they were excluded from an in camera conference between the judge, defense counsel and a juror regarding the juror's possible bias. The Court based its holding on the fact that the defendants "could have done nothing had they been at the conference, nor would they have gained anything by attending." Id. at 527, 105 S.Ct. at 1485. In Shukitis, we similarly held that a

defendant's due process rights were not implicated when he was excluded from an in camera conference that addressed a separation of witnesses order. We reasoned that the absence did not affect the court's ability to decide the issue or otherwise diminish Shukitis' ability to defend against the charges, and that Shukitis' interests were adequately protected by his counsel's presence at the conference. 877 F.2d at 1330. See also Moore, 936 F.2d at 1523.

As in Gagnon and Shukitis, McCoy's absence from the conferences did not detract from his defense or in any other way affect the fundamental fairness of his trial. Indeed, McCoy seems to have conceded this point, having offered no argument to the contrary. Like Shukitis, McCoy's interests were sufficiently protected by his counsel's presence at the conferences. McCoy therefore had no due process right to attend.

[4] Finally, Fed.R.Crim.P. 43 entitles defendants to be present "at every stage of the trial including the impaneling of the jury...." (FN1) This right is broader than the constitutional right (Shukitis, 877 F.2d at 1330), but is waived if the defendant does not assert it. Reversing the Ninth Circuit in Gagnon, the Supreme Court explained:

We disagree with the Court of Appeals that failure to object is irrelevant to whether a defendant had voluntarily absented himself under Rule 43 from an in camera conference of which he is aware. The district court need not get an express "on the record" waiver from the defendant for every trial conference which a defendant may have a right to attend.... A defendant knowing of such a discussion must assert whatever right he may have under Rule 43 to be present.

470 U.S. at 528, 105 S.Ct. at 1485; cf. Taylor v. United States, 414 U.S. 17, 18-20, 94 S.Ct. 194, 195-96, 38 L.Ed.2d 174 (1973) (per curiam). A defendant may not assert a Rule 43 right for the first time on appeal. Gagnon, 470 U.S. at 529, 105 S.Ct. at 1485; Shukitis, 877 F.2d at 1330. Because McCoy did

not invoke Rule 43 either during trial or in a post-trial motion, he has waived any right under that rule. (FN2)

Because of the availability of consultation between a lawyer and his client present for trial, there is no due process violation when a defendant is not present at the bench during a sidebar for peremptory challenges. See, McCoy, United States v. Gayles, 1 F.3d 735 (8th Cir. 1993), United States v. Moore, 936 F.2d 1508, 1523 (7th Cir. 1991), United States v. Bascaro, 742 F.2d 1335 (11th Cir. 1984) Therefore, the only legitimate conclusion is that the Coney decision was not one of constitutional magnitude.

In United States v. Gagnon, 470 U.S. 522, 526-530 (1985) the Supreme Court indicated that the right of the defendant to be present under Rule 43 of the Federal Rules of Criminal Procedure (similar to our rule) is broader than the constitutionally based right to be present. In Gagnon, the Court held that such claims must be preserved at trial and that waiver of the benefits of the Rule 43 right to be present may be inferred by a defendant's failure to assert the right at trial. Thus, the United States Supreme Court recognizes that rule right must be asserted at trial by the defendant, our rule should adopt this approach.

Finally, to state the problem and analysis in a slightly different form. The district court and the petitioner fail to distinguish between the Coney decision and the prospective rule announced in that decision. Coney is applicable to all pipeline cases, including the one at hand. However, Coney by its terms plainly announces that the new procedural rule established therein is only applicable to trials which occur after the announcement of the new rule. By its terms it does not provide relief to any appellant/petitioner whose trial occurred before the Coney decision became final. Not only is it uncontroverted that the issue was not preserved below, it is also uncontroverted that the trial occurred before the issuance of Coney. The district court is simply misapprehending the plain language of Coney in perceiving a conflict with Smith. None exists.

Summary

The question certified by the district court has already been answered and does not rise to the level of a question of great public importance. Thus, discretionary review should be denied. The Court should also decline review because the petitioner is not a member of the pipeline class who could benefit from an affirmative answer to the certified question, as he did not raise the issue at trial. Gibson

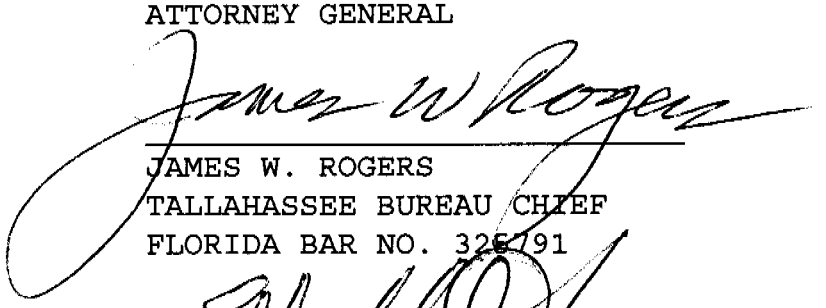
Finally, the state urges that if this Court answers the question, that it answer the question in the negative. The question should be answered in the negative because the issue has been decided, because this Court has the authority to make its decisions prospective, and because modifications of rules of procedure are appropriately prospective only.

CONCLUSION

Based on the foregoing, the State respectfully submits should decline to answer the certified question. Alternatively the State respectfully submits that the certified question should be answered in the negative, and the judgement entered in the trial court should be affirmed.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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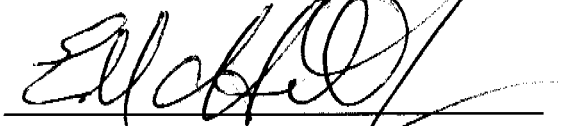

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S ANSWER BRIEF ON THE MERITS has been furnished by U.S. Mail to Raymond Dix, Esq.; Assistant Public Defender; Leon County Courthouse, Suite 401, North; 301 South Monroe Street; Tallahassee, Florida 32301, this 22nd day of May, 1996.

Edward C. Hill, Jr.
Assistant Attorney General

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