SUPREME COURT OF FLORIDA

JOHN WESLEY HENDERSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO.: 92-885

District Court of Appeal,
1st District - No.: 97-0795

PETITIONER'S INITIAL BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

For purposes of this brief, the Petitioner will be referred to as Petitioner, Defendant or Henderson; the Respondent shall be referred to as Respondent or the State. Citations (A-) refer to exhibits in Volume I of the Appendices followed by the appropriate page number. Citations (T-) refer to the hearing transcript contained in Volume II of the Appendices followed by the appropriate page number.

STATEMENT OF CASE AND FACTS

John Wesley Henderson was indicted by a Bay County Grand Jury on June 5, 1996 for the offense of the premeditated murder of Lawrence Pinkard. A second count of the indictment charges Henderson with the grand theft of an unspecified sum of United States Currency from Pinkard. (A-1) Tracy Adams was indicted by the same Grand Jury with these same offenses. Ms. Adams, however, was indicted by a separate indictment and is being tried separately from Henderson. The State Attorney has announced his intention to seek the death penalty should Henderson be convicted of the murder charge. Henderson has been declared indigent by the trial court and is presently incarcerated pending trial.

Counsel for Henderson elected not to participate in discovery available pursuant to the provisions of Rule 3.220, *Fla.R.Crim.P.* By not participating in discovery under the rules of criminal procedure, the defense seeks to avoid the reciprocal disclosure requirements of Rule 3.220(d). Henderson's defense has thus far relied upon independent investigation and preparation of his case by counsel and a private investigator. This investigation has made use of the Florida Public Records laws, Chapter 119, *Fla. Stat.,* to obtain records from public agencies where necessary. The defense has diligently avoided any use of the discovery tools provided by Rule 3.220 *et.seq., Fla.R.Crim.P.*.

Counsel for alleged co-perpetrator, Tracy Adams, has elected to engage in discovery under the applicable rules of procedure. Full disclosure, as required by the discovery rules, presumably has been made to Adam's counsel. No effort has been made by Henderson, however, to obtain such discovery materials from Adam's counsel.

In furtherance of the defense investigation, on or about February 10, 1996 counsel caused a letter to be served on the Sheriff of Bay County, pursuant to the Public Records Law, seeking "...an opportunity to inspect and copy all investigative reports. . .relating to the death of Lawrence Pinkard and/or the subsequent arrest of Tracy Adams and John Henderson." The request also sought to examine any other files wherein these same people were either ". .complainants, victims witnesses and/or defendants." (A-2)

In response to this request, the Sheriff's Department immediately notified the State Attorney of the Request. (T-2) The State Attorney, on February 11, 1996 filed a Motion for Protective Order/Sanctions (A-3) and obtained a hearing thereon with less than three (3) hours notice. (T-6) Upon presentation of argument, the trial court ruled that the defendant's public records request was tantamount to participation in discovery under the Florida Rules of Criminal Procedure and thus triggered the reciprocal disclosure obligation of Rule 3.220(d).

This ruling was effectively rendered when reduced to writing on February 19, 1997. (A-4)

The trial court's written ruling found that the records sought by the defendant's public records request have in fact previously been disclosed in discovery to Adams and are "otherwise public records" subject to the court's inherent authority to regulate the discovery process. The trial court then held "[t]hat the defendant's public records request *does* constitute engaging in discovery pursuant to the criminal discovery rules." The court went on to find that this issue is one having a "substantial impact upon this defendant, as well as others similarly situated. Therefore this court certifies that this is a question of great public importance." (A-4) (emphasis in original)

Thereafter, Henderson timely filed his Petition For Writ of Certiorari in the First District Court of Appeal seeking relief from the trial court's Order imposing reciprocal discovery obligations upon Henderson due to his request for public records from the Sheriff's Department. Upon application by Henderson, the First District Court of Appeal granted a Stay of the proceedings in the trial court pending disposition of the Petition For Writ of Certiorari. (A-6) Following briefing and oral argument before the First District Court of Appeal, the court below filed an opinion on April 2, 1998 that denied Henderson's petition for writ

of certiorari and agreed with the trial court that the following question should be certified to the Florida Supreme Court as an issue of great public importance having a substantial impact on similarly situated criminal defendants that :

> DOES SECTION 119.07 (8), FLORIDA STATUTES (Supp. 1996), LIMIT A CRIMINAL DEFENDANT'S PRE-TRIAL DISCOVERY OF NONEXEMPT PUBLIC RECORDS REGARDING HIS OR HER PENDING PROSECUTION, TO THE DISCOVERY PROVISIONS IN FLORIDA RULE OF CRIMINAL PROCEDURE 3.220, SUCH THAT RECEIPT OF SUCH RECORDS TRIGGERS A RECIPROCAL DISCOVERY OBLIGATION FOR THAT DEFENDANT?

The First District Court of Appeal relied upon the language of Section 119.07 (8), Fla. Stat. for reasoning that a criminal defendant incurs a reciprocal obligation of disclosure upon requesting public records. The First District recognized that the State conceded that the material requested by Henderson had become public records and "...note[d] that none of the exceptions provided for in section 119.011 (3) (c)5 have been asserted in the case at bar." *Henderson v. State,* 708 So.2d 642,643 (Fla.1st DCA 1998). The First District Court of Appeal also observed that the documents were allowed to be produced to the trial court under seal, pending the outcome of the appeal. *Id.* at 643.

Mandate was issued by the First District Court of Appeal on April 20, 1998. Thereafter, Henderson timely filed his Notice To Invoke Discretionary Jurisdiction of The Florida Supreme Court on April 23, 1998 challenging the

correctness of the opinion of the First District Court of Appeal.

SUMMARY OF ARGUMENT

The question certified to this Honorable Court as a question of great public importance having a substantial impact on similarly situated criminal defendants should be answered in the negative holding that a criminal defendant's request for nonexempt public records in the preparation of an independent investigation does not trigger reciprocal discovery obligations where that defendant has not otherwise participated in discovery pursuant to the provisions of *Fla. R.Crim.P. 3.220.* This Court has previously rejected the argument that Section 119.07(1), providing for disclosure "under reasonable conditions", could be construed to require a reciprocal discovery obligation as a reasonable condition. *Wait v. Florida Power & Light Company,* 372 So.2d 420 (Fla.1979). Moreover, the statute relied upon by the First District as the basis for upholding the lower court, Section 119.07 (8), states unequivocally that the provisions of the statute "... are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution."

Furthermore, in *Llanes v. State,* 603 So.2d 1294, (Fla.3d DCA1992), the court recognized that discovery depositions in parallel administrative proceedings did not subject a criminal defendant to reciprocal disclosure obligations where the

defendant did not otherwise participate in discovery pursuant to *Fla. R.Crim.P. 3.220.* Likewise, where the defendant, as Petitioner, has not otherwise participated in discovery pursuant to *Fla. R.Crim.P. 3.220,* an obligation of reciprocal disclosure should not arise when the defendant requests public records.

Accordingly, the certified question should be answered in the negative, the opinion of the First District Court of Appeal should be reversed and the Order of the trial court imposing reciprocal discovery obligations upon Petitioner should be quashed.

ARGUMENT

DOES SECTION 119.07 (8), FLORIDA STATUTES (Supp. 1996), LIMIT A CRIMINAL DEFENDANT'S PRE-TRIAL DISCOVERY OF NONEXEMPT PUBLIC RECORDS REGARDING HIS OR HER PENDING PROSECUTION, TO THE DISCOVERY PROVISIONS IN FLORIDA RULE OF CRIMINAL PROCEDURE 3.220, SUCH THAT RECEIPT OF SUCH RECORDS TRIGGERS A RECIPROCAL DISCOVERY OBLIGATION FOR THAT DEFENDANT?

The appellate court below reasoned that the language of Section 119.07 (8), Fla. Stat. required and triggered a reciprocal obligation of disclosure upon a criminal defendant where such defendant made a request for public records. The First District recognized that Section 119.07 (8) provides as follows:

> The provisions of this section are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution...

The erroneous interpretation of the above section is readily apparent upon careful review. Firstly, if "... provisions are not intended to expand or limit...", then there should be no impact, i.e. nothing more or less. The answer to the certified question is answered in the negative by simply reading the language of the applicable statute, Section 119.07 (8). No reciprocal obligation is triggered by receipt of nonexempt public records.

The public records sought by Henderson are concededly public records.

Henderson has purposefully chosen not to avail himself of the provisions of Rule 3.220. Yet, the imposition of discovery obligations upon Henderson under the analysis employed by the appellate court below, in effect, *expands* the provisions of Rule 3.220 solely because he sought public records, as any other person could without penalty or imposition of any obligation whatsoever, and thereby denies to Henderson equal protection of law. (e.s.)

In *Wait v. Florida Power & Light Company,* 372 So.2d 420 (Fla.1979), this Court rejected the argument that Section 119.07(1), providing for disclosure "under reasonable conditions", could be construed to require a reciprocal discovery obligation as a reasonable condition. Furthermore, the court in *Llanes v. State,* 603 So.2d 1294, (Fla.3d DCA1992) held that taking depositions of state witnesses in a parallel administrative child abuse proceeding did not constitute participation in discovery in the criminal case arising from the same allegations, because rule 3.220 requires utilization of a discovery device in the pending criminal case.

The people of this state have determined that as a basic tenet of our organic and fundamental law most records and documents within the control of most agencies of the state and its political subdivisions should be open for inspection by any person. *Art.1 Section 24(a), Fla. Const.* This policy may be abridged in

limited circumstances by exemptions from disclosure provided in the state's general laws. However, such exemptions "shall be no broader than necessary to accomplish the stated purpose of the law." *Art. 1 Section 24(c), Fla. Const.*

In furtherance of this policy, Chapter 119, *Fla. Stat.* was enacted which provides that "[t]t is the policy of this state that all state, county, and municipal records shall be open for public inspection by any person."*F.S. 119.01(01).* There is a limited exemption from disclosure of active criminal investigative information. *F.S. 119.07(3)(b).* Active criminal investigative information is defined by two statutory provisions:

> (B) "Criminal Investigative Information"means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. *F.S. 119.011 (3)(b).*
>
> 2. Criminal investigative information shall be considered "active" as long as it is related to an on going investigation which is continuing with a reasonable good faith anticipation of securing an arrest or prosecution in the foreseeable future.
>
> In addition, . . .criminal investigative information shall be considered "active" while such information is directly related to pending prosecution or appeals. . .*F.S. 119.011(3)(d)2.*

The foregoing exemption is narrowed initially by the constitutional mandate that it be interpreted no more broadly that actual necessary to accomplish the

stated purpose of the law. Additionally, the legislature has provided that:

> (C). . ."criminal investigative information" *shall not* include:
>
> 5. Documents given. . .to the person arrested. . .except that the court in a criminal case may order that certain information required. . .to be given to the person arrested be maintained in a confidential manner and exempt from [disclosure] until released a trial *if* it is found that the release of such information would:
>
> a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; *and*
>
> B. Impair the ability of the state attorney to locate or prosecute a codefendant.
>
> *F.S. 119.0119(3)(c)5.* (Emphasis supplied)

The Court of Appeal, Fourth District, in reviewing the foregoing disclosure exemption determined that once documents have been released to a defendant in a criminal prosecution, the documents are then public records subject to disclosure and are no longer exempt as "active criminal investigative information." *Satz v. Blankenship,* 407 So.2d 396(Fla. 4th DCA 1981), *cert. denied,* 413 So.2d 877 (Fla. 1982). The decision of the Fourth District was reaffirmed three years later in *Bludworth v. Palm Beach Newspapers*, 476 So.2d 775 (Fla 4th DCA 1985). Similarly, the Second District Court of Appeal has concluded that documents provided to a defendant in discovery are not exempt from public disclosure as active criminal investigative records. *Tribune Company v. Public Records,*

P.C.S.O. #79-35504 Miller/Jent, 493 So.2d 480 (Fla. 2d DCA 1986).

In reliance on the foregoing authorities, John Henderson, through his counsel made a written demand upon the Sheriff of Bay County for an opportunity to inspect and copy the criminal investigative file related to the death of Lawrence Pinkard. (A-2) The State conceded in the trial court that the requested information has been disclosed, pursuant to Rule 3.220, *Fla.R.Crim.P.,* to the alleged co-perpetrator, Tracy Adams and under *Satz, Bludworth, and Tribune Company* the requested records are public records subject to disclosure under Chapter 119, Florida Statutes. (T-11, A-4)

The thrust of the State's objection to disclosure, and the sole basis of the trial court's ruling at issue, was that by utilizing the public records law the defendant would be obtaining law enforcement records relevant to the defendant's case without engaging in discovery pursuant to the criminal rules provisions. As a result the defendant would have no reciprocal obligation to disclose information developed by the defendant in the course of preparing his defense. This, complained the state, "does not put us on the same level playing field. . .it is going to be [trial] by ambush by the defense."(T-14)

The trial court concluded that obtaining records by means of the statutorily provided right of public access is effectively no different than obtaining the

records through the discovery process of the criminal procedure rules. Therefore, the trial court held that obtaining the requested documents, albeit admittedly subject to public disclosure, is no different than engaging in discovery under the criminal rules and therefore the defendant will incur a reciprocal disclosure obligation. (A-4)

There appears to be no prior decisional law directly addressing the issue raised by this appeal. However, the District Court of Appeal, Third District, has addressed the issue of reciprocal disclosure obligations in a somewhat similar factual context. In *Llanes v. State,* 603 So.2d 1294 (Fla. 3d DCA 1992) the court dealt with the issue of ". . . whether a defendant in a criminal case is deemed to have elected to participate in discovery, so that he is required to make reciprocal discovery to the state. . . solely because he has. . . taken discovery depositions in a parallel administrative proceeding." *Llanes* at 1294. Llanes was charged by information with capital sexual battery on his minor son. While the criminal case was making its way through the system, the defendant initiated an administrative proceeding challenging the Florida Department of Health and Rehabilitative Services [HRS] decision to identify him as the abuser of his son. The HRS abuse designation and the criminal charges were grounded upon the same facts. *Llanes* at 1295.

As part of the administrative action, Llanes' counsel took the depositions of several state witnesses that were being utilized in the administrative proceeding. However, Llanes did not engage in discovery pursuant to the criminal procedure rules in his simultaneously pending criminal case. The state attorney sought to compel reciprocal discovery by Llanes on the theory that utilizing discovery rights in the administrative action to obtain depositions otherwise obtainable through discovery in the criminal case constituted engaging in discovery pursuant to Rule 3.220. Thus the defendant had a reciprocal discovery obligation. The trial court agreed and entered an order compelling reciprocal disclosure by Llanes to the state.

The Third District Court of Appeal quashed the decision of the trial court. After a review of the genesis of the reciprocal disclosure provision of the criminal discovery rules and the abuses intended to be corrected by that provision, the appellate court held:

> It is therefore clear, beyond any hope of successful contradiction, that Fla.R.Crim.P. 3.220(a) and 3.220(d), by both its terms and underlying rationale, require that the defendant must participate in the discovery process *in the pending criminal case* in order to trigger the defendant's obligation to provide reciprocal discovery to the state under Fla.R.Crim. P. 3.220 (d)(1), (2). Contrary to the trial court's ruling, these rules have no application to discovery taken by the defendant in parallel administrative or civil proceedings.
>
> Turning to the instant case, it is undisputed that the defendant

> Sergio C. Llanes has not filed or served a notice of intent to participate in discovery in the criminal case, nor has he participated in any way in any criminal discovery under Fla.R.Crim.P. 3.220. That being so, he has incurred no reciprocal discovery obligations under Fla.R.Crim.P. 3.220(d)(1),(2), the fact that he has taken discovery depositions in a parallel HRS administrative proceeding cannot change this result. Llanes at 1298. (Emphasis supplied)

As in *Llanes,* the petitioner herein, John Henderson, has not served or filed a notice of intent to participate in discovery, nor has he in any way participated in discovery under Fla.R.Crim.P.3.220. Rather, Petitioner has diligently conducted the investigation of the prosecution's allegations and the preparation of his defense by utilizing resources available to any other individual or entity. He has utilized a private investigator; potential witnesses have been developed and interviewed;[1] relevant experts have been consulted; lab results have been obtained; and relevant documents have been obtained by various means, including the use of the public records law. All of this has been done without obtaining Fla.R.Crim.P.3.220 discovery disclosures from the state. Neither has the state engaged in any subterfuge by attempting to utilize the alleged co-perpetrator's discovery results.[2] Some of these efforts have without doubt resulted in the

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[1]The prosecution has not disclosed who their potential witnesses may be.

[2]Whether a co-perpetrator charged with the same crime but by separate indictment and being tried separately is synonymous with a "codefendant" as that term is used in Fla.R.Crim.P.3.220 (a) is an unresolved question. Arguably the defendant could fully utilize the discovery in the Adams case without incurring a reciprocal disclosure obligation.

defense obtaining information and materials that would have been provided as a part of discovery under the criminal rules provisions. Flor example, the defense has interviewed grand jury witnesses. The individuals were identified by the simple expedient of examining copies of subpoenas that are contained in the court file. These persons would have been identified by discovery under the criminal rules provisions. Yet, the state has not suggested that simple resort to these public records triggers reciprocal discovery obligation. Yet these are public records just like the investigative reports are public records.

The defendant has compelled the state to identify matters that fill within the scope of exculpatory evidence pursuant to *Brady v. Maryland,* 373 U.S. 83 (1963) and *U.S. v. Agurs,* 427 U.S. 97 (1976) and their progeny. (A-5) These materials would have been provided as a part of discovery had the defendant chosen to engage in such. Yet the state has not suggested that obtaining such matters triggers a reciprocal disclosure obligation.

The defendant has compelled the state to produce recorded and transcribed statements of the defendant. These too would have automatically been produced had the defendant engaged in discovery under the criminal rules provisions. Again however, the state has not suggested that a reciprocal obligation has been incurred as a result.

All of the foregoing have been obtained in a lawful, proper and ethical fashion, utilizing the investigative and legal acumen available to the defendant. Much of this has indeed duplicated what the defendant could have obtained, but is not obligated to obtain, through the resources of the criminal discovery rules. Yet, although the state clearly was aware that the defendant was obtaining these matters (after all, the state produced the matters) it was never suggested that a reciprocal was triggered simply because the matters duplicated what the defendant could have received through discovery. Similarly, the state never raised any objection on the grounds that it was being deprived of a "level playing field" or subjected to a trial by ambush.

The question inevitably follows then: Why does the defendant's utilization of a statutorily provided right-the same right any other person would have - to these particular public records suddenly have a cost that no other person is compelled to pay? Why must the defendant compromise his investigation and the preparation of his defense by reciprocal disclosure just to obtain public records that any other person or newspaper could obtain without question? The answer of course must be that these public records are no different than any other public records. There is no justification for making the defendant choose between his rights-the right to public records or the right to fully prepare a defense

uncompromised by premature disclosure. Like the petitioners Miller and Jent in *Tribune Company,* the trial court order at bar places the defendant Henderson between a real life Scylla and Charybdis. The trial court has placed a prior restraint upon the defendant's right to due process and effective assistance of counsel.

The state conceded in the trial court that the records sought by the defendant are public records and under *Satz,Bludworth,* and*Tribune Company* would be subject to disclosure. (T-14) Thus, if the seediest of sensationalizing tabloids sought these records, they would be entitled to receive them without restriction.[3] Yet, the petitioner, a human being that the state seeks to kill-but who is presumed to be innocent-cannot have the same unfettered access to these records. There is no rational basis for this distinction and the defendant is thus denied his equal protection rights by the trial court's order.

Moreover, it should be noted that these public records were sought by the undersigned counsel. Thus the trial court has also effectively deprived counsel of an individual right of access to these records.

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[3] Indeed, the First District opinion recognizes that the media may obtain such records as requested by Henderson and suggests that a reciprocal obligation is imposed upon the defendant " ...if a defendant or his attorney obtains such public records related to that defendant's criminal case from any source other than the media...". *Henderson,* at 644.

The opinion of the First District carves out a class for differential treatment for criminal defendants. The line drawn by the First District is arbitrary and capricious. Under the analysis of the First District, if the media or any member thereof elects to obtain the records and furnish them to defense counsel in any manner whatsoever, no reciprocal obligation arises. If, however, the defendant or his counsel request the same public records directly, a reciprocal obligation arises. Such distinction arbitrarily, and without justification, classifies persons accused of crimes in a class for differential and unequal treatment under the law. Such reasoning also opens the door for preferential treatment or assistance by the media or members thereof.

Rather than allow the media, or a member thereof, to further determine the accessability to records by any person, including those accused of crimes, the matter should be resolved judicially. The threshold inquiry should be whether the records are public records or not. If the records are public, as the indeed the State concedes they are, then no rational basis exists for depriving or penalizing a person charged with a crime of access thereto, particularly when the same records can be obtained by any other person without strings attached thereto.

The Fourth District Court of Appeal recently addressed a similar issue in *Cabral v. State*, 699 So.2d 294 (Fla.5th DCA 1997). In *Cabral*, defense counsel

made a public records request upon the State for the file of a codefendant who had participated in discovery pursuant to Rule 3.220. The court in *Cabral* recognized that the records sought were public but reasoned that the request of the defense was "knowingly and purposely" sharing in the discovery obtained by a codefendant triggering a reciprocal obligation under Rule 3.220(a).

Notwithstanding that the logic of *Cabral* is susceptible to an interpretation that classifies criminal defendants and counsel therefor as subject to indiscriminate treatment, the circumstances are not analogous to the case at bar. Firstly, unlike the circumstances in *Cabral*, Henderson did not make a request upon the State for a codefendant's file, and secondly, Henderson is not charged as a codefendant.

The State elected to charge Henderson and Adams separately and has, at all times, contended that they will be tried in separate trials. Such strategic decisions are within the discretion of the prosecution. The exercise of accessing public records should be within the discretion of the defense. Indeed, the purpose for the State's election to charge the defendants separately and to have separate trials is most likely to maintain a strategic advantage in the presentation of the case. The State may well choose to call certain witnesses in one case that are not presented by the State in the other case. While Henderson and Adams are accused of the

murder of Pinkard, they are not codefendants where the State's decisions in one case impact the other. The witness lists, even if both were participating in discovery, may very well be entirely different. In fact, the State may choose to try two entirely different theories or motives for the murder. The ability of defense counsel to aid or assist the other in the trial is unavailable by virtue of the State's election to charge and try the accused separately. Under such circumstances, can it seriously be contended that the State only wants a "level playing field"? [4]

And yet when the Petitioner requests only that which is concededly within the public domain, the State attempts to impose obligations of disclosure upon the Petitioner. A careful review of such argument leads to the inescapable conclusion that the First District erroneously upheld the lower court's Order in the case at bar and that such decision should be reversed with directions to grant the Petition For Certiorari and quash the Order of the lower court imposing reciprocal discovery obligations upon Petitioner. The certified question should be answered in the

[4] Moreover, it should be noted that the State in the instant case has thus far refused to go forward with the trial of Adams, insisting that Henderson must be tried separately and prior to Adams.

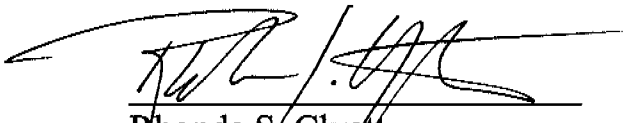
negative holding that the receipt of nonexempt public records by a criminal defendant does not trigger reciprocal discovery obligations. *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla.1979).

CONCLUSION

Based on the foregoing argument and citations of authority the certified question should be answered in the negative holding that the receipt of nonexempt public records by a criminal defendant does not trigger reciprocal discovery obligations. To hold otherwise denies Petitioner equal protection of law and deprives him of records that are public. A criminal defendant's access to public records or obligation to participate in reciprocal discovery pursuant to the provisions of Florida Rules of Criminal Procedure should not be left to a whimsical decision of the media, or a member the media, as would be the case according to the decision of the court below. Either the records are public or not.

In the case at bar, the State has conceded that the records are public and not subject to exemption. Thus, no rational basis exists for the differential treatment imposed upon defense counsel for obtaining such records. Moreover, the opinion of the First District Court of Appeal should be reversed as contrary to this Court's opinion in *Wait, supra* and the Order of the trial court that is challenged by Petitioner should be quashed.

Respectfully Submitted,



Rhonda S. Clyatt
Attorney For Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via United States Mail to **Edward C. Hill, Jr.**, Assistant Attorney General, Office of the Attorney General, The Capitol, Tallahassee, FL 32399-1050 and **Steven G. Mason, Amicus Curiae for the Florida Association of Criminal Defense Lawyers**, 609 E. Central Boulevard, Orlando, FL 32801 on this 11th day of June, 1998.

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