**IN THE SUPREME COURT OF FLORIDA**

CASE NO. 95,738

**STATE OF FLORIDA,**
Appellant,

vs.

**LARRY LAMAR GAINES,**
Appellee.

**********

ON APPEAL
FROM THE FOURTH DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
**********

# REPLY BRIEF OF APPELLANT

**ROBERT A. BUTTERWORTH**
Attorney General
Tallahassee, Florida

**MICHAEL J. NEIMAND**
Sr. Assistant Attorney General
Florida Bar No. 0239437

**DOUGLAS J. GLAID**
Assistant Attorney General
Florida Bar No. 0249475
Dept. Of Legal Affairs
110 S.E. 6th Street,10th Floor
Ft. Lauderdale, FL 33301
(954) 712-4600

Counsel for Appellant

**TABLE OF CONTENTS**

## TABLE OF CITATIONS

## INTRODUCTION

Appellee, Larry Lamar Gaines, was the defendant in the trial court the appellee in the Fourth District Court of Appeal. Appellant, the State of Florida, was the prosecution in the trial court and the appellant in the Fourth District Court of Appeal. Appellee, in this brief, will be referred to as he stood before the trial court and Appellant will be identified as the State or prosecution. The symbol "R" will be used to refer to the record on appeal. The symbol "AB" will be used to refer to Appellee's brief on the merits. Unless otherwise stated, all emphasis has been supplied by Appellant.

## CERTIFICATE OF TYPE SIZE AND STYLE

Counsel for the Appellant, the State of Florida, hereby certifies that 12 point Courier New is used in this brief.

## ARGUMENT

**§924.07(1)(l), FLA. STAT. (1997), IS CONSTITUTIONAL SINCE THE STATUTE ALLOWS THE STATE TO APPEAL, AS A FINAL ORDER, AN ORDER SUPPRESSING EVIDENCE MADE DURING TRIAL. (Appellee's points I and II consolidated and restated).**

Defendant first contends that the instant appeal is moot since the prohibition against double jeopardy prohibits the retrial of Defendant. This argument however ignores the real issue in this case, to-wit: the constitutionality *vel non* of §924.07(1)(l), Fla. Stat. (1997), which authorizes the State to appeal "an order or ruling suppressing evidence or evidence in limine at trial." Indeed, as explained in the State's initial brief, assuming *arguendo* that the State would be foreclosed in the instant case from retrying Defendant due to the prohibition against double jeopardy, other factual scenarios could exist in other cases which would allow the State to appeal an order suppressing evidence during trial under §924.07(1)(l), Fla. Stat. (1997), that would *not* infringe upon the prohibition against double jeopardy. For example, despite a trial court's order suppressing certain evidence at trial, the jury could still convict a defendant based on other evidence adduced at trial. At this point, the State could appeal the trial court's ruling suppressing evidence under §924.07(1)(l). Thus, since

the issue concerning the constitutionality of §924.07(1)(l), Fla. Stat. (1997), is of great public importance and/or is likely to recur in other cases, the State submits that this Court has jurisdiction to, and should, decide this issue in this case. *See Holly v. Auld,* 450 So. 2d 217, 218 n. 1 (Fla. 1984) ("It is well settled that mootness does not destroy an appellate court's jurisdiction,..., when the questions raised are of great public importance or are likely to recur."). This Court should reject Defendant's mootness argument.

Defendant additionally argues that the district court below correctly ruled §924.07(1)(l), Fla. Stat. (1997) unconstitutional since the trial court's order was non-final in nature. Although Defendant concedes that the trial court "dismissed" his case (AB 10; R 35), he asserts that the trial court should have entered a judgment of acquittal when it suppressed the cocaine as evidence in order to have "properly" ended the judicial labor in the case. The State vigorously disagrees. When the trial court belatedly suppressed the cocaine as evidence against Defendant in his possession of cocaine case, the State could obviously not proceed any further in the case. Thus, the trial court's order of dismissal was not improper. The case having been dismissed, it is clear that the judicial labor in Defendant's case had come to an end.

Consequently, as the State argued in its initial brief, it is clear that the trial court's order was not a non-final order, but rather a final order of suppression and dismissal which the State was permitted to have reviewed under either §924.07(1)(l), Fla. Stat. (1997), or rule 9.140(c)(1)(A), Fla. R. App. P., which provides in pertinent part that the State may appeal an order "dismissing an indictment or information or any count thereof."

## CONCLUSION

Based upon the foregoing reasons and authorities, the decision of the Fourth District Court of Appeal declaring §924.07(1)(l), Fla. Stat. (1997), unconstitutional should be quashed, and the trial court's order granting Defendant's motion to suppress evidence and dismissing the case should be reversed and the cause remanded for further proceedings.

Respectfully submitted,

**ROBERT A. BUTTERWORTH**
Attorney General

_____
**MICHAEL J. NEIMAND**
Sr. Assistant Attorney General

_____
**DOUGLAS J. GLAID**
Assistant Attorney General
Florida Bar No. 0249475
Department of Legal Affairs
110 S.E. 6th Street, 10th Floor
Ft. Lauderdale, FL 33301
(954) 712-4600

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief of Appellant was furnished by U.S. mail to Bernard S. Fernandez, Asst. Public Defender, 421 3rd Street, West Palm Beach, FL 33401, on this ___ day of October, 1999.

_____

**DOUGLAS J. GLAID**
Asst. Attorney General