

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, et.al.,

PETITIONER,

VS.

CASE NO. **96,401**

JAMES J. NORRIS, JR.,

Respondent.

_____ /

**BRIEF OF AMICUS CURIAE, THE FLORIDA
PUBLIC DEFENDER ASSOCIATION, ON BEHALF
OF RESPONDENT JAMES J. NORRIS, JR.**

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	iii
PRELIMINARY STATEMENT	1
STATEMENT OF FONT SIZE	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF ARGUMENT	5
ARGUMENT	
ISSUE I	9
EVERY DEFENDANT ARRESTED PURSUANT TO A WARRANT THAT HAS BEEN ENDORSED WITH A BOND AMOUNT IS ENTITLED TO BE HEARD AT FIRST APPEARANCE ON THE ISSUE OF HIS PRETRIAL RELEASE, AND TO HAVE THE FIRST APPEARANCE MAGISTRATE INDEPENDENTLY SET AN APPROPRIATE BOND, NOTWITHSTANDING AN ADMINISTRATIVE ORDER THAT PURPORTS TO PROHIBIT THE MAGISTRATE FROM INDEPENDENTLY SETTING BOND AT FIRST APPEARANCE.	
CONCLUSION	21
CERTIFICATE OF SERVICE	22

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
<u>Amaker v. State</u> , 492 So.2d 419 (Fla. 1st DCA 1986)	17
<u>Caloosa Property Owners Association, Inc. v. Palm Beach County Board of County Commissioners</u> , 429 So.2d 1260 (Fla. 1st DCA 1983)	11
<u>Cameron v. McCampbell</u> , 704 So.2d 721 (Fla. 4th DCA 1998) .	14
<u>Carrasquillo v. State</u> , 502 So.2d 524 (Fla. 1st DCA 1987)	8,20
<u>Castillega v. State</u> , 739 So.2d 666 (Fla. 5th DCA 1999) .	3,4
<u>Faoutas v. State</u> , 745 So.2d 398 (Fla. 1st DCA 1999) . . .	4
<u>Fleischman v. Department of Professional Regulation</u> , 441 So.2d 1121 (Fla. 3d DCA 1983).	6,15
<u>Graham v. Edwards</u> , 472 So.2d 803 (Fla. 3d DCA 1985) . .	6,15
<u>McCoy v. State</u> , 702 So.2d 252 (Fla. 3d DCA 1997)	14
<u>Norris v. State</u> , 737 So.2d 1240 (Fla. 5th DCA 1999) .	3,4,9
<u>State v. Martin</u> , 213 So.2d 889 (Fla. 4th DCA 1968) .	6,11,15
<u>Terrinoni v. Westward Ho!</u> , 418 So.2d 1143 (Fla. 1st DCA 1982)	11
<u>Turner v. State</u> , 382 So.2d 780 (Fla. 4th DCA 1980) .	8,19,20
<u>Wells v. State</u> , 654 So.2d 145 (Fla. 3d DCA 1995) .	8,9,19,20
<u>Williams v. State</u> , 739 So.2d 667 (Fla. 5th DCA 1999) . .	3,4
<u>Valdez v. The Chief Judge of the Eleventh Judicial Circuit of Florida</u> , 640 So.2d 1164 (Fla. 3d DCA 1994)	3

TABLE OF CITATIONS

(Continued)

CONSTITUTIONS AND STATUTES

PAGE (S)

Florida Constitution

Article I, section XIV	<i>passim</i>
Article V, Section 5(b)	19
Article V, Section 6(b)	19

Florida Statutes

Section 683.01	19
Section 903.046(2)(c)	14

OTHER SOURCES

Administrative Order A99-6	21
--------------------------------------	----

Florida Rules of Judicial Administration

Rule 2.020(6)	<i>passim</i>
-------------------------	---------------

Florida Rules of Criminal Procedure

Rule 3.121(a)(7)	5
Rule 3.130	<i>passim</i>
Rule 3.131	<i>passim</i>

<u>The World Book Dictionary</u> , (1977 edition)	17
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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
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Case No. 96,401

JAMES J. NORRIS, JR.,

Appellee.

_____ /

PRELIMINARY STATEMENT

This brief is being filed by amicus curiae, The Florida Public Defender Association, on behalf of Respondent James J. Norris, Jr.

The state will be referred to in this brief as Petitioner or the State. Respondent will be referred to as such or by his proper name. The Florida Public Defender Association will be referred to as the FPDA.

Reference to appendices in this brief will be to the appendices contained in Respondent's Brief on the Merits.

All emphasis is supplied unless the contrary is indicated.

STATEMENT OF FONT SIZE

Pursuant to the Florida Supreme Court's Administrative Order of July 13, 1997, this brief has been printed in Courier New 12-point

STATEMENT OF THE CASE AND FACTS

On February 16, 1999, Administrative Order A99-6 was entered by William T. Swigert, Chief Judge of the Fifth Judicial Circuit. That Order reads in pertinent part:

[A]ny judge authorized to issue Capiases and Warrants in the Fifth Judicial Circuit shall, at the time of issuance, establish an amount of bond, which shall not be changed by any other judge except the one issuing the Capias or Warrant, or with the consent of same.

See, appendix pages 1-2, attached to Respondent's Brief on the Merits.

Respondent was arrested pursuant to a warrant that was signed by Circuit Judge Jack Springstead. The warrant was endorsed with a \$20,000 bond amount. See appendix, page 21. The morning after his arrest, Respondent appeared for first appearance before County Judge Peyton Hyslop.

After making the inquiry required by Florida Rule of Criminal Procedure 3.131(b)(3), Judge Hyslop found that a reasonable bond for Respondent should be no more than \$1,500. See, transcript at pages 48-76 of appendix. Nevertheless, due to

Administrative Order A 99-6, Judge Hyslop determined that he was compelled to set bond at \$20,000, because Judge Springstead had endorsed the warrant with that amount. See, appendix, at page 76.

Thereafter, Respondent filed a Petition For Writ of Certiorari in the Fifth District Court of Appeal. He asserted that his right to a meaningful first appearance, as guaranteed to every arrested person by Article I, Section XIV, of the Constitution of Florida, and Florida Rules of Criminal Procedure 3.130, and 3.131 were violated when the first appearance magistrate refused to independently consider him for pretrial release on a reasonable bond.

Norris further asserted that A99-6 was not an administrative order because it "did not establish procedures for the uniform operation of the circuit." See, Valdez v. The Chief Judge of the Eleventh Judicial Circuit of Florida, 640 So.2d 1164 (Fla. 3d DCA 1994). Furthermore, Respondent asserted that A99-6 modified both the Florida Statutes and the Florida Rules of Criminal Procedure and was thus invalid, and should be quashed.

The Fifth District Court found that "a defendant is entitled to an independent bail determination in front of the first appearance judge after a consideration of all relevant factors."

Norris v. State, 737 So.2d 1240 (Fla. 5th DCA 1999). Accord, Castillega v. State, 739 So.2d 666 (Fla. 5th DCA 1999); Williams v. State, 739 So.2d 667 (Fla. 5th DCA 1999). "Binding the first appearance judge by the initial endorsement of a bail amount on the warrant deprives the defendant of a meaningful bail determination at first appearance." Norris v. State, supra.

The Fifth District Court issued its writ of certiorari in Norris, Castillega, and Williams, and quashed Administrative Order A99-6 in each case.

The Office of Attorney General filed a Notice to Invoke Discretionary Jurisdiction in Norris, Castillega, and Williams.

After the opinions in Norris, Castillega, and Williams were issued, the First District Court followed the lead of the Fifth District Court and, adopting the reasoning in Norris, issued its opinion in Faoutas v. State, 745 So.2d 398 (Fla. 1st DCA 1999). Faoutas also stands for the proposition that every person brought to first appearance is entitled to an independent bond determination by the first appearance magistrate. The opinion concluded by holding that "the same result would obtain even if such policy [of not considering arrestees for bond when they are brought to first appearance pursuant to an arrest warrant] was

reduced to an administrative order." Faoutas v. State, supra.
The state did not seek review of that decision in this Court.

SUMMARY OF ARGUMENT

The decision of the Fifth District Court should be affirmed because it correctly interpreted Article 1, section 14 of the Constitution of Florida, Florida Rules of Criminal Procedure 3.130 and 3.131, and Florida Rule of Judicial Administration 2.020(c).

Respondent was arrested pursuant to a warrant that had been endorsed with a \$20,000 bond amount. After making the appropriate inquiry at first appearance, the magistrate determined that a \$1,500 bond would be appropriate. The magistrate ruled, however, that Administrative Order A99-6 prohibited him from independently considering Respondent for bond, and required him to set bond in the amount that had been endorsed on the warrant. This ruling, as the Fifth District Court correctly held, violated Respondent's right to an independent bond determination by the first appearance magistrate, notwithstanding Administrative Order A99-6.

All arrest warrants are required to be "endorsed" with a bond amount. Rule 3.121(a)(7). Endorsing a warrant with a bond amount is not the functional equivalent of setting bond. The endorsement is done during an ex parte proceeding without input from the accused. It is done off the record, and is incapable of

appellate review. Rather, "The intent and purpose of the endorsement as to the amount of bail [is] to enable the arresting officer to accept proper bail without the necessity of contacting the judge to fix the amount of bail." State v. Martin, infra.

If the accused cannot make bail, Rule 3.130(a) requires that he be brought to first appearance within 24 hours of arrest. See also, Art. 1, s. 14, Const. of Fla. Once there, the first appearance magistrate is required to consider "all available relevant evidence," and set reasonable conditions of pretrial release. Rule 3.131(a)(b). There is a presumption in favor of release of nonmonetary conditions. Rule 3.131(b)(1).

When interpreting these rules of criminal procedure, (and Respondent asserts that they do not need to be interpreted since the words used therein are clear and unambiguous), meaning must be given to every portion and due regard given to the semantic and contextual interrelationship between their parts. Fleischman v Department of Professional Regulation, infra. Moreover, the rules must be read in harmony with each other without destroying their evident intent. Graham v. Edwards, infra.

Applying these principles to the rules at issue, it is clear this Court did not intend for bond to be "set" on an arrest warrant because this Court did not say that. Rather, the Court

intended for bond to be "endorsed" on a warrant so the accused could bail out of jail without having to wait for first appearance. State v. Martin, infra. This Court also adopted rules which require that "every arrested person shall be" taken to first appearance within 24 hours of their arrest. Rule 3.131(a). Once there, the first appearance magistrate "shall conduct a hearing to determine pretrial release," Rule 3.131(b), and consider "all available relevant factors to determine what form of release" would be appropriate. Rule 3.131(b)(2). This Court did not carve out an exception to these rules for individuals brought to first appearance pursuant to an arrest warrant with the requisite bond endorsement on it.

Administrative Order A99-6 prohibits the first appearance magistrate from independently considering an arrestee for bail if he is brought to first appearance pursuant to an arrest warrant that has been endorsed with a bond amount. Rather, the first appearance magistrate must set bond in the exact amount that is endorsed on the warrant. Thus, Administrative Order A99-6 attempts to suspend the operation of Article 1, section 14, of the Constitution of Florida, and Rules 3.130 and 3.131, by prohibiting the first appearance magistrate from independently

considering arrestees for pretrial release on conditions other than the exact bond amount endorsed on their arrest warrant.

Florida Rule of Judicial Administration defines an administrative order as follows:

A directive necessary to administer properly the court's affairs but **not inconsistent with the constitution or with court rules....**

Administrative Order A99-6 is void because it is inconsistent with the Florida Constitution, and Florida Rules of Criminal Procedure. Art. 1, s. 14, Const. of Fla; Rules 3.130 and 3.131. See also, Wells v. State, infra; Carrasquillo v. State, infra; Turner v. State, infra.

Thus, notwithstanding Administrative Order A99-6, Respondent was entitled under the state constitution and the rules of court to be heard at first appearance on the issue of his pretrial release, and to have the magistrate independently consider all available relevant factors before setting reasonable conditions of bond.

The Fifth District Court recognized this, and correctly ruled that Respondent was entitled to the rights conferred by the Florida Constitution and Rules 3.130 and 3.131. despite the administrative order in effect in Fifth Circuit. This Court should affirm that decision.

ARGUMENT

Point I

EVERY DEFENDANT ARRESTED PURSUANT TO A WARRANT THAT HAS BEEN ENDORSED WITH A BOND AMOUNT IS ENTITLED TO BE HEARD AT FIRST APPEARANCE ON THE ISSUE OF HIS PRETRIAL RELEASE, AND TO HAVE THE FIRST APPEARANCE MAGISTRATE INDEPENDENTLY SET AN APPROPRIATE BOND, NOTWITHSTANDING AN ADMINISTRATIVE ORDER THAT PURPORTS TO PROHIBIT THE MAGISTRATE FROM INDEPENDENTLY SETTING BOND AT FIRST APPEARANCE.

Amicus curiae contends herein that the Fifth District Court correctly decided this case. Norris v. State, supra. That is, Respondent was entitled to be heard at first appearance on the issue of his pretrial release, and to have the first appearance magistrate consider all available relevant evidence and independently determine what form of pretrial release was appropriate, including a monetary bond, if necessary to insure the accused's presence for trial. Art. 1, s. 14, Const. of Fla; Fla. R. Cr. P. 3.130(d) & 3.131.

Furthermore, a circuit court administrative order cannot create a procedure that is inconsistent with the constitution or with court rules. Fla. R. of Jud. Admin. 2.020(c). Accordingly, a circuit court administrative order that creates a rule of procedure in contravention of the Constitution of Florida or the

Rules of Criminal Procedure is a nullity. See e.g., Wells v. State, 654 So.2d 145 (Fla. 3d DCA 1995)(“Florida Rule of Judicial Administration 2.030(c) provides that an administrative order may not be inconsistent with the Constitution. An administrative order also may not contravene the jurisdictional authority of the court.”)

Below, both issues will be discussed separately.

The Issuance of an Arrest Warrant

Florida Rule of Criminal Procedure 3.121(a) provides in pertinent part:

- (a) Issuance. An arrest warrant, when issued, shall:
 - (7) in all offenses bailable as of right be endorsed with the amount of bail and the return date.

As required by Rule 3.121(a)(7), the warrant for Respondent’s arrest was endorsed with a bond amount. The issuing magistrate endorsed the warrant with a \$20,000 bond.

The endorsement of a bond amount on an arrest warrant is not the functional equivalent of setting bond. Bond may only be set after a hearing in open court where the magistrate has considered all available relevant evidence that both sides present. See, Fla. R. Cr. P. 3.130 and 3.131. The endorsement of the amount of

bail on an arrest warrant is done during an ex parte proceeding without any input from the accused. Furthermore, the endorsement is done off the record, and is not subject to any form of appellate review.

The endorsement of a bond amount on a warrant was never intended to serve as a substitute for a bond hearing at first appearance. Indeed, in State v. Martin, 213 So.2d 889 (Fla. 4th DCA 1968), the district court explained the reason for requiring all arrest warrants to be endorsed with a bond amount. That court noted: "The intent and purpose of the endorsement as to the amount of bail was to enable the arresting officer to accept proper bail without the necessity of contacting the judge to fix the amount of bail." That rationale also explains why this Court used the term "endorsed" in Rule 3.121(a)(7), rather than the phrase "set bond." See, Terrinoni v. Westward Ho!, 418 So.2d 1143 (Fla. 1st DCA 1982)(language in rules and statutes is not to be assumed to be superfluous; rule or statute must be construed so as to give meaning to all words and phrases contained within them); Caloosa Property Owners Association, Inc. V. Palm Beach County Board of County Commissioners, 429 So.2d 1260 (Fla. 1st DCA 1983)(enacting body is presumed to know the meaning of words it utilizes and the court must apply the plain meaning of those

words if they are unambiguous). Therefore, by requiring the issuing magistrate to "endorse" all arrest warrants with a bond amount, this Court clearly expressed its intention that something other than "setting bond" occur when a warrant is endorsed with a bond amount. Stated another way, if this Court had intended for bond to be set on an arrest warrant, it would have said that, rather than "endorsed," in Rule 3.121(a)(7). It should not be overlooked that the term "endorsed" is used exclusively in Rule 3.121(a)(7), and is not found in any other rule.

This construction of Rule 3.121(a)(7), is consistent with the requirements set out in subsequent Rules of Court.

**Rules 3.130 and 3.131 First appearance Hearing and
the Duties of the First Appearance Magistrate**

Rule 3.130(a) requires that "every arrested person... be taken before a judicial officer ... within 24 hours of arrest." The only exception to this requirement is when the arrestee has been "previously released in a lawful manner," i.e., they posted bond or were given a notice to appear and then released. Otherwise, every arrestee must be brought to first appearance within 24 hours of their arrest. Rule 3.131(a).

Rule 3.131(a) further provides:

Unless charged with a capital offense or an offense punishable by life imprisonment... every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions.

Rule 3.131(b)(1) establishes a presumption in favor of release on nonmonetary conditions, and delineates several such conditions.

Thereafter, Rule 3.131(b)(2) provides:

(2) The judge shall at the defendant's first appearance consider all available relevant factors to determine what form of release is necessary to assure the defendant's appearance.

Rule 3.131 does not carve out an exception for individuals arrested pursuant to a warrant with the requisite bond endorsement on it. To construe the rules as creating such an exception would require the magistrate to ignore the plain meaning of the phrase "every person" as used in Rule 3.131(a). Nevertheless, Administrative Order A99-6 purports to carve out an exception to the plain meaning of Rule 3.131. Order A99-6 is null and void to the extent it is inconsistent with Rule 3.131. See, Fla. R. Jud. Admin. 2.020(c).

Obviously, evidence concerning an arrestee's family ties, length of residence in the community, employment history, financial resources and mental condition (see Rule 3.131(b)(3)),

are not available for the magistrate to consider when he or she endorses an arrest warrant with a bond amount. Consequently Rule 3.131(b)(2) was adopted so the accused could be heard, and the magistrate could "consider all available factors to determine what form of release is necessary to assure the defendant's appearance." The framers of Rule 3.131(b)(2) recognized that the bail determination at first appearance would be made on short notice to both parties, and without time for them to obtain witnesses and documents that might otherwise be presented. That also explains why the rules provide for a subsequent setting or modification of bond. Rule 3.131(d). Nevertheless, the first appearance magistrate is required to "consider all available relevant evidence" that either side is able to present, before actually "setting" bond.

This requirement is consistent with the notion that setting reasonable terms for pretrial release requires information that is not available for a magistrate to consider when he or she endorses an arrest warrant with a bond amount. See, §903.046(2)(c), Fla. Stat. The defendant's financial condition must be considered, for example, because bail set in an amount the accused cannot post is tantamount to setting not bail at all. Cameron v. McCampbell, 704 So.2d 721 (Fla. 4th DCA 1998).

Accordingly, the accused has a right to present evidence at first appearance relevant to his or her financial condition, family ties, and involvement in community affairs, and the first appearance magistrate has a duty to consider these matters before setting bond.

The Third district Court of Appeal has construed Rules 3.121(a)(7) and 3.131 in pari materia and reached the same conclusion. In McCoy v. State, 702 So.2d 252 (Fla. 3d DCA 1997), the district court held:

The Dade County first appearance judge has the authority **and the duty** (Court's emphasis) independently to consider the appropriate conditions of release for a defendant arrested on a warrant issued by another judge so long as that judge does not specifically preclude him from doing so.

It should be noted that the procedure used in Dade County also guarantees that the accused has an expeditious bond hearing by requiring anyone arrested pursuant to a warrant endorsed with a bond amount with the "do not change bond" box checked, to be brought before the magistrate who issued the warrant within 24 hours so they can be heard on the question of pretrial release.

Rules of Statutory Construction

Every Rule of Court must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts. Fleischman v. Department of Professional Regulation, 441 So.2d 1121, 1123 (Fla. 3d DCA 1983). Furthermore, court rules on the same or related subjects must be read in harmony with each other, without destroying their evident intent. Graham v. Edwards, 472 So.2d 803 (Fla. 3d DCA 1985).

When these principles are applied to the Rules at issue, it is clear that arrest warrants are "endorsed" with a bond amount so the accused can gain his or her release without having to wait for a judge to "set" bond. State v. Martin, supra. The term "endorsed" is not used in any other context, and in fact, is not used in any other Rule of Court. The procedure for setting bail, on the other hand, is discussed in detail in subsequent rules.

The subsequent rules specifically provide that, "except when previously released in a lawful manner, every arrested person shall be taken before a judicial officer... within 24 hours of arrest." Fla. R. Cr. P. 3.131(a). Once at first appearance, "unless the state has filed a motion for pretrial detention pursuant to Rule 3.132, the court shall conduct a hearing to determine pretrial release." Fla. R. Cr. P. 3.131(b). At that

hearing, the court must consider "all available relevant factors to determine what form of release is necessary to assure the accused's presence." Fla. R. Cr. P. 3.131(b)(2). The first appearance magistrate cannot "consider all available relevant factors" pertaining to bail unless the court allows both parties to be heard.

Conversely, there is no provision in the Rules or statutes that authorize a magistrate to "set" bond on an arrest warrant. Furthermore, there is no "arrest warrant" exception to the requirement that every person brought to first appearance be independently considered for pretrial release. To construe the rules contrary to this interpretation would violate the requirement that each word in every rule be accorded its plain meaning, and that multiple rules on the same subject matter be construed in pari materia. That is, to construe the phrase "every person charged with a crime" in Rule 3.131(a), as containing an implicit exception for individuals arrested pursuant to an arrest warrant, would run completely afoul of the plain and unambiguous meaning of the phrase "every person." Additionally, to hold that the word "endorsed" as used in Rule 3.121(a)(7) really means "set bond" is to misconstrue the term

"endorsed" as that word is commonly used.¹ Furthermore, the requirement that, "the judge shall at the defendant's first appearance consider all available relevant factors to determine what form of release is necessary to insure the accused's presence," Rule 3.131(b)(2), means precisely what it says. It would be pure sophistry to find an implied exception to this requirement for individuals brought to first appearance pursuant to an arrest warrant with the requisite bond endorsement on it. Finally, to the extent the Rules of Criminal procedure are in conflict with one another, or are ambiguous, the conflict or ambiguity must be resolved in favor of the accused. See, e.g., Amaker v. State, 492 So.2d 419 (Fla. 1st DCA 1986).

Administrative Order A99-6 is Void

Administrative Order A99-6 is not a valid administrative order because it is inconsistent with Article 1, Section 14, Constitution of Florida, and Florida Rules of Criminal Procedure 3.130 and 3.131.

An administrative order is defines as:

¹ The term "endorse" means, inter alia, "to approve or support." The World Book Dictionary, 1977 edition, page 698. Michael Jordan "endorses" Nike sneakers. He encourages others to buy that product, but he cannot require them to do so.

a directive necessary to administer properly the court's affairs but **not inconsistent with the constitution or with court rules** and administrative orders entered by the supreme court.

Fla. R. Jud. Admin. 2.020(c).

Article 1, section 14, of the Constitution of Florida provides in pertinent part:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions.

In furtherance of that constitutional guarantee, Florida Rule of Criminal Procedure 3.130(a), requires that "every arrested person" be brought before a magistrate for first appearance within 24 hours of their arrest. Once at first appearance, the accused "shall be entitled to pretrial release on reasonable conditions." Rule 3.131(a). Consequently, the magistrate is required to conduct a hearing to determine what form of pretrial release is appropriate. "There is a presumption in favor of release on nonmonetary conditions for **any** person who is granted pretrial release." Rule 3.131(b)(1). "The judge shall... consider all available relevant factors to determine what form of release is necessary to assure the defendant's

appearance." Rule 3.131(b)(2). Rule 3.131(b)(3), then sets out a list of factors that the magistrate may consider.

Thus, it is clear that Administrative Order A99-6 is completely inconsistent with Article 1, section 14 of the Constitution of Florida, and with Rules 3.130 and 3.131.

In Wells v. State, supra, an administrative order was entered that conferred jurisdiction on the county court to hear violations of domestic injunctions. Nevertheless, the district court ruled that the circuit court properly heard the injunction violation in that case notwithstanding the administrative order because "Florida Rule of Judicial Administration 2.020(c) provides that a administrative order may not be inconsistent with the Constitution." The court noted that Article V, sections 5(b) and 6(b) created jurisdiction for county and circuit courts, and implicitly held that the administrative order was inconsistent with those constitutional provisions.

Similarly, in Turner v. State, 382 So.2d 780 (Fla. 4th DCA 1980), the appellate court held that the Friday after Thanksgiving, although declared an "official holiday" by an administrative order of the chief judge, was not a legal holiday and thus was the 180th, and hence last, day for bringing Turner to trial. The court noted that Section 683.01, Florida Statutes,

listed eighteen specific days as legal holidays, among which was Thanksgiving Day, but that the following day was not so listed. In so ruling, the district court reasoned that it would be improper to allow the speedy trial rule to be extended by an administrative order. See also, Carrasquillo v. State, 502 So.2d 524 (Fla. 1st DCA 1987).

In the case at bar, it is clear that Administrative Order A99-6 is inconsistent with both the Florida Constitution and the Rules of Criminal Procedure. Therefore, the order does not meet the definition of an administrative order. See, Florida Rule of Judicial Administration 2.020(c). Moreover, an administrative order that is inconsistent with the Rules of Criminal Procedure is a nullity. Wells v. State, supra; Carrasquillo v. State, supra; Turner v. State, supra.

CONCLUSION

Based on the foregoing argument, reasoning, and citations to authority, this Court should affirm the decision of the Fifth District Court and hold that every person brought to first appearance is entitled to be considered for pretrial release on reasonable terms, and that Administrative Order A99-6 cannot repeal that right.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of the foregoing has been furnished by U.S. Mail to the following list of people on this day, March 9, 2000.

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