IN THE SUPREME COURT OF THE STATE OF FLORIDA

STATE OF FLORIDA, et al.,

Petitioner,

vs. CASE NO. 96,489
5 DCA Case No. 99-1517

STACY CASTILLEGA,

Respondent.

_____/

ON DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL, FIFTH DISTRICT,
AND THE FIFTH JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FLORIDA

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTSSTATEMENT OF THE CASE AND FACTS

On February 16, 1999, Chief Judge William T. Swigert of the Fifth Judicial Circuit, acting in and for Hernando County, Florida, issued an Administrative Order, hereinafter entitled A99-6. The order stated that "any 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." Administrative Order A99-6, Fifth Judicial Circuit. (Appendix 1-2)

An arrest warrant for respondent James J. Norris, Jr., was issued on October 7, 1998, by Hernando County Circuit Court Judge Jack Springstead. The warrant authorized the arrest of Respondent for the crimes of one count Sale of Cocaine and one Count of Possession of Cocaine. The warrant, signed by Circuit Court Judge Jack Springstead, set bond in the amount of $20,000 and did not authorize modification. Arrest Warrant, James J. Norris. (Appendix 21).

Petitioner was arrested on the warrant signed by Judge Springstead on March 28, 1999. Petitioner appeared before Hernando County Court Judge Peyton Hyslop, acting in his capacity

of committing magistrate, at a First Appearance Hearing the following morning.

At that hearing, following the statutory inquiry, the Honorable Peyton Hyslop found, as a matter of fact, that a reasonable condition of release would be a bond set in an amount no greater than $2,000 for the charges lodged against respondent. His finding was based upon the inquiry required by Florida Rules of Criminal Procedure 3.131(b)(3). Transcript, State v. Norris. (Appendix 48-76).

Pursuant to the administrative order issued by the Honorable Judge William Swigert prohibiting the modification of bonds at First Appearance in the Fifth Judicial Circuit, the Honorable Peyton Hyslop declined to modify the bond. Id. (Appendix at 76).

On April 9, 1999, Respondent Norris filed a Petition For Certiorari in the District Court of Appeal, Fifth District.

Norris asserted that his right to a meaningful First Appearance, as guaranteed to every arrested person by Article I Section XIV of the Florida Constitution and the Florida Rules of Criminal Procedure, was violated. Norris further asserted that A99-6 was not an Administrative Order as 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. 3rd DCA 1994). Rather, petitioner contended, A99-6 modified both the Florida Statutes and the Florida Rules of

Criminal Procedure. Thus, the order was invalid and should be quashed.

The Fifth District Court of Appeals 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, 24 Fla. L. Weekly, D1866a (Fla. 5th DCA August 6, 1999). (Appendix 3-8). Accord, Companion Cases, Castillega v. State (Fla. 5th DCA). (Appendix 9). Accord, Williams v. State, (Fla. 5th DCA). (Appendix 10). "Binding the first appearance judge by the initial endorsement of bail amount on the warrant deprives the defendant of a meaningful bail determination at first appearance." Norris at 4.

The Fifth District Court of Appeals granted the writ of certiorari in Norris, Castillega, and Williams, and quashed the order. Norris at 5. Castillega at 1. Williams at 1.

The Office of the Attorney General, Robert A. Butterworth, filed a Notice to Invoke Discretionary Jurisdiction on August 20, 1999, in Norris stating that "the decision (in Norris) expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law." Notice To Invoke Discretionary Jurisdiction, August 20, 1999. (Appendix 11-12). Like notices in Castillega and Williams were filed.

The Attorney General further filed a Motion To Stay Mandate in Norris on August 20, 1999. The Fifth District Court of Appeals

denied the Motion to Stay. The Florida Supreme Court likewise denied the stay after the Motion was filed before This Honorable Court.

Following Norris, Castillega, and Williams, the First District Court of Appeals followed the Fifth District's lead and reasoning in Foutas, concurring with and adopting the reasoning in Norris. Foutas v. State, 1999 WL 821265 (Fla. 1st DCA 1999, Opinion Not Yet Released For Publication and Subject to Revision or Withdrawal).

CERTIFICATE OF FONTCERTIFICATE OF FONT

The undersigned attorney hereby certifies that this brief is submitted in Courier New Font, 12 point, a font that is not proportionally spaced.

SUMMARY OF THE ARGUMENTSUMMARY OF THE ARGUMENT

Every person not charged with a capital or life offense where the proof of guilt is evident or the presumption is great shall be entitled to pretrial release on reasonable conditions. That constitutional right provided to all American citizens arrested on a substantive matter goes to the very heart of this appeal. Such conditions should reasonably protect the community from risk of physical harm, assure the presence of the accused at trial, and assure the integrity of the judicial process. See Article I Section XIV, Fla. Const., Fla. R. Crim. Proc. 3.130 and 3.131(b).

Nothing in the Florida Statutes or the Rules of Criminal Procedure expressly abrogates that Constitutional mandate on a warrant arrest. Any right conferred on a citizen through either the United States or Florida constitutions cannot be arbitrarily denied by any judge. Furthermore, if the Legislature elects to limit a citizen's constitutional right, that limitation must both expressly abrogate the right and meet the stringent balancing tests designed to weigh issues of great public importance against the rights of individual citizens.

The instant case arose after Chief Judge William T. Swigert, Fifth Judicial Circuit in, and for Hernando County, Florida,

issued Administrative Order 99-6. That order required that all first appearance magistrates in the circuit were bound by the bond amount set by another judge issuing a warrant if the warrant stated that the bond was non-modifiable. Administrative Order A99-6, Fifth Judicial Circuit. (Appendix 1-2). Consequently, all defendants arrested on a warrant were denied their rights to meaningful first appearances. Respondent Norris appeared before First Appearance Judge Peyton Hyslop, who made the factual finding that an appropriate bond amount balancing the factors relevant to a first appearance bond determination would be $1,500. Transcript, State v. Norris, 98-956-CF, Hernando County. (Appendix 48-76). However, in light of the administrative order, Hyslop had no discretion to alter the $20,000 bond Judge Springstead had set on the unmodifiable warrant. Arrest warrant of James J. Norris. (Appendix 21). Respondent sought review at the Fifth District Court of Appeals. Subsequently, petitioners James A. Williams and Stacy Castillega likewise sought review. (Appendix 9-11).

Finding that the administrative order impermissibly bound the first appearance judge and denied the respondent his right to a meaningful first appearance, the Fifth District Court of Appeals quashed the order on August 6, 1999. (Appendix 3-8). The Williams and Castillega companion decisions followed Norris. (Appendix 9-11).

The First District Court of Appeals followed Norris some months later, holding that a practice that denied a defendant a meaningful first appearance when arrested on a warrant designated as non-modifiable was impermissible. Foutas v. State, 1999 WL 821265 (Fla. 1st DCA Oct. 15, 1999). In dicta, the Court added that, "the same results would obtain even if such policy was reduced to an administrative order." Id. At 821265.

In Norris , Williams, and Castillega (hereinafter referred to as Norris), the Fifth District Court of Appeals held that independent review by a first appearance judge of a bond set in a warrant issued must be conducted or the defendant is deprived of a meaningful first appearance. Norris at 5. The Court reasoned that "although a bail amount is endorsed on the warrant, that amount is only in effect until the bond amount is set at first appearance after an independent consideration for release by the first appearance judge and the defendant is afforded an opportunity to be heard." Norris at 4-5.

Any implication that a first appearance judge is bound by a bond amount endorsed in a warrant by another judge expressly abrogates the plain meaning of both the Florida Constitution and the Florida Rules of Criminal Procedure. At the mandatory first appearance afforded all arrested persons, "the judge shall...consider all available relevant factors to determine what form of release is necessary to assure the defendant's appearance." Fl. R. Crim. Proc. 3.131(b)(2). Furthermore, the

Court must consider "the defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition." Fl. R. Crim. Proc. 3.131(b)(3).

Any rule, or construction of a rule, that denies the first appearance judge from individually ascertaining pretrial release conditions is unconstitutional. Administrative Order A99-6 constructed the rules in such a fashion that it denied a timely review that took into account the defendant's individual characteristics, circumstances, financial resources, ties to the community, and likelihood to appear. Clearly, that order served to abrogate Florida Rule of Criminal Procedure 3.130, which mandates a First Appearance for every arrested person within 24 hours. The rule requires that the judicial officer presiding ***SHALL*** determine appropriate conditions of release pursuant to rule 3.131. Fl. R. Crim. Pro. 3.130. (Emphasis supplied).

When a bond amount is endorsed on a warrant, the judge issuing the warrant has no facts available to him to determine the appropriate conditions of release inasmuch as he has never seen the defendant in case before him nor has any ability to ascertain the statutory factors required by the rules before a first appearance bond amount is set. Consequently, that bond amount endorsed in a warrant "is ***in effect only until the bond amount is set at first appearance after an independent consideration of conditions for release...and the defendant is afforded an***

opportunity to be heard." Norris at 4-5. Any other interpretation can only serve to deny an arrested person his Constitutional right to a meaningful first appearance and independent bond determination inquiry.

ARGUMENTARGUMENT

A DEFENDANT ARRESTED ON A WARRANT IS ENTITLEDTHERE IS NO EXPRESS AND DIRECT CONFLICT TO A MEANINGFUL FIRST APPEARANCE WHEREIN THE FIRST APPEARANCE MAGISTRATE SETS A BAIL AMOUNT AFTER CONSIDERING THE RELEVANT STATUTORY FACTORS EVEN THOUGH THE JUDGE ISSUING THE WARRANT SET A SPECIFIC NON-MODIFIABLE BOND.

Article I Section XIV of the Florida Constitution provides, in part, that every person not charged with a capital or life offense where the proof of guilt is evident or the presumption is great shall be entitled to pretrial release on reasonable conditions. Those conditions should reasonably protect the community from risk of physical harm, assure the presence of the accused at trial, and assure the integrity of the judicial process. Article I Section XIV of the Florida Constitution.

Any rule, or construction of a rule, that denies the first appearance judge from individually ascertaining pretrial release

conditions is unconstitutional. In the instant case, Administrative Order A99-6 operated to construct the rules in a fashion that denied the defendant a timely bond review that considered the defendant's individual characteristics. See Rawls v. State, 540 So.2d 946, 947 (Fla. 5th DCA 1989); Lawyer v. Crawford, 517 So. 2d 36 (Fla. 3d DCA 1989); Glosson v. Solomon, 490 So. 2d 94, 95 (Fla. 3d DCA 1986).

Florida Rules of Criminal Procedure 3.130 mandates a First Appearance for every arrested person within 24 hours, further requiring that the judicial officer presiding *SHALL* proceed to determine conditions of release pursuant to rule 3.131. Fla. R. Crim. Pro. 3.130. (Emphasis supplied). In Hernando County, from whence this appeal arises, the judicial officer designated by the Chief Judge is routinely County Court Judge Peyton B. Hyslop, unless he is on vacation or not present in the courthouse. Consequently, an independent inquiry as to the defendant's bond status within 24 hours by the presiding judicial officer, Judge Hyslop, is specifically mandated for each arrested person unless the arrest falls within an enumerated exception in rule 3.131.

Florida Rules of Criminal Procedure 3.131 specifically tracks the arrested person's Constitutional entitlement to pre-trial

release. (See above). The rule further mandates that the presiding judicial officer *SHALL* conduct a hearing to determine pre-trial release, specifically citing the Legislative presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release. Fla. R. Crim. Proc. 3.131 (a) and (b). (Emphasis supplied).

Specific conditions of release as well as specific factors that may be considered by the judge when determining whether to release a defendant on bail or other conditions are fully set out within the rule. Those factors include the defendant's family ties, length of residence in the community, employment history, financial resources, mental condition of the accused, the nature and probability of danger that the defendant's release poses to the community, source of funds used to secure the release, and any other factors the court considers relevant. Fl. R. Crim. Proc. 3.131(b)(1)(3). Those factors *CAN NOT* adequately, or even possibly, be addressed in the stagnant arena of a warrant issued ex parte by a judge.

FOUR EXCEPTIONS TO BOND DETERMINATIONS

AT FIRST APPEARANCE MADE BY THE PRESIDING

MAGISTRATE WERE ENUMERATED BY THE

FLORIDA LEGISLATURE

First, any person charged with a capital or life offense where the proof is evident or the presumption is great is not entitled to bail as a matter of right. Fl. R. Crim. Proc. 3.131. Likewise, any person arrested for an offense where pretrial detention may be ordered under Florida Statute Section 907.041 may be ordered detained pending trial by the First Appearance magistrate after a Motion for Pretrial Detention is filed by the Office of the State Attorney setting forth the grounds and facts with particularity, and a hearing is held. Fla. R. Crim. Pro. 3.131 and 3.132. The third exception, arguably, is a violation of probation warrant, governed by Florida Statutes Section 948.06(1). That statute provides that a violator shall be "returnable forthwith before the court granting such probation or community control." Fla. Stat. 948.06(1). The Fourth District Court of Appeals, in determining that statute, held that a probationer is entitled to be taken before a judicial officer within 24 hours of arrest. Hill v. State, 739 So. 2d 634 (Fla. 4th DCA 1999). That Honorable Court concluded that the word forthwith coupled with

Florida Rules of Criminal Procedure 3.130 made the first appearance within twenty-four hours a matter of right for the defendant. The discretion to control trial dockets, the State's argument in Hill to allow violators to remain incarcerated without an appearance before a judge, "does not supplant the rights of defendants to be brought to court forthwith following an arrest for violation of probation, particularly when a statute and rule of criminal procedure expressly mandate that the appearance be forthwith or within 24 hours." Id. At 635. However, that Honorable Court did not address the question of a bond determination by the First Appearance Magistrate. Other courts have found that bail is not a matter of right in violation of probation cases. See Copeland v. The Honorable Kathleen F. Dekker, 20 Fl. L. W. D2678 (Fla. 1st DCA 1995). Nevertheless, whether that particular offense is bailable or not bailable is not at issue in the instant case.

It is indisputable that Respondent Norris was not charged with a capital or life offense, was not in violation or probation, and no motion for pretrial detention was filed by the Office of the State Attorney.

Consequently, the only remaining exception is the one upon which the State bases its argument. That is, Florida Rule of Criminal Procedure 3.131 (d), entitled "Subsequent Application for Setting or Modification of Bail." Subsequent can best be defined as following a particular or similar event, whereas first means exactly what it says, nothing comes before it. See Webster's Unabridged Dictionary, 1999. Under traditional rules of statutory construction, it is clear that the title of a rule is not dispositive of its contents. Nevertheless, a rule's heading may be used in construing the section. In fact, the Norris court used the titles of both rules under consideration in its rationale. The Court correctly distinguished the headings and noted that rule 3.131(b) is entitled "Hearing at First Appearance - Conditions of Release," while 3.131(d) is entitled "Subsequent Application for Setting or Modification of Bail." Norris at 1240-1; Fla. R. Crim. Proc. 3.131(b) and 3.131(d).

The State contends that the intent of the Florida Supreme Court was to designate the defendant's first appearance as a subsequent application for bond, regardless of the obvious fact that no prior application for bond was made and the word subsequent certainly precludes first. To conclude that

contradicting words, well-known to both the layman and the legal scholar, were written into the rules by the Florida Supreme Court, creating synonyms of the words and overlooking their clearly distinguishable and differing meanings, is beyond belief. The State would have this Honorable Court hold that the word subsequent means first when a warrant arises. Petitioner's Initial Brief on the Merits at 5-6. If the State's reasoning that a first appearance becomes a subsequent application for bond by virtue of the fact that another judge endorsed a bond amount prior to the defendant's arrest, how much of a leap would it be to extend that reasoning to probable cause affidavits. **Deputy sheriff routinely, in fact, are required, to set a bond amount on every probable cause arrest that is an offense bondable by right.** Does the State intend to suggest that the bond amount established by a deputy is a first application and the defendant's first appearance then becomes a subsequent application for bail? Surely not. Such a result would be untenable and completely vitiate the Rules of Criminal Procedure and Florida Statutes. The result of such a holding would gut Article I, Section 14 of the Florida Constitution, which affords every arrested person who does not fall into the above-enumerated exceptions the constitutional

guarantee of retrial release on reasonable conditions. Fl. Const. Art. I, Sec. 14. This Honorable Court, when adopting Rules of Criminal Procedure 3.130 and 3.131, noted that the rules were amended and adopted in compliance with the constitutional protection of pretrial release. The rules so conform with the Constitution that rule 3.131(a) mirrors the language of the constitutional protection. The Florida Bar, 436 So.2d 60 (Fla. 1982).

Each rule promulgated by the Florida Supreme Court must be read in its entirety with no portion cast aside as meaningless, unimportant, or perhaps not just what the Court meant, and due regard must be given to the semantic and contextual interrelationship between its parts. See Fleischman v. Dept. of Professional Regulation, 441 So. 2d 1121, 1123 (Fla. 3d DCA 1983). Additionally, all rules on same or related subjects must be read in conjunction with each other. See Graham v. Edwards, 472 So. 2d 803 (Fla. 3d DCA 1985).

Applying these principles to the words subsequent and first, it can only be concluded that the Supreme Court meant subsequent bond hearings to take place at some point following a defendant's first appearance.

That conclusion certainly operates to mesh the two rules together in a workable manner in that the magistrate at a defendant's first appearance "**shall conduct a hearing to determine pretrial release.**" Fl. R. Crim. Proc. 3.132. Clearly, the Supreme Court did not intend to per se exclude warrant arrests from the inalienable rights granted to a defendant, including the Constitutional right to pre-trial release except in limited circumstances. Had such a result been intended, the required hearing to determine pretrial release examining the statutory factors the magistrate is required to consider at first appearance before setting bond would be both an exercise in futility and a complete waste of the magistrate's time. **There would be no requirement established by the Supreme Court that a magistrate conduct a bail determination at the first appearance if the magistrate had no authority to set bond for the defendant.** Clearly, the Court cannot have intended to require lengthy bond inquiries if the Justices did not intend for that inquiry to lead to the actual setting of a bond for the defendant.

Further support for Respondent's position that the Supreme Court intended the first appearance magistrate to conduct a bond hearing and set bond at the defendant's initial application can be

found in the Supreme Court's specific language adopted in rule 3.131(d). Entitled "Subsequent Application for Setting or Modification of Bail," the body of the rule contemplates that **when a defendant is held to answer before a having jurisdiction to try the defendant, and bail has been denied or sought to be modified, application by motion may be made to the court having jurisdiction, or in the absence of the trial judge, the circuit court.** Fl. R. Crim. Proc. 3.131(d). Interpreting the rule, giving plain meaning to all parts of the rule, application means the act of actively seeking a result. Webster's Unabridged Dictionary, 1999. It is important to note that, prior to the first appearance, neither the State Attorney's Office nor the answering defendant have sought a bond modification. To the contrary, until a defendant is picked up on an ex parte arrest warrant, he is usually unaware that pending charges have been lodged against him. Furthermore, the language in the rule contained in its body, strictly construed, absolutely requires one of the parties to have sought modification prior to this rule's coming into play.

Consequently, it can be determined that, utilizing any interpretation of the rules and their captions, it is without

question that the Supreme Court intended warrant arrests to be bound by the same constitutional, statutory, and procedural protections afforded any arrested citizen. Any other interpretation defies both the plain meaning of the rules and common sense.

THE EFFECT OF THE ENDORSEMENT OF BAIL

ON A WARRANT WHEN THE ISSUING JUDGE

DESIGNATES THE AMOUNT TO BE NON-MODIFIABLE

The State suggests that this Honorable Court find that a bond amount established on a warrant by the issuing judge cannot be modified if the judge so specifies by specifically, and wholly impermissibly, commingling two separate rules of civil procedure. First, the State suggests that a defendant's first appearance is, in effect, a subsequent appearance for the sole purpose of a warrant arrest. Secondly, the State suggests that an arrest made by warrant be considered under the specific rule that governs arrests by capias. Such co-mingling and unsupported extension of the rules is patently absurd.

By their very natures, capiases and warrants are not the same thing. A capias issues upon the filing of either an indictment or an information charging the commission of a crime. Fl. R. Crim. Pro. 3.130(j). The rule specifically authorizes the issuing judge to establish a bail amount and "***may authorize the setting or modification of bail by the judge presiding over the defendant's first appearance hearing***." Id. (Emphasis supplied). An information requires that the state attorney, or designated assistant, sign under oath attesting to good faith in instituting the prosecution and certifying that he or she has received testimony under oath from the material witness or witnesses for the offense. Fl. R. Crim. Pro. 3.140(g).

Conversely, the requirements to issue a warrant are only that it be in writing, set forth the charge, specify the defendant, be signed by a judge, and endorsed with the amount of bail in all offenses bailable as a matter of right. See Fl. R. Crim. Pro. 3.121(a). The legal definition of a capias is "the general name for several species of writs the common characteristic of which is that they require the officer to take the body of the defendant into custody." Black's Law Dictionary, 5th Ed. The definition of arrest warrant is a "written order made on behalf of the State and

is based upon a complaint issued pursuant to statute or rule which commands law enforcement to arrest the person and bring him before a magistrate." Id. Although those definitions lend little in the way of interpretation, it is interesting to not that, even in Black's, the definition for an arrest warrant contemplates on its face an appearance before a magistrate, while the definition for a capias does not.

Nothing in the rules or Florida statutes suggests that the two rules should be read in tandem, resulting in a denial of a defendant's absolute right to a first appearance bail determination. To the contrary, the issue of a non-modifiable bond endorsement is specifically handled in rule 3.130, the very rule that guarantees a defendant the right to a meaningful first appearance and bond determination.

The specific exclusion to a defendant's right to an effective first appearance wherein all of the included factors are considered is ***solely and specifically*** directed to the defendant's arrest upon a capias. A capias charging a defendant with a felony issues solely upon an information, which requires that the State Attorney sign under oath, certifying good faith in instituting the prosecution, that the allegations set forth in the information are

based upon facts that have been sworn to him or her as true and, if true, would constitute the offense charged. Fla. Stat. 923.03(2) and Fl. R. Crim. Proc. 3.140(g). Consequently, when a capias issues, it issues only after specific safeguards are met to insure that innocent people are not impermissibly detained. That is, the State Attorney has reviewed the case and, in good faith, sworn that he or she believes that the weight of the evidence against the defendant is sufficient to sustain a conviction. Since the State Attorney cannot swear to an information without taking sworn testimony as to the weight of the evidence, the weight of the evidence has already been reviewed prior to the capias issuing.

Petitioner was *NOT* arrested on a felony capias, but, rather, on a felony arrest warrant issued prior to the State Attorney filing an information. Consequently, he is not specifically excluded by rule from the mandated determination of bail at an effective first appearance.

Petitioner was arrested on an arrest warrant pursuant to Florida Rules of Criminal Procedure 3.121. Clearly, the purpose of the court's endorsing an amount of bail is to avoid an arrested person's illegal detention on a no bond status should he or she

wish to bond out before first appearance, as well as to enable an arresting officer to set a bond amount without contacting a judge for permission.

Although the State would have this Honorable Court find it so, the endorsement of a bond amount on an arrest warrant is not tantamount to setting bond. Bond may only be set during a hearing where the magistrate has considered all relevant evidence from both the State and the defendant relating to the bond factors set out by the Legislature. Furthermore, ***the defendant has an absolute right to be present at all stages in the proceedings against him, including his first appearance where bond, in other than the limited circumstances set out above, is required to be set.*** Rule 3.130 specifically provides for the defendant's presence, either in person or by videotape. Fl. R. Crim. Pro. 3.130(a). The setting of a bond on an arrest warrant is done ***outside of the defendant's presence, denying him the opportunity to be heard as to his ties to the community, employment, prior record, mental health, and other relevant factors.*** The warrant is handled in an ex parte proceeding, wherein a judge who is likely never to have met the defendant is arbitrarily setting a bond amount, often in conformity with the bond schedule established for

the circuit. See Fifth Judicial Circuit, Bond Schedule. (Appendix 22-33).

Nothing in the rules, the committee notes, or relevant case law suggests that a judge's ex parte establishment of a bond amount was ever contemplated or established to be an adequate substitute for a defendant's meaningful first appearance and bond determination. In fact, the Fourth District Court of Appeals laid out the reason for a bond endorsement, including nothing whatsoever that indicated that bond was established in perpetuity, nor that the endorsement was meant to preclude the defendant's Constitutional right to a first appearance bond determination. "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 bond." State v. Martin, 213 So. 2d 889 (Fla. 4th DCA 1968).

Offering particular guidance to a full analysis of the language utilized in the bond and warrant rules is the Court's clear designation in language. Warrants are to be endorsed with a bond amount, whereas the purpose of the first appearance bond determination is to set bond. See. Fla. R. Crim. Proc. 3.121(a)(7) and 3.131(b). Specific language in the rules and

statutes is not to be assumed to be superfluous; rule of statute must be construed so as to give meaning to all words and phrases contained within then. Terrinoni v. Westward Ho!, 418 So. 2d 1143 (Fla. 1st DCA 1982);Furthermore, the enacting bodies of the rules and statutes are presumed to know the meaning of the words they utilize and the court must apply the plain meaning of those words if they are unambiguous. Caloosa Property Owners Assoc., Inc. v. Palm Beach County Board of County Commissioners, 429 So. 2d 1260 (Fla. 1st DCA 1983).

The plain meaning of the word endorse is to lend support or give credence to, while the plain meaning of the word set is to indisputably establish. Webster's Unabridged Dictionary, 1999. Clearly, endorse merely suggests and set imposes. Furthermore, the word endorsed is used solely in rule 3.121(a)(7), and no place else in the rules, suggesting the Supreme Court meant exactly what it said; that is, to suggest an amount that the First Appearance Magistrate was under no obligation to follow. If the Court meant that the judge issuing a warrant was to establish without review a bond amount, it would have said just that, exactly as it did elsewhere in the rules. The judge issuing the warrant would have

been authorized to set, as oppose to suggest, the bond amount. See Florida Rules of Criminal Procedure.

THERE IS NO AUTHORITY UNDER THE RULES OF CRIMINAL PROCEDURE OR FLORIDA STATUTES FOR THE ISSUING JUDGE TO ORDER THE BOND AMOUNT HE ENDORSES BE NON-MODIFIABLE

Nowhere in the rule governing arrest warrants is there the provision for the issuing judge to authorize or not authorize modification of the amount of bail he or she has endorsed. Conversely, the rule governing the issuance of a capias specifically sets out the judge's ability to direct any other judge, including the first appearance magistrate, to not modify the bond he has set. Fl. R. Crim. Proc. 3.130 and 3.131. Consequently, a person arrested pursuant to an arrest warrant is absolutely entitled to the effective first appearance guaranteed to him by both the Constitution and the Rules of Criminal Procedure and the first appearance judge is mandated to make the judicial inquiry required before bail is set.

Issuing an arrest warrant with a non-modifiable bond amount, something provided for nowhere in the Florida Constitution, the Florida Statutes, or the Florida Rules of Criminal Procedure, is clearly outside the powers given to judges by our founding fathers, legislators, and courts. As such, it is an abuse of those powers resulting in the denial of a vital, inalienable, and guaranteed constitutional right afforded an arrested person.

By issuing Administrative Order 99-6, Fifth Judicial Circuit Chief Judge William T. Swigert effectively rewrote the Rules of Criminal Procedure and denied an accused, arrested on a felony arrest warrant, an effective first appearance hearing. Administrative Order 99-6, Fifth Judicial Circuit, In and For Hernando County, Florida. (Appendix 1-2).

The Chief Judge cited authority for the order by co-mingling Florida Rules of Criminal Procedure 3.131, 3.121, and Florida Statute 903.02(2). As noted above, nothing in the rules or the statutes permits such co-mingling. To the contrary, criminal rules are strictly construed in favor of an accused. Thus, as the modification of bail authorization is specifically not included in an arrest warrant case and specifically included in a capias case, it must be concluded that the Florida Supreme Court intended for

the authorization of modification to be coupled solely with a capias arrest.

Had the Florida Supreme Court intended for an accused's first appearance entitlement to effective determination of bail be denied in an arrest warrant case, such denial would be specifically set out in rule 3.121. "The plain language of the rules promulgated by the Supreme Court of Florida are binding upon the trial and appellate courts." State v. Battle, 302 So. 2d 782 at 783 (Fla. 3rd 1974) (citing State v.Lott, 286 So.2d 565 (1073).

Under the principles of statutory and rule construction, the Florida Supreme Court's inclusion of the modification language in the capias rule operates to presumptively exclude the provision under the warrant rule. See Capers v. State, 678 So. 2d 330, (Fla. 1996); Moonlit Waters Apts., Inc., v. Cauley, 666 So. 2d 898, 900 (Fla. 1996).

The Chief Judge further couples Florida Statute 903.03(3) and Florida Rules of Criminal Procedure 3.131(d)(1) to support the finding that a bond amount cannot be modified by a court of equal or inferior jurisdiction unless the judge modifying imposed the amount, is the Chief Judge of the Circuit, has been assigned to preside over the criminal trial, or is the first appearance judge

and (emphasis added) was authorized by the judge initially setting or denying bail to modify or set conditions of release. However, those specific criteria are mandated by the Legislature and the Florida Supreme Court to be authorized *ONLY AFTER* application for bail has been made and denied. Fla. Stat. 903.02 and Fl. R. Crim. Proc. 3.131(d). Consequently, those sections are generally inapplicable in a first appearance setting, other than to address a capias as described in Florida Rules of Criminal Procedure 3.131(j).

Since the respondent had *NOT* made previous application for bail to any court nor had he been denied, that criteria should not effect either him or any other defendant appearing before a magistrate on an arrest warrant.

The Administrative Order (as well as the Assistant Attorney General) further cites as authority McCoy v. State, 702 So. 2d 252 (Fla. 3rd DCA, 1997). Order at 2. (Appendix at 2). (Petitioner's Brief on the Merits, passim). At issue in that case was whether an unchecked authorization for (non-)modification box on an arrest warrant implicitly allowed the first appearance judge to modify the bond set by the issuing judge. That Court found that, pursuant to Fl. R. Crim. Proc. 3.131(d)(1)(D) that when the box is

not checked the first appearance judge had the duty to independently consider appropriate conditions of release. However, that Court did not address the issue raised here, whether or not a person arrested on an arrest warrant is specifically excluded from a first appearance bond determination if a bond amount is set and it is designated by the issuing judge as non-modifiable. Furthermore, it is unclear from the McCoy opinion whether the case at issue was a violation of probation or a new offense, and, if a new offense, what level. It is the McCoy case that the Assistant Attorney General cited in the Notice to Invoke the jurisdiction of this Honorable Court.

By co-mingling the rules and statute applying to warrant arrests, capias arrests, and subsequent applications for setting bond, the Chief Judge of the Fifth Judicial Circuit, in and for Hernando County, Florida, has effectively redrafted the Rules of Criminal Procedure. That redrafting was designed to directly effect only Fifth Circuit arrests and was neither adopted by local rule or by the Supreme Court of Florida.

THERE IS NO EVIDENCE TO SUPPORT THE ASSISTANT ATTORNEY GENERAL'S CONTENTION THAT A JUDGE

ISSUING A WARRANT HAS ANY KNOWLEDGE OF

A PARTICULAR DEFENDANT OTHER THAN

HE HAS BEEN CHARGED WITH A CRIME

The Assistant State Attorney relies upon the judge who issues a warrant setting a non-modifiable bond amount and his "being most familiar with the facts of the case and the defendant's history." Petitioner's Brief on the Merits at 5. There is nothing in the record to support such a contention. To the contrary, Respondent Norris, when asked by the first appearance magistrate if he knew the judge issuing the warrant, Judge Springstead, respondent replied that he did not know and he might have gone to school with his daughter. Transcript State v. Norris at 58. (Appendix at 58). Respondent Williams stated unequivocally that he did not know Judge Springstead. Transcript State v. Williams at 83. (Appendix at 83.) Respondent Stacy Castillega, and her co-defendant Jeremy Castillega, were not asked whether they knew the issuing judge or not. Transcript State v. Stacy Castillega and State v. Jeremy Castillega. (Appendix 86-104).

Nothing in the record below rebuts respondents Norris and Williams' under oath statements that they had not been before

Judge Springstead when he issued the warrant and made a non-modifiable bond determination. Consequently, the respondents lack of familiarity with Judge Springstead must be taken as fact in the instant appeal.

Allowing warrants to be issued with a non-modifiable bail amount set without input from the defendant presents this Honorable Court with a uniform practice that is ripe for abuse from judicial, law enforcement, and State Attorney personnel. Furthermore, it totally vitiates any factors favorable to a defendant in a bond determination. Since consideration of those factors, most importantly financial conditions, nearby family members, and community ties, are expressly mandated by both the Legislature and the Florida Supreme Court to be vital considerations in a bail determination, bonds set without a defendant's input bypasses important constitutional safeguards. Setting bail in an amount the accused cannot post is tantamount to setting no bail at all. Cameron v. McCampbell, 704 So. 2d 721 (Fla. 4th DCA 1998). Determining whether or not a defendant can make bail can only be done by an examination of the defendant's circumstances, the very examination mandated by the Constitution, the Legislature, and the Florida Rules of Criminal Procedure. An

accused has the right to an individualized review of his bail based upon facts and circumstances of his situation and the alleged offense. Kelsey v. McMillan, 560 So. 2d 1343 (Fla. 1st DCA 1990). Case law routinely and repeatedly tracks the defendant's absolute right to have his individual situation considered at first appearance and subsequent bail hearings. See Flores v. Cocalis, 453 So. 2d 1198 (Fla. 4th DCA 1984); Goode v. Wille, 382 So. 2d 408 (Fla. 4th DCA 1980).

Finally, a judge issuing a warrant within the sterile confines of the law enforcement officer's request without input from the defendant invites the unconscionable result that innocent citizens will be incarcerated for extended periods of time. It cannot be argued that, if every warrant arrest had an independent bond determination at first appearance, all innocent people would not serve time in jail. Even with the safeguard of an independent bond determination at first appearance, some innocent people would indeed be incarcerated, but that judicial consideration would, at the very least, cut down on such an untenable result.

Judicial Notice was taken by the Fifth District Court of Appeals in this matter of a tabulation provided by the Honorable Judge Peyton Hyslop, co-petitioner before this Honorable Court.

Request for Compulsory Judicial Notice. (Appendix 18-19). Order Granting Judicial Notice. (Appendix 20). The tabulation provided analyzes all felony cases in Hernando County during the months of January, April, and August, 1997. Summary of Hernando County Cases. (Appendix 34-47).

During that time period, three hundred and thirty one felony cases were filed in Hernando County. Three of those case files could not be located. Eighty seven of the cases involved arrest warrants with sixty of them having been signed by Judge Springstead. Fifty nine of those warrants stated that bail could not be modified at first appearance. Id. (Appendix 34-47).

Ultimately, of the seventy four warrants signed with no authorization to modify bail, fifteen to twenty percent of the cases were nolle prossed, dismissed, or a no information was filed. On only one of the eighty seven cases did the defendant receive any term of incarceration following his or her plea. Id. (Appendix 34-47).

It can easily be determined that the practice of warrants with non-modifiable bond amounts, if this Honorable Court disallows an independent bond determination at First Appearance, operates as a vehicle that unconscionably keeps between ten and

fifteen innocent people incarcerated during a three-month period. Per year, those statistics equate to forty to sixty innocent people sitting in our jails for extended periods of time. Such a result is untenable.

The Assistant Attorney General suggests, pursuant to the rules, that defendant can obtain a bond hearing in a minimum of three hours. Consequently, there is no necessity for a warrant arrest to have an independent bond determination. While this concept seems to offer a defendant a speedy release from custody, the reality is that no defendant can get a bond hearing in three hours. The operative word in the statute is “minimum”. In reality, an incarcerated defendant can expect at least a week’s delay between his or her arrest and a bond hearing in Hernando County. Often, a defendant will not have his or her bond reviewed until his or her arraignment, approximately one month after the arrest. For example, Respondent Norris was incarcerate for approximately a week after his arrest and before his bond hearing.

The Fifth District Court of Appeals provided the mechanism to eliminate, or at least reduce, the likelihood of innocent people

languishing in our jails when it held in Norris, Williams, and Castillega that any person arrested on a warrant is entitled to an independent and meaningful bond determination at first appearance. Norris at 1240-42. The First District Court of Appeals followed suit in Faoutas, adopting the Norris reasoning, and holding that no practice nor order can serve to deny a defendant his constitutionally mandated right to an independent bond determination at first appearance. Foutas v. State, 1999 WL 821265 (Fla. 1st DCA Oct. 15, 1999). Likewise, this Honorable Court should reach the same result.

ISSUE TWO

AN ADMINISTRATIVE ORDER THAT ALTERS, EXPANDS, OR OTHERWISE CHANGES THE FLORIDA CONSTITUTION, STATUTES, OR RULES OF CRIMINAL PROCEDURE IS INVALID ON ITS FACE AND GOES BEYOND THE SCOPE OF A CHIEF JUDGE'S RULE-MAKING AUTHORITY

Petitioner in its Initial Brief on the Merits deftly sidestepped the issue of the legality of the Administrative Order issued by Judge William T. Swigert by contending that the order conforms with the rules of criminal procedure, is irrelevant and an unnecessary diversion in the instant appeal. Petitioner's Brief on the Merits at 4. To the contrary, Respondent contends that Judge Swigert's administrative order goes to the very heart and soul of this appeal. Petitioner further contends that the order is superfluous "in view of the clear provisions of rule 3.131(d)(1)(D). Id. At 4.

Respondent would suggest that any order addressing first appearance and bond determinations would be superfluous in view of

the clear Constitutional, statutory, and rule provisions established by our Legislature and this Honorable Court that absolutely mandate the right to a meaningful first appearance and bond determination within twenty-four hours of a defendant's arrest, whether the arrest is for probable cause or on a warrant. Nevertheless, an administrative order that goes beyond the scope of the chief judge's authority is unconstitutional and invalid on its face and should be quashed as the Fifth District Court of Appeals did in Norris, and the First District Court of Appeals supported in Foutas. See Norris at 1240-2 and Foutas at 821265. The fact that an invalid and unconstitutional administrative order is but a small part of a larger issue make the order itself no less illegal.

Administrative orders that serve as unadopted rules of criminal procedure cannot be permitted to stand. Pursuant to Florida Rules of Judicial Administration, rule 2.050(b)(2) allows the Chief Judge to enter administrative orders in the exercise of his or her administrative supervision over all of the courts within the judicial circuit, in the exercise of his or her judicial powers, and over the judges and officers of the courts. However, when an administrative order is "clearly beyond the chief

judge's power to establish procedures for the uniform operation of the circuit under rule 2.050(b)," it cannot lie. See Valdez v. The Chief Judge of the Eleventh Judicial Circuit of Florida, 640 So.2d 1164 (Fla. 3rd DCA 1994). In Valdez, the Chief Judge had entered an order limiting the power of the first appearance judge to grant a defendant specific pretrial release without reviewing the criteria ordered by the Chief Judge. That order, basically amending the Rules of Criminal Procedure was quashed upon review. "A judge of a paramount court cannot direct a colleague of that court or of an inferior court how to rule upon a matter except through an established writ or appellate process." Valdez at 1165. As with Petitioner, the named defendants were no longer effected by the order in that they had already garnered some (unknown) type of release, yet the Court reviewed finding that "potential harm emanating from future enforcement of the order" was paramount. Valdez at 1165.

An order entered by a Chief Judge that did not arise out of any adversary proceeding, was not adopted as a local rule, and did not come within the definition of an administrative order exceeded the jurisdiction of the circuit court. State of Florida ex. Rel. Dept. of Health and Rehabilitative Services v. Honorable John J.

Upchurch, Chief Judge of the Seventh Judicial Circuit, 394 So 2d 577 (Fla. 5th DCA 1981). (hereinafter Upchurch).

In Upchurch, this Honorable Court held that an order by the Chief Judge establishing additional juvenile detention criteria other than that set out by the Legislature and Florida Supreme Court was in excess of the Chief Judge's jurisdiction. An administrative order is defined as "a directive necessary to administer properly the court's affairs, but not inconsistent with the Constitution." Fl. R. Jud. Admin. 2.020(c). An order not necessary to administer the *court's* affairs is an attempt to legislate, a function expressly delegated to the Legislature by the constitution. Upchurch at 579. Likewise, to permit A99-6 to stand would be to permit the Chief Judge to promulgate rules beyond the clear meaning of the Rules of Criminal Procedure as set forth by the Florida Supreme Court. The Constitution, the Legislature, and the Supreme Court of Florida have cloaked the accused with both the entitlement and the right to reasonable bail and an effective first appearance. Clearly, neither the Constitution nor the Rules can be satisfied if an ex parte order settting bail before an information is filed is allowed to stand without ever having the first appearance inquiry mandated by Rule

3.131 with the defendant present and able to add input into the decision. As this Court recognized in Upchurch, it is the Legislature and the Supreme Court, not the lower courts, that have the power and responsibility to create substantive and procedural changes of law. Upchurch at 580. To give any meaning to a rule other than the plain meaning on the rule's face is "to permit the court to amend the obvious statutory intent, which is not constitutionally permissible." See Upchurch at 579.

When the Chief Judge of the Eighteenth Judicial Circuit issued an Administrative Order disallowing the State to refile charges after first entering a nolle prossequi, the Fourth District Court of Appeals held that, without approval by the Florida Supreme Court, an administrative order that invaded the province of the Legislature or Supreme Court was inoperative and ineffective. State of Florida v. Darnell, 335 So. 2d 638 (Fla. 4th 1976). When an administrative order treads on the province of the rule, "the Supreme Court should be allowed to pass upon its correctness and desirability and to either disallow its usage; make it the subject of a statewide rule, or sanction a different and unique procedure solely for use" in that circuit. See Darnell at 641.

CONCLUSIONCONCLUSION

Based upon the foregoing facts, arguments, and authority, Respondent respectfully requests that this Honorable Court uphold the Fifth District Court of Appeals decisions in the Norris, Williams, and Castillega cases.

RESPECTFULLY SUBMITTED

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CERTIFICATE OF SERVICECERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail, Federal Express, hand delivery, or Fax to Belle Schumann, Attorney General's Office, 444 Seabreeze Blvd., 5th Floor, Daytona Beach, Fl., 32118; the Office of the State Attorney, Hernando County Judicial Center, Brooksville, Florida; the Honorable Peyton Hyslop, the Honorable Richard Tombrink, the Honorable William Law, the Honorable Daniel Merritt, and the Honorable Jack Springstead, Hernando County Judicial Center, Brooksville, Florida; the Honorable William T. Swigert, 110 N.W. 1st Ave., Ocala, Fl, 34601; and Greenfelder, Mander, Hanson, Murphy and Dwyer, 14217 Third Street, Dade City, FL 33523.

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