ORIGINAL

IN THE SUPREME COURT OF FLORIDA

ARIC A. WILLIAMS,

Petitioner/Appellant,
versus

STATE OF FLORIDA,

Respondent/Appellee.

S.CT. CASE NO. 96,672

DCA CASE NO. 99-362

ON DISCRETIONARY REVIEW FROM THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF PETITIONER

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

LYLE HITCHENS
ASSISTANT PUBLIC DEFENDER
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APPELLANT

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STATEMENT OF THE CASE AND FACTS

Aric Alexander Williams was charged in a two count information with resisting an officer with violence (F3), and battery upon a law enforcement officer (F3). (Volume 1, pages 13-14)

Officer Buff Harris, employed by the Sanford Police Department, was on duty on May 1, 1998, when he came in contact with the defendant. Officer Evans was in the car with Officer Harris. The officers were in a marked patrol vehicle, dressed in full uniform. Harris exited his vehicle and called out to appellant. Officer Curtin was in a different car, coming up the side. Appellant turned around and began to run. Harris told him to stop, that he was under arrest. Harris had previously given appellant two trespass warnings for this complex. Appellant went up a flight of stairs into apartment 78 or 76. (Volume 2, pages 4-10) Harris knocked on the door pretty loudly and yelled for him to come out. Officer Evans and Officer Curtin entered the apartment with Harris entering behind them. (Volume 2, pages 10- 14) Harris was to ensure that no one jumped the officers while they were making the arrest. He could see the struggle between the officers and appellant. (Volume 2, page 16)

On cross-examination, testimony was that he knew they were struggling but he did not see any exact blows [between the officers and appellant]. When Harris

first yelled to appellant, he told appellant that he was trespassing. Harris was aware that appellant had friend[s] at the Seminal Garden complex. (Volume 2, page 2 1)

On May 1, 1998, Robert Curtin was employed with the Sanford Police Department. Curtin went straight to the apartment front door. Officer Harris was already there. Curtin and Evans made entry into the apartment and went down the hall to the back bedroom where the defendant slammed the door on Cur-tin, hitting his knee. Cur-tin drew his weapon and kicked the door open. Officer Evans reached out to grab the defendant's arms, and the defendant knocked his hand away. (Volume 2, pages 3 1-37) Officer Evans took his hands again and was able to get him down on the ground. The defendant continued to fight, pulling his arms away. (Volume 2, pages 38-39) While walking from the apartment to the car he was yelling to the crowd, violently jerking away, turning and facing Curtin and telling him to fuck off, When trying to put the defendant in the patrol vehicle, the defendant jerked his body straight up so that the officer and defendant were chest to chest, and knocking the officer back about half of a step. (Volume 2, pages 40-44) After the defendant was sprayed with pepper spray, there was no trouble putting him in the car. (Volume 2, page 45)

Cross-examination testimony was that when Curtin saw Mr. Williams, Curtin asked the defendant to show his hands. When the defendant retreated behind the

wall, Curtin entered first and Officer Evans went in behind him. Officer Evans' second attempt to grab Mr. Williams was successful and he took the defendant to the ground, by himself. At that point he holstered his gun, and assisted with cuffing the defendant. The defendant was wiggling around and pulling his arms away, but he was not throwing punches too. (Volume 2, pages 49, 52, 54) Cur-tin did not receive any medical treatment. (Volume 2, page 56)

Sanford Police Officer John Evans testified that on May 1, 1998, he was driving a marked patrol car and Officer Harris was a passenger who identified the defendant. Harris exited the vehicle and called to the defendant who fled on foot. (Volume 2, pages 58-61) The defendant went into an apartment and then into a bedroom. Officer Curtin followed and the bedroom door was closed on Curtin's left leg. (Volume 2, pages 63-64) The defendant knocked Evans' hand away. Evans had to force the defendant to the ground. The defendant and officers struggled for a few minutes as the defendant was trying to kick and trying to swing to keep the officers at a distance to keep them from accomplishing their purpose. The defendant struck Evans on the arm, with his right hand. (Volume 2, pages 65-67, 69-70)

Cross-examination revealed details testified to in court were not included in the written report. However, the officer indicated the defendant was kicking and

throwing punches. The officers did not have a warrant to arrest the defendant. Evans said it was a probable cause arrest. (Volume 2, pages 72-73) Evans charged the defendant with trespass, resisting an officer with violence as well as resisting an officer without violence. This officer did not personally speak with the tenant in apartment 76. (Volume 2, page 74)

The state rested. Motion for judgment of acquittal was made. Defense counsel, Ms. Lee Taylor, cited Scott v. State, 693 So. 2d 7 15 (Fla. 4th DCA 1997), and L.D.L. v. State, 569 So. 2d 13 10 (Fla. 1 st DCA 1990), another case saying the same thing, that a tenant has a right to invite...into the premises... (Volume 2, pages 80-83) The court stated:

> in the light most favorable to the state, the defendant slammed the door on the officer's knee, Somebody said the defendant fought and kicked. The jury can believe whoever they want to.

The motions for judgment of acquittal as to both counts were denied. (Volume 2, pages 80-87)

The defendant told the judge he was not going to testify. The defendant stepped out to show himself to the jury, so that they could get an idea of his stature. The defense rested. (Volume 2, pages 119- 12 1) Defense counsel Ms. Taylor requested on both the resisting with violence and the resisting without violence

counts, since both of them had an element that had to be proven -- that they were engaged in the lawful execution of a legal duty -- the Defense requested in the very last line that the court read: that making a lawful arrest constitutes lawful execution of a legal duty. Ms. Taylor cited State v. Anderson, 639 So. 2d 609 (Fla. 1994), specifically head note 3 and 4. The court responded that State v. Anderson is about resisting an unlawful arrest without violence, but not being able to resist an unlawful arrest with violence. (Volume 2, pages 125-128) If the defense argued the state must prove the officers were engaged in the "lawful execution of a legal duty", then the court was going to give the State's requested instruction. (Volume 2, page 130) The court denied the defense's requested jury instruction (Volume 2, page 132)

A motion for new trial was heard on January 26, 1999, based on a contradiction in the law. Argument was: case law says that a lack of a lawful legal duty is never a defense to resisting with violence. Yet, on other hand, the statute reads that their needs to be lawful execution of a legal duty and the standard jury instruction reads that way. So in effect its sets up an element that the state has to prove while at the same time the case law is saying that you can not argue that element, because it is not a defense. That is a direct contradiction of each other. (Volume 1, page 148)

The court stated: the jury instruction is consistent with the statute. [However], the statute is not consistent with the law that says that you cannot resist an unlawful arrest with violence. The problem apparent to the court is that either the standard jury instruction is incorrect and the word "lawful" should not lead into an element of the execution of a legal duty. If the defendant chooses to resist with violence, then the officer does not have to be in a lawful execution of a legal duty, [but] only in the execution of a legal duty. (Volume 1, page 149) Defense counsel Ms. Taylor stated it was not just the jury instruction, but the statute itself that included the 'language "lawful." So the defense's position would be that the statute wording should be changed. (Volume 1, page 150) The state cited Jones v. State, 577 So. 2d 433 (Fla. 5th DCA.). The court denied the motion for new trial. (Volume 1, page 151)

Sentencing took place on February 2, 1999. The defense had filed an amended motion to declare the prisoner releasee re-offender act unconstitutional. (Volume 1, pages 67-84, 132) Defense counsel reiterated that this state attorney's office filed their notice of intent to prosecute as a prisoner releasee re-offender on November 5, 1998. Then on January 13, 1999, the jury found appellant guilty as charged of resisting an officer with violence and battery on a law enforcement officer. On January 26, 1999, the court denied appellant's motion for new trial [see

above]. Defense counsel also advised the court that the Honorable Reginald K. Whitehead, Circuit Judge in Orange County, in the case of State v. Jake Murray, #CR 98-3249, declared Florida Statute, Section 775.082 (8), unconstitutional based on the separation of powers argument. (Volume 1, page 133) Appellant's counsel went on to state that the prisoner releasee re-offender act also violated the single subject rule as well as the separation of powers doctrine. (Volume 1, page 134) The court imposed a sentence of five years DOC as a prison release re-offender with 277 days credit for time served. (Volume 1, page 142)

The Fifth District Court of Appeal affirmed on the basis of Speed v. State, 732 So. 2d 17 (Fla 5th DCA 1999); with Speed v. State being under review by this Court as S. Ct. Case Number 95,706.

SUMMARY OF THE ARGUMENT

The Fifth District Court of Appeal's decision in this cause cites as controlling authority a decision which is currently pending review in this Honorable Court in Supreme Court Case Number 95,706.

ARGUMENT

THE DISTRICT COURT OF APPEAL'S DECISION CITES AS CONTROLLING AUTHORITY THE DECISION IN SPEED V. STATE, WHICH IS PENDING REVIEW BY THIS HONORABLE COURT.

In its per curiam decision affirming Petitioner's appeal, the Fifth District Court of Appeal affirmed on the authority of:

> Speed v. State, 732 So. 2d 17 (Fla 5th DCA 1999). (APPENDIX)

See also Jollie v. State, 405 So. 2d 418 (Fla. 1981), wherein this Honorable Court held that a District Court of Appeal's per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by the Supreme Court constitutes prima facie conflict and allows the Supreme Court to exercise its jurisdiction.

CONCLUSION

BASED UPON the argument and authorities contained herein, Petitioner respectfully requests that this Honorable Court exercise its discretionary jurisdiction and grant review of the Fifth District Court of Appeal's decision in this cause.

Respectfully submitted,

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SEVENTH JUDICIAL CIRCUIT

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COUNSEL FOR PETITIONER/
APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Robert E. Butterworth, Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, in his basket at the Fifth District Court of Appeal, and mailed to Aric A. Williams, Inmate No. 7823 11, Liberty Correctional Institution, H.C.R. 2, Box 144, Bristol, Florida 3232 1-97 11, on this 11 th day of October, 1999.

LYLE HITCHENS
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

ARIC A. WILLIAMS,	)	
	)	
Petitioner/Appellant,	)	
	)	
vs.	)	S.CT. CASE NO. 96,672
	)	
STATE OF FLORIDA,	)	DCA CASE NO. 99-362
	)	
Respondent/Appellee.	)	

APPENDIX

99-255 4/e

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT
JULY TERM 1999

ARIC A. WILLIAMS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL THE TIME EXPIRES TO FILE REHEARING MOTION, AND, IF FILED, DISPOSED OF.

CASE NO. 99-362

RECEIVED

AUG 27 1999

PUBLIC DEFENDER'S OFFICE
7th CIR. APP. DIV.

Opinion filed August 27, 1999

Appeal from the Circuit Court
for Seminole County,
Alan A. Dickey, Judge.

James B. Gibson, Public Defender,
and Lyle Hitchens, Assistant Public
Defender, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney
General, Tallahassee, and Carmen F.
Corrente, Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED on the authority of Speed v. State, 732 So. 2d 17 (Fla. 5th DCA 1999).

DAUKSCH, GOSHORN and THOMPSON, JJ., concur.

It has been held by the First District[1] that a second motion for rehearing is permitted in those cases where, as a result of the initial (and timely) motion for rehearing, the court issues a new opinion which changes the entire basis for the ruling in the first opinion. In a similar vein, it has been implied though not held, in a decision from this court,[2] that a second motion for rehearing would have been permitted had the court, as a result of the initial (and timely) motion for rehearing, issued a new opinion that substantially changed the results or reasoning of the prior opinion. There appears no reason or logic why the rationale of those decisions, notwithstanding they involved motions for rehearing, should not equally apply to motions for certification. Consistent with that reasoning, we furthermore hold that a motion for certification may be addressed to new opinions meeting like criteria.

The cross-appeal was not briefed and is dismissed. The summary judgment is reversed and this cause remanded for further proceedings not inconsistent herewith.

REVERSED.

POLEN and SHAHOOD, JJ., concur.

WEST KEY NUMBER SYSTEM

Lorenzo SPEED, Appellant,

v.

STATE of Florida, Appellee.

No. 98–1728.

District Court of Appeal of Florida, Fifth District.

April 23, 1999.

Defendant was convicted in the. Circuit Court, Volusia County, S. James Foxman, J., of strong armed robbery, and was sentenced pursuant to Prisoner. Releasee Reoffender Act. Defendant appealed. The District Court of Appeal, Cobb, J., held that Act did not unconstitutionally divest court of its sentencing discretion..

Affirmed.

Criminal Law -1201.5

Prisoner Releasee Reoffender Act did not unconstitutionally divest trial court of its sentencing discretion, but rather 'provided sentencing considerations for state attorney which were not applicable to trial judge. West's F.S.A. § 775.082(8).

James B. Gibson, Public Defender, and Leonard- R. Ross, Assistant Public Defender, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Alfred Washington, Jr., Assistant Attorney General, Daytona Beach, for Appellee.

COBB, J.

The defendant below, Lorenzo Speed, was convicted of strong arnied robbery and was sentenced to fifteen years imprisonment pursuant to the Prisoner Releasee Reoffender Act, codified as section 775.082(8), Florida Statutes (1997).[1] The Act provides:

> (8)(a)1. "Prison releasee reoffender" means any defendant who commits, or attempts to commit:
>
> a.- Treason;
>
> b. Murder;
>
> c. Manslaughter;

1. *Dade Fed. Sav. & Loan Ass'n v. Smith, 403* So.2d 995 (Fla. 1st DCA 1981).

2. *3299 N. Federal Highway v. Broward County Comm'rs, 646* So.2d 215, 228 (Fla. 4th DCA 1994).

1. Now codified as section 775.082(9), Florida Statutes (1998).

d. Sexual battery;

e. Carjacking;

f. Home-invasion robbery;

g. Robbery;

h. Arson;

i. Kidnapping

j. Aggravated assault;

k. Aggravated battery;

1. Aggravated stalking;

m. Aircraft piracy;

n. Unlawful throwing, placing, or discharging of a destructive device or bomb.

0. Any felony that involves the use or threat of physical force or violence against an individual;

p. Armed burglary;

q. Burglary of an occupied structure or dwelling; or

r. Any felony violation of s. 790.07, s. 800.04, s. 827.03, or s. 827.071;

within 3 years of being released from a state correction facility operated by the Department of Corrections or a private vendor.

2. If the state attorney determines that a defendant is a prison releasee reoffender as defined in subparagraph 1., the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of, the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing' guidelines and must be sentenced as follows:

a. For a felony punishable by life, by a term of imprisonment for life;

b. For a felony of the first degree, by a term of imprisonment of 30 years;

c. For a felony, of the second degree, by a term of imprisonment of 15 years; and

d. For a felony of the third degree, by a term of imprisonment of 5 years.

(b) A person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence.

(c) Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law, pursuant to s. 775.084 or any other provision of law.

(d)1. It is the intent. of the Legislature that offenders previously released from prison who meet the criteria in paragraph (a) to be punished to the fullest extent of the law and as provided in this subsection, unless any of the following circumstances exist:

a. The prosecuting attorney does not have sufficient evidence to prove the highest charge available;

b. The testimony of a material witness cannot be obtained;

c. Tbe victim does not want the offender to receive the mandatory prison sentence and provides a written statement to that effect; or

d. Other extenuating circumstances exist which preclude the just prosecution of the offender.

2. For every case in which the offender meets the criteria in paragraph (a) and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney. On a quarterly basis, each state attorney shall submit copies of deviation memoranda regarding offenses committed on or after the effective date of this subsection, to the president of the Florida Prosecuting Attorneys Association, Inc. The association must maintain such information, and make such information available to the public upon request, for at least a 10-year period.

On appeal, Speed contends that the challenged Act "is an unconstitutional delegation of power from the legislative branch to the executive branch (the State Attorney) to (a) determine what the maximum punishment for a given crime is to be and (b) then divest and usurp the power of the judicial branch with respect to the sentencing function, in violation of Article II, section 3 of the Florida Constitution." In other words, the Act violates the separation of powers doctrine because it divests the trial court of sentencing discretion. Speed observes that this court upheld the sentencing guidelines [2] and the habitual offender statute [3] because they preserved 'sufficient elements of judicial discretion in the sentencing function. He argues that the Prison Releasee Reoffender Act, on the other band, divests the trial court of all discretion in sentencing and reposits that discretion in the State Attorney.

The constitutionality of this Act was recently considered by the Third District in *McKnight a State*, 727 So.2d *314, 24* Fla. L. Weekly D439 (Fla. 3d DCA 1999) and by the Second District in State *v. Cotton*, 24 Fla. L. Weekly D18, 728 So.2d 251 (Fla. 2d DCA 1998). The Act was also construed by the Fourth District in *State v. Wise*, 24 Fla. L. Weekly D657, — So.2d —, 1999 WL 123568 (Fla. 4th DCA March 10, 1999). In *McKnight* Judge Sorondo's opinion disagrees with the analysis of Judge Blue in Cotton, wbo found that the four factors set. forth in subsection (d) of the Act involve fact finding and the exercise of discretion by the trial court, thus saving the Act from any attack on the basis of separation of powers. The Fourth District is in agreement with the construction in *Cotton*. Based upon our reading of the Act, and its legislative history, we agree with the Third District that the factors in subsection (d) are intended by the legislature as considerations for the state attorney and not for the trial judge. Despite this interpretation of the Act, the Third District concluded tbai the Act does not contravene the separation of powers provision of the Florida Constitution-and we also agree with that conclusion. No appellate court to date has invalidated the Act.'

The legislature enacted the foregoing legislation because of its concern about the early release of violent felony offenders with the resulting toll upon Florida's residents and visitors. See Preamble, Ch. 97–239, Laws of Florida (1997). It is well established that setting penalties for crimes is a matter of substantive law within the power of the legislature. *McKendry v. State*, 641 So.2d 45 (Fla.1994); Smith *v. State*, 537 So.2d 982 Wa.1989). Florida law contains mandatory minimum [5] statutes whereby the prosecutor, by charging pursuant to the statute, can implement a required level of punishment Arguments that mandatory sentences violate the separation of powers have been uniformly rejected by courts in this state. Sea, e.g., *Lightbourne v. State*, *438* So.2d

2. *See Ecenrode v. Stare*, *576* So.2d 967 (Fla. 5th DCA 1991).

3. *See Kirk v. Stare*, 663 So.2d *1373* (Fla. 5th DCA 1995).

4. We do have one profound reservation in regard to the Act, but it is not based on separation of powers but rather on substantive due process. Our concern is prompted by the provision in subsection (8)(d) 1.c. of the Act which apparently gives the victim of the crime an absolute veto over imposition of the mandatory prison sentences prescribed by the Act, in this case a fifteen year sentence. Thus, the punishment of the offender will vary from case to case based upon the benign nature. or susceptibility to intimidation. of the criminal's victim. Should an armed robber be punished less severely because his victim happens to be forgiving rather than somewhat vindictive? Moreover. this provision of the Act promotes harassment and intimidation of the victim. Apparently this due process argument in regard to a victim veto has not been raised in any other case involving the validity of the Prison Releasee Reoffender Act, nor has it been briefed or argued in the instant appeal. We therefore do not determine its viability here.

5. See §§ 775.0823. 775.087, Fla. Stat.

380 (Fla.1983), cert. *denied*, 465 U.S. 1051, 104 S.Ct. 1330, 79 L.Ed.2d 725 (1984); *Scott v. State*, 369 So.2d 330 (Fla.1979); *Sowell v. State*, 342 So.2d 969 (Fla.1977). Accordingly, we reject the argument that the Act is unconstitutional because it requires the trial court to impose a mandatory minimum sentence.

We find no merit in the other issue raised by Speed in respect to the sufficiency of the evidence to support a conviction for strong armed robbery. *See Mahn v. State*, 714 So.2d 391 (Fla.1998); *Jones v. State*, 652 So.2d 346 (Fla.), *cert.* denied, 516 U.S. 875, 116 S.Ct. 202, 133 L.Ed.2d 136 (1995).

AFFIRMED.

GOSHORN and ANTOON, JJ., concur.

WEST KEY NUMBER SYSTEM

Tommie Lee SANDERS, Appellant,

v.

STATE of Florida, Appellee.

No. 98–2206.

District Court of Appeal of Florida, First District.

April 27, 1999.

Following plea of nolo contendere, defendant was convicted in the Circuit Court, Columbia County, Paul S. Bryan, J., of possession of cocaine and drug paraphernalia, and he appealed. The District Court of Appeal, Allen, J., held that evidence seized in connection with search exceeded scope of defendant's consent.

Reversed and remanded.

1. Searches and Seizures ⇐186

Officer's action of instructing suspect, who consented to pat-down, to take everything out of his pockets exceeded scope of defendant's consent and amounted to illegal search.

2. Searches and Seizures ⇐53.1

When a suspect empties his pockets in response to an officer's directive that he do so, the legal effect is the same as if the officer had himself searched the suspect's pockets.

3. Searches and Seizures ⇐171

Consensual search by its very definition is circumscribed by the extent of the permission given, as determined by the totality of the circumstances.

4. Searches and Seizures ⇐186

In the absence of additional circumstances which would justify a more complete search, consent to a mere pat down does not include consent to reach into the pockets of a suspect and retrieve the contents.

Nancy Daniels, Public Defender, and Glen P. Gifford, Assistant Public Defender, Tallahassee, for Appellant.

Robert A. Butterworth, Attorney General, and Denise O. Simpson, Assistant Attorney General, Tallahassee, for Appellee.

ALLEN, J.

Reserving the right to appeal the trial court's denial of his motion to suppress cocaine and drug paraphernalia, the appellant pled nolo contendere to charges of possession of the cocaine and paraphernalia. *See* Fla. R.App. P. 9.140(b)(2)(A). We reverse the appellant's convictions because the evidence was seized in connection with a search which exceeded the scope of the appellant's consent.

[1] Considered in a light most favorable to the prosecution, the testimony presented at the suppression hearing revealed the following facts: Approximately ten minutes after a store had
in the very early mornin
Raggins spotted the ap
along a street about two
store. When the officer
lant why he was out at t
morning, the appellant fir
was looking for his car I
further pressed, stated tha
a walk at that time of the
the officer asked if the
object to being patted dow
responded that he had no
cer Raggins then asked
whether he had any needle
objects in his pockets that
officer during the pat dowr
appellant indicated that h
objects in his pockets, the
ed the appellant to take e
his pockets. The appellan
ducing the cocaine and para

[2–4] When a suspec
pockets in response to an o
that he do so, the legal ef
as if the officer had himse
suspect's pockets See *K.*
So.2d 819 (Fla. 1st DCA 1
justification offered by the
search of the appellant's
present case is that the app
to a pat down also provide
more extensive search of h
"[a] consensual search by
tion is circumscribed by th
permission given, as dete
totality of the circumstance
Wells, 539 So.2d 464 (Fla.
U.S. 1, 110 S.Ct. 1632,
(1990). And, in the absen
circumstances which would
complete search, consent
down does not include co
into the pockets of a suspe
the contents. See *Jorda*
So.2d 272 (Fla. 5th DCA 1
court therefore erred in d
tion to suppress.

The appellant's convictio
and this case is remanded t

IN THE SUPREME COURT OF FLORIDA

ARIC A. WILLIAMS,	)	
	)	
Petitioner/Appellant,	)	
	)	
versus	)	S.CT. CASE NO. 96,672
	)	
STATE OF FLORIDA,	)	DCA CASE NO. 99-362
	)	
Respondent/Appellee.	)	
	)	

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of the type used in this brief is 14 point Times New Roman, a font that is proportionately spaced.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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