

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

PETITIONER,

v.

CASE NO. SC00-514

ZINA JOHNSON,

RESPONDENT.

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DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

REPLY BRIEF

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THE STATE SHOULD BE GIVEN AN OPPORTUNITY TO  
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723 So.2d 928 (5th DCA 1999).

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**STATEMENT REGARDING TYPE**

The size and style of type used in this brief is 12-point Courier New, a font that is not proportionately spaced.

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**OTHER AUTHORITIES**

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### **SUMMARY OF THE ARGUMENT**

The State's good faith effort to locate the Respondent diminishes the necessity to resort to the harsh consequences of exclusion of her medical records despite the technical failure to follow procedural requirements since the authority of State v. Manny, *infra*, allows those requirements to be met upon proper issuance of a subpoena once a defendant whose medical records are sought to be introduced is located.

**ARGUMENT**

**ISSUE I**

**THE STATE SHOULD BE GIVEN AN OPPORTUNITY TO NOTICE RESPONDENT BY SUBPOENA OF HER MEDICAL RECORDS ON THE AUTHORITY OF STATE V. MANNY, 723 So.2D 928 (5th DCA 1999).**

Respondent appears to indicate that she lived at the address listed on her current driver's license at the time the records were sought and that the effort to locate her was therefore not made in particularly good faith. The record however does not seem so clear in this regard, although Petitioner certainly acknowledges that the State Attorney Investigator did not explore every avenue available to him in his effort to find Respondent at the time.

Nevertheless, although Respondent minimizes the holding in State v. Manny, 723 So.2d 928 (5th DCA 1998), that is the case upon which Petitioner seeks jurisdiction before this Court upon conflict certified by the Second District Court of Appeal in this cause.

Respondent urges that in Manny, the State issued a subpoena with proper notice to the defendant, and asserts that court did not carve out a good faith exception to the notice requirements of Sec. 395.3025(4)(d), Fla. Stat. Petitioner asserts the Manny court recognized that the states initial failure to follow proper statutory notice requirements is not fatal to issuance of the records where they are later sought through proper means.

Petitioner also urges that the good faith effort to locate the Respondent in this cause eliminates the necessity of resorting to suppression to enforce procedural requirements, particularly in light of Manny's holding that a second and proper notice before issuance of the subpoena is appropriate. Petitioner seeks only to have the opportunity now that it is aware of Respondent's location, to issue proper notice. Pursuant to the authority in State v. Manny, supra, it should be allowed to do so.

**CONCLUSION**

WHEREFORE, this Court should reverse the opinion of the Second District Court of Appeal and apply the reasoning in State v. Manny, supra, and allow the State to issue a subpoena for Respondent's medical records.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. mail to Jeffrey A. Haynes, Esquire, 240 N. Washington Blvd., Suite 470, Sarasota, Florida 34236 this \_\_\_\_\_ day of May, 2000.

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**COUNSEL FOR PETITIONER**