IN THE SUPREME COURT OF FLORIDA

JEFFREY LAMAR WILLIAMS,

Petitioner,

v. **CASE NO. SC00-78**

STATE OF FLORIDA,

Respondent.
_____/

PETITIONER'S INITIAL BRIEF ON THE MERITS

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SECOND JUDICIAL CIRCUIT

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I. PRELIMINARY STATEMENT

Jeffery Lamar Williams was the defendant in the trial court and will be referred to in this brief as “petitioner,” “defendant,” or by his proper name. Reference to the record on appeal will be by use of the volume number (in roman numerals) followed by the appropriate page number in parentheses.

Filed with this brief is an appendix containing copies of the district court’s opinions in petitioner’s case, as well as other relevant documents. Reference to the appendix will be by use of the symbol “A” followed by the appropriate page number in parentheses.

The undersigned certifies that this brief was printed with Courier New, 12-point, a non-proportional font.

II. STATEMENT OF THE CASE AND FACTS

Count I of an information containing five charges alleged that petitioner, on September 17, 1997, burglarized a dwelling owned by A.P., and during the offense committed an assault or battery, contrary to Section 810.02(2), Florida Statutes (1997). Count II alleged that petitioner, on September 17, 1997, robbed U. S. Currency owned by and from the custody of A.P., contrary to Sections 812.13(1) and (2)(c), Florida Statutes (1997). Count III alleged that petitioner, on September 27, 1997, committed sexual battery upon A.P., by penetration or union of his sexual organ with her vagina, with use of actual physical force likely to cause serious personal injury, contrary to Sections 794.011(1)(h) and (3), Florida Statutes (1997). Count IV of the information alleged that petitioner, on September 27, 1997, committed sexual battery upon A.P., by penetration or union of his sexual organ with her anus, with use of actual physical force likely to cause serious personal injury, contrary to Sections 794.011(1)(h) and (3), Florida Statutes (1997). Count V alleged that petitioner, on September 27, 1997, battered or caused bodily harm to A.P., a person 65 years of age or older, contrary to Sections 784.03 and 784.08, Florida Statutes (1997)(I-1-2).

Petitioner proceeded to a trial by jury on October 27, 1998. During opening statement, defense counsel stated he expected the evidence to show that, while horrible crimes were committed upon Ms. P., it was not petitioner who committed them. Counsel said, in part:

> DEFENSE COUNSEL: Evidence will show that the person who did this had no tattoos. Miss P. got a good look at the arms, he had a short sleeve shirt on, the evidence will show that Jeffery Williams has tattoos on both arms.

(IV-28).

The first witness in the state's case was A.P. Ms. P. testified she and her husband retired and moved to Jackson County in 1978, purchasing six acres at Road. Mr. P. died 18 months later, and since that time Ms. P. lived alone on the property. She has received a lot of help from her neighbors, the H., who lived a short distance away (IV-32-33).

September 17, 1997, started out like a typical day for Ms. P. She fed the chickens and worked in her garden. At about 4:30 p.m., she went into her house to watch the news. Ms. P. changed into a robe and decided to make some coffee before showering. She sat down to drink a cup and then heard a knock on her screen door (IV-34-35).

The man at the door asked P. if she had any jobs for him, such a raking leaves. Ms. P. said the leaves did not need raking. The man then said that he knows the H. and their grandson, and that he lived in the area, pointing toward Dellwood (IV-36).

At this point, the man forced his way into the house. P. tried to escape but the man grabbed her by her hair, choked her, and drug her into her home. The man vowed to kill P. if she screamed. P.offered the man $60 that was on her clothes dryer, and the man remarked that he was going to get that too. The man forced P. into her bedroom. At some point, she lost her dentures. Once in the bedroom, the man told P. to drop her clothes. When P. did not immediately remove her robe, the man struck her with his fist, knocking her out. P. knows that he continued to beat her because she suffered damage in one eye, and her ear was struck so hard that it was three months before she could walk without a cane (IV-37-40).

When Ms. P. came to, she walked to her kitchen and called the H., who quickly came over (IV-41). Ms. P. remembers little about being taken to the hospital, where she remained for six days, or being examined by a physician at the hospital. She does recall a visit from Sheriff Johnny Mack. Ms.

P. was shown a photo lineup and made an identification, after which Johnny Mack said, “We got him within eight hours.” (IV-42-44).

At the time she was shown a photo lineup, one of Ms. P.’ eyes was nearly swollen shut. She has no doubt that the person she picked from the photo lineup was the correct person (IV-44-45). When asked if the man was in court, Ms. P. did not selected anyone (IV-56). Ms. P. had her cataracts removed in March of 1998. She does not know Lester Williams or Larry Williams and she does not recall either of them ever being in her house. Ms. P. experienced soreness in her vaginal and anal area. Her chest, neck, and the top of her head had been bruised black (IV-57-59).

On cross-examination, Ms. P. testified the culprit was not as tall as defense counsel. She does not recall telling the police how tall the assailant was, but she did state on deposition that he was thin and about 5'8" to 5'10" tall. She got a good look at his arms and she did not see any tattoos. P. stated the intruder’s shoes were black or blue, not white (IV-60-63). Ms. P. is 77 years old (IV-67).

Dr. Duane Herring, M.D., testified he is an emergency room physician at Jackson Memorial Hospital. On September 17 or 18, 1997, he examined A.P., who had been severely beaten and raped (IV-69-70). There were bruises over her scalp, neck, back arms, and a thigh. There was a tear in the vaginal wall, indicative of forceful penetration. There was a small fissure, a tear posterior to the rectum. Dr. Herring also performed a rape kit analysis in connection with his examination. Non-motile sperm were observed on the vaginal swab (IV-69-74).

Dr. Herring testified further than he took samples later that morning from three black males, petitioner, Lester Williams, and Larry Williams (IV-77-79).

Herring testified that, after his examination of Ms. P he referred her to Dr. Muniz, an obstetrician and gynecologist, and to Dr. Bruner, a general surgeon. Ms. P. was admitted to the hospital for observation. The injuries to Ms. P., according to Dr. Herring, were potentially life-threatening (IV-80-81).

E. H., the next state witness, testified she and her husband live at Road in Greenwood, and was a neighbor of Ms. P. (IV-82). Ms. H. testified that on September 17, 1997, at about sundown, Ms. P. telephoned and asked the H. to come to her house. She sounded very upset.

When they arrived, Ms. P. was sitting in a chair, in a daze. P. said a man had beat and raped her. She knew the man but didn't know his name. Over a hearsay objection, Ms. H. testified P. told her the person had short curly hair and was the same person who had been shooting in her yard a year or so earlier. On that occasion, Mr. P. had called Mr. H. about the man shooting in her yard (IV-83-90). The man had also told P. he knew the H.'s grandson, S. The man had also pointed to the direction where he lived, which Ms. P. showed to the H. (IV-91-92).

E. H. testified he was a neighbor of Ms. P., and that he was born in 1920. In September of 1997, H.'s wife told him that Ms. P. needed their help. So he and his wife drove to Ms. P.' house. Ms. P. had blood on her. Referring to petitioner, Mr. H. testified that, about a year earlier, Ms. P. had complained about someone hunting on her property. Mr. H. advised petitioner that Ms. P. did not want hunting on her property (IV-93-97).

On cross-examination, when asked if the hunting incident had in fact occurred in 1990, Ms. H. testified he really could not recall precisely when it had occurred (IV-98-99).

Sgt. Michael Baxter testified he is the canine supervisor at Jackson Correctional Institution ("J.C.I."). Baxter trains bloodhounds to track by scent (IV-100). At the request of the sheriff's office, Baxter and one of his trained dogs went to the P. residence. About fifty feet from the house, Baxter observed tennis shoe tracks running in a southern direction. Along with Inspector Ricky Cloud, Baxter and his dog tracked the prints and scent to the back door of a wood frame residence on H. Road. Baxter notified the sheriff, and deputies questioned the occupants of the residence (IV-101-107).

Some of the residents of the house advised that they had traveled to the home of Mr. "Skeeter" Godfrey on Green Road. Baxter tracked this route in an effort to find the shoes. Baxter did not see any tennis shoe tracks at the Godfrey residence. On the way back, Baxter spied a tennis shoe on the side of Sweet Pond Road (IV-108-112).

Baxter testified his dogs are able to follow tracks made up to five or six hours earlier. Changing shoes would not affect the dogs' ability to track, as they rely upon human scent (IV-113-117).

On cross-examination, Baxter admitted he had no evidence that the foot prints ever came closer than fifty feet from Ms. P.' house (IV-118-119).

Chuck Richards, the next state witness, testified he is employed by the Florida Department of Law Enforcement ("F.D.L.E."), assigned to the latent print and crime scene section (IV-123). He responded to Ms. P.' home at about 10:25 p.m. on September 17, 1997. He processed both the inside and outside of the residence. He took photographs of the shoe tracks. Richards also went to Sweet Pond Road where he photographed and collected some shoes and socks (IV-124-126). During Richards' testimony, it was stipulated that the left shoe, a size 13 Reebok athletic shoe, could have made two of the three tracks that had been photographed (IV-143-145). The nearest track was 200 feet from P.' home, and the other track was 225 feet from the house (IV-146-147).

On cross-examination, Richards testified the shoes were mostly white, with green trim (IV-148-150).

Larry Williams, the next state witness, testified he is 25 years old and lives with his mother and his brother, Lester Jimmy Williams. His grandmother often visits. Both Larry and Lester are disabled. Larry's nephew, petitioner, was also living with them on September 17, 1997 (IV-151-153).

On the afternoon of September 17th, Williams' mother went grocery shopping at a Harvey's in Donalsonville, Georgia. After she returned petitioner, known as "Bo-Bo," left the house to go for a

walk. This occurred when the Oprah Winfrey Show was airing from Channel 4 in Dothan, Alabama. Larry does not think Lester went with petitioner. After petitioner returned, a family friend named Damien Thornton picked up petitioner, Lester, and Larry, and took them to Skeeter's house on Green Road. One of the men had a bag; Larry could not recall which one. Larry did recall throwing the bag, which he thought contained trash, out of the window while they were Sweet Pond Road. Lester and petitioner left Skeeter's at about 7:30 p.m. Larry stayed at Skeeter's a while longer. He then headed home, walking part of the way and catching a ride for part of the way. As he approached his house, he saw police officers. Larry did not go home right away. He did go home about a half hour later and learned that something had happened at Ms. P.' house. Officer Larry Birge talked with Larry, who agreed to come to the sheriff's office the next day to provide a blood sample. Petitioner and Lester Williams also agreed to provide samples. Later, Larry advised Officer Birge and Tim Robinson of the F.D.L.E. about petitioner taking a walk the previous day. Larry does not recall telling the police petitioner was gone from 45 to 60 minutes, but he does recall petitioner seemed kind of frightened when he came back (IV-154-162).

On cross-examination, Larry testified that the police questioned him for about 27 hours. He was sleepy and tired. Petitioner's walk lasted no more than five to ten minutes, because Larry saw petitioner outside talking to his mother five to ten minutes after he left (IV-172-173).

Lester Williams, the next state witness, testified he is 42 years old. He testified his younger brother, Larry, is about 34 or 35 years old. Lester cannot work because he is disabled. In September of 1997, Lester lived with Larry, their mother, and his nephew, petitioner (IV-175-176).

On September 17, 1997, Williams' mother went shopping in Donalsonville, Georgia; Lester helped her unload the groceries when she returned. Ms. Williams started doing some laundry. Lester and Larry watched Oprah Winfrey on television. Petitioner left for 15 to 30 minutes (IV-177-179).

Lester does not recall telling the police petitioner looked a bit shook up when he returned and testified that he misunderstood the question (IV-180-181). Lester explained that it seemed as if the police were blaming him for the crime, which shook him up. When petitioner returned, he changed clothes, but Lester does not recall what petitioner did with his socks and shoes. Lester did not tell the police petitioner was asking him and Larry to get rid of his

socks and shoes for him (IV-180-184). Lester does recall Larry carrying a white plastic bag in their house, but he does not know who carried the bag to Damien's car. On the way to Skeeter's house, Larry tossed the bag out of the car. Lester does not know what was in the bag. Lester wears a size 10 shoe (IV-185-190).

On cross-examination, Lester testified that, as far as he knew, petitioner owned only one pair of white tennis shoes. He does not think the shoes found by the police were the ones petitioner was wearing (IV-192-193).

The Sheriff of Jackson County, John McDaniel, was the next state witness. He visited Ms. P. at the hospital the night she was admitted (IV-194). The next day, Sheriff McDaniel displayed a photo lineup that had been compiled by Investigator Birge to Ms. P.. Ms. P. first said that photo number one and photo number six each looked like the suspect. Sheriff McDaniel asked her if she could choose between the two. Ms. P. studied them and said, "I think it's number one but I thought he had a little longer hair but it's number one" (IV-195-197).

On cross-examination, Sheriff McDaniel testified he makes contemporaneous notes when showing someone a photo lineup. In the instant case, however, the only written notation was, "Number one and number six resemble." He did not make a written record of Ms.

P.' positive identification of number one. Ms. P. did not have her glasses when she viewed the photo display (IV-198-200).

Thomas Simmons, the next state witness, testified he is employed in the latent prints section of the F.D.L.E. laboratory in Pensacola (V-203). Three latent prints of value had been lifted from various items in Ms. P.' home. Simmons compared petitioner's prints to them; they did not match (V-204-209).

On cross-examination, Simmons testified he had only one set of known prints available to him to compare to the latents, those of petitioner. He did not have known prints from either Larry or Lester Williams, or from Roger Horn (V-209-210).

Magda Clanton of the F.D.L.E. testified she works in the serology-DNA section of the laboratory. Clanton was deemed an expert in DNA analysis (V-213-215). Utilizing the samples of Ms. P. obtained from the rape kit, and samples obtained from petitioner, Lester Williams, and Larry Williams, Ms. P. performed a DNA analysis on various objects. She testified a $20 dollar bill and a handwritten note was found in petitioner's pants pocket. Human blood was found on Ms. P.' nightgown and in her vaginal sample. She also found sperm cells in the vaginal sample. The anal samples also contained blood and sperm cells. Blood was

found on the bed sheets submitted for analysis. With respect to blood found on some toilet tissue, Clanton was able to exclude Larry Williams, Lester Williams, and petitioner as being the contributor (V-216-236). She was unable to determine who contributed the sperm found in the vaginal and anal swabs (V-239-241).

Ms. Clanton testified that with respect to a hair found in Ms. P.' master bedroom, she was able to exclude Ms. P ., Lester Williams, and Larry Williams, but not petitioner, as being the source (V-247-248). There was a mixture of DNA on a hair generated by pubic hair combing from Ms. P. If it is assumed there were only two contributors, Ms. P. and petitioner could account for each of the markers found, but not Lester or Larry Williams. If it is assumed there were more than two contributors, then it could be Ms. P., petitioner, Larry Williams, and Lester Williams (V-251-253).

On cross-examination, Ms. Clanton admitted that there are thousands of people with the same markers as petitioner, Ms. P., and Lester and Larry Williams. With respect to one of the markers, Ms. Clanton testified it is found in one out of forty black males. Ms. Clanton could not say that hair came from petitioner (V-254-256). It is possible for anyone living with

petitioner to have some of Petitioner's hair on their clothing (V-260-261).

On redirect, Ms. Clanton testified that one out of 3300 Caucasians would have the same type of DNA profile as Ms. P., and that one out of 268,000 African-Americans would have the same DNA profile (V-264-265).

Investigator Larry Birge of the Jackson County Sheriff's Office testified he responded to Ms. P.' home at about 7:30 p.m. on September 17, 1997. He secured the scene for the purpose of collecting evidence and summoned an evidence technician (VI-274-276).

Early the next morning, Birge interviewed Lester and Larry Williams. They advised that they were at their house watching television, but that petitioner left for a period of time. The Oprah Winfrey showed aired from 4:00 to 5:00 p.m. on September 17, 1997. Birge also collected several sexual assault kits from Dr. Herring, which he sent to Pensacola. Petitioner was arrested on September 18, 1997; Birge took his clothing as evidence, including underwear, black shorts, and a jacket. Birge photographed petitioner and his two uncles. Using three other photographs, he compiled an array of six photographs. Birge gave the array to Sheriff McDaniel to show to Ms. P. (VI-277-271).

The prosecutor requested permission to disassemble the photo array to permit the jury to see more than just the defendant's face. The prosecutor noted Ms. P. had not been able to make an in-court identification, and that petitioner had gained 30 or 40 pounds since his arrest. Defense counsel objected on the grounds of relevancy and a discovery violation. The trial court rejected counsel's objections, but did order that "Jackson County Sheriff's Office" be hidden (V-282-287).

Birge testified petitioner wears a size 13 shoe (VI-287-288).

On cross-examination, Birge testified that Office Snell felt that one Roger Horn, who was seen walking on Flat Road, fit the description given by Ms. P. Horn is shorter than petitioner. Horn was questioned briefly but not taken into custody (VI-288-289).

On redirect, Birge estimated that Mr. Horn wears a size nine or 9-1/2 shoe. Horn provided an alibi and was eliminated as a suspect (VI-291).

Roger Horn testified that he resides on Horn Lane off of Flat Road. He works for Amos McMillian planting and tending to pine trees. On September 17, 1997, he worked on the McMillian farm until about 4:00 p.m. After he arrived home he ate, took a bath, and then took a walk to the house of a friend, Eddie Williams. As he headed

back home, a sheriff's deputy stopped him and asked him some questions. Horn went with the deputy to a place on road. Horn recalls talking with Lt. Birge. Horn wears a size 9-1/2 shoe (VI-292-296).

On cross-examination, Horn testified he owns three pair of tennis shoes, a black pair, and white pair, and a green and white pair. He has not submitted any hair or blood samples (VI-297).

On redirect, Horn related he knows where Larry and Lester Williams live, but he did not visit them on the day at issue. He planted pine trees with Lester Williams 2-1/2 to three years earlier (VI-297-298).

Investigator Lou Roberts of the Jackson County Sheriff's Office testified he participated in the investigation of the case. He prepared a diagram of Ms. P.' house and made certain measurements (VI-300-303). He also interviewed petitioner and Lester Williams and learned the route they had taken with Damien Thornton to Skeeter Godfrey's house. Referring to petitioner in court, whom the trial court ordered to stand up, Roberts testified petitioner had gained 30 to 35 pounds and his hair was different than when he was in September of 1997 (VI-304-305).

At the bench, defense counsel explained that petitioner was wearing a t-shirt underneath his dress shirt. Counsel requested

permission to have petitioner remove his dress shirt during the cross-examination of Lou Roberts. The trial court indicated that would be a fair procedure (VI-305-306).

With the jury present, and over objection, Roberts testified that the shoes in evidence and the tracks observed at the scene were consistent in terms of the tread and size (VI-316-318).

On cross-examination, Roberts testified he did not recall what kind of shirt petitioner was wearing when he was interviewed. Roberts does not recall tattoos on his arms (VI-318-320).

Investigator Birge was recalled to the stand and the photo lineup was placed in evidence (VI-326-327).

At this point in the proceedings, the state rested (VI-329). The court recessed from approximately 10:45 a.m. until noon (VI-331). Defense counsel moved for an acquittal, which was denied. The trial court asked defense counsel if the defense was going to present any evidence. Counsel indicated in the negative, and rested (VI-332-335).

During the recess, the parties conducted a jury instruction conference. Over defense counsel’s objection that the state had not tied the 20-dollar bill found in petitioner’s shorts to the offense, the trial court granted the state’s request to instruct the jury on the inference arising from unexplained possession of

recently stolen property (VI-338, 343).

After the lunch recess, the following occurred:

> THE COURT: We're back on the record. It's 12 o'clock. The defendant is here, defense attorney his here, State's here. Mr. Boothe [defense counsel], I see your client has changed shirts.
>
> DEFENSE COUNSEL: I wanted his arms to demonstrate he has tattoos.
>
> THE COURT: Sir, you have already rested your case, you can not present any testimony or evidence at this point.
>
> DEFENSE COUNSEL: It wasn't going to be testimony or evidence, it's demonstrative aid.
>
> THE COURT: No, sir, that will be evidence. You have already rested your case, you can't present any testimony or evidence. If you do present that testimony or evidence that you are talking about I assume the State would get opening and closing argument at that point.
>
> DEFENSE COUNSEL: Okay, Your Honor.
>
> THE COURT: Your client needs to go back and put his shirt back on.
>
> THE COURT: Go ahead, Jeffery.
>
> THE COURT: Mr. Jailer take him back there and let him.
>
> DEFENSE COUNSEL: I am recalling the famous O. J. Simpson trial, they put the gloves on him and it wasn't called testimony.

> THE COURT: It was during the case, you have rested and the State rested.

(VI-352-353).

After argument of counsel and the trial court's instructions on the law, and after deliberation, the jury returned verdicts finding petitioner guilty of burglary of a dwelling with an assault, robbery, vaginal sexual battery, anal sexual battery, and battery of a person over 65 years of age as charged in Counts I, II, III, IV, and V of the information (III-404-405, VI-413-414).

During sentencing, the state presented proof petitioner had been released from state prison on a cocaine charge on August 11, 1997, and requested that petitioner be sentenced as a prison releasee reoffender (III-536-541). The defense contended that, while the defendant did serve a state prison sentence, he was illegally sentenced to state prison and, therefore, he should not be treated in this case as a prison releasee reoffender (III-541-547). The trial court rejected this argument and ruled petitioner should be sentenced as a prison releasee reoffender (III-557-558).

For Count I, burglary, petitioner was sentenced to life. For Count II, robbery, petitioner was sentenced under the guidelines to 15 years in prison. For Court III, sexual battery, petitioner was sentenced to life. For Count IV, sexual battery, petitioner was

sentenced to life. For Count V, battery, petitioner was sentenced under the guidelines to five years in state prison. The trial court specified that all sentences be consecutive to each other (III-421-429, 558-559).

Notice of appeal was timely filed (III-432), petitioner was adjudged insolvent (III-445), and the Public Defender of the Second Judicial Circuit was designated to handle the appeal.

On appeal before the district court, petitioner raised three legal issues, to-wit:

> ISSUE I:
>
> THE TRIAL COURT ERRED BY FORCING APPELLANT TO COVER HIS TATTOOS AND ERRED FURTHER IN RULING THAT A DISPLAY OF HIS TATTOOS WOULD CAUSE APPELLANT TO FORFEIT HIS RIGHT TO OPENING AND CLOSING SUMMATION, SINCE THE DISPLAY OF TATTOOS IS NEITHER EVIDENCE OR TESTIMONY, THEREBY DEPRIVING APPELLANT OF HIS RIGHT TO DUE PROCESS OF LAW AND TO PRESENT A DEFENSE SECURED BY ARTICLE I, SECTIONS 9 AND 16, CONSTITUTION OF THE STATE OF FLORIDA, AND AMENDMENTS V, VI, AND XIV, CONSTITUTION OF THE UNITED STATES OF AMERICA.
>
> ISSUE II:
>
> THE TRIAL COURT ERRED IN GIVING, OVER OBJECTION, THE INSTRUCTION PERTAINING TO THE INFERENCE ARISING FROM UNEXPLAINED POSSESSION OF RECENTLY STOLEN PROPERTY, SINCE THE EVIDENCE DID NOT SUPPORT THE INSTRUCTION, THEREBY DEPRIVING APPELLANT OF HIS RIGHT TO DUE PROCESS OF LAW SECURED BY ARTICLE I, SECTIONS 9 AND 16, CONSTITUTION OF THE STATE OF FLORIDA, AND AMENDMENTS V AND XIV,

> CONSTITUTION OF THE UNITED STATES OF AMERICA.
>
> ISSUE III:
>
> THE TRIAL COURT ERRED IN SENTENCING APPELLANT AS A PRISON RELEASEE REOFFENDER, SINCE THE STATE IS UNCONSTITUTIONAL.

By opinion dated November 15, 1999, the district court per curiam affirmed the convictions and sentences appealed from (A-1). By *Order* dated December 1, 1999, the district court granted petitioner a extension of time for filing a motion for rehearing until December 10, 1999 (A-2). On December 10, 1999, petitioner filed a *Motion For Rehearing, Motion For Certification, and Motion For Rehearing En Banc* (A-3-23).

On January 7, 2000, the district court withdrew its prior opinion and substituted a new one. While affirming the convictions and sentences appealed from, the district court certified to this Court the same legal issue it had previously certified in ***Woods v. State***, 740 So.2d 20 (Fla. 1st DCA), *review granted*, 740 So.2d 529 (Fla. 1999), to-wit:

> DOES THE PRISON RELEASE REOFFENDER PUNISHMENT ACT, CODIFIED AS SECTION 775.082(8), FLORIDA STATUTES (1997), VIOLATE THE SEPARATION OF POWERS CLAUSE OF THE FLORIDA CONSTITUTION?

Williams v. State, 25 F.L.W. D121b (Fla. 1st DCA Jan. 7, 2000)(A-24-25).

Notice To Invoke Discretionary Jurisdiction was timely filed

January 11, 2000 (A-26-27). By *Order* Postponing Decision On Jurisdiction And Briefing Schedule, the Court ordered petitioner to file his initial brief on or before February 14, 2000 (A-28). This *Initial Brief of Petitioner On The Merits* follows.

III. SUMMARY OF THE ARGUMENT

Ms. A.P. testified that, on September 17, 1997, a black male burglarized her home, and beat, robbed, and sexually battered her. She said the assailant was wearing a short-sleeved shirt but she did not see any tattoos on his arms.

Petitioner was sitting in court wearing a short-sleeved shirt. Defense counsel stated he wished to show petitioner's tattooed arms to the jury. The trial court ruled that, if petitioner so displayed his arms, the defense would lose its right to opening and closing summation.

In Issue I, *infra*, petitioner contends the trial court erred in not allowing him to display his arms to the jury. Such an act is not testimony or evidence; it is a demonstrative aide. As such, there is no need to request such a display before resting. Since the trial court ruling impacted upon Petitioner's right to opening and closing summation, the error is per se reversible.

Petitioner was arrested the day after the offenses were committed upon Ms. P. A single 20-dollar bill was found in his pocket. Ms. P. testified that she had advised the assailant of three 20-dollar bills on top of her clothes dryer. Over objection, the trial court instructed the jury about the inference of guilt arising from unexplained possession of recently

stolen property. In Issue II, *infra*, petitioner argues it was error to give the instruction. Given the generic quality of a single 20-dollar bill, it cannot be rightly maintained that the bill found in petitioner's pants pocket was undisputedly one of the three bills on top of Ms. P.' clothes dryer. The error is not harmless and a new trial on all charges is required.

In Issue III, *infra*, petitioner contends the prison releasee reoffender act is unconstitutional.

Petitioner is cognizant that only Issue III relates to the question certified by the district court. However, it is well-settled that once the Court obtains jurisdiction, it has discretion to rule on any issue presented. ***Trushin v. State***, 425 So.2d 1226 (Fla. 1986). Petitioner firmly believes both Issue I and Issue II warranted reversal from the district court, but the district court chose for whatever reason to not write on them. Accordingly, petitioner urges the Court to accept jurisdiction with respect to the certified question, and exercise its discretion and reverse the convictions and sentences appealed from on the basis of either Issue I or II, or both.

IV. ARGUMENT

ISSUE I:

> THE TRIAL COURT ERRED BY FORCING PETITIONER TO COVER HIS TATTOOS AND ERRED FURTHER IN RULING THAT A DISPLAY OF HIS TATTOOS WOULD CAUSE Petitioner TO FORFEIT HIS RIGHT TO OPENING AND CLOSING SUMMATION, SINCE THE DISPLAY OF TATTOOS IS NEITHER EVIDENCE OR TESTIMONY, THEREBY DEPRIVING Petitioner OF HIS RIGHT TO DUE PROCESS OF LAW AND TO PRESENT A DEFENSE SECURED BY ARTICLE I, SECTIONS 9 AND 16, CONSTITUTION OF THE STATE OF FLORIDA, AND AMENDMENTS V, VI, AND XIV, CONSTITUTION OF THE UNITED STATES OF AMERICA.

This case must be remanded for a new trial unless, on remand, Petitioner is unable to show he had tattoos on his arms at the time of the alleged offenses. This contention is based upon the following facts:

Petitioner was charged with several criminal offenses perpetrated against Ms. A.P.(I-1-2). During opening statement, defense counsel stated he expected the evidence to show that, while horrible crimes were committed upon Ms. P , it was not petitioner who committed them. Counsel said, in part:

> DEFENSE COUNSEL: Evidence will show that the person who did this had no tattoos. Miss P. got a good look at the arms, he had a short sleeve shirt on, the evidence will show that Jeffery Williams has tattoos on both arms.

(IV-28).

During the testimony of Ms. P., she was unable to

identify petitioner in court (IV-56). On cross-examination, Ms. P. testified her attacker was wearing a short-sleeved shirt, and that she did not see any tattoos on his arms (IV-61-62).

Defense counsel anticipated cross-examining Deputy Lou Roberts, who arrested petitioner, about petitioner's tattoos. During Roberts' direct examination, the following occurred at the bench:

> DEFENSE COUNSEL: During this identification of the defendant while on the night in question, I have under his dress shirt, I have a T-shirt. I would like him to take off his shirt and have the witness identify the tattoos on his arms as being the ones that were there that night as well during my cross-examination.
>
> THE COURT: Sound fair enough to me.

(VI-305-306).

Officer Roberts, however, testified he could not recall if petitioner had tattoos when he was arrested (VI-319).

After the defense had rested without putting on a case (VI-332-335), the jury was excused for lunch and the parties conducted a jury instruction conference. After the lunch recess, the following occurred:

THE COURT: We're back on the record. It's 12 o'clock. The defendant is here, defense attorney his here, State's here. Mr. Boothe [defense counsel], I see your client has changed shirts.

DEFENSE COUNSEL: I wanted his arms to demonstrate he has tattoos.

THE COURT: Sir, you have already rested your case, you can not present any testimony or evidence at this point.

DEFENSE COUNSEL: It wasn't going to be testimony or evidence, it's demonstrative aid.

THE COURT: No, sir, that will be evidence. You have already rested your case, you can't present any testimony or evidence. If you do present that testimony or evidence that you are talking about I assume the State would get opening and closing argument at that point.

DEFENSE COUNSEL: Okay, Your Honor.

THE COURT: Your client needs to go back and put his shirt back on.

THE COURT: Go ahead, Jeffery.

THE COURT: Mr. Jailer take him back there and let him.

DEFENSE COUNSEL: I am recalling the famous O. J. Simpson trial, they put the gloves on him and it wasn't called testimony.

THE COURT: It was during the case, you have rested and the State rested. (VI-352-353).

Petitioner contends the trial court erred in ruling that a display of his tattoos would result in him forfeiting his right to opening and closing summation. A defendant has the right to display physical features, such as tattoos, and it is not required that it be done during the defendant's case-in-chief.

Florida Rule of Criminal Procedure 3.250 provides, in pertinent part, that "... a defendant offering no testimony in his or her own behalf, except the defendant's own, shall be entitled to the concluding argument before the jury." (emphasis supplied). Although the rule refers to "concluding argument," case law establishes that the defendant receives first and last closing argument, with the state "sandwiched" in the middle. See ***Faulk v. State***,104 So.2d 519 (Fla. 1958).

Implicit in the trial court's ruling is the view that where a defendant displays a tattoo, such an act is "testimony." And since the trial court ruled that, should petitioner display his tattoos to the jury in his case, he would lose the right to opening and closing summation, also implicit in the trial court's ruling is the view that a display of tattoos amounts to the defendant presenting testimony other than his own testimony.

Petitioner relies upon ***Whittington v. State***, 656 So.2d 1346 (Fla. 1st DCA 1995). In that case, the defendant was charged with shooting into a building and aggravated assault. The proof showed the defendant was not wearing a shirt; the victim said she did not see any marks of any kind on the gunman. In chambers, the following occurred:

> MS. CLAYTON [defense counsel]: Judge, Mr. Whittington has advised me that he does not want to testify.
>
> THE COURT: Okay.
>
> MS. CLAYTON: However, we did want him to display his tattoos to the jury. I had asked Ms. Davis if she saw any markings of any type on his upper body and he has a good number of tattoos.
>
> THE COURT: That's testifying.

565 So.2d at 1347, note. The trial judge in ***Whittington*** ruled that a display of tattoos would amount to testimony, subjecting the defendant to cross-examination. Given that ruling, Whittington did not testify.

On appeal, the district court reversed with directions to conduct a new trial, unless on remand Whittington could not prove the tattoos was on his body at the time of the alleged offense. This ruling was based in part on the Court's decision in ***Macias v. State***, 515 So.2d 206 (Fla. 1987) and on ***United States v. Bay***, 762

F.2d 1314 (9th Cir. 1984).

The ***Whittington*** court relied on ***Macias*** for the view that a display of tattoos is not testimonial in nature and would not have subjected Whittington to cross examination.

Bay was relied upon by the ***Whittington*** court to reject the argument made by the state in that case. In ***Whittington***, the state argued that the defendant's convictions should be affirmed because he never established by evidence or proffer that he had tattoos at the time of the offense. This Court noted that the trial court had ruled the defendant would be subject to cross-examination if he displayed his tattoos, without regard to predicate. The Court also pointed out the state had never objected on grounds of inadequate foundation. The Court relied upon ***Bay*** and reversed for a new trial, unless Whittington could not prove he had tattoos on the day of the shooting.

The Whittington court, in remanding, also followed the procedure of ***Pettit v. State***, 612 So.2d 1381 (Fla. 2d DCA 1992) and ***Smith v. State***, 574 So.2d 1195, 1196, n.3 (Fla. 3d DCA 1991), both of which were based upon ***Bay***.

In the instant case, as in ***Whittington***, the trial court ruling was not based on a lack of predicate, but was instead based on the erroneous view that a display of tattoos is "evidence" that would operate to deprive petitioner of his right to open and close. On this point, it should be noted that defense counsel correctly argued a display of tattoos is neither evidence or testimony, but is instead merely a demonstrative aid (VI-353). In ***Pettit***, the defense also claimed a display of tattoos was a demonstrative aid, and the appellate court held it was error to have rejected this argument.

It also appears from ***Whittington*** that the defendant need not formally present his tattoos to the jury for viewing during the defendant's "case." In ***Whittington***, the issue arose in chambers, not during a formal defense case. To rule that a display can only come in during the defendant's case flies in the face of the rule that such a display is not evidence or testimony. To the extent the trial court has discretion, it certainly is an abuse of such discretion to require a defendant to present such a display only during the defendant's case.

The error is not harmless. Had the defendant displayed his tattoos, under the trial court's ruling he would have lost the right to opening and closing summation. It is well-established that

a deprivation of a defendant's right to opening and closing summation is per se reversible without regard to the harmless error doctrine. ***Gari v. State***, 364 So.2d 766 (Fla. 2d DCA 1978); ***Morales v. State***, 609 So.2d 765 (Fla. 3d DCA 1992); and, ***Marin v. State***, 624 So.2d 808 (Fla. 1993). See also ***Wike v. State***, 648 So.2d 683 (Fla. 1994). Under this scenario, petitioner's conviction would be reversed, even though the jury would have seen his tattoos.

If a violation of the right to opening and closing summation is per se reversible error, it follows as a matter of logic that an erroneous ruling that caused the defendant to not present matters he had the right to present upon pain of losing opening and closing argument is likewise per se reversible. Put differently, it is illogical to say, on the one hand, that petitioner could have displayed his tattoos and his case would be automatically reversed, and also say, on the other hand, that the error is somehow harmless in a case where the trial court's ruling precluded him from displaying his tattoos.

ISSUE II:

THE TRIAL COURT ERRED IN GIVING, OVER OBJECTION, THE INSTRUCTION PERTAINING TO THE INFERENCE ARISING FROM UNEXPLAINED POSSESSION OF RECENTLY STOLEN PROPERTY, SINCE THE EVIDENCE DID NOT SUPPORT THE INSTRUCTION, THEREBY DEPRIVING PETITIONER OF HIS RIGHT TO DUE PROCESS OF LAW SECURED BY ARTICLE I, SECTIONS 9 AND 16, CONSTITUTION OF THE STATE OF FLORIDA, AND AMENDMENTS V AND XIV, CONSTITUTION OF THE UNITED STATES OF AMERICA.

The alleged victim of the offenses, Ms. A.P., testified that after the assailant entered her house, she pointed out three 20-dollar bills that were on top of her clothes dryer, to which the assailant replied, “I am going to get that too” (IV-38). Petitioner was arrested the next day. Officer Birge seized Petitioner’s clothing, including a pair of black shorts (VI-279). Magda Clanton, a DNA expert employed by F.D.L.E., testified there was a 20-dollar bill in the pocket of the black shorts (V-222-223).

During the jury instruction conference, the following occurred:

> THE COURT: Proof of unexplained possession of stolen property.
>
> PROSECUTOR: Yes, Judge.
>
> THE COURT: You want that?
>
> PROSECUTOR: Yes, sir.

> DEFENSE COUNSEL: I don't think that applies, they did find $20, but nobody linked that up to $20, that was mistaken [sic: taken] from Miss P.
>
> * * * * * * * *
>
> THE COURT: "Possession of recently stolen property," you want that?
>
> PROSECUTOR: Yes, sir.
>
> THE COURT: I will give that over your objection, Mr. Boothe [defense counsel].

(VI-338, 343).

Consistent with the trial court's ruling above, the trial court gave the following instruction:

> THE COURT: Proof of unexplained possession by an accused of property recently stolen by means of a burglary may justify a conviction of burglary with intent to steal that property if the circumstances of the burglary and of the possession of the stolen property, when considered in light of all the evidence in the case, convince you beyond a reasonable doubt that the defendant committed the burglary.

(VI-397). At the conclusion of the jury instructions, the trial court inquired if there were "...any objections to the instructions as read other than those already noted on the record" (VI-411)(emphasis supplied). Neither party had an objection. Petitioner did, however, lodge his objection during the jury instruction conference.

Petitioner contends the trial court erred in giving the

instruction on “unexplained” possession of recently stolen property, since the evidence simply failed to support it.

The instruction in effect establishes a permissive presumption or inference. From the fact of “unexplained” possession of property stolen during a burglary, a trier of fact is permitted but not required to infer the person in possession is the burglar. However, in order for such a presumption to be valid, it must not be arbitrary or irrational, and it must be more likely than not that the fact presumed (guilt of burglary) flows from the proved fact (possession of property stolen in a burglary). ***Leary v. United States***, 395 U.S. 6, 23 L.Ed.2d 57, 89 S.Ct. 1532 (1969).

Petitioner requests the all readers of this brief to look in their purse or wallet right now. If you have a 20-dollar bill in your possession, under the trial court’s view you are presumed to have committed any theft or burglary of anyone occurring in the vicinity within the previous 24-hours!

Petitioner’s point is, where a generic item like a 20-dollar bill is concerned, it is not more likely than not that the fact presumed (guilt of theft or burglary) flows from the proved fact (possession of a 20-dollar bill). Thus, the rule of Leary has been violated.

In ***Consalvo v. State***, 697 So.2d 805 (Fla. 1996), the Court

observed that the instruction for unexplained possession of stolen property "... applies only where the property is undisputedly stolen and the question is who stole it." 697 So.2d at 815 (emphasis supplied). In this case, it cannot be rightly argued that it is "undisputable" that the 20-dollar bill found in Petitioner's pants was stolen from Ms. P. See also ***S.P.L. v. State***, 512 So.2d 1153 (Fla. 1st DCA 1987)(before inference that the defendant is guilty of theft arises from unexplained possession of stolen property, the evidence must show the property found in defendant's possession was the same evidence stolen during offense).

Petitioner contends that the error is decidedly not harmless. The state argued the fact that the 20-dollar bill was found in petitioner's pants several times during summation (VI-373, 382). See ***State v. Lee***, 531 So.2d 133 (Fla. 1988)(where erroneously admitted evidence was stressed during summation, error not harmless).

Further, petitioner contends he is entitled to a new trial on all five counts of the information, not just burglary. Petitioner's defense was lack of proof of identity. Whoever burglarized Ms. P. house also robbed, battered, and sexually battered her. Thus, to instruct the jury petitioner could be deemed guilty of burglary upon proof he possessed a 20-dollar bill also means in

this case that the jury could find he committed all of the crimes charged. See ***T.S.R. v. State***, 596 So.2d 766 (Fla. 5th DCA 1992)(unexplained possession of recently stolen property is not only sufficient to support theft conviction, but also to offenses occurring necessarily as adjunct to theft).

ISSUE III:

THE TRIAL COURT ERRED IN SENTENCING Petitioner AS A PRISON RELEASEE REOFFENDER, SINCE THE

STATUTE IS UNCONSTITUTIONAL.

At sentencing, the trial court imposed life sentences for burglary and sexual battery upon petitioner as a prison releasee reoffender, pursuant to Section 775.082(8)(a)1, Florida Statutes (1977)(I-9, III-423-430). On appeal, the district court rejected petitioner's argument that the statute is unconstitutional, but certified the same issue to this Court that it had previously certified in Woods, namely:

> DOES THE PRISON RELEASE REOFFENDER PUNISHMENT ACT, CODIFIED AS SECTION 775.082(8), FLORIDA STATUTES (1997), VIOLATE THE SEPARATION OF POWERS CLAUSE OF THE FLORIDA CONSTITUTION?

(A-25). Petitioner urges the Court to answer this question "yes."

Section 775.082(8), Florida Statutes (1997) provides, in pertinent part, as follows:

> (8)(a)1. "Prison releasee reoffender" means any defendant who commits, or attempts to commit:
>
> * * * * * * * *
>
> p. Armed burglary...within 3 years of being released from a state correctional 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) 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) 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. The 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 Attorney's 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.

Article II, Section 3, *Constitution of the State of Florida*, which provides:

> The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

This clause "... embodies one of the fundamental principles of our federal and state constitutions and prohibits an unlawful encroachment by one branch upon the powers of another branch." ***Simms v. State***, Department Of Health & Rehabilitative Services, 641

So.2d 957, 960 (Fla. 3d DCA 1994). In ***B.H. v. State***, 645 So.2d 987 (Fla. 1994), the Court observed that, in light of this constitutional provision, "...the people of Florida have established a tripartite separation of powers precisely like that envisioned by Locke and Montesqieu." 645 So.2d at 991. The Court went onto state:

> The prohibition contained in the second sentence of Article II, section 3 of the Florida Constitution could not be plainer, as our cases clearly have held. This Court has stated repeatedly and without exception that Florida's Constitution absolutely requires a "strict" separation of powers.

645 So.2d at 991.

In ***Chiles v. Children A, B, C, D, E, and F, etc.***, 589 So.2d 260, (Fla. 1991), the court elaborated upon the separation of powers doctrine:

> The doctrine encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. See e.g., Pepper v. Pepper, 66 So.2d 280, 284 (Fla. 1953). The second is that no branch may delegate to another branch its constitutionally assigned power.

589 So.2d at 264.

In ***London v. State***, 623 So.2d 527 (Fla. 1st DCA 1993), the district court was discussing Section 775.084, Florida Statutes (1989), the habitual felony offender statute. Relying upon ***Grimes v. State***, 616 So.2d 996 (Fla. 1st DCA 1992) and ***Johnson v. State***, 612 So.2d 689 (Fla. 1st DCA 1993), the court remarked:

> Because the trial court retains discretion in classifying and sentencing a defendant as a habitual offender, the separation of powers doctrine is not violated. Although the state attorney may suggest a defendant be classified as a habitual offender, only the judiciary decides whether or not to classify and sentence the defendant as a habitual offender.

623 So.2d at 528.

Thus, ***London*** teaches that the decision to classify a defendant as a habitual offender and the length of a habitual felony offender sentence is a judicial function, so long as the technical requirements for a habitual felony offender sentence are met, and the sentence imposed is within the range authorized by the legislature.

If the prison releasee reoffender statute gives the judicial branch no discretion as to whether to classify a defendant as a releasee reoffender, or to the length of sentence to be served, ***London*** is good authority for the view that the statute is unconstitutional.

The statute here vests all discretion in the state attorney and absolutely no discretion in the trial court. Only the state attorney decides whether to seek a prison releasee reoffender sentence. Once the state attorney decides to seek such a sentence, the only issue is whether the predicate exists. If the predicate exists, the only sentence for robbery with a firearm is a life sentence.

While the statute permits the state attorney to not seek a prison releasee reoffender sentence, there is no judicial review over that decision. And the phrase "other extenuating circumstances exist which preclude the just prosecution of the offender" is so wide open that nearly any reason would seem to suffice, even assuming the decision is reviewable, which it isn't.

Petitioner acknowledges the cases that uphold mandatory minimum sentences against separation of powers claims. Moreover, petitioner fully understands that it is a legislative function to establish a range of sentence. See ***Booker v. State***, 514 So.2d 1078 (Fla. 1987).

Here, however, the legislature did not establish either a mandatory minimum, nor a range of sentence. Instead, it established only one sentence. Petitioner's research has not disclosed a case upholding a similar statute against a separation of powers attack.

The statute says that, once the prosecutor decides to proceed against the offender as a prison releasee reoffender and proves the necessary predicate, the trial court "must" impose the sentences required under the statute for the appropriate degree of felony. The use of the term "must" would appear to be mandatory in nature. While courts should construe a statute so as to render it constitutional, if at all possible, courts may not engage in the essentially legislative act of varying actual intent or reading new elements into a statute. ***Keaton v. State***, 371 So.2d 86 (Fla. 1979). Petitioner accordingly contends that the term "must" is mandatory, and that Section 775.082(8), Florida Statutes (1997), is unconstitutional. Thus, the sentences appealed from must be reversed, and the cause remanded to resentence petitioner pursuant to the sentencing guidelines.

There is, however, case law support for the view that use of the term "must" in a statute is directory rather than mandatory. ***Simmons v. State***, 160 Fla. 626, 36 So.2d 207 (1948) and ***Johnson v. State***, 297 So.2d 35 (Fla. 2d DCA 1974).

If the Court were to construe "must" in Section 775.082(8), Florida Statutes (1997), is being directory only, with the result that the decisions whether the classify a defendant as a prison releasee reoffender, and the range of sentence to be imposed, are

within the discretion of the trial court, the statute would then operate similarly to the habitual felony offender statute, and would not run afoul of separation of powers. London.

In that instance, however, appellant is still entitled to be resentenced. In ***Burdick v. State***, 594 So.2d 267 (Fla. 1992), the supreme court held that a first degree felony punishable by a term of years not exceeding life did not mandate a life sentence as a habitual felony offender. After so ruling, the Court said, "...because the trial court in this case did not indicate whether it believed it could in fact decline to impose a life sentence, we remand for the trial court to reconsider the sentence as within its discretion." 594 So.2d at 271.

Here, the trial court did not indicate it was aware it had discretion to impose anything other than mandatory sentences. Thus, should the Court rule that the prison releasee reoffender statute is directory, petitioner is entitled to a new sentencing hearing pursuant to the ***Burdick*** rationale.

V. CONCLUSION

Based upon the foregoing analysis and authorities, petitioner contends reversible error has been demonstrated. Because of the errors discussed under Issues I and II, supra, the convictions and sentences appealed from must be reversed and the cause remanded with directions to conduct a new trial.

As a result of the error discussed under Issue III, the life sentences imposed pursuant to the prison releasee reoffender statute must be vacated and the cause remanded for resentencing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Sherri T. Rollison, Assistant Attorney General, by delivery to The Capitol, Criminal Appeals Division, Plaza Level, Tallahassee, Florida, 32301, and a copy has been mailed to Jeffrey Williams, DOC# A-458928, Century Corr. Institution, 400 Tedder Road, Century, FL 32535, on this ____ day of January, 2000.

CARL S. McGINNES