

IN THE SUPREME COURT OF FLORIDA

TONY HOBBS,

Petitioner,

v.

CASE NO. SC02-1679

STATE OF FLORIDA,

Respondent.

\_\_\_\_\_ /

PETITIONER'S REPLY BRIEF ON THE MERITS

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**TABLE OF CONTENTS**

	<u>PAGE(S)</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
ARGUMENT	1
<b>WHETHER CLOSING THE COURTROOM WITHOUT COMPLYING WITH SECTION 918.16, F.S., CONSTITUTES FUNDAMENTAL ERROR.</b>	
CONCLUSION	4
CERTIFICATE OF SERVICE	4
CERTIFICATE OF FONT SIZE	4

TABLE OF CITATIONS

<u>CASE</u> <u>(S)</u>	<u>PAGE</u>
<u>Clements v. State,</u> 742 So. 2d 338 (Fla. 1999)	1,2
<u>Waller v. Georgia,</u> 467 U.S. 39, 104 S. Ct. 2210, 81 L. Ed. 31 (1984)	2,3
 <u>STATUTES</u>	
Section 918.16, Fla. Stat.	1,2

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REPLY BRIEF

ARGUMENT

WHETHER CLOSING THE COURTROOM WITHOUT  
COMPLYING WITH SECTION 918.16, F.S.,  
CONSTITUTES FUNDAMENTAL ERROR.

The state argues that, "The defendant in Clements made the same, identical claim that Appellant makes here." See, Respondent's Answer Brief, at p. 7. Not so<sup>1</sup>.

In Clements, the trial court specifically excluded everyone except those allowed to remain pursuant to s. 918.16, F.S. In this case, the trial court excluded everyone except

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<sup>1</sup>Clements v. State, 742 So. 2d 338 (Fla. 1999)

*the victim-witness advocate.* In Clements, that petitioner wanted the trial court to engage in the Waller analysis, even though that court had properly implemented **Section 918.16, Fla. Stat.** In this case, had the trial court not excluded those parties specifically allowed to remain pursuant to statute, Mr. Hobbs would have no complaint. Indeed, had the trial court properly implemented the statute, an objection would be required (as was the case in Clements) for this Court to reach the merits. But, because the trial court did not properly implement **Section 918.16, Fla. Stat.**, it can not be said that the closure of the courtroom was partial; hence, the Waller analysis was required, even without objection.

Essentially, the state urges this Court to set a precedent whereby trial courts can clear the courtroom of everyone, as long as there is some vague reference to **Section 918.16, Fla. Stat.**, thereby circumventing the procedural safeguards which have been deemed necessary by the United States Supreme Court to protect the right to public trial. Such an analysis would render **Section 918.16, Fla. Stat.**, unconstitutional.

The state says the trial court should have been placed on notice and given the chance to remedy the error before it is

placed before the appellate court. Naturally, should a trial court properly implement the statute, a defendant should give the trial court notice of why he or she believes that its implementation, still, violates their right to a public trial. But, a defendant should not have to place a trial judge on notice to fulfill his or her duties and responsibilities under the law. When a trial court fails to afford a defendant fundamental constitutional rights, such as the right to a public trial, our courts and our society at large do not have confidence in the result, below. Indeed, that is why the United States Supreme Court has deemed this error to constitute fundamental error, reviewable for the first time on appeal<sup>2</sup>.

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<sup>2</sup>Waller v. Georgia, 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed. 31 (1984)

**CONCLUSION**

Based on the foregoing analysis, caselaw and other citation of authority, Appellant request this Honorable Court vacate the judgement and sentence below and remand this cause for a new trial.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing has been furnished to Kenneth Pratt, Assistant Attorney General, by U.S. mail to The Capitol, Plaza Level, Tallahassee, FL, and Mr. Tony Hobbs, DOC# 877221, Okaloosa Corr. Inst., 3189 Little Silver Road, Crestview, FL 32539, on this \_\_\_\_ day of October, 2002.

**CERTIFICATE OF FONT SIZE**

I hereby certify that this brief has been prepared using Courier New 12 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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