IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-1263

STATE OF FLORIDA,

Appellant,

-vs-

MARTI CASSANDRA RAYMOND,

Appellee.

APPEAL FROM THE DISTRICT COURT OF APPEAL
THIRD DISTRICT

BRIEF OF APPELLEE

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit of Florida
1320 N.W. 14th Street
Miami, Florida 33125
(305) 545-1958

JOHN EDDY MORRISON
Assistant Public Defender
Florida Bar No. 072222

Counsel for Ms. Raymond, Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-1263

STATE OF FLORIDA,

Appellant,

-vs-

MARTI CASSANDRA RAYMOND,

Appellee.

APPEAL FROM THE DISTRICT COURT OF APPEAL
THIRD DISTRICT

BRIEF OF APPELLEE

INTRODUCTION

This appeal is from a Third District Court of Appeal opinion affirming and adopting "in all respects" an order of the Appellate Division of the Eleventh Judicial Circuit of Florida granting a writ of habeas corpus and declaring section 907.041(4)(b), Florida Statutes, to be an unconstitutional violation of the separation of powers. In this brief, the symbol "R." will indicate the record on appeal.

STATEMENT OF CASE

This case began in a county court bond hearing where the state sought to enforce section 907.041(4)(b) of the Florida Statutes, which reads in crucial part: "No person charged with a dangerous crime shall be granted nonmonetary pretrial release at a first appearance hearing; . . . ." On behalf of Ms. Raymond, counsel filed a separation of powers challenge to that statute (R. 18-26). The county court denied the challenge, but certified a question of great public importance (R. 27-36):

> DOES SECTION 907.041(4)(b), FLORIDA STATUTES (2000), IMPERMISSIBLY INTRUDE UPON THE SUPREME COURT'S RULE MAKING AUTHORITY IN VIOLATION OF THE SEPARATION OF POWERS CLAUSE OF ARTICLE II, SECTION 3, OF THE FLORIDA CONSTITUTION?

Ms. Raymond then filed a petition for a writ of habeas corpus raising the separation of powers issue (R. 1-15). The Eleventh Judicial Circuit of Florida's Appellate Division granted that petition and declared the statute unconstitutional with a lengthy opinion (R. 137-46). The Third District Court of Appeal agreed with that "well-reasoned" opinion and adopted reasoning "in all respects" (R. 147-48)

The state then brought the present appeal to this Court. The appendix to the state's brief contains the brief opinion of the Third District Court of Appeal, but does not contain the Eleventh Judicial Circuit opinion. A copy of that opinion is included in the appendix to this brief.

STATEMENT OF FACTS

The County Court explained the impact of section 907.041(4)(b) on its operations:

> Prior to the enactment of the subject statute, which became effective October 1, 2000, defendants arrested for domestic violence related crimes were brought within 24 hours to a first appearance at which, routinely, those who qualified were immediately ordered released to PTS.[1] Judges of the domestic violence division were advised by the State of the defendant's prior arrests or convictions, if any, to assist the court in determining eligibility for PTS release. Thus, many defendants accused of domestic violence crimes were able to be released at or shortly after the first appearance hearing. However, subsequent to the effective date of the subject statute, courts in this division may no longer order PTS to otherwise eligible defendants at first appearance hearings. Instead, judges in this division now set a standard monetary bond which the defendant must post if he or she is to attain immediate release. If the defendant is unable to post the bond, he or she must remain in the county jail until a calendar the next morning (denoted the "jail report calendar") which commences each week day at 8:30 a.m. It is at this second appearance that the court may order PTS without having to post the monetary bond set the day before.

(R. 30). A footnote went on to explain the even longer delays can occur, as in Ms. Raymond's case:

> If, as in the instant case, a defendant who is otherwise eligible for PTS release is unfortunate enough to appear at

[1]The initials "PTS" stand for "Pre-Trial Services," a division of the Miami-Dade County Department of Corrections and Rehabilitation.

> his or her first appearance hearing on Friday at the usual bond hearing calendar, he or she must await the Monday jail report calendar to be released to PTS in the event that the detainee is unable to post the monetary bond set at the first appearance hearing.

(R. 30).

On January 31, 2002, Ms. Raymond was arrested and charged with a misdemeanor battery involving domestic violence (R. 17). She came before the court for her first appearance hearing Friday, February 1, 2002 (R. 46-52). The court addressed Ms. Raymond and the effect of the statute in question:

> THE COURT: Okay, ma'am, here's what I'm going to do for you.
>
> Under the law I'm not able to release you to Pre-Trial Services today. There is a statute that says that we cannot do that at a first appearance hearing. We can do it the next business day at which point you would be able to get out without having to put up a money bond. But that, unfortunately for you, is not until Monday. So do make whatever effort you can today to get on the phone and call your family and relatives, because you do qualify for Pre-Trial Services Release. Do you understand?
>
> THE DEFENDANT: (Non-verbal response.)
>
> THE COURT: If you can't afford to do it by today or tomorrow, or Sunday, they will bring you automatically early Monday morning at a calendar that we have especially for this, and at that time you can get released to Pre-Trial Services.

(R. 47-48). After the trial court denied the separation of powers challenge, the court set a monetary bond (R. 27).

SUMMARY OF THE ARGUMENT

Section 907.041(4)(b), Florida Statutes, attempts to legislate at which hearing a judge can order someone released to Pre-Trial Services (PTS) if they are charged with a "dangerous crime." By definition, all misdemeanor domestic violence cases are "dangerous crimes." Under the constitutional separation of powers, only courts can determine the order of steps in the judicial process, not the legislature.

The state's brief ignores the large body of case law on point, just as it largely ignores subsection (4)(b). Instead, the state addresses amendments to two other subsections of section 907.041: amendments to subsection (3)(a) modifying the presumption of nonmonetary conditions of release; and amendments to subsection (3)(b) concerning the certification requirements before someone can be released to PTS. The state then makes two different, and inconsistent, arguments.

The state's first argument is that the procedure mandated by subsection (4)(b) is merely incidental to those other, substantive provisions. The state largely fails to engage the detailed and thorough opinion of the circuit court appellate division, which held that: 1) no legislative history supports the state's argument; 2) the statute itself does not support the state's interpretation because the PTS certification requirements, which the state claims causes the delay mandated in subsection (4)(b), apply in all cases, not just those charging a "dangerous crime"; and 3) the facts in this case show the paucity of the state's argument because the county court was ready to release

Ms. Raymond to PTS but/for the statute.

The state's second, and inconsistent, argument is that this Court should interpret section 907.041(4)(b) to allow judges to grant PTS at first appearance hearings if the PTS certification is complete. This (mis)interpretation runs afoul of the plain meaning of the statute and renders subsection (4)(b) redundant and meaningless. Although this argument can be taken as a tacit admission that the statute needs to be rewritten to pass constitutional muster, this Court does not have the authority to rewrite laws. Separation of powers reserves that task for the legislature.

Alternatively, the state suggests that this Court adopt subsection 907.041(4)(b) as a rule of procedure. The state's only argument is that such a rule would allow PTS to complete the investigation required by subsection (3)(b). As the Circuit Court observed, however, PTS already completes that investigation before the first appearance hearing in every case, not just those involving "dangerous crimes." No change in the rules of procedure is necessary to accommodate that investigation. The only effect of such an amendment would be needless duplication of hearings, resulting in increased costs for the clerks, judges, sheriffs, state attorneys and public defenders. Given the current financial situation, spending precious resources on duplicative hearings would violate the public's trust and fisc.

ARGUMENT

SECTION 907.041(4)(b) OF THE FLORIDA STATUTES IS AN UNCONSTITUTIONAL REGULATION OF COURT PROCEDURE.

As the result of Section 907.041(4)(b), the Domestic Violence Division of the County Court for Miami-Dade County could not consider Pre-Trial Services (PTS) releases at first appearance hearings. Instead, that court specially set those defendants for whom PTS supervision was appropriate on the next available 8:30 a.m. calendar. The ultimate outcomes were the same, but the timing was different.

This change in procedure occurred because section 907.041(4)(b) applies to all "dangerous crimes," including all misdemeanor domestic violence cases. *See* § 907.041(4)(a)18, Fla. Stat. (2002). That section does not prohibit courts from ultimately granting PTS to those charged with these crimes. Instead, that section purports to govern only at which hearings the courts can do so—namely, any time other than at a first appearance hearing:

> (b) No person charged with a dangerous crime shall be granted nonmonetary pretrial release *at the first appearance hearing*; however, the court shall retain the discretion to release an accused on electronic monitoring or on recognizance bond if the findings on the record of facts and circumstances warrant such a release.

§ 907.041(4)(b), Fla. Stat. (2002) (emphasis supplied). The procedural response by the domestic violence court—delaying the PTS release decision until the next

day—beautifully illustrates that the statute is a procedural regulation, and therefore a violation of the constitutional separation of powers.

Article II, section 3, of the Florida Constitution prohibits one branch of government from exercising the powers of another branch. Article V, section 2(a) of the Florida Constitution gives the Supreme Court of Florida exclusive authority to "adopt rules for the practice and procedure in all courts." Consequently, the legislature has no authority to enact procedural rules, only substantive law. *See Allen v. Butterworth*, 756 So. 2d 52, 59-64 (Fla. 2000).

The classic definition of this distinction is Justice Adkins' concurring opinion in *In re Florida Rules of Criminal Procedure*, 272 So. 2d 65 (Fla. 1972):

> Practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. "Practice and procedure" may be described as the machinery of the judicial process as opposed to the product thereof.
>
> Examination of many authorities leads me to conclude that substantive law includes those rules and principles which fix and declare the primary rights of individuals as respects their persons and their property. As to the term "procedure," I conceive it to include the administration of the remedies available in cases of invasion of primary rights of individuals. The term "rules of practice and procedure" includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution.

Id. at 66 (*quoted in, e.g., Allen*, 756 So. 2d at 60).

Section 907.041(4)(b) attempts to control "the machinery of the judicial process"—the "order, process or steps" before the trial court can consider PTS release—rather than the "product thereof"—whether the court grants PTS release. Therefore, section 907.041(4)(b) adopts a procedural rule. "It is clear that while it is a judicial function—and thus the proper subject of a rule—to control the procedure by which a defendant's right to bail may be exercised, it is a legislative function—and thus the proper subject of a statute—to declare what persons are entitled to bail." *State v. Jimenez*, 508 So. 2d 1257, 1258 (Fla. 3d DCA 1987). By legislating on only the question of at which hearings a trial court can consider various types of nonmonetary release, including PTS, the legislature violated the separation of powers.

Gray areas can exist between substance and procedure, but section 907.041(4)(b) is as pure of a procedural rule as is imaginable. If what a court can consider at which hearing is not procedural, nothing else would be either. Florida courts have routinely found that the order of what happens in litigation is a procedural matter outside the legislature's control. *See, e.g., Jackson v. Florida Dept. of Corrections*, 790 So. 2d 381 (Fla. 2001) (holding that although the right for indigents to litigate without paying costs is substantive, the requirement that the person file copies of their prior actions before the court can make an indigency determination is procedural and, therefore, unconstitutional); *Allen v. Butterworth*, 756 So. 2d at 59-64

(holding unconstitutional a statute attempting to establish deadlines for postconviction motions); *Haven Federal Savings & Loan Assoc. v. Kirian*, 579 So. 2d 730 (Fla. 1991) (holding unconstitutional a statute attempting to regulate when counterclaims in a foreclosure action could be tried); *Markert v. Johnston*, 367 So. 2d 1003, 1006 (Fla. 1978) ("The timing of joinder during the course of a trial is, without question, a matter of practice or procedure assigned by the Constitution exclusively to this Court."); *Huntley v. State*, 339 So. 2d 194 (Fla. 1976) (holding that mandatory language in a statute requiring a presentence investigation report before sentencing was procedural and, therefore, unconstitutional); *Hanzelik v. Grottoli and Hudon Investment of America, Inc.*, 687 So. 2d 1363 (Fla. 4th DCA 1997) (holding that timing of the acceptance of offers of attorneys' fees is procedural); *In re Adoption of a Minor Child*, 570 So. 2d 340, 342 (Fla. 4th DCA 1990) (holding that time for taking an appeal is procedural); *Military Park Fire Control Tax District No. 4 v. DeMarois*, 407 So. 2d 1020 (Fla. 4th DCA 1981) (holding that a statute requiring an expedited appeal was procedural and, therefore, unconstitutional).

Although cited by Ms. Raymond in both the Eleventh Judicial Circuit and the Third District Court of Appeal, the state's brief never addresses this body of case law. Instead, the state cites *State v. Golden*, 350 So. 2d 344 (Fla. 1976). In that case, "the Legislature ha[d] established a statutory right to a detention hearing speedier than that afforded by our rules." *Id.* at 347. The Legislature did not interfere with what went

on in the hearing. Instead, the Legislature just gave the juveniles a right to such a hearing within twenty-four hours. This Court held that "the length of time an individual may spend in confinement is substantive in nature." *Id*.

Unlike the statute in *Golden*, section 907.041(4)(b) does not impose any length of time before a person can be released to PTS. Nor does this statute decree a time within which the court must make a PTS determination. Instead, this section meddles with what a court can consider at which hearing. Under this section, a court could schedule a "bond review" calender immediately after the first appearance hearing. At this "second" hearing held minutes after the first appearance, the court could order defendants released to PTS. The point is not that the trial court should have done so, but that the statutory provision governs only what the court considers at which hearing, not substantive outcomes.

Other than *Golden*, the state's brief barely addresses the issue or mentions the statute in question, subsection (4)(b) of section 907.041, Florida Statutes. Instead, the state spends the rest of its brief discussing (the unchallenged) modifications to the presumption of nonmonetary release in subsection (3)(a) and the requirements for PTS certifications in subsection (3)(b). The state then uses these subsections to support two different, and inconsistent, theories.

The first theory cites *Kalway v. State*, 730 So. 2d 861 (Fla. 1st DCA 1999), and argues that the purpose of subsection (4)(b) is "[t]o give effect" to the changes

in (3)(a) and (3)(b) (State's brief at 11). Assuming *Kalway* is still good law,[2] the state fails to make its case that the delay mandated by subsection (4)(b) is merely incidental to some substantive provision. The Eleventh Judicial Circuit's opinion addressed and rejected this argument:

> We reject the theories proposed by the State for the following reasons. First, the legislative history of the statute is devoid of any explanation or reasoning for the one hearing-delay created under section 907.041(4)(b). While the State argues that the delay under the statute is necessary so that PTS and the county court can have time to conduct an adequate investigation to determine the appropriateness of nonmonetary release, this explanation is not supported by any express legislative intent. Indeed, the facts of this case prove the contrary. The State's assertions are mere speculation.
>
> Second, the investigation and certification requirements of the statute are applicable to all defendants, not just those accused of committing dangerous crimes. If, as alleged by the State, the delay mandated by subsection (4)(b) was required so that PTS and the court could satisfy the investigation requirements of subsection (3)(b), the need for a delay would necessarily exist in all cases. However, the need for a delay does not exist in all cases, as criminal defendants, other than those who commit dangerous crimes, are routinely released to PTS at the first appearance hearing where PTS and the county court have already conducted the investigation requirements of subsection

[2] *Kalway* upheld section 57.085, regulating indigent litigation by prisoners, against a separation of powers challenge. This Court's subsequent decision in, *Jackson v. Florida Dept. of Corrections*, 790 So. 2d 381 (Fla. 2001), declared portions of that statute to be unconstitutional both as a violation of the separation of power and because formulating such procedures is the "exclusive providence of the Supreme Court." *Id*. at 384. The continuing validity of *Kalway* is questionable.

(3)(b).

> Third, the State's interpretation is even less reasonable when we consider that the one hearing-delay was not even necessary in the instant matter, as the county court judge found that Defendant qualified for nonmonetary release to PTS in time for the first appearance hearing. As it was only the statute that prevented the county court from releasing Defendant at first appearance, and the Defendant could not afford to post bond, Defendant was unjustifiably required to remain in custody over the weekend. In theory, to avoid such a result the county court could have purportedly held a second hearing immediately following the first appearance to avoid the consequence of the impending weekend. However, it would be absurd for the county court to be required to be in the position of having to hold a second, meaningless "hearing," immediately following the first appearance, just to release a defendant to PTS where the PTS investigation is already complete.

(R. 144-45, footnotes omitted). The state's brief never engages this analysis.

Additionally, the state's argument—that the legislature decided more time was necessary before PTS release—only highlights the separation of powers violation. How much time is needed to prepare for a hearing is a procedural matter for courts to decide. *See Huntley v. State*, 339 So. 2d 194, 195 (Fla. 1976) (mandatory language in a statute requiring presentence investigation before sentencing was unconstitutional because "the means to assure informed exercise of judicial discretion in sentencing is a procedural matter properly determined by court rules.").[3] Courts determine how

[3]This discretion is the sole province of the judiciary whether or not any rule of procedure from the Supreme Court of Florida directs the lower courts on how to exercise that discretion. Thus, the status of Florida Rules of Criminal Procedure 3.131

much time is needed to comply the PTS certification requirements (and all the other requirements of law), not the legislature.

Perhaps as a tacit acknowledgment of these problems with its theory, the state tacks on another theory at the end of its brief. The state claims that "section 907.041 does nothing more than set forth the public's substantive right to protection by ensuring that persons accused of dangerous crimes not be release on certain nonmonetary conditions at first appearance, *without findings on the record*." (State's brief at 14, emphasis supplied). The state therefore claims that the statute "retains the trial court's discretion to release an accused where findings on the record establish that

---

and 3.132 is not directly relevant to the outcome of this case. Nevertheless, as the state again raises this issue, this brief will also address it.

The legislature purported to repeal rule 3.131 and 3.132 only "to the extent that the rules are inconsistent with this act." Therefore, this provision is not a repeal, but only an attempt to insert an exception into the rule. Rule 3.131 stands as before, only it now has a legislatively-created exception for cases where the state charges someone with a "dangerous crime." As the Circuit Court below noted: "While the legislature could properly repeal all or any portion of Rule 3.131, it could not then enact a purely procedural rule in its place, as the authority to initiate rules of procedure rests exclusively with the Florida Supreme Court. *See Allen v. Butterworth*, 756 So. 2d 52, 59 (Fla. 2000)." (R. 145). *See also Johnson v. State*, 336 So. 2d 93 (Fla. 1976). Thus, the purported repeal is actually an unconstitutional legislative amendment to the rules of procedure. Tellingly, the state does not address the lower court's analysis in its brief.

This court need not reach this issue to decide this case. Even a proper repeal of the rule would not salvage the constitutionality of this statute. The legislature cannot unconstitutionally pass a procedural rule in the guise of a statute, yet somehow make that action constitutional by repealing a rule.

such a release is warranted." (State's brief at 14).

The state never attempts to reconcile this interpretation with its previous argument that the delay in subsection (4)(b) is mandated by the requirements for PTS certification. In fact, the state disavowed this interpretation in both the County Court (R. 102) and the Circuit Court, which noted that: "In fact, the State conceded at oral argument that even if all the 'necessary information' was available at first appearance, the court could not consider a releases to PTS at that time." (R. 144).

The state's new (mis)interpretation of the statute violates the most basic canon of statutory construction: "construction and interpretation of a statute are unnecessary when it is unambiguous." *Baker v. State*, 636 So. 2d 1342 (Fla. 1994). The statute reads in relevant part: "No person charged with a dangerous crime shall be granted nonmonetary pretrial release at the first appearance hearing." § 907.041(4)(b), Fla. Stat. (2002). The statute says "no person." The exceptions are only for the rarely-granted recognizance releases and the never-granted-at-first-appearance electronic monitoring (R. 31-32). *See* § 907.041(4)(b), Fla. Stat. (2002). The state's naked assertions to the contrary notwithstanding, the statute does not contain an exception for "findings on the record that establish that such a release is warranted." Hence, the state's misinterpretation violates the plain meaning of the statute. The Supreme Court of Florida "has repeatedly held that the plain meaning of statutory language is the first consideration of statutory construction." *Jones v. State*, 813 So. 2d 22, 24 (Fla. 2002)

(*quoting State v. Bradford*, 787 So. 2d 811, 817 (Fla. 2001)).

Moreover, the state's misinterpretation would destroy subsection (4)(b) to save it. The state would have this Court read into subsection (4)(b) an exception for when the subsection (3)(b) certification requirements have been complied with. As the (3)(b) requirements must be complied with for every PTS release, even for those defendants not charged with a "dangerous crime," the state's new interpretation of subsection (4)(b) would make it redundant with subsection (3)(b). "[C]ourts should avoid readings that would render part of a statute meaningless." *Unruh v. State*, 669 So. 2d 242, 245 (Fla. 1996) (*quoting Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 456 (Fla. 1992); *see also Neu v. Miami Herald Publ'g Co.*, 462 So. 2d 821, 825 (Fla. 1985) ("In construing legislation, courts should not assume the legislature acted pointlessly.").

At best, this new interpretation is a tacit admission that the plain meaning of the statute is unconstitutional and a request for this Court to judicially rewrite the statute. Such a suggestion also violates the constitutional separation of powers: "Courts may not go so far in their narrowing constructions so as to effectively rewrite the legislative enactments." *Wyche v. State*, 691 So. 2d 231, 236 (Fla. 1993); *see State v. Keaton*, 371 So. 2d 86, 89 (Fla. 1979) (holding that "courts may not vary the intent of the legislature with respect to the meaning of the statute in order to" "render it constitutional"). Under the separation of powers, this Court's duty is to declare the

statute unconstitutional; it is the legislature's duty to amend the statute as it sees fit.[4]

II.
THE STATE HAS SHOWN NO CAUSE WHY THIS COURT SHOULD AMEND THE CRIMINAL RULES OF PROCEDURE TO CREATE REDUNDANT HEARINGS, CLOG COURT CALENDARS, AND WASTE JUDICIAL RESOURCES.

The state alternatively suggests that this Court amend the Florida Rules of Criminal Procedure to adopt section 907.041(4)(b) as a procedural rule. The state's only argument for such an amendment is that this Court should defer to the legislature on the need for a more in-depth investigation prior to releasing a person to PTS (State's brief at 16-17).

The state apparently does not yet understand what the Eleventh Judicial Circuit explained: the PTS investigation requirements already exist for everyone released to PTS regardless of the charges (R. 144-45). *See* § 907.041(3)(b), Fla. Stat. (2002). In Miami-Dade County, PTS employs a number of people precisely to make such

---

[4]To date, the Legislature has not done so. A bill tellingly entitled "An act relating to court *procedures*," proposed to amend section 907.041(4)(b) as follows: Pursuant to the provisions of paragraph (3)(b) ~~No person charged with a dangerous crime shall be granted nonmonetary pretrial release at first appearance hearing; however~~, the court shall retain the discretion to release an accused on electronic monitoring or on recognizance bond if the findings of the record or facts and circumstances warrant such as release." Fla. CS. for CS. for SB 1020, §110 (2003). This bill died on calendar in the Senate.

investigations and report their results at first appearance hearings. This is a part of the routine practice and procedure of first appearance hearings (R. 144-45). No change in the rules of procedure is necessary to allow PTS to comply with its investigation obligations.

The only result of adopting subsection (4)(b) as a procedural rule would be to create the need for two hearings to accomplish what is now done in one. Such an amendment would cause:

> 1) the clerk's office to calendar two separate hearings;
>
> 2) the sheriff's office to transport defendants to those two hearings, and to house and feed the defendants between the hearings;
>
> 3) the trial court judges to familiarize themselves with the case twice and enter a second set of orders; and
>
> 4) and similar needless duplication by the state attorneys and public defenders.

Even if the state coffers were full, such needless duplication of hearings would be a waste of the public trust and fisc. Given the serious budget cuts and unfilled requests for additional judges, such an amendment would amount to reckless disregard of current fiscal and political realities.

CONCLUSION

The Eleventh Judicial Circuit wrote a detailed and thoughtful opinion detailing why section 907.041(4)(b) violates the separation of powers. The state's brief never engages the analysis in that opinion. This Court should affirm that opinion and hold that the legislative attempt in that subsection to dictate at which hearing a defendant may be granted Pre-Trial Services violates the constitutional separation of powers.

Respectfully submitted,

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit of Florida
1320 N.W. 14th Street
Miami, Florida 33125
(305) 545-1958

BY:_____
JOHN EDDY MORRISON
Assistant Public Defender
Florida Bar No. 072222

CERTIFICATES

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by courier to John D. Barker, Assistant Attorney General, 444 Brickell Avenue, Suite 950, Miami, Florida 33131, this 22nd day of October 2003.

I HEREBY CERTIFY that this brief was printed in 14-point Times New Roman.

_____

JOHN EDDY MORRISON
Assistant Public Defender