IN THE SUPREME COURT OF FLORIDA

CASE NO. SC05-1996

DAVID EVERETTE,

Petitioner,

-vs-

THE STATE OF FLORIDA,
DEPARTMENT OF CHILDREN AND FAMILY SERVICES,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON MERITS

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit of Florida
1320 N.W. 14th Street
Miami, Florida 33125
(305) 545-1963

JOHN EDDY MORRISON
Assistant Public Defender
Florida Bar No. 072222

Counsel for Mr. Everette, Petitioner

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INTRODUCTION

The district court of appeal granted a petition for certiorari by the Department of Children and Family Services ("department") challenging a trial court order for the department to transport Mr. Everette for evaluations. The district court of appeal held that Mr. Everette was a "forensic client" and that the sheriff was therefore responsible for transporting him. This Court accepted jurisdiction. In this brief, the symbol "A." followed by a numeral indicates the page number in the appendix filed with the response to the petition for certiorari. All emphasis in quotations is supplied unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

David Everette contracted meningitis shortly after his birth (A. 1). Probably as the result of that disease, he suffers from moderate mental retardation, cerebral palsy, epilepsy and schizoaffective disorder (A. 1, 3). His right arm and leg are noticeably atrophied, which impairs his ability to walk (A. 2, 3).

David Everette lived with his grandmother until she passed away, and then with an aunt until he was 16 (A. 1). His parents had seven other children and could not care for him because of his illness (A. 1). At age 16, he was placed in the care of the state (A. 1). Several years later, while living in a group home, David was involved in a fight over allowance money owed to him, during which he stabbed someone with a kitchen knife (A. 4-5).

Given David Everette's mental condition, the criminal case never progressed to trial. The trial court found him not competent to stand trial and committed him under Chapter 916 to the department (A. 6-7). After the statutorily required two-year wait, the trial court dismissed the criminal charges pursuant to then-section 916.145[1] and committed Mr. Everette to the department under section 393.11

[1]Subsequently, the statute was amended. Section 916.145, Florida Statutes, now applies only to defendants with mental illness and requires a five-year wait. *See* § 916.145, Fla. Stat. (2005). Section 916.303, Florida Statutes applies to defendants such as Mr. Everette with mental retardation and it retains the two-year waiting period. *See* § 916.303(1), Fla. Stat. (2005).

(A. 8-9). The court ordered that he be held in a secure facility (A. 9). He was placed in the Pathways facility in Miami.

In an evaluation conducted in November 2003, the department determined that he could be transferred to a non-secure facility (A. 1-3). Seven months later, in June 2004, the department filed its notice of intent to transfer Mr. Everett to a nonforensic residential setting (A. 11-12). The trial court notified the department of its objection and ordered evaluations (A. 13-14).[2] The department's delay was more than just inconsiderate—its delay resulted in a real problem securing evaluations because on August 3, 2004, Pathways was moving to Mariana, Florida, just outside of Tallahassee, Florida (A. 15).

The Third District Court of Appeal's opinion below explains what happened when Pathways moved:

> In August 2004, Pathways was relocated from Miami, Florida to Marianna, Florida. . . . At the hearing, the trial court appointed two expert witnesses to evaluate Mr. Everette and directed the Department to transport Mr. Everette for the evaluations. The Department objected, arguing that pursuant to section 916.107(10), Florida Statutes, the County Sheriff is responsible for transporting Mr. Everette. The Court denied the Department's Motion to Order the County Sheriff to

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[2]The Third DCA's opinion inaccurately reports that the evaluations were for an annual review. *See State v. Everette*, 911 So. 2d 119, 119 (Fla. 3d DCA 2004). The purpose of the evaluations has no material impact on the legal analysis in this case.

> transport Mr. Everette for the evaluations, and ordered the Department to coordinate the evaluations, including scheduling and transporting Mr. Everette (Case No. 3D04-2324). The Court subsequently entered an Order to Comply with the Order to Transport (Case No. 3D04-2366). The Department seeks a writ of certiorari from both Orders.

State v. Everette, 911 So. 2d 119, 119-20 (Fla. 3d DCA 2004).

The department named as respondents Mr. Everette and the State of Florida.[3] The Third DCA's opinion names the parties to that action and lists the attorneys appearing on behalf of those parties. *See id*. at 119. The department never served or named as a respondent any entity in Miami-Dade County that functions as the sheriff's office in that county, and none appeared in this litigation

The Third DCA granted the department's petition. In his dissent, Judge Ramirez noted that the sheriff should have been a party to this action. *See* 911 So. 2d at 123. Judge Ramirez's dissent was clear on this point, and Mr. Everette stated as a ground for rehearing and rehearing *en banc* the issues raised in Judge

[3]The State of Florida was presumably named because it was a party to the long-ago dismissed criminal case pursuant to the rule requiring "all parties to the proceeding in the lower tribunal who are not named as petitioners shall be named as respondents." Fla. R. App. P. 100(b). The State of Florida made no appearance until specifically ordered to respond by the Third DCA to Mr. Everette's motion for rehearing.

Ramirez's dissent (Motion for Rehearing at 4-5). The Third DCA denied that motion. This Court accepted jurisdiction in this case.

SUMMARY OF ARGUMENT

This case turns on whether Mr. Everette is a "forensic client" committed under chapter 916, the mental health statutes for those accused of crime, or is committed under a civil mental health statute. The statutory language requires a "commitment" under chapter 916, not a "placement." The statutory scheme distinguishes commitments from placements. A person is committed under chapter 916 while criminal charges are pending. Someone like Mr. Everette whose criminal charges have been dismissed is committed under chapter 393, a civil mental health chapter. A court can then order him placed in a secure facility under chapter 916. The district court of appeal's decision in this case erroneously held that Mr. Everette is a "forensic client" because he was placed in a secured facility

This case has impacts far beyond the question of whether the sheriff pays transportation costs. "Forensic clients" have less freedoms and rights than patients committed under the civil mental health statutes. Patients committed under civil mental health statutes must be held in the least restrictive conditions and have protections regulating the use of restraints and isolation. Forensic clients, who are, after all, awaiting trial in a criminal case, do not have such protections. Similarly, forensic clients have more restricted rights to visitation, telephone access and property. Civil mental health patients have greater access to their own medical records. Conversely, the medical records of forensic clients are available to a

wider range of agencies persons. Those records would be confidential for civil mental health patients.

Under the district court of appeal's decision, Mr. Everette and all those in his situation have the limited rights of criminals awaiting trial even though all criminal charges against them have been dismissed. Only one result of this decision is that Mr. Everette and similarly situated individuals are transported like criminals, and sheriffs (a class of constitutional officers) must pay their transportation costs.

Additionally, the department facilitated transferring the transportation costs to the sheriff by never serving the sheriff with notice of this litigation. The sheriff was a necessary and indispensable party because this case necessarily affected the sheriff's interests. This Court should also reverse to provide the sheriff notice and an opportunity to be heard in this litigation.

Finally, the district court of appeals decision did not limit certiorari to correcting only manifest injustices. The trial court in this case, by ordering the department to transport Mr. Everette, was attempting to avoid having Mr. Everette returned to jail years after all criminal charges had been dismissed. Far from reserving certiorari for corrections of manifest injustice, the district court of appeal's decision creates an injustice by allowing such illegal incarcerations.

ARGUMENT

I.

MR. EVERETTE IS NOT A "FORENSIC CLIENT" BECAUSE HE IS COMMITTED UNDER A CIVIL MENTAL HEALTH STATUTE. THE DISTRICT COURT OF APPEAL'S DECISION PLACES MR. EVERETTE IN A SECOND-CLASS STATUS YEARS AFTER ALL CRIMINAL CHARGES WERE DISMISSED.

The district court of appeal's decision not only affects sheriffs (a class of constitutional officers), but also the treatment of mentally retarded persons. The question this case raises is whether mentally retarded persons are to be treated like criminals even if their criminal charged have been dismissed. The district court of appeal held that David Everette is a "forensic client" under section 916.107. *See State v. Everette*, 911 So. 2d 119, 120 (Fla. 3d DCA 2004). That section is a long, comprehensive section entitled: "Rights of forensic clients." § 916.107, Fla. Stat. (2004). Subsection (10) covering transportation is but one small part of that statute. If David Everette is a "forensic client" for transportation issues, he is a "forensic client" for all other issues and may be treated as a criminal awaiting trial, regardless that all criminal charges were dismissed years ago. The district court of appeal's holding cannot be limited to transportation.

The district court of appeal based its decision on a statute requiring sheriffs' offices to "determine the most appropriate and cost-effective means of transportation for <u>forensic clients</u> committed for treatment or training."

§ 916.107(10), Fla. Stat. (2005). The plain language of the statute in question defines a forensic client by the statute under which the person is committed, not by the facility in which the person is placed: "'Forensic client' or 'client' means any defendant who is mentally ill, retarded, or autistic and who is committed to the department pursuant to this chapter." § 916.106(7), Fla. Stat. (2005). This definition belies the assumption that everyone in a secured facility is a "forensic client."[5]

This definition of "forensic client" makes Mr. Everette's placement in a secured facility irrelevant for purposes of determining whether he is a "forensic client." Section 916.303(2), Florida Statutes, makes clear that although Mr. Everette's placement in a secured facility is pursuant to chapter 916, his commitment is pursuant to chapter 393, a civil commitment statute. Subsection 916.303(2)(a), Florida Statutes provides: "If the charges are dismissed . . . the state attorney or the defendant's attorney may apply to the committing court to involuntarily admit the defendant to residential services pursuant to s. 393.11." § 16.303(2)(a), Fla. Stat. (2005). The next subsection continues to acknowledge

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[5]Moreover, a secure facility does not even necessarily mean a "forensic facility." For instance, persons committed or held for trial under the involuntary commitment of sexually violent predators statute are held in "a secure facility." *See* §§ 394.9135(1), 394.915(4), Fla. Stat. (2005). Those commitments are civil, not forensic or criminal. *See Westerheide v. State*, 831 So. 2d 93 (Fla. 2002).

that the commitment is pursuant to chapter 393 and provides for only a secure placement under chapter 916: "If the defendant is considered to need involuntary residential services under 393.11, and further there is a substantial likelihood that the defendant will injure another person or continues to present a danger of escape . . . then the person or entity filing the petition under s. 393.11 . . . may also petition the committing court to continue the defendant's placement in a secure facility or program pursuant to this section." § 916.303(2)(b), Fla. Stat. (2005).

Conversely, when a commitment is pursuant to chapter 916, the statutory language refers to a "commitment," not "placement." *See* § 916.13, Fla. Stat. (2005) ("Every defendant who is charged with a felony and who is adjudicated incompetent to proceed . . . may be involuntarily committed for treatment . . . ."); § 916.15, Fla. Stat. (2005) ("A defendant who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily committed . . . ."); § 916.302, Fla. Stat. (2005) ("Every defendant who is charged with a felony and who is found to be incompetent to proceed . . . may be involuntarily committed for training . . . ."). Even the titles to these sections all begin with the words "Involuntary commitment of defendant . . . ."

A "well-settled" principle of statutory construction is that "[t]he legislative use of different terms in different portions of the same statute is strong evidence that different meanings were intended." *State v. Bradford*, 787 So. 2d 811, 819

(Fla. 2001) (quoting other cases; alteration in original). Thus, the statutory language is clear: Mr. Everette's commitment is pursuant to the civil commitment statute in chapter 393; his placement in the secured facility is pursuant to chapter 916. Because Mr. Everette's commitment is under chapter 393, he cannot be a "forensic client" because the definition of that term requires a commitment under chapter 916.

The district court of appeal's statements on this point are indecipherable and self-contradictory. The opinion begins correctly: "In the instant case, the trial court dismissed Everette's criminal case pursuant to section 916.145, Florida Statues (1996), committed Everette, pursuant to section 393.11, Florida Statues, to the Department, and retained jurisdiction over Everette." *State v. Everette*, 911 So. 2d at 120. After a couple of sentences explaining the statutes requiring the dismissal of criminal charges and allowing retention of jurisdiction to ensure a secure placement, the district court of appeal's opinion continues: "Currently, section 916.303, Florida Statutes (2003), provided that if charges against an incompetent defendant are dismissed, the department, the state attorney, or the defendant's attorney may ask the trial court to involuntarily commit the defendant pursuant to section 393.11, Florida Statutes. §916.303(2)(a), Fla. Stat. (2003)." 911 So. 2d at 120.

Up until this point, the district court of appeal's opinion is sound: Mr. Everette has been committed pursuant to a civil commitment under chapter 393. In the next sentence, however, the district court of appeal makes an unexplained (and unexplainable) U-turn and writes that he is committed pursuant to the criminal mental health statute, chapter 916:

> Consequently, Mr. Everette is clearly a "forensic client," within the meaning of section 916.106(7), Florida Statutes (2003), i.e., a "defendant who is mentally ill, retarded, or autistic and who is committed to the department pursuant to this chapter and: (a) Who has been determined to need treatment for a mental illness or training for retardation or autism; (b) who has been found incompetent to proceed on a felony offense or has been acquitted of a felony offense by reason of insanity; (c) Who has been determined by the department to: 1. Be dangerous to himself or herself or others; . . . ." § 916.106(7), Fla. Stat. Thus, contrary to the dissent's suggestion, section 916.107(10)(a), Florida Statues does apply in the instant case.

911 So. 2d at 120-21 (emphasis modified).

The district court of appeal's opinion is, at best, self-contradictory. Is David Everette committed under chapter 393 or chapter 916? The definition of "forensic client" in section 916.106(7) requires that the person be committed pursuant to that chapter. The district court of appeal had already held that Mr. Everette is committed pursuant to a different statute, the civil mental retardation statute in chapter 393. Therefore, by the district court of appeal's own reasoning, Mr. Everette is not a "forensic client."

Both the state and the department have conceded as much by suggesting that the trial court transfer this case via subsection 393.11(11), Florida Statutes, to a judge where the department has relocated Mr. Everette (A. 24; State's Response at 7). That section requires that the "initial order for involuntary admission" be "under this section." § 393.11(11), Fla. Stat. (2005). The department's and the state's position is also self-contradictory. They claim that Mr. Everette is committed under 393 when they suggest transferring jurisdiction, but that he is a forensic client committed under chapter 916 when it comes to paying for transportation. Their legal positions on the statutory basis for Mr. Everette's commitment apparently vary based on their own convenience.

Judge Ramirez's dissenting opinion states the correct law:

> The basic problem with the majority's reliance on section 916.107(10) is that this statute does not apply to Everette and has not applied to him since 1996, when the state dismissed the criminal charges pending against him. Chapter 916 applies to criminal defendants. Everette is no longer a criminal defendant. He is a person who is mentally retarded who was involuntarily committed pursuant to section 393.11, Florida Statutes (1996). The department recognized this in its motion of August 25th when it sought to transfer his case to the Fourteenth Circuit. These commitments are civil, not forensic. The department has cited nothing in chapter 393, nor a careful reading of section 393.11 reveals any provision, governing the transportation of persons involuntarily admitted to residential services.

911 So. 2d at 123 (Ramirez, J., dissenting) (emphasis in original).

The district court of appeal's inexplicable error has serious consequences. Because "forensic clients" have fewer rights than civil mental health patients, the Third DCA relegated David Everette and other persons in secured facilities with now-dismissed criminal charges to a second-class status as mental health patients.

Persons committed under chapter 916, the forensic mental health chapter, have significantly curtailed rights as compared to those committed under the civil mental health statutes, chapter 393 and 394. A civil mental health commitment requires that the person be held in the least restrictive conditions possible; a forensic commitment does not. *See* § 393.13(3)(c), Fla. Stat. (2005) (requiring least restrictive conditions); c*ompare* § 394.459(2)(b), Fla. Stat. (2005) *with* § 916.107(2), Fla. Stat. (2005) (virtually identical to provision in chapter 394, except omitting the subsection on least restrictive treatment). Civil mental health patients have much greater protection against the use of restraints or isolation than forensic clients, who are, after all, detained pending a criminal trial. *See* § 393.13(4)(i), Fla. Stat. (2005); *compare* § 394.459(4)(a)&(b), Fla. Stat. (2005) *with* § 916.107(4), Fla. Stat. (2005) (similar language, but omitting subsection (b) on use of restraints and isolation).

Liberties within the institutions are also significantly different. Civil mental health patients have much greater rights to their own property than "forensic clients." *Compare* §§ 393.13(4)(b) & 394.459(6), Fla. Stat. (2005) *with*

§ 916.107(6), Fla. Stat. (2005). Civil mental health patients also have greater rights to visitation and telephone access than forensic clients. *Compare* §§ 393.13(4)(a) & 394.459(5), Fla. Stat. (2005) *with* § 916.107(5), Fla. Stat. (2005) (again copying language from chapter 394 but omitting right of immediate access to family, guardians and attorneys and omitting right of access to a telephone).

Additionally, the confidentiality of clinical records is different. Civil mental health patients have a right to access to their own records that forensic clients do not have. *Compare* §§ 393.13(4)(j)4 & 394.4615(10), Fla. Stat. (2005) *with* §916.107(8), Fla. Stat. (2005). Conversely, forensic clients' records may be provided to many agencies and persons without court order where no similar exception to confidentiality applies to civil mental health patients' records. *Compare* § 916.107(8)(b), Fla. Stat. (2005) *with* §§ 393.13(4)(j), 394.4615, Fla. Stat. (2005).

The district court of appeal ignored these concerns, just as it ignored the plain language of the statute it purported to be interpreting. This Court should reverse and hold that the sheriff is not responsible for transporting David Everette because he is committed under chapter 393 is not a "forensic client" under chapter 916.

II.

BECAUSE THE SHERIFF WAS DIRECTLY AFFECTED, THE SHERIFF WAS A NECESSARY AND INDISPENSIBLE PARTY. CASE LAW REQUIRES THAT SUCH PARTIES RECEIVE NOTICE AND AN OPPORTUNITY TO BE HEARD.

The Department of Children and Family Services ("department") brought this original proceeding for certiorari, naming Mr. Everette and the State of Florida as respondents, because they were the parties in the proceedings before the trial court. The department never served the sheriff or any entity performing that role in Miami-Dade County.[4]

The Attorney General, responding to the motion for rehearing, represented the State of Florida, not the sheriff, and supported the department's position. Mr. Everette also did not represent the sheriff's interests. Mr. Everette's interest was in not being housed in the jail, which would likely result in him a deterioration of his mental capabilities.

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[4]The correct entity that should have been named is Miami-Dade County. *See Masson v. Miami-Dade County*, 738 So. 2d 431, 432 (Fla. 3d DCA 1999). Miami-Dade County was given the power to abolish certain offices, including the office of sheriff. *See* Art. VIII, §6(e), Fla. Const. (2005) (preserving Art. VIII, § 11, Fla. Const. (1885 as amended. Subsection (f) of that section allowed for the abolition of state offices and transfer of functions of such offices). Miami-Dade county abolished the office of the sheriff in 1966, and assigned those powers to the County Manager. *See* Art. 8, § 8.01(D), Miami-Dade County Home Rule Charter. Because this arrangement is unique in Florida, this brief will refer to the County Manager as the "sheriff" in an effort to avoid undue confusion.

The sheriff undoubtedly has financial and practical problems transporting persons all over the state from wherever the department has chosen to house them. This problem is especially acute because under the Third DCA's opinion, this duty can last in perpetuity for the life of the person, even if that person is not, and has not been, a criminal defendant for many years. The sheriff's office never had an opportunity to be heard by the court before it handed down this opinion.

"All persons materially interested in the subject matter of a suit and who would be directly affected by an adjudication of the controversy are necessary parties." *W.F.S. Co. v. Anniston Nat'l Bank*, 190 So. 2d 300, 301 (Fla. 1939); *see also Amerada Hess Corp. v. Morgan*, 426 So. 2d 1122, 1125 (Fla. 1st DCA 1983). The sheriff's office was directly affected by the Third DCA's adjudication of this original proceeding and therefore was a necessary party. Nevertheless, the sheriff's office was never served nor represented in the District Court.

This lack of notice and an opportunity to be heard is contrary to a long line of precedent from this Court and other District Courts of Appeal. "[T]his court has repeatedly held that persons whose interests will necessarily be affected by any decree that can be rendered in a cause are necessary and indispensable parties and that the court will not proceed without them." *Cline v. Cline*, 134 So. 546, 548-49 (Fla. 1931); *see also Heisler v. Florida Mortgage Title & Bonding Co.*, 142 So. 2d 242, 247 (Fla. 1932). "A person whose rights and interests are to be affected by a

decree and whose actions with reference to the subject matter of litigation are to be controlled by a decree is a necessary party to the action and the trial court cannot proceed without that person." *Blue Dolphin Fiberglass Pools, Inc. v. Swim Indus. Corp.*, 597 So. 2d 808, 809 (Fla. 2d DCA 1992)*; see also Tobin v. Vasey*, 843 So. 2d 376, 377 (Fla. 2d DCA 2003).

In its jurisdictional brief, the state sought to distinguish these cases because of their subject matters. The state never explained how the rule on necessary and indispensable parties should vary depending on the subject matter of the litigation. The district court of appeal held the sheriff responsible for transporting Mr. Everette without providing the sheriff an opportunity to be heard on whether that was a correct reading of the statute. In essence, the department facilitated the transfer of its obligation to transport Mr. Everette to the sheriff by never telling the sheriff what was at stake in this litigation.

In the state's jurisdictional brief, the state faults undersigned counsel for not raising this issue in the initial response to the petition for certiorari. Judge Ramirez pointed out this issue in his dissent. *See* 911 So. 2d at 123. Judge Ramirez's discussion of the issue certainly indicates that the district court of appeal was cognizant of the issue. Courts can *sua sponte* raise the issue of necessary parties. *See Rabinowitz v. Houk*, 129 So. 501, 506 (Fla. 1930).

Additionally, the motion for rehearing and rehearing *en banc* raised as a ground for rehearing the issues stated in Judge Ramirez's dissent (Motion for Rehearing at 4-5). Raising an issue in a motion for rehearing preserves those issues for review. *See, e.g., Moore v. State*, 903 So. 2d 238, 239 n.2 (Fla. 2d DCA 2005); *C.W. v. State*, 861 So. 2d 1243, 1244 (Fla. 2d DCA 2003); *Waksman Enterprises, Inc. v. Oregon Properties, Inc.*, 862 So. 2d 35, 42 (Fla. 2d DCA 2003) (citing *Anderson v. Amaco Transmissions, Inc.*, 265 So. 2d 5 (Fla. 1972)); *Sag Harbour Marine, Inc. v. Fickett*, 484 So. 2d 1250, 1256 (Fla. 1st DCA 1985). This issue can be raised by any party, or, as noted earlier, the court itself. *See Headley v. Lasseter*, 147 So. 2d 154, 157 (Fla. 3d DCA 1962) (County raised issue of failure to include city as a party).

Finally, the state never articulates how David Everette has standing to waive the sheriff's right to notice and a hearing in this litigation. Mr. Everette does not represent the sheriff's interests. Because of the concerns about due process, the issue of necessary parties can be brought at any time during the litigation, even raised for the first time on appeal. *See Headley*, 147 So. 2d at 156-57 (citing cases).

The failure to include necessary and indispensable parties is reversible error. *See, e.g., Tobin*, 843 So. 2d at 377; *Blue Dolphin Pools*, 597 So. 2d at 809;

Headley, 147 So. 2d at 157. This Court should reverse the decision below to allow the sheriff to have a voice in this litigation.

III.
THE DISTRICT COURT OF APPEAL APPLIED A LOWER STANDARD FOR CERTORARI THAN IS REQUIRED BY THIS COURT'S PRECEDENTS.

The district court of appeal granted certiorari because it thought that the trial court had violated section 916.107(10), Florida Statutes. Certiorari, however, requires more than a legal error. "Existing case law establishes that the departure from the essential requirements of the law necessary for the issuance of a writ of certiorari is something more than a simple legal error. Both *Combs* and *Heggs* suggest that the district court should examine the seriousness of the error and use its discretion to correct an error 'only when there has been a violation of [a] clearly established principle of law resulting in a miscarriage of justice.'" *Ivey v. Allstate Ins. Co.*, 774 So. 2d 679, 683 (Fla. 2000). As Chief Justice Boyd once wrote:

> The required "departure from the essential requirements of law" means something far beyond legal error. It means an inherent illegality or irregularity, an abuse of judicial power, an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice. The writ of certiorari properly issues to correct essential illegality but not legal error.

Jones v. State, 477 So. 2d 566, 569 (Fla. 1985) (Boyd, C.J., concurring).

Therefore, even if this Court should agree with the district court's reading of the statutes, there can be no question that the trial court was diligently trying to apply those statutes. Certiorari is appropriate only in "matter[s] of disobedience to the law" not "a failure to logically . . . reach to correct result under a new set of facts." *Ivey*, 774 So. 2d at 682-83. As this Court wrote one hundred and twenty-four years ago:

> The question which this certiorari brings here is . . . whether the Judge exceeded his jurisdiction in hearing the case at all, or adopted any method unknown to law or essentially irregular in his proceeding under the statute. A decision made according to the form of law and the rules prescribed for rendering it, although it may be erroneous in its conclusion as to what the law is as applied to facts, is not an illegal or irregular act or proceeding.

Basnet v. City of Jacksonville, 18 Fla. 523, 526-27 (1882) (*reaffirmed by Haines City Community Development v. Heggs*, 658 So. 2d 523, 525 (Fla. 1995). The trial court ordered the department to transport someone the trial court reasonably believed is a under a civil commitment. Nothing is improper about such an order, even if this Court somehow reads the statute differently.

Additionally, if the trial court was wrong and Mr. Everette was somehow committed under chapter 916, having the sheriff transport Mr. Everette would create a serious violation of Mr. Everette's rights. Pursuant to an administrative order that the department provided the trial court, the sheriff would "return the

defendant to the Dade County Jail." *In re Transportation of Defendants for Commitment Status Hearings*, 80-1 (May 9, 1980) (A. 18). Chapter 916 provides that "a jail may be used as an emergency facility for up to 15 days from the date the department receives a completed copy of the commitment order." § 916.107(1)(a), Fla. Stat. (2005). As Mr. Everette was committed in 1996, those fifteen days expired long ago. Thus, for the trial court to have acceded to the department's request would have resulted in Mr. Everette being illegally held in the Dade County Jail. The department has not shown how avoiding an illegal incarceration is a manifest injustice. To the contrary, the trial court's order prevented an injustice.

The district court of appeal's disregard of the boundaries of certiorari established by this Court's precedents would be reason enough to accept jurisdiction and reverse. At the very least, this Court should remind the district court of appeal of these boundaries in reversing on the grounds listed in the previous sections.

CONCLUSION

This Court should reverse both to give the sheriff an opportunity to be heard in this case and to avoid depriving Mr. Everette and other persons with dismissed criminal charges of the rights of all other civilly committed persons.

Respectfully submitted,

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit of Florida
1320 N.W. 14th Street
Miami, Florida 33125
(305) 545-1963

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 mail to counsel for the Department of Children and Family Services, Amy McKeever Toman, Senior Attorney, Sunland Center, 3700 Williams Drive, Marianna, Florida 32446, and by courier to counsel for the State of Florida, Annette M. Lizardo, Assistant Attorney General, 444 Brickell Avenue, Suite 650, Miami, Florida 33131 this __th day of May 2006.

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

BY:_____
JOHN EDDY MORRISON

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APPENDIX
