

Supreme Court of Florida

No. SC06-2211

ABRAHAM YISRAEL,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[February 21, 2008]
REVISED OPINION

LEWIS, C.J.

In this case, we review the decision of the Fourth District Court of Appeal in Yisrael v. State, 938 So. 2d 546 (Fla. 4th DCA 2006). In Yisrael, the Fourth District certified that its decision is in direct conflict with the decision of the First District Court of Appeal in Gray v. State, 910 So. 2d 867 (Fla. 1st DCA 2005). We therefore possess jurisdiction to resolve this conflict. See art. V, § 3(b)(4), Fla. Const. The sole meritorious issue presented for review is whether the documents the State proffered to establish the defendant's status as a habitual violent felony offender ("HVFO") are admissible under either the business- or public-records exceptions to the rule against hearsay. As explained below, we hold that the

“Crime and Time Reports” issued by the Department of Corrections (“DOC” or “Department”) are admissible as public records so long as they are properly authenticated. However, we concurrently hold that DOC release-date letters—standing alone—constitute inadmissible hearsay.

I. BACKGROUND

On January 14, 2004, Defendant-Petitioner Abraham Yisrael (a/k/a Eugene Lumsden) was convicted of cocaine trafficking and possession of a firearm by a convicted felon in Broward County Circuit Court.¹ The State later filed notice of its intent to seek an HVFO sentence enhancement. During sentencing, the trial judge relied on a DOC release-date letter, which indicated that Mr. Yisrael committed the target offenses within five or fewer years of having been released for his predicate felonies. Based on this letter, Yisrael qualified as an HVFO under section 775.084, Florida Statutes (2001).²

1. Mr. Yisrael committed the target offenses on February 21, 2001.

2. Yisrael was convicted of arson and robbery on July 10, 1992 (both of which are predicate felonies under section 775.084(1)(b)(1), Florida Statutes (2001)), and according to the DOC letter, the State released him on April 8, 1998, after Yisrael served sentences for those offenses. Yisrael committed his current cocaine-trafficking and felon-in-possession offenses on February 21, 2001, nearly three years after having been released for his 1992 felony convictions. Cf. § 775.084(1)(b)(2)(b), Fla. Stat. (2001) (permitting HVFO sentencing if “[t]he felony for which the defendant is to be sentenced was committed . . . within 5 years of the defendant’s release from a prison sentence . . . that [wa]s imposed as a result of a prior conviction for an enumerated felony.” (emphasis supplied)).

Mr. Yisrael did not object to the trial judge's consideration of the release-date letter during sentencing. Nonetheless, Yisrael later filed a timely Florida Rule of Criminal Procedure 3.800(b)(2) motion to correct sentence, alleging that (1) the letter was based upon inadmissible hearsay; (2) the letter was the only evidence the State produced to support its HVFO sentencing request; and (3) the trial court consequently could not have properly sentenced him as an HVFO.³ Yisrael, however, neither attacked the validity of his predicate felonies, nor did he challenge the accuracy of his predicate-offense release date. The circuit court denied Yisrael's rule 3.800(b)(2) motion, and Yisrael appealed to the Fourth District Court of Appeal.

On appeal, sitting en banc, the Fourth District affirmed the order of the circuit court denying Yisrael's rule 3.800(b)(2) motion. Yisrael v. State, 938 So. 2d 546, 547-50 (Fla. 4th DCA 2006). The court reasoned that the DOC letter was admissible under the public-records exception to the rule against hearsay. In the course of its decision, the Fourth District receded from its prior opinion in Sutton v. State, 929 So. 2d 1105 (Fla. 4th DCA 2006), and certified direct conflict with the First District's decision in Gray v. State, 910 So. 2d 867 (Fla. 1st DCA 2005), which held that a nearly identical DOC letter constituted inadmissible hearsay.

3. Neither party has addressed the propriety of the application of a rule 3.800(b)(2) claim. Therefore, we do not address this issue in the instant case.

However, apparently unknown on appeal to the Fourth District, the Public Defender's Office, and the State, the trial-level prosecutor actually included an attachment with the supposedly objectionable DOC letter (collectively labeled "Exhibit C"), which undermined Mr. Yisrael's hearsay objection and rendered Yisrael factually distinguishable from Gray and Sutton. See Appendix ("Exhibit C"). This attachment was included in the record filed with this Court, and is an example of what Florida courts have generally referred to as the DOC's "Crime and Time Reports." The report provided under seal in this case clearly indicated that Mr. Yisrael's predicate-felony release date was "04/08/98." The decisions of the First District in Desue v. State, 908 So. 2d 1116 (Fla. 1st DCA 2005), and Gray each specified that this type of report is admissible, despite a hearsay objection, as either a public or business record. See Desue, 908 So. 2d at 1117-18; Gray, 910 So. 2d at 869. Moreover, Sutton expressly followed Gray. See Sutton, 929 So. 2d at 1108 (citing Gray in support of its holding). Therefore, if the Fourth District had been informed of this important fact, its opinion overruling Sutton and declining to follow Gray would have been unnecessary.⁴ This Court's discretionary review

4. Despite this factual oversight, conflict still exists in this case based on the four-corners rule—i.e., Yisrael, as written, conflicts with Gray. Compare Yisrael, 938 So. 2d at 550 (finding the DOC release-date letter admissible under the public-records exception and stating that "[u]nder the facts and circumstances presented here, we do not perceive any necessity to read into the public records exception, a requirement that a statement under seal also attach copies or identify such physical papers or electronic data from which the declarant derived the criminal history

follows from the Fourth District’s certification of direct conflict between its decision in Yisrael and the First District’s decision in Gray. See Yisrael v. State, 938 So. 2d 546, 550 (Fla. 4th DCA 2006), review granted, 956 So. 2d 458 (Fla. 2007) (table).

II. ANALYSIS

The Fourth District crafted its Yisrael opinion under the assumption that it was considering exclusively the admissibility of a stand-alone DOC release-date letter. Therefore, to resolve the increasing confusion and at least apparent conflict surrounding this issue, our opinion addresses both the inadmissibility of stand-alone release-date letters and the admissibility of properly authenticated DOC Crime and Time Reports. In addressing this hearsay issue, we first explain that a DOC release-date letter is not a business record, whereas a Crime and Time Report may constitute such a record if properly authenticated. We then clarify that a release-date letter—standing alone—is not a public record, but that this type of letter may be used to authenticate an attached Crime and Time Report. We conclude by holding that when the State provides a Crime and Time Report, and properly authenticates the report by attaching a signed and sealed release-date

information”), with Gray, 910 So. 2d at 869 (finding that the DOC release-date letter was inadmissible “under any exception to the rule excluding hearsay,” and noting that Gray did not involve “duly authenticated ‘Crime and Time Reports,’ like the computer printout that came in evidence in Desue v. State, 908 So. 2d 1116 (Fla. 1st DCA 2005)” (emphasis supplied)). See Gandy v. State, 846 So. 2d 1141, 1144 (Fla. 2003) (outlining the four-corners conflict-jurisdiction rule).

letter, the combined document is admissible as a public record to establish a defendant's HVFO status.

A. The Business-Records Exception

The State contends that the DOC release-date letter is admissible as a business record. However, by itself, the letter is not admissible under the business-records exception. Out-of-court statements offered to prove the truth of the matter asserted are inadmissible unless the statements fall under a recognized exception to the rule against hearsay. See § 90.802, Fla. Stat. (2004).⁵ Here, the DOC release-date letter read as follows:

I, JOYCE HOBBS, CORRECTIONAL SERVICES ADMINISTRATOR, CENTRAL RECORDS OFFICE, STATE OF FLORIDA DEPARTMENT OF CORRECTIONS, DO HEREBY CERTIFY THAT THIS SEAL IS THE OFFICIAL SEAL OF THE FLORIDA DEPARTMENT OF CORRECTIONS. I ALSO CERTIFY THAT THE LAST RELEASE DATE FOR INMATE EUGENE LUMSDEN [A/K/A ABRAHAM YISRAEL], DC# 647647, B/M, DOB: 4/1/1963, WAS APRIL 08, 1998, FOR CASE # 89-20161, 89-20162 – BROWARD COUNTY, FLORIDA.

GIVEN UNDER MY HAND AND SEAL, THIS FEBRUARY 04, 2004.

[SIGNATURE]

5. Rules of evidence are generally considered rules of procedure, and hence, retroactive application does not violate the Ex Post Facto Clauses of the federal and Florida Constitutions. See, e.g., Hopt v. Territory of Utah, 110 U.S. 574, 589 (1884); Glendening v. State, 536 So. 2d 212, 215 (Fla. 1988). Mr. Yisrael's trial occurred during early 2004. Therefore, the 2003 or 2004 Florida Evidence Code applies to the issues presented in this appeal. We reference the 2004 Code because there is no appreciable difference between the 2003 and 2004 versions with regard to the provisions involved in Yisrael.

JOYCE HOBBS,
CORRECTIONAL SERVICES ADMINISTRATOR

(Emphasis supplied.)

Neither party disputes the fact that the State offered the DOC release-date letter to prove Mr. Yisrael's release date for his predicate felonies, which were convictions for arson and robbery. Furthermore, there is no dispute that the letter constituted a "statement" under section 90.801(1)(a)(1), Florida Statutes (2004). See id. ("A 'statement' is: 1. An oral or written assertion . . ."). Finally, neither party claims that Ms. Hobbs made this statement in court, while relying upon appropriately admitted and authenticated State records. Therefore, the DOC release-date letter is a classic example of hearsay: "Hearsay is defined as a statement, other than one made by the declarant while testifying at trial or hearing, offered to prove the truth of the matter asserted." Banks v. State, 790 So. 2d 1094, 1097 (Fla. 2001) (citing § 90.801(1)(c), Fla. Stat. (1997)). In its attempt to prove Yisrael's release date, the State, as the evidentiary proponent, thus had the burden of supplying a proper predicate to admit this evidence under an exception to the rule against hearsay. See § 90.802, Fla. Stat. (2004) ("Except as provided by statute, hearsay evidence is inadmissible."); Lowenthal v. State, 699 So. 2d 319, 320 (Fla. 2d DCA 1997) ("[T]he state must furnish proof of . . . the date that the defendant was released from prison imposed for the last felony conviction . . .");

§ 775.084(3)(a)(4), Fla. Stat. (2001) (mandating a preponderance-of-the-evidence standard).

Florida's business-records exception appears in section 90.803(6)(a), Florida Statutes (2004).⁶ To secure admissibility under this exception, the proponent must show that (1) the record was made at or near the time of the event; (2) was made by or from information transmitted by a person with knowledge; (3) was kept in the ordinary course of a regularly conducted business activity; and (4) that it was a regular practice of that business to make such a record. See, e.g., Jackson v. State, 738 So. 2d 382, 386 (Fla. 4th DCA 1999). Additionally, the proponent is required to present this information in one of three formats. First, the proponent may take the traditional route, which requires that a records custodian take the stand and testify under oath to the predicate requirements. See § 90.803(6)(a), Fla. Stat.

6. The business-records exception provides as follows:

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make such memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or as shown by a certification or declaration that complies with paragraph (c) and s. 90.902(11), unless the sources of information or other circumstances show lack of trustworthiness. The term "business" as used in this paragraph includes a business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(2004). Second, the parties may stipulate to the admissibility of a document as a business record. See, e.g., Kelly v. State Farm Mut. Auto. Ins., 720 So. 2d 1145, 1146 (Fla. 5th DCA 1998) (holding that the parties stipulated to the admissibility of medical records under the business-records exception); but see Gordon v. State, 787 So. 2d 892, 894 (Fla. 4th DCA 2001) (holding that the State and defense counsel’s stipulation regarding the defendant’s release date was not sufficient to relieve the State of its burden to prove the defendant’s release date by a preponderance of the evidence). Third and finally, since July 1, 2003, the proponent has been able to establish the business-records predicate through a certification or declaration that complies with sections 90.803(6)(c) and 90.902(11), Florida Statutes (2004). The certification—under penalty of perjury—must state that the record:

- (a) Was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person having knowledge of those matters;
- (b) Was kept in the course of the regularly conducted activity; and
- (c) Was made as a regular practice in the course of the regularly conducted activity[.]

§ 90.902(11)(a)-(c), Fla. Stat. (2004).

Here, a records custodian did not appear as a witness, the parties did not stipulate to admissibility, and the State did not provide a certification under section 90.902(11). Even if the State had attempted to satisfy the business-records predicate—exclusively with regard to the release-date letter—it would have failed.

“If evidence is to be admitted under one of the exceptions to the hearsay rule, it must be offered in strict compliance with the requirements of the particular exception.” Johnson v. Dep’t of Health & Rehab. Servs., 546 So. 2d 741, 743 (Fla. 1st DCA 1989). The DOC release-date letter, standing alone, falls short of each predicate requirement.

First, the letter was not made at or near the time of Mr. Yisrael’s predicate-felony release date—April 8, 1998. Instead, Ms. Hobbs certified that she drafted the letter on February 4, 2004—nearly six years after the fact. Second, Ms. Hobbs drafted the letter upon the prosecutor’s request, exclusively for the purpose of the instant prosecution, not as part of a regularly conducted activity. “When a document is made for something other than a regular business purpose, it does not fall within the business record exception,” and “[w]henever a record is made for the purpose of preparing for litigation, its trustworthiness is suspect and should be closely scrutinized.” Charles W. Ehrhardt, Florida Evidence § 803.6, at 876 n.3, 877 (2007 ed.) (citing, e.g., United States v. Kim, 595 F.2d 755, 760-64 (D.C. Cir. 1979) (rejecting an argument that a document created solely for litigation purposes was admissible as a business-records summary of otherwise admissible records, which were not produced)).⁷ Similar to the telefax at issue in Kim, the release-date

7. The Federal Rules of Evidence may provide persuasive authority for interpreting the counterpart provisions of the Florida Evidence Code. See Sikes v. Seaboard Coast Line R.R., 429 So. 2d 1216, 1221 (Fla. 1st DCA 1983) (citing

letter cannot be admitted as a summary of otherwise admissible records, which were not produced. See also Thompson v. State, 705 So. 2d 1046, 1048 (Fla. 4th DCA 1998) (“[T]he business-records exception to the hearsay rule . . . does not authorize hearsay testimony concerning the contents of business records which have not been admitted into evidence.”); United States v. Marshall, 762 F.2d 419, 423-28 (5th Cir. 1985) (substantially similar). The letter itself is not a record; rather, as the First District observed in Gray,

[the DOC letter] constituted hearsay, and the State proved no proper predicate for its admission under any exception to the rule excluding hearsay. The document fails to identify the official records on which it relied, if any, does not state that it is a true and correct representation of any record, and does not say where or in whose custody any original official or business records are kept. . . . [The] statement is essentially a (defective) affidavit devoid of any reference to records the DOC maintains

Gray, 910 So. 2d at 869-70 (emphasis supplied). See also Desue, 908 So. 2d at 1116-18 (holding the DOC’s “Crime & Time Reports” admissible as business records, and commenting that “we [are not] concerned here with an affidavit prepared for use in a particular case masquerading as a business record.” (emphasis supplied)).

Third, the DOC letter does not state that it was drafted “[b]y or from information transmitted by a person with knowledge.” § 90.803(6)(a), Fla. Stat.

Charles W. Ehrhardt, A Look at Florida’s Proposed Code of Evidence, 2 Fla. St. U. L. Rev. 681, 682-83 (1974)).

(2004). Fourth and finally, the DOC produces its Crime and Time Reports as a regular practice in the ordinary course of its business—i.e., its statutorily mandated duty⁸ to keep track of its inmate population. See Desue, 908 So. 2d at 1117. Conversely, the DOC produces release-date letters at the request of prosecutors, exclusively for the purpose of litigation, not as part of its regularly conducted activities. See, e.g., Gray, 910 So. 2d at 869-70.

In Yisrael, the State could have secured the admission of the attached Crime and Time Report as a business record if it had supplied the authentication required by sections 90.803(6) and 90.902(11). See, e.g., Parker v. State, 973 So. 2d 1167, 1168-69 (Fla. 1st DCA 2007) (holding that a DOC Crime and Time Report is admissible as a business record where a DOC records custodian supplies a certification that strictly complies with sections 90.803(6) and 90.902(11), Florida Statutes), notice invoking discretionary jurisdiction filed, No. SC07-1847 (Fla. Oct. 2, 2007). However, the State did not provide a section 90.902(11) certification in this case; instead, it contends that the release-date letter alone is admissible as a business record. We do not agree with this contention. We therefore hold that a DOC release-date letter is not a business record because it was not (1) made at or near the time of the defendant’s release date; (2) made by or

8. “The Department of Corrections shall be responsible for the inmates and for the operation of, and shall have supervisory and protective care, custody, and control of, all buildings, grounds, property of, and matters connected with, the correctional system.” § 945.04(1), Fla. Stat. (2001) (emphasis supplied).

from information transmitted by a person with knowledge; (3) kept in the ordinary course of a regularly conducted business activity; or (4) created as a regular practice.

B. The Public-Records Exception

The State also contends that the DOC release-date letter, in and of itself, is admissible as a public record under section 90.803(8), Florida Statutes (2004).⁹ We do not agree with this contention because this type of letter does not pass muster under the relevant evidentiary analysis. Where government records are at issue, the records are often admissible both as business records and as public records; but it is generally easier to obtain admission as a public record. See Ehrhardt, supra § 803.8, at 905. For example, in contrast to business records, the State is not required to create public records at or near the time of the memorialized matter. Compare § 90.803(6), Fla. Stat. (2004), with § 90.803(8), Fla. Stat. (2004). Further, an evidentiary proponent may easily authenticate public

9. The public-records exception provides in pertinent part:

Records, reports, statements reduced to writing, or data compilations, in any form, of public offices or agencies, setting forth the activities of the office or agency, or matters observed pursuant to duty imposed by law as to matters which there was a duty to report, excluding in criminal cases matters observed by a police officer or other law enforcement personnel, unless the sources of information or other circumstances show their lack of trustworthiness. The criminal case exclusion shall not apply to an affidavit otherwise admissible under s. 316.1934 or s. 327.354.

records by requesting that the State supply the record under seal. See § 90.902(1), Fla. Stat. (2004).

“Public record,” as used in section 90.803(8), only encompasses two types of records. The first type includes records setting forth “the activities of the office or agency.” § 90.803(8), Fla. Stat. (2004); Ehrhardt, supra § 803.8, at 906. And the second type includes records setting forth “matters observed pursuant to [a] duty imposed by law as to matters which there was a duty to report.” § 90.803(8), Fla. Stat. (2004); Ehrhardt, supra § 803.8, at 906. Moreover, “matters-observed” public records must be based upon a public official’s first-hand observation of an event. See Ehrhardt, supra § 803.8, at 906; Kimbrough v. State, 852 So. 2d 335, 335-36 (Fla. 5th DCA 2003).

The release-date letter at issue in this case is not an “activities-based” public record. The DOC is “responsible for the inmates and for the operation of, and shall have supervisory and protective care, custody, and control of, all buildings, grounds, property of, and matters connected with, the correctional system.” § 945.04(1), Fla. Stat. (2001). However, drafting a gratuitous hearsay letter for the purpose of litigation is not a regular activity of the DOC. Rather, creating and maintaining Crime and Time Reports is the relevant DOC activity. See, e.g., Parker, 973 So. 2d at 1168-69; Desue, 908 So. 2d at 1117-18. Release-date letters do not memorialize any DOC activity; instead, they assert a release date without

reference to the actual documents the DOC uses to maintain accurate release dates for its inmate population. See, e.g., Parker, 973 So. 2d at 1168-69; Desue, 908 So. 2d at 1117-18; Gray, 910 So. 2d at 869. Thus, the release-date letter alone is not admissible under the first prong of section 90.803(8) because it does not memorialize a DOC activity.

The release-date letter is also not a “matters-observed” public record:

[T]o be admitted under this portion of the exception: (1) the source of the information must have personal knowledge of the information recorded, as the phrase “matters observed” implies, (2) the source must have had a legal duty to both observe and report the information, and (3) the record in question must be one that the public agency or office is required by law to prepare.

Ehrhardt, supra § 803.8, at 908 (emphasis supplied). Here, Ms. Hobbs did not allege that she had personal knowledge of Mr. Yisrael’s release date, and the DOC did not have a legal duty to create a litigation-specific letter for the assistant state attorney. Rather, the DOC had a statutory duty to create and maintain its Crime and Time Reports, which are the actual records the DOC relies upon to keep track of inmates’ crimes, sentences, and release dates. See § 945.04(1), Fla. Stat. (2001); Parker, 973 So. 2d at 1168-69; Desue, 908 So. 2d at 1117-18; Gray, 910 So. 2d at 869. Therefore, the release-date letter alone is not admissible under the second prong of section 90.803(8) because it does not memorialize a matter observed and recorded pursuant to a legal duty.

In contrast, the Crime and Time Report attached and included in exhibit C, which the parties and the Fourth District inadvertently overlooked in the discussion below, is a public record. See § 90.803(8), Fla. Stat. (2004); Desue, 908 So. 2d at 1117-18. Crime and Time Reports memorialize a regular DOC activity: the efforts of the Department to accurately record and maintain records of inmates' crimes, sentences, and release dates, and we hold that section 945.04(1), Florida Statutes, imposes a statutory duty upon the DOC to create and maintain records regarding "matters connected with . . . the correctional system." Furthermore, the signed DOC release-date letter—written under seal—may be viewed as a means of authenticating the attached Crime and Time Report. § 90.902(1), Fla. Stat. (2004) (signed public records offered under seal are self-authenticating).

Here, we conclude that the Crime and Time Report is an admissible public record because: (1) the State submitted the release-date letter and the Crime and Time Report as one combined record during Yisrael's sentencing proceeding; (2) the release-date letter certified Yisrael's former name, offense identification numbers, and release date; (3) the attached Crime and Time Report contained this same information; and (4) the DOC records custodian signed the letter, which was written under seal. Hence, the combined record constituted an "activities-based" public record, which the State authenticated under section 90.902(1), Florida Statutes. Section 90.902(1) merely requires that the submitted document bear the

signature of the records custodian attesting to the authenticity of the document and to the authenticity of the document's seal. See § 90.902(1), Fla. Stat. (2004); Ehrhardt, supra § 902.2, at 1045. Here, Joyce Hobbs certified the document's seal and certified the accuracy of all the relevant information contained in Mr. Yisrael's attached Crime and Time Report. Therefore, the combined record, not the release-date letter itself, was admissible as a public record, which the records custodian properly authenticated under seal. See §§ 90.803(8), 90.902(1), Fla. Stat. (2004).

III. CONCLUSION

In sum, we conclude that DOC release-date letters alone are not admissible under either the business- or public-records exceptions because they are not records under the relevant statutory definitions. A DOC release-date letter, standing alone,

fails to identify the official records on which it relied, if any, does not state that it is a true and correct representation of any record, and does not say where or in whose custody any original official or business records are kept. . . . [The letter] is essentially a (defective) affidavit devoid of any reference to records the DOC maintains

Gray, 910 So. 2d at 869-70 (emphasis supplied).

There is, however, no applicable legal impediment to the State and the DOC using a signed release-date letter, written under seal, as a means of authenticating an attached DOC Crime and Time Report, which then renders the entire report admissible as a public record. See § 90.902(1), Fla. Stat. (2004). Moreover, as the

First District explained in Parker, the State may have a second means of authenticating a DOC Crime and Time Report: the Department may attach a section 90.902(11) certification to the report, which satisfies the business-records admissibility predicate. See Parker, 973 So. 2d at 1168-69; § 90.902(11), Fla. Stat. (2004).

Nevertheless, in the case at bar, the Fourth District incorrectly held that the DOC release-date letter alone was admissible, in and of itself, as a public record. See Yisrael, 938 So. 2d at 549-50. Therefore, we disapprove the reasoning and the rule of law articulated by the Fourth District, but we approve the ultimate result because, apparently unknown to appellate counsel and the Fourth District, the release-date letter—written under seal—provided in this case was simply used as a permissible means of authenticating an attached Crime and Time Report. See §§ 90.803(8), 90.902(1), Fla. Stat. (2004). We also approve the decision of the First District in Gray v. State, 910 So. 2d 867 (Fla. 1st DCA 2005), to the extent that it holds that DOC release-date letters, standing alone, constitute inadmissible hearsay. Finally, we caution that in appropriate cases, both the business- and public-records exceptions are subject to “trustworthiness” exclusions (i.e., if the records—despite their otherwise admissible status—show a lack of trustworthiness, courts may deem the records inadmissible).¹⁰ See §§

10. There is no trustworthiness issue in this case.

90.803(6)(a), 90.803(8), Fla. Stat. (2004). In the future, the State and the DOC should prove recidivist defendants' predicate-offense release dates through Crime and Time Reports, and should use one or both of the two permissible means of authenticating these reports: (1) business-records certification under sections 90.803(6)(c) and 90.902(11); or (2) public-records authentication under seal as provided by section 90.902(1). See Parker, 973 So. 2d at 1168-69; §§ 90.803(6)(c), 90.902(1), 90.902(11), Fla. Stat. (2004). We remand for further proceedings consistent with this opinion.

It is so ordered.

WELLS, ANSTEAD, PARIENTE, QUINCE, CANTERO, and BELL, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND
IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of Appeal - Certified
Direct Conflict of Decisions

Fourth District - Case No. 4D04-2967

(Broward County)

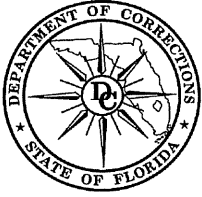
Carey Haughwout, Public Defender, and David J. McPherrin, Assistant Public
Defender, Fifteenth Judicial Circuit, West Palm Beach, Florida,

for Petitioner

Bill McCollum, Attorney General, Tallahassee, Florida, Celia A. Terenzio, Bureau
Chief, and Thomas A. Palmer, Assistant Attorneys General, West Palm Beach,
Florida,

for Respondent

[APPENDIX]



**FLORIDA
DEPARTMENT of
CORRECTIONS**

Governor
JEB BUSH
Secretary
JAMES V. CROSBY, JR.

An Equal Opportunity Employer

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DATE: 2/4/04
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OFFICE OF THE STATE ATTORNEY
201 SE 6TH STREET, SUITE 665
FORT LAUDERDALE, FL 33301
RE: EUGENE LUMSDEN, DC# 647647

INFORMATION PROVIDED:

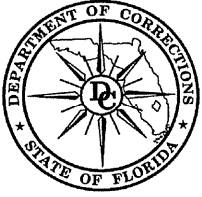
AFFIDAVIT OF LAST RELEASE

COMMENTS:

Please direct all questions or comments to:

Carol J. Butler, Central Records Administrator
Phone: (850) 488-1503 Fax: (850) 413-8302
Email: butler.carol@mail.dc.state.fl.us

Request Tracking Number: 15838



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STATE OF FLORIDA)

COUNTY OF LEON)

I, JOYCE HOBBS, CORRECTIONAL SERVICES ADMINISTRATOR , CENTRAL RECORDS OFFICE,
STATE OF FLORIDA DEPARTMENT OF CORRECTIONS, DO HEREBY CERTIFY THAT THIS SEAL IS THE
OFFICIAL SEAL OF THE FLORIDA DEPARTMENT OF CORRECTIONS. I ALSO CERTIFY THAT THE LAST
RELEASE DATE FOR **INMATE EUGENE LUMSDEN, DC# 647647, B/M, DOB: 4/1/1963, WAS APRIL 08, 1998,**
FOR CASE # 89-20161, 89-20162 - BROWARD COUNTY, FLORIDA.

GIVEN UNDER MY HAND AND SEAL, THIS FEBRUARY 04, 2004.

JOYCE HOBBS,
CORRECTIONAL SERVICES ADMINISTRATOR

SEAL

DC14 0 647647
NAME: LUMSDEN, EUGENE

USER ID: DSIMDOY
DOC NO: 647647 STATUS: INACTIVE

IISO006 OVERALL INMATE RECORD AS OF 02/04/04 TIME: 10:34

THE FOLLOWING INFORMATION IS FROM THE RECORD OF THE INMATE NAMED ABOVE.
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AWARD OF AND/OR FORFEITURE OF GAIN TIME OR PROVISIONAL CREDITS OR WITH
A CHANGE IN SENTENCE STRUCTURE OR INMATE STATUS.

LOCATION: -RELEASED PROVISIONAL RELEASE DATE: NO CREDITS
OVERALL TERM: 7 YRS 0MOS 0DAYS TENTATIVE RELEASE DATE: 04/08/1998
CUSTODY GR: MEDIUM SINCE: / / LAST PROV.AWARD: 0 DAYS ON / /
DATE OF BIRTH: 04/01/63 SEX: MALE LAST GAIN TIME: 20 DAYS ON 02/28/98
BIRTHPLACE: GEORGIA HT: 5' 2" RACE: BLACK EYES: BROWN
SOC.SEC.NO.: FBI NO: FDLE:
FILE IMAGING:

THE FOLLOWING DATES ARE SET BY THE PAROLE COMMISSION. QUESTIONS ABOUT
THESE DATES SHOULD BE DIRECTED TO THAT AGENCY AT (850) 488-1655.
CONTROL RELEASE DATE: INELIGIBLE PRESUMPTIVE PAROLE DATE: 99/99/9999

INMATE SENTENCES AS OF 02/04/04 TIME: 10:34

THE PRIOR INMATE RECORD REFLECTS THE DATE THE OFFENDER WAS RELEASED.
EXTERNAL MOVEMENTS WILL REFLECT THE TYPE OF RELEASE.
THE CURRENT INMATE RECORD IS COMPRISED OF CONCURRENT AND/OR CONSECUTIVE
SENTENCES WHICH ARE COMBINED TO ESTABLISH THE OVERALL TERM.

--- PRIOR INCARCERATION ---							
IMPOSED	COUNTY	CASE NO.	OFFENSE	YRS	MO	DY	RELEASED
10/29/86	BROWARD	06-8301023	GRAND THEFT, \$300 LES	1	1	0	03/03/87
SPEC. PROV.: NONE							
07/10/92	BROWARD	06-8920161	ARSON, WILLFUL DAMA.S	6	0	0	05/13/97
SPEC. PROV.: PAROLE INEL							
07/10/92	BROWARD	06-8920161	GRAND THEFT, \$300 LES	5	0	0	05/13/97
SPEC. PROV.: PAROLE INEL							
07/10/92	BROWARD	06-8920162	ROBBERY N/FIREARM OR	6	0	0	05/13/97
SPEC. PROV.: PAROLE INEL							
07/10/92	BROWARD	06-9104276	POSS.FIREARM BY FELO	5	0	0	05/13/97
SPEC. PROV.: PAROLE INEL							
07/10/92	BROWARD	06-9104276	OBSTRUCT CRIME INVES	5	0	0	05/13/97
SPEC. PROV.: PAROLE INEL							
07/10/92	BROWARD	06-9105583	OBSTRUCT CRIME INVES	5	0	0	05/13/97
SPEC. PROV.: PAROLE INEL							
07/10/92	BROWARD	06-9209418	BATTERY LAW ENFORCEM	5	0	0	05/13/97
SPEC. PROV.: PAROLE INEL							

--- LATEST INCARCERATION ---
11/06/97 BROWARD 06-8920161 ARSON, WILLFUL DAMA.S 7 0 0 04/08/98

SPEC.PROV.: PAROLE INEL
 11/06/97 BROWARD 06-8920162 ROBBERY N/FIREARM OR 7 0 0 04/08/98
 SPEC.PROV.: PAROLE INEL

 INMATE DETAINERS AS OF 02/04/04 TIME: 10:34

THE FOLLOWING REFLECTS DETAINERS AGAINST THIS RECORD, AND/OR REQUESTS TO BE NOTIFIED PRIOR TO RELEASE OF THE INMATE.

FILED	TYPE	--- PRIORITY INCARCERATION --- AUTHORITY	CHARGE(S)	REMOVED
07/10/92	NOTIFY	NTFY: BROWARD CO P&P	6YRS PROBATION TO FOLLOW	05/13/97

 INMATE MOVEMENT/TRANSFER HISTORY AS OF 02/04/04 TIME: 10:34

THE FOLLOWING ENTRIES REFLECT MOVEMENT BY THE INMATE BETWEEN DEPARTMENT FACILITIES AS WELL AS RELEASES AND RETURNS FROM OUTSIDE AGENCIES.

DATE	MOVEMENT TYPE	--- PRIORITY INCARCERATION --- DESTINATION/LOCATION	FROM
10/31/86	NEW COMMITMENT	R.M.C.- MAIN UNIT	BROWARD
11/05/86	TRANSFERRED TO	NEW RIVER-WEST UNIT	R.M.C.- MAIN UNIT
11/07/86	TRANSFERRED TO	NEW RIVER-EAST UNIT	NEW RIVER-WEST UNIT
11/25/86	TRANSFERRED TO	APALACHEE EAST UNIT	NEW RIVER-EAST UNIT
02/04/87	TRANSFERRED TO	OPA LOCKA W.R.C.	APALACHEE EAST UNIT
02/04/87	IN TRANSIT AT	R.M.C.- MAIN UNIT	APALACHEE EAST UNIT
02/11/87	TRANSFERRED TO	OPA LOCKA W.R.C.	R.M.C.- MAIN UNIT
02/11/87	IN TRANSIT AT	INDIAN RIVER C. I.	APALACHEE EAST UNIT
02/19/87	TRANSFERRED TO	OPA LOCKA W.R.C.	INDIAN RIVER C. I.
03/03/87	SUPV REL PRGM	BROWARD	OPA LOCKA W.R.C.
03/26/87	DISCH. FM SCR	BROWARD	OPA LOCKA W.R.C.
08/06/92	NEW COMMITMENT	S.FLA.RECEPTION CTR.	BROWARD
09/15/92	TRANSFERRED TO	MARTIN UNIT TC	S.FLA.RECEPTION CTR.
01/15/93	TRANSFERRED TO	MARTIN WORK CAMP	MARTIN UNIT TC
01/26/93	TRANSFERRED TO	HENDRY C. I.	MARTIN WORK CAMP
01/26/93	IN TRANSIT AT	S.FLA.RECEPTION CTR.	MARTIN WORK CAMP
01/27/93	TRANSFERRED TO	HENDRY C. I.	S.FLA.RECEPTION CTR.
03/09/93	TRANSFERRED TO	HENDRY WORK CAMP	HENDRY C. I.
07/21/93	TRANSFERRED TO	HOLLYWOOD W. R. C.	HENDRY C. I.
07/21/93	IN TRANSIT AT	S.FLA.RECEPTION CTR.	HENDRY WORK CAMP
07/23/93	TRANSFERRED TO	HOLLYWOOD W. R. C.	S.FLA.RECEPTION CTR.
11/09/93	TRANSFERRED TO	POMPANO BCH W.R.C.	HOLLYWOOD W. R. C.
01/20/94	TRANSFERRED TO	S.FLA.RECEPTION CTR.	POMPANO BCH W.R.C.
03/03/94	TRANSFERRED TO	NEW RIVER-EAST UNIT	S.FLA.RECEPTION CTR.
03/03/94	IN TRANSIT AT	R.M.C.- WEST UNIT	S.FLA.RECEPTION CTR.
03/04/94	TRANSFERRED TO	NEW RIVER-EAST UNIT	R.M.C.- WEST UNIT
03/04/94	TRANSFERRED TO	NEW RIVER-WEST UNIT	NEW RIVER-EAST UNIT

06/28/94	TRANSFERRED TO	BAKER C. I.	NEW RIVER-WEST UNIT
07/15/94	TRANSFERRED TO	SUMTER C.I.	BAKER C. I.
07/15/94	IN TRANSIT AT	R.M.C.- WEST UNIT	BAKER C. I.
07/18/94	TRANSFERRED TO	SUMTER C.I.	R.M.C.- WEST UNIT
07/18/94	IN TRANSIT AT	CFRC-EAST	R.M.C.- WEST UNIT
07/25/94	TRANSFERRED TO	SUMTER C.I.	CFRC-EAST
05/13/97	EOS TO PROB/CC	PALM BEACH	SUMTER C.I.

--- LATEST INCARCERATION ---

12/02/97	NEW COMMITMENT	S.FLA.RECEPTION CTR.	BROWARD
12/12/97	TRANSFERRED TO	S.F.R.C SOUTH UNIT	S.FLA.RECEPTION CTR.
12/31/97	TRANSFERRED TO	HAMILTON C.I.	S.F.R.C SOUTH UNIT
12/31/97	IN TRANSIT AT	R.M.C.- WEST UNIT	S.F.R.C SOUTH UNIT
01/02/98	TRANSFERRED TO	HAMILTON C.I.	R.M.C.- WEST UNIT
01/07/98	TRANSFERRED TO	HAMILTON WORK CAMP	HAMILTON C.I.
04/08/98	COND. RELEASE	BROWARD	HAMILTON WORK CAMP

OFFENDER NAMES AS OF 02/04/04 TIME: 10:34

THE FOLLOWING ENTRIES REFLECT ALL NAMES BY WHICH THE OFFENDER IS KNOWN.

TYPE	NAME
TRUE	LUMSDON, EUGENE
COMMIT.	LUMSON, EUGENE
COMMIT.	LUMSDEN, EUGENE
ALIAS	PATRICK, JAMES
ALIAS	YISREAL, ABRAHAM

Case No. 01-6729CKD

FILED 4

JUL 09 2004

By *W. K. Lytle*

State