SUPREME COURT OF FLORIDA

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| ROBERT E. RANSONE<br><br>Petitioner,<br><br>vs.<br><br>STATE OF FLORIDA,<br><br>Respondent. | Case No. SC09-2084<br><br>Lower Tribunal Nos.: 4D09-316, 04-920 CF10A |

# REPLY BRIEF ON THE MERITS

*On Discretionary Review from the Fourth District Court of Appeal*

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## ARGUMENT

### I. DANIELS IS THE EXCEPTION, NOT THE RULE, GOVERNING CREDIT FOR TIME SERVED IN COUNTY JAIL, AND SHOULD BE LIMITED TO CASES INVOLVING MULTIPLE, PROSPECTIVE SENTENCES.

The crux of the State's argument is that granting Mr. Ransone credit on his Broward sentence for the time he served in Miami-Dade County "would allow the petitioner to improperly pyramid sentences and is contrary to the plain language of Section 921.16(1) of the Florida Statutes" and Daniels v. State, 491 So. 2d 543 (Fla. 1986). (Answer Br., p. 7.) The State, and the Fourth District in the decision on review, read Daniels too narrowly.

Section 921.161(1), Florida Statutes, governs a defendant's entitlement to credit for time served in county jail before sentencing. Notably, the State entirely ignores the governing statute in its Answer Brief. As stated by this Court in Daniels, "the legislature amended Section 921.161(1), to provide that the court *must* allow a defendant credit for *all of the time* spent in the county jail before sentencing." 491 So. 2d at 544-45 (emphasis in original). In Daniels, this Court recognized, in passing, a possible exception to the mandate of Section 921.161(1), where "the defendant does not receive concurrent sentences on multiple charges; in such a case the defendant 'is not entitled to have his jail time credit pyramided by being given credit on each sentence for the full time he spends in jail awaiting

disposition.'" Id. (quoting Martin v. State, 452 So. 2d 938, 938-29 (Fla. 2d DCA 1984)).

The exception contemplated by Daniels is inapplicable here because Mr. Ransone did not receive multiple sentences when he was sentenced in Broward County. Under these facts, the Court should approve of the reasoning of the Third District in Tharpe v. State, 744 So. 2d 1256 (Fla. 3d DCA 1999), which held that the rule against pyramiding credit is not implicated when the defendant has completed his sentence in the first county prior to sentencing in the second county, and the court in the second county imposes only one sentence. 744 So. 2d at 1256-57.

Because Section 921.16(1) expressly applies to multiple "sentences," it has no application to Mr. Ransone's sentence in Broward County. More importantly, Mr. Ransone's Broward County sentence was not consecutive for purposes of Daniels. As a result, the District Court erred in finding that Mr. Ransone was not entitled to credit for time served in Miami-Dade County.

## II. THE RECORD DOES NOT SUPPORT THE FOURTH DISTRICT'S RELIANCE ON THE TIPSY-COACHMAN DOCTRINE

The State also argues that "it is clear that the trial judge in this case intended for the sentences to be consecutive . . . ." (Answer Br., p. 8.) Notably, the only support cited by the State for this assertion is the District Court's reasoning in the decision on review. See id. However, the record below does not support the

State's argument or the Fourth District's conclusion. To the contrary, the trial court's sentence in Broward County was premised on the lack of evidence that Mr. Ransone had been arrested on the Broward County Warrant while jailed in Miami-Dade County. During the hearing on June 16, 2006, Mr. Ransone testified that he was arrested on the Broward County Warrant while jailed in Miami-Dade County, and requested credit for the time he served from the date of that arrest. R-53. The trial court responded:

> I don't have anything in the Court filed to indicate that.
>
> And you will have to present that to me, this shows he wasn't booked into the Broward county jail until April 6, 2006.
>
> But that doesn't mean a detainer was placed on him. I just don't have that information in the file. (R-53.)

This only supports the conclusion that the trial court had no reason to specify whether Mr. Ransone's Broward sentence was concurrent or consecutive to the Miami-Dade sentence. Not only was the Miami-Dade sentence completed, but there was no evidence before the trial court that Mr. Ransone had been arrested on the Broward County Warrant while jailed in Miami-Dade County. This record simply does not support the Fourth District's conclusion that the trial court intended that Mr. Ransone's Broward County sentence be consecutive to the Miami-Dade sentence. Robertson v. State, 829 So. 2d 901, 906-07 (Fla. 2002) (the "key to the application of [the Tipsy-Coachman] doctrine of appellate efficiency is that there must have been support for the alternative theory or principle of law in

the record before the trial court."). To the contrary, the trial court had no reason to make the sentence concurrent or consecutive because the Miami-Dade sentence was already completed. As such, Mr. Ransone should be permitted to proceed with his Rule 3.850(b) motion with the newly discovered evidence of his arrest on the Broward County Warrant.

## CONCLUSION

For the foregoing reasons, in addition to those stated in Petitioner's Initial Brief, the decision below should be reversed, and the case remanded to the trial court to conduct an evidentiary hearing on the merits of Mr. Ransone's Rule 3.850(b) motion.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 11, 2010, a true and correct copy of the foregoing Answer Brief of Appellee was served via U.S. Mail, postage prepaid, to the following:

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## CERTIFICATE OF COMPLIANCE

This brief has been prepared using Times New Roman, 14 Point Font in compliance with the Florida Rules of Appellate Procedure.

S. Douglas Knox